

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

FILED

Court of Appeal - First App. Dist.

JUN - 5 2001

RON D. BARROW, CLERK

By _____ DEPUTY

STATE OF CALIFORNIA, et al.,

Petitioners,

v.

SUPERIOR COURT OF THE COUNTY
OF SAN FRANCISCO;

Respondent.

GINO BUCHIGNANI, et al.,

Real Parties in Interest.

A094890

(San Francisco County
Super. Ct. No. BC312236)

By the Court:¹

Permission to file petitioner's May 30, 2001 letter brief in reply to the opposition is denied. The Clerk of this Court is directed to return the letter brief to petitioner at petitioner's expense.

Respondent, superior court, denied petitioner's motion for summary judgment or summary adjudication as to the "Cloverdale plaintiffs" on the sole ground that the motion would not completely dispose of a cause of action within the meaning of Code of Civil Procedure section 437c, subdivision (f)(1). The superior court erred.

If meritorious, petitioner's motion would have completely disposed of causes of action pleaded in the operative complaint on file between petitioner and each of the plaintiffs against whom the motion was filed. (See § 22; § 378, subd.(a)(1); § 578; 9 Witkin. Cal. Procedure (4th ed. 1997) Appeal, § 69, p. 126; § 103, pp. 166-167; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 740-741.)

Therefore, let an alternative writ of mandate issue, commanding the County of San Francisco Superior Court in its case number BC 312236 to set aside its April 25, 2001 order denying petitioner's motion for summary judgment and/or summary adjudication and to instead reconsider the motion and the opposition to it.

¹ Before Stein, Acting, P.J., Swager, J., and Marchiano, J.

The alternative writ is to be issued, served and filed on or before June 5, 2001, and shall be deemed served when certified copies are mailed by the Clerk of this Court to petitioner, real parties in interest and respondent, superior court.

The parties shall jointly make inquiry whether respondent, superior court, has complied with the alternative writ. Thereafter, on or before June 25, 2001, petitioner shall inform this Court in writing of the outcome of that inquiry, and shall serve and file any new orders issued by respondent. If respondent complies with the alternative writ, this Court will promptly discharge it, and dismiss the petition as moot.

Otherwise, a written return to the alternative writ shall be served and filed on or before June 28, 2001, and the matter will be heard before Division One of this Court when it is ordered on calendar.

Petitioner shall serve a copy of this order and the alternative writ on all parties to County of San Francisco Superior Court Number BC 312236, and shall file proof thereof in this Court.

Dated: JUN 05 2001

STEIN, J.

ACTING
P.J.