

NOT TO BE PUBLISHED IN OFFICIAL REPORTS  
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

COPY

FIRST APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA, et al.,  
Petitioner,  
v.  
THE SUPERIOR COURT OF SAN  
FRANCISCO COUNTY,  
Respondent;  
GINO BUCHIGNANI, et al.,  
Real Parties in Interest.

**FILED**

Court of Appeal - First App. Dist.

OCT - 4 2001

RON D. BARROW, CLERK

A094890

By \_\_\_\_\_  
DEPUTY

(San Francisco County  
Super. Ct. No. 312236)

Petitioners, the State of California, Delaine Eastin as the Superintendent of Public Instruction, the California Department of Education and the California Board of Education (collectively the State), are defendants in a suit for injunctive and declaratory relief concerning alleged "substandard learning conditions and learning tools" in certain California public schools. Named plaintiffs include real parties in interest, 3 minors who attend Cloverdale High School (the Cloverdale plaintiffs).<sup>1</sup> The other student plaintiffs attend 37 other schools in 17 other school districts.

The State moved for summary judgment and/or summary adjudication against the Cloverdale plaintiffs, contending that their claims had no merit. (Code Civ. Proc., § 437c, subd. (a); 437c, subs. (n)(1) and (o)(2).)<sup>2</sup> Respondent superior court denied the motion on the sole ground that the State's motion would not completely dispose of a

<sup>1</sup> Their parents filed petitions to act as their guardians ad litem in the suit below.

<sup>2</sup> Unless otherwise noted, further statutory references are to the Code of Civil Procedure.

cause of action. (§ 437c, subd. (f)(1).) This timely petition for writ of mandate followed. (§ 437c, subd. (l).)

As will be seen, if meritorious, the State's motion would have completely disposed of some or all causes of action pleaded in the operative complaint on file between the State and each of the named Cloverdale plaintiffs. We previously issued our alternative writ, affording the superior court the opportunity to voluntarily and expeditiously correct its error. It declined to do so. Accordingly, we now issue our peremptory writ.

Section 437c, provides “[a]ny party may move for summary judgment in any action or proceeding if it is contended that the action has no merit . . . .” (§ 437c, subd. (a); 437c, subds. (n)(1) and (o)(2).) Where some, but not all causes of action between parties may be meritless, section 437c also provides that a party may move for summary adjudication “as to one or more causes of action within an action . . . .” (§ 437c, subd. (f)(1).)

Relying on *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848 (*Lilienthal*), the Cloverdale plaintiffs argue here, as they did below, that because they joined their claims with those of other plaintiffs, each alleging the same wrongful acts, the State's efforts to terminate the matter against fewer than all must necessarily fail. They correctly observe that a cause of action for summary judgment/summary adjudication purposes is a “group of related paragraphs in the complaint reflecting a separate theory of liability.” (*Ibid.*) They erroneously conclude, however, that because the pleaded causes of action will remain in the complaint concerning other plaintiffs, the motion may not lie against them.

“An action is an ordinary proceeding in a court of justice by which *one party* prosecutes *another* for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.” (§ 22, italics added.) Civil actions arise out of obligations or injuries (§ 25), and likewise are prosecuted by “one party against another.” (§ 30.) Several plaintiffs may join their actions into one action where, as here, they assert rights severally, and the rights asserted arise out of the same transactions or occurrences with common questions of fact or law among the cases.

(§ 378, subd. (a)(1).) But, while convenience may justify a single trial, when parties have distinct interests, “[j]udgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants . . . .” (§ 578; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 69, p. 126; § 103, pp. 166-167.) And, “[j]udgment in a multiparty case determining all issues as to one or more parties may be treated as final even though issues remain to be resolved between other parties . . . .” (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 740.) The summary judgment motion procedure clearly contemplates such cases. (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1208; § 437c, subds. (c), (j).) Nowhere does section 437c say that a party’s motion for summary judgment must dispose of all claims asserted by *all* parties against the moving party.

The State sought summary judgment or summary adjudication on the basis that the Cloverdale plaintiffs could not establish the violations alleged in the complaint concerning Cloverdale High School. As the pleadings “ ‘delimit the scope of the issues’ ” (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382), we examine them to determine whether the motion would have eliminated needless trials as to the Cloverdale plaintiffs. (*Lilienthal, supra*, 12 Cal.App.4th at p. 1854.)

The State’s answer generally denied all allegations against it. In evaluating the operative complaint,<sup>3</sup> we look first to the causes of action pleaded. Again, by causes of action, we mean the paragraphs in the complaint which reflect the separate theories of liability alleged by the Cloverdale plaintiffs against the State. (*Lilienthal, supra*, at p. 1853.)

The complaint generally alleges a “staggering range of disparities in public education” in the state and a “shocking scope of substandard educational conditions” in many schools.<sup>4</sup> In five causes of action, all of the named plaintiffs assert that the State

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<sup>3</sup> The operative pleading is the first amended complaint.

<sup>4</sup> The complaint explains that the schools “lack the bare essentials required of a free and common school education that the majority of students throughout the State enjoy: trained teachers, necessary educational supplies, classrooms, even seats in classrooms,

has violated Education Code section 51004,<sup>5</sup> the equal protection (art. I, § 7 (a); art. IV, § 16(a)) and due process (art. I, §§ 7 (a), 15) clauses of the California Constitution, and article IX, sections 1 and 5 of that constitution.<sup>6</sup> In addition, it is alleged that the State maintains schools in a manner that violates Title VI of the Civil Rights Act of 1964. (42 U.S.C., § 2000d.)

The alleged violations, however, are based upon each named plaintiff's specific allegations concerning his or her own school or school district. Each of the Cloverdale plaintiffs claims injury based upon facts specific to the Cloverdale High School. That they elected to join their separate actions (§§ 22, 30) in one pleading (§ 378, subd. (a)(1)) with one another and with many other individuals does not alter the legal effect of the pleading. The State's motion, therefore, would have eliminated some or all of the causes

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and facilities that meet basic health and safety standards. Students must therefore attempt to learn without books and sometimes without any teachers, and in schools that lack functioning heating or air conditioning systems, that lack sufficient numbers of functioning toilets, and that are infested with vermin, including rats, mice and cockroaches.”

<sup>5</sup> That section provides: “The Legislature hereby recognizes that it is the policy of the people of the State of California to provide an educational opportunity to the end that every student leaving school shall have the opportunity to be prepared to enter the world of work; that every student who graduates from any state-supported educational institution should have sufficient marketable skills for legitimate remunerative employment; that every qualified and eligible adult citizen shall be afforded an educational opportunity to become suitably employed in some remunerative field of employment; and that such opportunities are a right to be enjoyed without regard to race, creed, color, national origin, sex or economic status.”

<sup>6</sup> Article IX, section 1 provides: “A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.” Article IX section 5 provides: “The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.”

of action as to the Cloverdale plaintiffs. On this record,<sup>7</sup> the superior court erred when it concluded otherwise.

The Cloverdale plaintiffs opposed the State's motion on the grounds that triable issues of material fact remained to be resolved (§ 437c, subd. (b)) and that discovery had only recently commenced (§ 437c, subd. (h)), as well as on the ground adopted by respondent superior court. They ask us to resolve this petition in their favor even if we find the superior court's ruling to be in error. We decline to do so, as the arguments are properly resolved in the first instance by the superior court.

Respondent superior court erred when it denied the State's motion for summary judgment or summary adjudication against the Cloverdale plaintiffs on the sole ground that the motion would not completely dispose of a cause of action within the meaning of section 437c, subdivision (f)(1). Therefore, let a peremptory writ of mandate issue commanding the superior court to set aside its April 25, 2001 order denying the motion and to instead reconsider the motion and any opposition to it.

Petitioners shall recover their costs. Petitioners shall serve a copy of this opinion on all parties to San Francisco Superior Court No. BC 312 236.

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<sup>7</sup> Although the complaint contains class action allegations (§ 382), the Cloverdale plaintiffs did not object to the State's motion as premature in advance of class certification or denial of certification. (*Home Sav. & Loan Assn. v. Superior Court* (1976) 54 Cal.App.3d 208.)

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Stein, Acting P.J.

We concur:

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Swager, J.

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Marchiano, J.

(State of California v. Superior Court of S.F.; Buchignani - A094890)