

1 Glenn L. Block (SB#208017)
2 Christopher G. Washington (SB#307804)
3 CALIFORNIA EMINENT DOMAIN LAW GROUP, APC
4 3429 Ocean View Blvd., Suite L
5 Glendale, CA 91208
6 Telephone: (818) 957-0477
7 Facsimile: (818) 957-3477

8 Paul J. Beard II (SB#210563)
9 FISHERBROYLES, LLP
10 4470 W. Sunset Blvd., Suite 93165
11 Los Angeles, CA 90027
12 Telephone: 818-216-3988

13 Attorneys for Plaintiff MENDOCINO RAILWAY

FILED

07/11/2023

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Lozano, John
DEPUTY CLERK



14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY,
Plaintiff,

v.

JOHN MEYER; REDWOOD EMPIRE
TITLE COMPANY OF MENDOCINO
COUNTY; SHEPPARD INVESTMENTS;
MARYELLEN SHEPPARD;
MENDOCINO COUNTY TREASURER-
TAX COLLECTOR; All other persons
unknown claiming an interest in the
property; and DOES 1 through 100,
inclusive,

Defendants.

Case No. SCUK-CVED-2020-74939

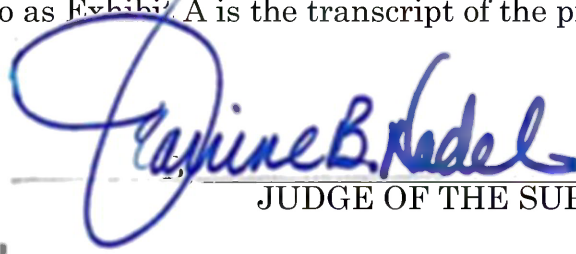
[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**~~PROPOSED~~ ORDER RE
PLAINTIFF'S MOTION TO REOPEN
BENCH TRIAL TO CONSIDER NEW
FACTS ARISING PRIOR TO
JUDGMENT**

Plaintiff's Motion to Reopen Bench Trial to Consider New Facts Arising Prior to
Judgment came on for hearing on June 30, 2023, at 9:30 a.m. Glenn L. Block, Esq.
appeared on behalf of Plaintiff and Stephen Johnson appeared on behalf of Defendant.
The Motion was denied.

1 Attached hereto as Exhibit A is the transcript of the proceedings.

2
3
4 A handwritten signature in blue ink, reading "Gaylene B. Nedel". The signature is written in a cursive style with a large initial "G".

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF MENDOCINO

3 MENDOCINO RAILWAY,

4 Plaintiff,

5 vs.

No. SCUk CVED-2020-74939

6 JOHN MEYER,

7 Defendant.

8 _____/

9
10
11
12
13 MOTION HEARING

14 Held at 100 North State Street, Mendocino County
15 Superior Court, Department E, Ukiah, California
on Friday, June 30, 2023,

16 Before the Honorable Jeanine B. Nadel, Judge
Reported by Trisha R. Hathaway-Link, CSR No. 10866

17
18
19
20
21
22
23 _____
24 ADAIR, POTSWALD & HENNESSEY
25 Certified Shorthand Reporters
212 West Perkins Street, Ukiah, California 95482
(707) 462-8420 and (800) 747-3376

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES OF COUNSEL:

For the Plaintiff:

GLENN BLOCK
Attorney at Law
Eminent Domain Law Group
3429 Ocean View Boulevard, Suite L
Glendale, California 91208-1527
glb@caledlaw.com

For the Defendant:

STEPHEN F. JOHNSON
Attorney at Law
Mannon, King, Johnson & Wipf
Savings Bank Building
200 North School Street, #304
Ukiah, California 95482

1 following Monday.

2 In order to demonstrate that the signing of the
3 judgment two days prior to the cutoff was harmless
4 error, the Court will accommodate plaintiff in reviewing
5 the objections to the judgment.

6 Based on the Court's review of those
7 objections, there is no need to amend the judgment even
8 if the law allowed me to. The Court was clear in its
9 decision that a dismissal of the eminent domain claim
10 was warranted for the reasons set forth in the decision.
11 The requested conditional judgment will not be ordered.

12 Throughout the trial, plaintiff was steadfast
13 in its position that this Court maintain jurisdiction
14 over the eminent domain proceeding. To claim now that a
15 ruling would potentially interfere with any input from
16 the Surface Transportation Board as to whether the
17 Court's decision could constitute an improper regulation
18 of MR's services and whether such regulations preempted,
19 is not only disingenuous, but untimely and unsupported
20 by any legitimate authority.

21 The motion to reopen the case is also denied.

22 The basis for the denial is that this issue was
23 addressed at trial when Mr. Pinoli testified that
24 Mendocino Railway assumed the carrier responsibilities
25 from its affiliates in 2022.

1 This testimony was given despite the fact that
2 Mr. Pinoli was fully aware of the fact that freight and
3 passenger transport was virtually nonexistent even in
4 2022 due to the collapse of the tunnel on the route and
5 no evidence of passengers being transported.

6 The Court understands the distinction between
7 the employer versus carrier status, but my decision in
8 this case was not based solely on the employer's status,
9 but the fact that Pinoli himself testified that
10 Mendocino Railway was merely a holding company and had
11 no employees and did not perform freight and passenger
12 services between the time of its acquisition in 2004 and
13 when it allegedly assumed operations from the Sierra
14 Northern in 2022.

15 Pinoli's testimony did not even occur until the
16 case was reopened to address the retirement letter, and
17 when confronted with the letter, Pinoli then offered
18 that indeed MR was not operating as a common carrier
19 until it assumed operations from its affiliates in 2022.

20 This case was filed in 2020 with Mendocino
21 Railway as the only plaintiff in the action. This case
22 was filed with the knowledge that Mendocino Railway was
23 not acting or providing common carrier services. In
24 fact, despite Mr. Pinoli's testimony, Mendocino Railway,
25 as a successor to California Western Railway, was not

1 and is not doing today what CWR was allegedly doing for
2 137 years of existence.

3 Since 2004 the services were allegedly provided
4 by the affiliate companies, and as stated in my opinion,
5 there was no evidence submitted to support this
6 allegation. Mendocino Railway did not offer any
7 evidence in the form of contracts with the affiliate
8 entities, operating agreements, or any documents
9 whatsoever. I laid all of this out in my opinion.

10 Furthermore, it is abundantly clear that at the
11 time of the filing of the complaint, and even now, that
12 Mendocino Railway is operating solely as an excursion
13 service and all income generated from that excursion
14 services -- service and leases and easements.

15 There was no evidence presented that even the
16 affiliates generated income from the freight and
17 passenger services. So to suddenly appear with a letter
18 from the secretary of the Board of Retirement that now
19 MR is a common carrier, despite never performing the
20 service prior to 2022, and even now, is misleading to
21 the Court and the public.

22 I laid out a road map as to what was needed to
23 prove -- what was needed to be proved in this case.
24 Mendocino Railway did not meet their burden and
25 reopening the case to add what has already been

1 testified to is not probative and won't change my
2 opinion when the evidence is viewed in its totality.

3 So the motion to reopen, like I said, is
4 denied.

5 So I'm happy to hear argument. I doubt you're
6 going to change my mind, but you're welcome to state
7 your argument for the record.

8 MR. BLOCK: I appreciate that, Your Honor.

9 I certainly appreciate the effort the Court has
10 put into understanding the issues in this case and
11 thoughtfully listening to the testimony and re-examining
12 the testimony.

13 With respect, I think there's a couple of
14 fundamental issues with the way the Court has expressed
15 its -- its opinion and its decision here.

16 First, the Court is expressing standards and
17 requirements -- or imposing standards and requirements
18 that frankly don't exist in the law either with respect
19 to the determination of common carrier or public utility
20 status as well as the -- the eminent domain
21 requirements.

22 For example, at the end of the tentative, which
23 the Court read and I'm just hearing on the spot this
24 morning, the Court mentioned that there was no evidence
25 that -- that either Mendocino Railway or its affiliate,

1 Sierra Northern Railway, generated revenue from freight
2 or non-excursion passenger service. That is not the
3 standard.

4 The definition of transportation, both under
5 California law and under federal law, states that the
6 services are provided for compensation.

7 Again -- and this is expressed in our brief --
8 a public utility can only make the services available.
9 And that -- and its dedication of its assets -- its
10 assets in this case, its railway, its equipment, its
11 personnel -- providing those services, making them
12 available for compensation, is the standard, and that is
13 clear and the evidence has amply established that that
14 is the fact and has been the fact since Mendocino
15 Railway acquired the assets of CWR in 2004.

16 Moreover, the -- the Court has misinterpreted I
17 think the testimony of Mr. Pinoli and misinterpreted the
18 Notice of Exemption in 2004 with respect to the
19 reference of the -- the, quote/unquote, "holding
20 company."

21 And this is a standard under the federal
22 regulations, 49 U.S.C. 10501 or -- I can't remember the
23 exact number, but this is how the STB looks at the
24 transaction. Is the entity that is acquiring the assets
25 an existing carrier or is it a holding company that then

1 becomes a common carrier once it acquires the assets?

2 So it is a moment in time at the time of the
3 acquisition. At the time that the assets were acquired
4 through the bankruptcy process, it was a holding company
5 with no employees.

6 THE COURT: I --

7 MR. BLOCK: Once it -- yeah, please.

8 THE COURT: I understand all of that, and what
9 you're missing from my -- my point is, even if --
10 Mendocino Railway testified that they did not perform --
11 Mr. Pinoli testified that they did not perform the
12 services, but the services were being performed by their
13 affiliates.

14 You offered no evidence, nothing, to -- to
15 substantiate that. There were no agreements with the
16 affiliates, there were no indemnification agreements,
17 there were no contracts with the affiliates. It's
18 all -- I was all -- all -- it was only the testimony of
19 Mr. Pinoli that said that. Four days of testimony from
20 Mr. Pinoli -- and no disrespect to your client at all,
21 four days without any evidentiary support in terms of
22 documents so that I can determine that indeed Mendocino
23 Railway was operating through its affiliates, which I
24 really have suspicion about because there was no
25 evidence of that, and there was no evidence that those

1 affiliates actually generated any income.

2 And I understand what you're saying is, yes,
3 we're sitting here, we're ready, passengers can come and
4 freight can come -- can't get through the tunnel. We're
5 not going to be able to really do freight, but so be it,
6 we're still a common carrier. That's what you're trying
7 to argue here.

8 MR. BLOCK: But a common carrier -- there's a
9 couple of things, Your Honor.

10 First of all, common carrier status isn't
11 something that you turn on and off like a light switch.
12 It doesn't -- they're not a common carrier today because
13 they ran a train and then for the next year if they
14 don't move freight, they're not a common carrier.
15 That's not the way it works.

16 The other thing is, there -- there is a
17 process, both under federal law and state law, to --
18 to -- for the common carrier status, public utility
19 status, to go away. It is abandonment and it's a formal
20 process.

21 The other way --

22 THE COURT: But Mr. Pinoli admitted at trial
23 that he wasn't performing common carrier and he wasn't
24 acting as -- MR wasn't acting as a common carrier.

25 MR. BLOCK: I --

1 THE COURT: The only way that they were
2 providing services was through those affiliates.

3 MR. BLOCK: Exactly. And that -- and so there
4 is -- there are several pieces of evidence that -- that
5 establish that.

6 Number one --

7 THE COURT: Well, I'm not -- let's not argue
8 the case over again. I'm not going to do that.

9 MR. BLOCK: That's fine. But I want to address
10 the Court's tentative ruling where -- where it made
11 certain statements. And, again, in -- in discussing it
12 just now, you said that there is no evidence.

13 A couple of things. Number one, there is not a
14 requirement for documentary evidence. That's -- that's
15 setting forth the standard that doesn't exist, number
16 one. Number two, there's the 2004 Notice of Exemption
17 and the Federal Register, Exhibits 20 and 21, that both
18 refer to this structure where Mendocino Railway is the
19 common carrier, the services are provided -- are
20 performed by someone else.

21 There is also Exhibit 8, which is the -- the
22 freight tariff which explicitly says Mendocino Railway
23 providing freight tariff via its affiliate Sierra
24 Northern Railway.

25 As to contracts, indemnity, and these kinds of

1 things, they're both sister companies under -- under
2 Sierra Railroad Company. So the fact that they -- and I
3 don't even know whether or not there are any contracts,
4 but the Court didn't ask for those things. There's a
5 comment in the notice --

6 THE COURT: It's not my job to ask for you --
7 to tell you how to prove the case, sir.

8 MR. BLOCK: Well, a witness' sole --

9 THE COURT: I gave you every opportunity to
10 actually produce documents to address the issues of
11 income and relationship and --

12 MR. BLOCK: That was not discussed --

13 THE COURT: -- it was not done; so...

14 MR. BLOCK: It wasn't discussed in the case.

15 There was a question of the MTA contract which
16 Mr. Pinoli reviewed -- or looked for and could not find,
17 so --

18 THE COURT: Anyway, we're just dealing with the
19 motion to reopen to address the letter that you received
20 from the Retirement Board, and, like I said, that was
21 already testified to and I don't see any need to reopen
22 the case to bring in evidence that's already been
23 presented.

24 MR. BLOCK: Well, it hasn't been presented
25 because it clarifies and contradicts the -- the 2006

1 Railroad Board decision, which the Court granted
2 defendant's motion to reopen to allow.

3 But as the Court indicated before, nothing I
4 can say will change the Court's mind. I think I've
5 started to establish somewhat of a record of -- of our
6 response to the Court's ruling, and we respect the
7 Court's decision. And if there's any other questions or
8 anything else you'd like to hear from me, I'd be happy
9 to share.

10 THE COURT: Okay. Mr. Johnson?

11 MR. JOHNSON: Submitted, Your Honor.

12 THE COURT: All right. So I'll have the moving
13 party go ahead and prepare any proposed orders.

14 Thank you.

15 MR. JOHNSON: Thank you.

16 MR. BLOCK: Thank you, Your Honor.

17 (Proceedings concluded.)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I hereby certify that the above transcript of proceedings was taken down, as stated in the caption, and that the foregoing 13 pages represent a complete, true and correct transcript of the proceedings had thereon.

DATED: July 2, 2023.

Trisha R. Hathaway-Link
TRISHA R. HATHAWAY-LINK, CSR 10866
COURT REPORTER

PROOF OF SERVICE

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On July 7, 2023, I served the within document(s):


[PROPOSED] ORDER RE PLAINTIFF’S MOTION TO REOPEN BENCH TRIAL TO CONSIDER NEW FACTS ARISING PRIOR TO JUDGMENT

- ELECTRONIC MAIL:** By transmitting via e-mail the document listed above to the e-mail address set forth below.
- BY MAIL:** By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list
- OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.
- PERSONAL SERVICE:** By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 7, 2023, in Glendale, California.


Debi Carbon

SERVICE LIST

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

Stephen F. Johnson
Mannon, King, Johnson & Wipf, LLP
200 North School Street, Suite 304
Post Office Box 419
Ukiah, California 95482
steve@mkjlex.com

Attorneys for Defendant John Meyer

Maryellen Sheppard
27200 North Highway 1
Fort Bragg, CA 95437
sheppard@mcn.org

In Pro Per

Christian Curtis
Brina Blanton
Office of Mendocino-Administration Center
501 Low Gap Road, Room 1030
Ukiah, CA 95482
curtisc@mendocinocounty.org
blantonb@mendocinocounty.org

Attorneys for Defendant Mendocino
County Treasurer-Tax Collector