Blogs
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Failure to Timely Name and Serve Real Parties In Interest Does Not Warrant Dismissal Of An Entire CEQA Action if The Unnamed Parties Are Not Indispensable

In the first reported interpretation of a 2012 amendment to CEQA's statute of limitations provisions, the First District Court of Appeal addressed "whether an action against a lead agency must be dismissed--despite being filed within the limitations period--because of a failure to [timely name and serve] necessary third parties." *Save Berkeley's Neighborhoods v. The Regents of the University of California (Collegiate Housing Foundation, American Campus Communities, real parties in interest)*, 70 Cal.App.5th 795 (2021). A decade ago, the Legislature sought

The Regents of the University of California filed a notice of determination on May 17, 2019, regarding certification of a Supplemental Environmental Impact Report analyzing an academic building, campus housing and parking project approved by the Regents for the Berkeley campus. The NOD identified American Campus Communities and the Collegiate Housing Foundation as the parties undertaking the project. Save Berkeley's Neighborhoods' June 13, 2019 petition for a writ of mandate failed to name either ACC or CHF. A first amended petition filed on September 18, 2019, added ACC and CHF as real parties in interest, and a "first amendment to the first amended petition" subsequently sought to add various ACC entities as real parties. ACC and CHF argued that the incurable failure to timely name and serve persons identified on a NOD as undertaking a project requires dismissal. The First District rejected this argument, relying on legislative history to resolve textual ambiguities in Section 21167.6.5 and preserve the applicability of an equitable indispensable party analysis in CEQA actions. Prior to 2012, Public Resources Code Section 21167.6.5(a) required that "any recipient of an approval" be named and served in CEQA actions as real parties in interest. However, then-applicable PRC Section 21108(a) did not require state agencies to identify the "recipient of an approval" on NODs. Courts enforced Section

21167.6.5(a) by 1) identifying the "approval" subject to challenge and the "recipients" thereof, and then 2) applying Code of Civil Procedure Section 389(b)'s equitable balancing test to determine whether unnamed approval recipients were indispensable such that an incurable failure to name them requires dismissal of the entire action. Assembly Bill 320 (2012) amended Section 21108(a) to require state agencies to identify on notices of determination those undertaking a project supported by "contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies" or "that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." Public Res. Code § 21065(b) and (c). AB 320 also amended Section 21167.6.5(a) "to replace the phrase 'any recipient of an approval'" with 'the person or persons identified by the public agency in its notice filed pursuant to" Section 21065(b) or (c). The Court of Appeal held that amended Section 21167.6.5(a) does not require dismissal for failure to timely name and serve as real parties those identified on a NOD as undertaking a project. It ruled that the use of "shall" in 21167.6.5(a) ("The petitioner or plaintiff shall name, as a real party in interest …") "only requires that parties 'shall' file and serve the real parties in interest within a limitations period … Failure to do so excludes real parties in interest from the action. The statutory language does not expressly condition a petitioner's ability to bring suit upon the inclusion of the real parties in interest." Having found AB 320's amendments left Section 21167.6.5(a) "silent as to the impact on a party's failure to name and serve the real parties in interest," the Court of Appeal concluded that the Legislature sought only to eliminate uncertainty arising from parties and courts "independently assess[ing] which entities qualified" as "recipients" of an "approval"--notoriously complex inquiries often involving "numerous sub-inquiries." The Legislature, however, did not address the courts' use of CCP Section 389(b)'s equitable balance test to determine indispensability. Reviewing the legislative history, the court noted that the Senate deleted a provision in the Assembly version of the bill that allowed a CEQA legal action to be "dismissed for failure to serve the recipients of the lead agency's approval with the petition or complaint." The opinion also referenced the Legislature's expressed intent to "prevent the dismissal of important and meritorious CEQA cases," observing that "[t]he approach advocated by appellants would increase dismissal of CEQA cases."