IN THE COURT OF APPEAL OF THE STATE OF CALIFONRIA FIRST APPELLATE DISTRICT, DIVISION ONE

A168497 & A168959

MENDOCINO RAILWAY
Plaintiff-Appellant,

v.

JOHN MEYER
Defendant-Respondent.

On Appeal from the Superior Court of California,
County of Mendocino
(Case No. SCUKCVED202074939, Hon. Jeanine Nadel)

RESPONDENT'S OPPOSITION TO MOTION FOR JUDICIAL NOTICE

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The Court Should Deny Appellant's Motion For Judicial Notice

Appellant Mendocino Railway ("MR") filed a motion pursuant to California Rule of Court, rule 8.252, seeking to admit new evidence in the pending appeal. The evidence submitted by MR consists of (1) a loan agreement between the United States Department of Transportation and Sierra Northern Railway and Mendocino Railway, dated January 11, 2024; and (2) a letter dated April 19, 2024, from the Federal Railroad Administration to the California Coastal Commission concerning MR's rehabilitation project that the Department of Transportation is loaning it funds to complete.

The referenced documents were not before the trial court because they did not exists until this year. MR contends that this court should take judicial notice of this new evidence as these documents are "probative of two issues: (1) Mendocino's status as a common-carrier railroad, and (2) whether Mendocino now has financial support to reopen Tunnel No. 1, and make other repairs and improvements on the California Western Railroad line."

Code of Civil Procedure § 909 provides that the reviewing court may take additional evidence "for the purpose of making the factual determinations or for any other purpose in the interest of justice." "It has long been the general rule and understanding that an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration." (*Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal. App. 4th 764, 770.) This rule establishes an "essential distinction between the trial and the appellate court that it is the province of the trial court to decide questions of fact and the appellate court to decide questions of law." (*Id.*) This rule promotes the orderly settling of factual questions and disputes in the trial court, allows for a meaningful record for review, and

serves to avoid excessive delays on appeal. (*Id.*) Appellate courts are authorized to make findings on appeal by Code of Civil Procedure § 909, however "the authority should be exercised sparingly." (*Id.*) "*Absent exceptional circumstances, no such findings should be made.*" (*Id*; *In Re Zeth S.* (2003) 31 Cal 4th 396, 405.)

In this case there are not exceptional circumstances, and there is no reason for the appellate court to make a finding based upon the documents submitted by MR for judicial notice.

MR is requesting that the court take judicial notice of a loan agreement and a letter in an attempt to show that these documents establish that MR is a common carrier as far as the Surface Transportation Board ("STB") is concerned. The documents are not relevant to the issues in this case because they do not tend to prove MR's status as a "railroad" or "common carrier" under California law as of the time that this action was filed in 2020 against John Meyer ("Meyer").

Robert Pinoli, the Chief Executive Officer of MR testified at trial that MR does not believe that it became a common carrier until January 1, 2022. (RT 1004:17-25.) Since January 1, 2022, MR may have become a common carrier as far as the STB is concerned, but it is not relevant to this action. The documents in question do not establish that the STB considers MR a common carrier and the documents in question were not even in existence until 2024. Additionally, the STB's determination of MR's common carrier status in 2024 is of no importance in this action, as California eminent domain law also does not base its determination of an entity's right to take property based upon a determination of carrier status by the STB.

The documents are not relevant to the issues on appeal, and even if they were relevant, the court of appeal can only take judicial notice of the fact that the documents exist, it cannot take judicial notice for the truth of their contents. (*Id; Mangini v. R.J. Reynolds Tobacco Co.*

(1994) 7 Cal. 4th 1057, 1063-1064, overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal. 4th 1247.) "The taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom." (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal. 4th 1057, 1063.) This is the case because "in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom." (*Id.*)

Meyer respectfully requests that the court deny MR's motion for judicial notice. The documents should not be admitted under Code of Civil Procedure § 909 because there are not exceptional circumstances and there is no reason for the appellate court to make a finding based upon the documents submitted. The documents were created in 2024, and they are not relevant to this action that was filed in 2020. Accordingly, this court should solely rely upon the trial court record and deny MR's motion for judicial notice.

Dated: December 2, 2024.

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