

Defendant further contends that Mendocino Railway is a federally recognized railroad which carries with it federally protected prerogatives that the City's injunction would extinguish.

I. Standard of Review:

A judge may, on a motion to strike made under CCP §435 or at any time at his or her discretion, strike out any irrelevant, false, or improper matter in a pleading, on terms the judge deems proper. CCP §436(a); *La Jolla Village Homeowners Ass'n v Superior Court* (1989)212 Cal.App.3d 1131, 1141. "Irrelevant matter" includes an "allegation that is not essential to the statement of a claim or defense," or a "demand for judgement requesting relief not supported by the allegations of the complaint."

The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." CCP §437. On a motion to strike, the Court assumes the truth of all facts properly pled in or reasonably inferred from the complaint, but not mere contentions, deductions, or conclusions of law. *Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 985-86

An objection to a portion of a cause of action may be made by a motion to strike, but not by a general demurrer. For example, a defendant may file a motion to strike to challenge a portion of a cause of action that violates the applicable statute of limitations or a purported claim of right that is legally invalid. Motions to strike for this purpose should be used sparingly, however, and not to afford parties a procedural "line item veto." (See, *PHII, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.

A judge may, on a motion to strike made under CCP §435 or at any time at this or her discretion, strike out all or any part of a pleading that is not drawn or filed in conformity with the laws of this state, a court rule, or a court order. CCP §436(b). *Caliber Bodyworks, Inc. v Superior Court* (2005) 134 Cal.App.4th 365, 384-385. Under this authority, a judge may strike sham pleadings or those not filed in conformity with a prior ruling of the court. *Ricard v. Grobstein, Goldman, Stevenson, Siegel, LeVine & Mangel* (1992) 6 Cal.App.4th 157, 162.

A defendant may object to the court's jurisdiction over the subject matter of the action by filing a motion to strike. *Greener v Workers' Comp. Appeals Bd.* (1933) 6 Cal4th 1028, 1036

II. Discussion:

As set forth in this court's ruling on Mendocino Railway's demurrer (See sections IV(A) and IV(B)) Mendocino Railway's contentions regarding both subject matter jurisdiction and preemption are overly broad. Neither Public Utilities Code §1759 nor preemption under the Interstate Commerce Commission Termination Act (ICCTA) provide the wholesale freedom from local control that Mendocino Railroad hopes to establish.

First, as discussed in the court's ruling on the demurrer, the relevant case law clearly establishes that a Superior Court has jurisdiction over public utilities wherein the lawsuit actually furthers the policies of the CPUC. In general, a careful assessment of the scope of the CPUC's regulatory authority and an evaluation of whether the suit would thwart or advance CPUC regulation is necessary before the jurisdictional question can be answered. The same logic applies in analyzing the applicability of federal preemption. As discussed in the court's ruling on the demurrer, where local regulatory control does not interfere with railroad activities involving interstate railroad operations, preemption under the ICCTA does not apply. Both inquiries are fact driven and not susceptible to resolution by demurrer or motion to strike. Accordingly, the wholesale preemption advocated by Mendocino Railway is simply not supported by the relevant authorities. (See, Ruling on Demurrer, Section IV(A) and IV(B)).

Finally, in an action for declaratory relief, it may be entirely appropriate for a court to order an injunction. As plaintiff cite in their opposition,

"The Court of Appeal has specifically recognized that "injunctive relief may be granted in a declaratory relief action. The reason is: It is the duty of the court hearing an action for declaratory relief to make a complete determination of the controversy." City of San Jose v. Department of Health Servs., 66 Cal.App.4th 35, 46. In *City of San Jose*, the City sought a declaration of its right to regulate smoking not subject to State preemption, and since the court found that the "City's smoking ordinance was valid,... an injunction was the proper remedy to enjoin defendants from enforcing, within City's territorial limits, Departments' smoking rules and regulation that conflict with City's smoking ordinance."

Here, the issue is whether Mendocino Railway is subject to the City of Fort Bragg's local regulations, zoning and building and safety codes and other police powers. The City has alleged Mendocino Railway has violated valid City building and safety regulation, and has refused to permit City inspections as to such violations. The City alleges specific violations are causing irreparable injury, are a public nuisance and are a "substantial risk to the health, safety and welfare of the public, for which "no other adequate remedy exists." Clearly, such allegations, if proved true, might support issuance of an injunction. The question, insofar as preemption is concerned, would be whether an injunction could be tailored in such a way as to not interfere with railroad operations.

Accordingly, for the reasons summarized above and more fully explained in this courts ruling on the related demurrer, the motion to strike is denied.

DATED: 4/28/2022



Clayton L. Brennan
Judge of the Superior Court