

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
APPEALS DIVISION

MAY 6 2013

BY Carolyn Solberg
CAROLYN SOLBERG, DEPUTY

SCANNED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
APPELLATE DIVISION

BONNIE SHIPLEY,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SAN
BERNARDINO,
Respondent,

STUBBLEFIELD PROPERTIES, A
CALIFORNIA GENERAL PARTNERSHIP
DBA MOUNTAIN SHADOWS
MOBILEHOME COMMUNITY,
Real Party in Interest.

Case No: CIVDS1302013
(Trial Court: UDDS1204130)

OPINION

Petition for Writ of Mandate, directed to the San Bernardino County Superior Court, San Bernardino District, Donald R. Alvarez, Judge. Petition granted.

Nancy D. McCarron, Esq., for petitioner and defendant.

No appearance for respondent.

Hart, King & Coldren, A Professional Law Corporation, Robert S. Coldren, Esq., Robert G. Williamson, Jr., Esq., for real party in interest.

EXHIBIT B

THE COURT:

FACTUAL AND PROCEDURAL BACKGROUND

On August 11, 2012, real party in interest Stubblefield Properties, a California General Partnership, dba Mountain Shadows Mobilehome Community (hereinafter "Stubblefield") served Petitioner with a 5-Day Notice to Surrender Possession. The notice is based upon Civil Code section 798.75, subdivision (c), "for failure to move into the mobilehome without being approved as a sublessee or any other capacity." The notice also states that "this is a violation of the Rules and Regulations of the mobilehome park."

On August 27, 2012, Stubblefield filed a complaint for forcible detainer (Code Civ. Proc., § 1160) naming Petitioner as the sole defendant. The complaint alleges that Stubblefield is the owner of the premises commonly known as 4040 E. Piedmont Drive, Space 333, Highland, CA 92346. The complaint also alleges that prior to service of the Notice to Surrender, Petitioner had, without Stubblefield's consent or approval, without signing a rental agreement, and without becoming the registered owner of the mobilehome situated at the premises, entered into possession of the premises. The complaint further alleges that Petitioner has continued to hold and keep possession of the premises by force and in violation of Civil Code section 798.75 by failing to surrender the premises to Stubblefield. The complaint prays for possession of the premises, for damages at \$30.01 per day (reasonable rental value of space 333), and for attorney's fees.

On January 23, 2013, Petitioner filed a motion for summary judgment. On February 14, 2013, the trial court denied Petitioner's motion for summary judgment. The court also denied Stubblefield's motion for summary judgment, which was heard on the same day.

On February 27, 2013, Petitioner filed her petition for writ of mandate requesting that the Appellate Division issue an order directing the trial court to set aside its order denying Petitioner's motion for summary judgment and to enter a new order granting the motion.

DISCUSSION

Petitioner contends that the trial court erred in interpreting Civil Code section 798.75, subdivision (c) as being applicable to *any* occupant a park owner unilaterally considers an "unlawful occupant," regardless of whether the occupant is an owner of the mobilehome or a subtenant of the mobilehome owner. Petitioner contends that the summary eviction remedy provided under Civil Code section 798.75, subdivision (c) is limited only to purchasers and transferees who occupy a mobilehome without first executing a lease with the mobilehome park. We agree.

Petitioner's motion for summary judgment establishes that on July 27, 2012, Petitioner executed a written lease with homeowner Nancy Duffy McCarron (hereinafter "McCarron") to share McCarron's mobilehome at space 333, 4040 E. Piedmont Drive, Highland, CA 92346. In support of the motion, Petitioner presents the declaration of McCarron, who declares that on January 5, 2005, she purchased the mobilehome at space 333 in Stubblefield's mobilehome

park and executed the park's lease. McCarron states that on July 27, 2012, Petitioner signed a six-month lease to share her home as a co-resident after her former co-resident moved next door. McCarron states that Stubblefield has continued to accept monthly rent from her. She also states that all of the utilities are in her name and she pays for them. Thus, Petitioner's evidence establishes that she is, in effect, a sublessee or subtenant of McCarron and that McCarron is the owner of the mobilehome located at space 333 of Stubblefield's mobilehome park pursuant to a lease agreement between McCarron and Stubblefield.

In its opposition to the motion for summary judgment, Stubblefield argued that it was not required to establish the elements of a forcible detainer action pursuant to Code of Civil Procedure section 1160, because in mobilehome park unlawful occupant situations, section 798.75, subdivisions (c) and (d), control over the general provisions of the Code of Civil Procedure. Stubblefield argued that it was apparent from the legislative history that "the Legislature's purpose and intent in enacting subdivisions (c) and (d) of section 798.75 was to authorize summary eviction procedures against an unlawful occupant as defined therein, not as defined in general sections 1160 and 1172 of the Code of Civil Procedure that would deem an occupant 'guilty of forcible detainer.'" Stubblefield argued that "purchaser" in subdivision (b) and "occupant" in subdivision (c) are by ordinary definition distinctly different terms that describe different categories of persons, although both refer to the same subject of "no rights or tenancy" by failure to sign a rental agreement. Stubblefield further argued that subdivision (c)

applies to *any* "unlawful occupant," whether or not he or she is a purchaser or other transferee.

At the hearing on Petitioner's motion for summary judgment, the court found, among other things, that Civil Code section 798.75 does not apply only to circumstances where ownership is transferred. Rather, the court found that Section 798.75, subdivision (c) "is not limited in its application, only in the escrow, sale or transfer of a mobile home. It applies when an occupant of a mobile home has no right of tenancy and is not otherwise entitled to occupy the mobile home pursuant to this chapter. That's Civil Code 798.75(c). This chapter refers to chapter 2.5 which is the Mobilehome Residence Law and includes such provision as Civil Code 798.34 as applying to guests at mobile homes." In our view, the trial court denied Petitioner's motion for summary judgment based on an erroneous interpretation of Civil Code section 798.75.

The facts are not in dispute. Stubblefield's complaint is based upon a 5-Day Notice to Surrender pursuant to Civil Code section 798.75, subdivision (c).

Civil Code section 798.75 states as follows:

(a) An escrow, sale, or transfer agreement involving a mobilehome located in a park at the time of the sale, where the mobilehome is to remain in the park, shall contain a copy of either a fully executed rental agreement or a statement signed by the park's management and the prospective homeowner that the parties have agreed to the terms and conditions of a rental agreement.

(b) In the event the purchaser fails to execute the rental agreement, the purchaser shall not have any rights of tenancy.

(c) In the event that an occupant of a mobilehome has no rights of tenancy and is not otherwise entitled to occupy the mobilehome pursuant to this chapter, the occupant is considered an unlawful occupant if, after a demand is made for the surrender of the mobilehome park site, for a period of five days, the occupant refuses to surrender the site to the mobilehome park management.

In the event the unlawful occupant fails to comply with the demand, the unlawful occupant shall be subject to the proceedings set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure.

(d) The occupant of the mobilehome shall not be considered an unlawful occupant and shall not be subject to the provisions of subdivision (c) if all of the following conditions are present:

(1) The occupant is the registered owner of the mobile home.

(2) The management has determined that the occupant has the financial ability to pay the rent and charges of the park; will comply with the rules and regulations of the park, based on the occupant's prior tenancies; and will comply with this article.

(3) The management failed or refused to offer the occupant a rental agreement.

Thus, where the mobilehome is to remain in the park, subdivision (a) provides that, as a condition to the purchaser's or other transferee's rights of tenancy in the park, at the time of sale or transfer, the escrow, sale or transfer agreement must contain a copy of either (a) a fully executed rental agreement or (b) a statement signed by park management and the prospective homeowner that the parties have agreed to the terms and conditions of a rental agreement.

Subdivision (b) refers to a "purchaser" and requires a written agreement to be in place between the park and the purchaser. Subdivision (b) provides that if the purchaser fails to execute a rental agreement, he or she has no rights of "tenancy."¹ Where a purchaser fails to execute a lease agreement as provided in subdivisions (a) and (b), he or she becomes an "unlawful occupant." It follows that subdivision (c)'s reference to "unlawful occupant" is to a purchaser (or other transferee) who has not executed a lease agreement and who has no rights of

¹ "Tenancy" is defined as "the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the park." (Civ. Code, § 798.12.)

tenancy. Thus, this "unlawful occupant" (i.e., purchaser without a lease agreement) is an occupant that "is not otherwise entitled to occupy the mobilehome pursuant to this chapter." As a sublessee of a mobilehome owner, Petitioner does not fall within the definition of an "unlawful occupant."

We find significance in the fact that section 798.75 is contained within Article 7 (of the Mobilehome Residency Law), which is entitled "Transfer of Mobilehome or Mobilehome Park." The statute's language signifies that it applies only to a purchaser or transferee of a mobilehome in the park. The language, and thus the overall tone of the statute, indicates that the Legislature intended that it apply only in the context of a purchase or transfer of a mobilehome. (*Patarak v. Williams* (2001) 91 Cal.App.4th 826, 829 [goal in interpreting provision of Mobilehome Residency Law is to ascertain and effectuate the intent of the Legislature]; see *Torrey Hills Community Coalition v. City of San Diego* (2010) 186 Cal.App.4th 429, 440 [if there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant that what it said, and the plain meaning of the language governs.].) Although in several places the statute contains the term "unlawful occupant," it is used in the context of a purchaser without a lease agreement who "is not otherwise entitled to occupy the mobilehome pursuant to this chapter."

Support for this interpretation is found in subdivision (c) where it states that "the occupant is considered an unlawful occupant if, after a demand is made for the surrender of the *mobilehome park site* for a period of five days, the occupant refuses to surrender the *site* to the mobilehome park management."

(Civ. Code, § 798.75, subd. (c), emphasis added.) This language refers to the occupant of a park "site," not to the occupant of a mobilehome unit. An individual who is simply an occupant, and not an owner, of a mobilehome has no legal authority to remove a mobilehome unit from a mobilehome park "site."

We also find support for this interpretation in the well-known practice guide *The Rutter Group Landlord-Tenant*, which provides this discussion of Section 798.75: "A purchaser who refuses to execute a rental agreement with management 'shall not have any rights of tenancy.' [CC §798.75(b)] Management may serve a purchaser resident with a *demand to surrender* the mobilehome park site; failure to surrender within five days after the demand makes the purchaser an 'unlawful occupant.' [CC §798.75(c)] [¶] Once placed in the status of an 'unlawful occupant,' the purchaser may be evicted under the statutory *summary repossession* procedures (CCP §1159 et seq.; [§])." (Friedman, Garcia & Hagarty, *Cal. Prac. Guide: Landlord-Tenant* (The Rutter Group 2012), ¶¶ 11:257-11:258. Italics in original.)

In addition to the above, Stubblefield cannot directly evict Petitioner because there is no privity between Stubblefield and Petitioner—i.e., Stubblefield is not the legal owner of the mobilehome unit in which Petitioner is an occupant.

Although Civil Code section 798.75 does not authorize Stubblefield to evict Petitioner, Stubblefield is not without a remedy under the Mobilehome Residency Law. Stubblefield alleges that Petitioner has violated park rules by, among other things, failing to obtain park consent or approval before assuming

occupancy.² A sublessee must comply with all park rules and regulations. Failure to do so may result in termination of the homeowner's tenancy in accordance with Civil Code section 798.56. However, the homeowner's tenancy may not be terminated if the homeowner completes an unlawful detainer action or executes a judgment for possession within 60 days of receiving notice of termination of tenancy. (Civ. Code, § 798.23.5, subd. (b)(3).) Thus, Stubblefield's remedy under the Mobilehome Residency Law is to proceed against the homeowner in accordance with Civil Code section 798.56, subdivision (d) for "failure of the homeowner or resident to comply with a reasonable rule or regulation of the park that is part of the rental agreement or any amendment thereto."

The trial court misinterpreted Civil Code section 798.75. This statute applies only to a purchaser or transferee of a mobilehome unit that occupies the park's space without first executing a written lease agreement with the park. Petitioner is not a purchaser or transferee of the subject mobilehome. Therefore, the 5-Day Notice to Surrender is invalid because it is based upon an inapplicable statute. As such, the eviction of Petitioner by Stubblefield under Civil Code section 798.75 is not authorized.

DISPOSITION

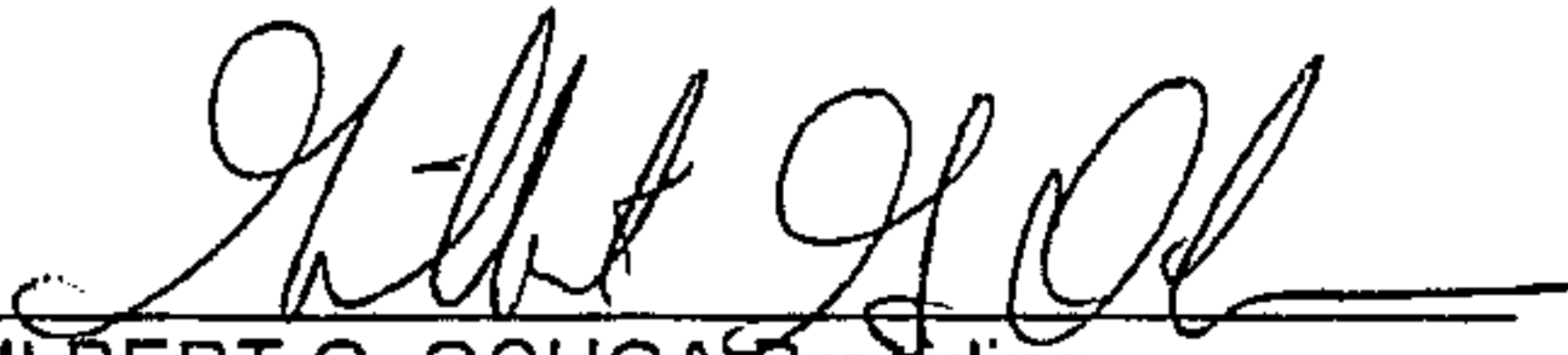
The petition is granted. Let a writ of mandamus issue directing the Superior Court to vacate its order denying Petitioner's motion for summary

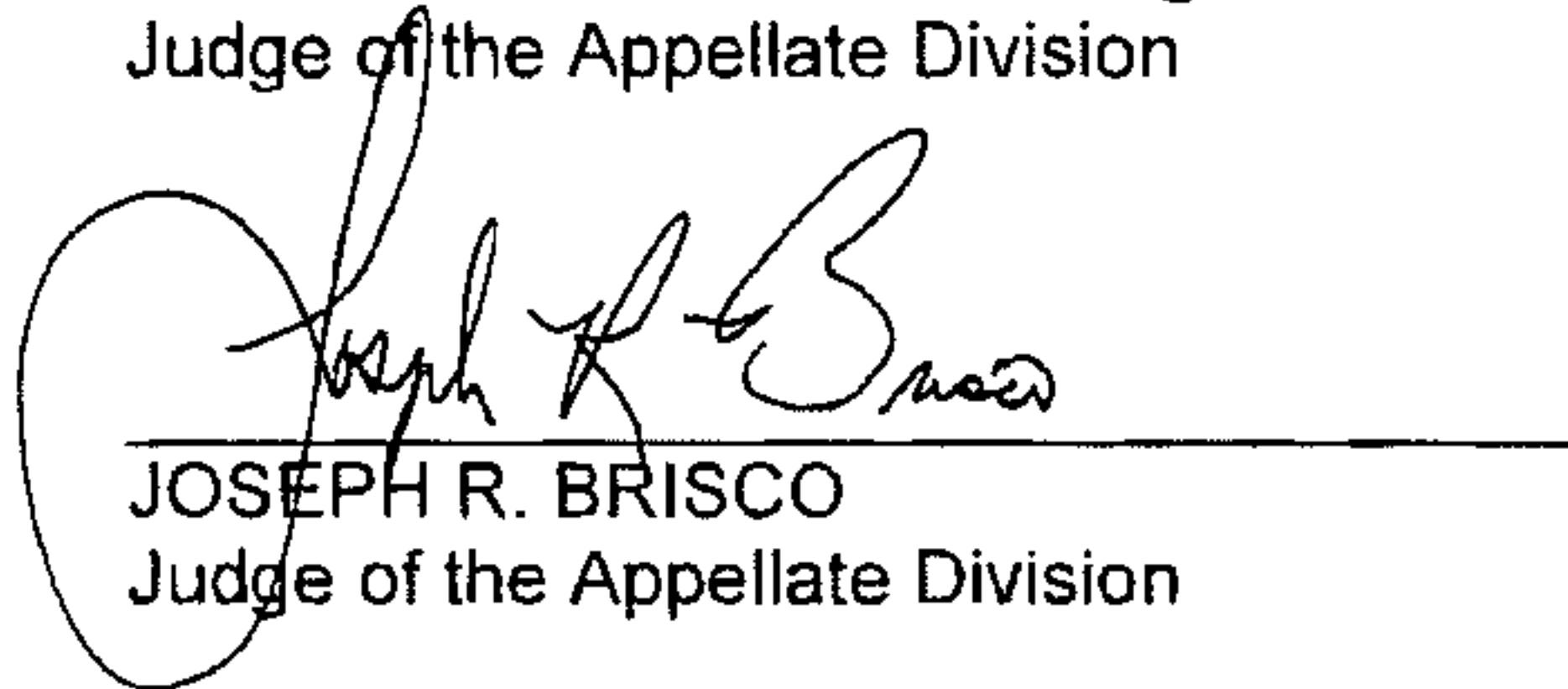
² We express no opinion regarding the reasonableness of Stubblefield's rules or regulations, as such a determination is not relevant or necessary to our discussion.

judgment, to enter a new order granting Petitioner's motion, and to enter judgment in favor of Petitioner. Petitioner shall recover her costs.

The previously ordered stay is LIFTED.




GILBERT G. OCHOA Presiding
Judge of the Appellate Division


JOSEPH R. BRISCO
Judge of the Appellate Division

The Hon. James J. Hosking dissents.

PROOF OF SERVICE
STUBBLEFIELD PROPERTIES v. BONNIE SHIPLEY, et al.
Court Case No. UDDS 1204130 - CIVDS1302013

Court of Appeal Case No. E058852

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 4 Hutton Centre Drive, Ste. 900, Santa Ana, California 92707-0507. On July 24, 2013, I caused the foregoing document(s) described as:

PETITION FOR REVIEW

to be served on the interested parties in this action as follows:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as stated below or by sending a copy as stated and addressed below:

Nancy Duffy McCarron, Esq.
Law Office of Nancy Duffy McCarron
950 Roble Lane
Santa Barbara, CA 93103
Tel.: (805) 450-0450
Fax: (805) 965-3492
nancyduffysb@yahoo.com

***VIA OVERNIGHT DELIVERY
AND ELECTRONIC SERVICE***
*Attorneys for Real Party in
Interest, BONNIE SHIPLEY*

San Bernardino County Superior Court
Appellate Division
Hon. Gilbert G. Ochoa
401 N. Arrowhead Ave.
San Bernardino, CA 92415-0063
Tel: (909) 521-3574

***VIA OVERNIGHT DELIVERY
ONLY***
Respondent

San Bernardino County Superior Court
Clerk of the Court
303 West Third Street
San Bernardino, CA 92415-0205
Tel: (909) 708-8680

***VIA OVERNIGHT DELIVERY
ONLY***

Court of Appeal
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501
(951) 782-2500

***VIA OVERNIGHT DELIVERY
ONLY***

BY MAIL: 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 Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons identified herein. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

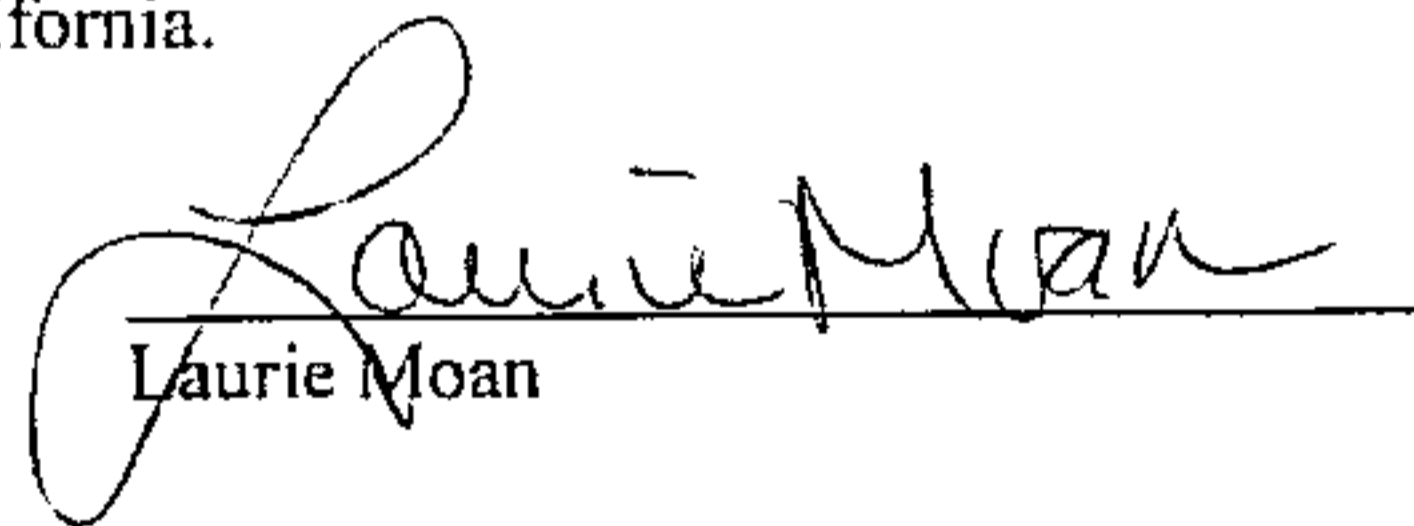
BY ELECTRONIC SERVICE. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed herein on this date. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY FACSIMILE: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents from a fax machine, at Santa Ana, California, with the telephone number, (714) 546-7457 to the parties and/or attorney for the parties at the facsimile transmission number(s) shown herein. The facsimile transmission was reported as complete without error by a transmission report, issued by the facsimile transmission machine upon which the transmission was made, a copy of which is attached hereto.

BY PERSONAL SERVICE: I caused the documents to be personally delivered to the persons at the addresses listed herein. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

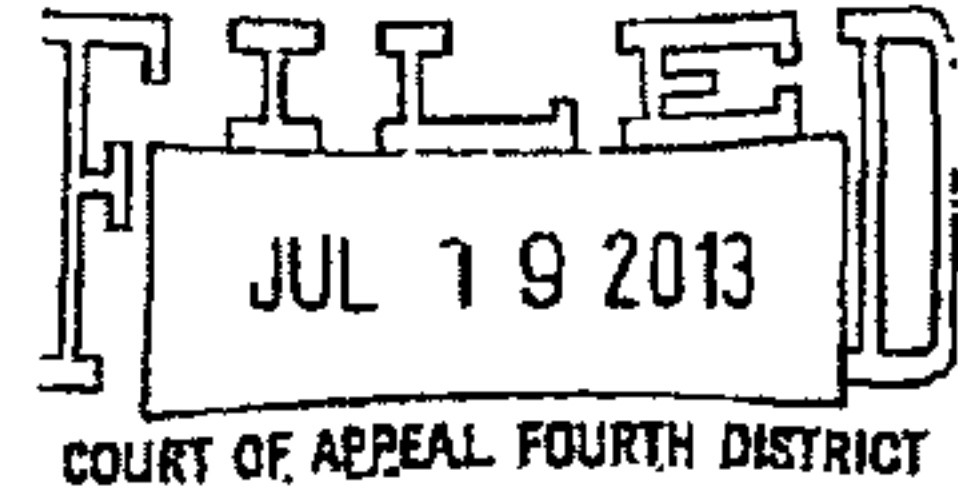
[State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 24, 2013 at Santa Ana, California.


Laurie Moan

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER



STUBBLEFIELD PROPERTIES,
Petitioner,
v.
THE APPELLATE DIVISION OF THE
SUPERIOR COURT OF SAN
BERNARDINO COUNTY,
Respondent,
BONNIE SHIPLEY,
Real Party in Interest.

E058852

(Super.Ct.Nos. CIVDS1302013
& UDDS1204130)

County of San Bernardino

THE COURT

The petition for writ of mandate/prohibition/certiorari is DENIED. The previously issued stay is hereby LIFTED.

RAMIREZ

Presiding Justice

cc: See attached list

EXHIBIT A