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Brenda Barnes
406 Broadway, Ste. 332F
Santa Monica, CA 90401
(310) 795-3762

Plaintiff in pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

BRENDA BARNES, an Individual,)
)
)
)
Plaintiff,)
v.)
)
)
MARC L. LUZZATTO, an Individual;)
JAMES MURAMATSU, an Individual;)
VILLAGE TRAILER PARK, L.L.C., a California)
Limited Liability Company; VILLAGE TRAILER)
PARK, INC., a California Corporation; J & H)
ASSET PROPERTY MGMT.CO., INC. a)
California Corporation; JAMES GEORGE JOFFE,)
An Individual, JILL ARTEAGA, an Individual;)
DENNIS SHAY, an Individual; JUNE WILLIS,)
An Individual; JAMES BREWSTER, an Individual;)
and DOES 1 through 20, Inclusive,)
)
Defendants.)
)
_____)

Case No. BC 473905
Assigned for All Purposes to Dept. 47, The
Honorable Debre K. Weintraub

**PLAINTIFF'S NOTICE OF OPPOSITION AND
OPPOSITION TO DEFENDANTS LUZZATTO
ET AL.'S MOTION TO TRANSFER TO WEST
DISTRICT; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF BRENDA
BARNES IN SUPPORT THEREOF**

(C.C.P. § 396b, L. A. Sup. Ct. Local Rule
2.3(a))

Hearing
DATE: April 5, 2012
TIME: 9:00 a.m.
DEPT.: 1

Action Filed: November 21, 2011
Trial Date: Not Set
CMC: 3/19/12, Cont'd. to 4/24/12

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TO THE HONORABLE ABOVE-ENTITLED COURT AND TO DEFENDANTS MARC L. LUZZATTO, VILLAGE TRAILER PARK, LLC, AND VILLAGE TRAILER PARK, INC., AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE Plaintiff BRENDA BARNES opposes your Motion to Transfer to the West District on the following grounds:

1) Defendants' Motion Is Untimely Under C.C.P § 396b, They Have Shown No Excuse Therefor, And No Excuse Appears, So Their Motion To Transfer Must Be Denied;

and

2) Defendants' Reliance on Local Rule 2.3(a)(1) Is Inapt and Cannot Overcome the Preemption of State Law.

This Opposition will be and is based on the attached Memorandum of Points and Authorities, and Declaration of BRENDA BARNES, the verified FAC herein, and such other and further argument and/or evidence as shall be permitted by the Court at the above-listed hearing.

DATED: March 24, 2012

Respectfully submitted,



BRENDA BARNES
Plaintiff in pro per

Memorandum of Points and Authorities
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California Cases

Sherwin-Williams Co. v. City of Los Angeles (1993)
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California Constitution

Article XI, section 7 6

California Statutes

C.C.P.

§ 170.6 3

§ 396b 1, 6

Local Rules

Los Angeles Super. Ct. Local Rules

Rule 2.3(a)(1)(A) 1, 2, 3, 3 fn. 1, 4, 6

1 Memorandum of Points and Authorities in Opposition to Motion to Transfer to West
2 District

3 Introduction and Summary of Facts and Issues

4 This case is about Defendants removing house trailers from a property they wish to
5 develop, where Plaintiff, an elder according to the Elder Abuse statute, lives and has lived
6 for 25 years.

7 This case has been pending in the Central District for over four (4) months.

8 Defendants now making the subject Motion to Transfer it to the West District answered
9 the First Amended Complaint ("FAC") on January 4, 2012, over two (2) months ago.

10 Plaintiff has appeared ex parte in the Central District three (3) times, and Defendants
11 have appeared in opposition twice. Both Plaintiff and these Defendants appeared at the
12 first Case Management Conference in Department 47—to which this case was assigned
13 for all purposes well over three (3) months ago—on March 19, 2012. Declaration of
14 Brenda Barnes attached hereto and incorporated by reference as though repeated in full
15 here, ¶¶ 1-10.

16 Now, like Rip Van Winkle and also a sleepwalker, Defendants appear to have
17 suddenly awakened, rubbed their eyes, and realized there is a case pending in the
18 Central District that they wish were not here. Defendants give no authority to show Local
19 Rule 2.3(a)(1), on which they rely, is jurisdictional. Even if they had and it were, they
20 provide no authority courts in the Central and West Districts lack concurrent jurisdiction
21 over cases such as this. Finally and fatally, C.C.P. § 396b, which preempts local rules,
22 requires motions to transfer such as this to be made when an answer is due. Defendants
23 have not shown any validity for their Motion, which is untimely by months. Neither have
24 they shown any inconvenience from having the case heard in the Central District, where it
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1 has been pending before a specific judge more than three months longer than their time
2 to peremptorily disqualify that judge. Therefore, their Motion to Transfer must be denied.

3 I

4 DEFENDANTS' MOTION IS UNTIMELY UNDER C.C.P. § 396b. THEY HAVE SHOWN
5 NO EXCUSE THEREFOR, AND NO EXCUSE APPEARS, SO THEIR MOTION TO
6 TRANSFER MUST BE DENIED

7 C.C.P. § 396b provides in relevant part as follows:

8 (a) Except as otherwise provided in Section 396a, if an action or proceeding is
9 commenced in a court having jurisdiction of the subject matter thereof, other than
10 the court designated as the proper court for the trial thereof, under this title, the
11 action may, notwithstanding, be tried in the court where commenced, unless the
12 defendant, at the time he or she answers, demurs, or moves to strike, or, at his
13 or her option, without answering, demurring, or moving to strike and within the
14 time otherwise allowed to respond to the complaint, files with the clerk, a notice
15 of motion for an order transferring the action or proceeding to the proper court,
16 together with proof of service, upon the adverse party, of a copy of those papers.
17 Upon the hearing of the motion the court shall, if it appears that the action or
18 proceeding was not commenced in the proper court, order the action or
19 proceeding transferred to the proper court.

20 Defendants mention no reason this Court is not "a court having jurisdiction of the
21 subject matter" of this action. No facts appear indicating this Court does not have subject
22 matter jurisdiction. Therefore, any motion to transfer was due under C.C.P. § 396b(a).
23 This is the section under which Defendants make their Motion, the only section under
24 which they could make a jurisdictional claim as contrasted to forum non conveniens.
25 Defendants filed an Answer in January, almost four (4) months ago, so their Motion is well
26 past untimely. Id., ¶ 4. They fail to qualify to make a motion to transfer under the Section,
27 so their Motion must be denied.
28

1 Defendants appear to be trying to get around their failure to timely disqualify the
2 judge assigned to the matter, Judge Debra K. Weintraub. No other reason for making the
3 instant Motion appears plausible. Their doing so goes against the timeliness
4 requirements of C.C.P. § 170.6 and simply has no basis in any law.

5 Neither have Defendants indicated any policy reason, such as convenience to
6 witnesses, for their untimely Motion.
7

8 Neither does it appear Defendants could give any reason involving convenience of
9 witnesses in support of their untimely Motion. Given that the Central District is only 14
10 minutes away from Santa Monica, going there should not be a great hardship to those of
11 the defendants who live and work regularly in the West District. Other defendants live
12 and work regularly far South of the West District, so the Central District is even more
13 convenient than is Santa Monica for them. In any event, Defendants do not make their
14 instant Motion to Transfer on the basis of anyone's convenience, so even if that were the
15 actual basis for their Motion, there is no valid basis in that argument to help them either.
16
17

18 II

19 DEFENDANTS' RELIANCE ON LOCAL RULE 2.3(a)(1) IS INAPT AND CANNOT
20 OVERCOME THE PREEMPTION OF STATE LAW

21 (a) Local Rule 2.3(a)(1)(A) Does Not Apply to this Case.

22 Los Angeles Super. Ct. Local Rule 2.3(a)(1)(A) refers to Bodily Injury cases as
23 being mandatory to file in the district where the injury occurred. It defines "Bodily Injury"
24 cases as those suing for "actual physical damage to a person." It goes on to state:
25 "Actions for emotional distress, . . . are not included in this definition." ¹ "Bodily injury"
26

27

1 Los Angeles Superior Court Local Rule 2.3(a)(1) reads in relevant part as follows:
28 2.3 FILING AND TRANSFER OF ACTIONS
(a) Filing of Actions.

1 cases apparently are cases like those commonly filed for car accidents or slip-and-falls.

2 Review of the 1st Amended Complaint indicates it has a cause of action, one of 9,
3 for "Personal Injury," not "Bodily Injury," and that cause of action does not include
4 allegations of "actual physical damage to a person." Instead, the only paragraphs of the
5 Cause of Action referring to injuries, ¶¶ 51 and 52 state as follows, as to "injuries:"
6

7 51. Plaintiff is unaware of the nature or amount of injuries she suffered, is
8 suffering now, and will suffer in the future due to the wrongful actions of
9 Defendants detailed herein, and will seek leave of court to amend this 1st
10 Amended FAC [sic.] further at the various junctures after future discovery has
11 been completed, when the nature and extent of her damages becomes more fully
12 known.

13 52. Plaintiff may also have been damaged and/or will in the future be
14 damaged by such actions by Defendants as alleged above and will have suffered
15 and/or will suffer actual damages in ways and amounts that are subject to proof.
16 Plaintiff therefore reserves the right to amend this FAC to allege entitlement to
17 compensatory damages for future similar actions by Defendants before or after
18 trial, according to proof to be presented at the relevant time.

19 Neither of these paragraphs limits the type of "personal injury" to "actual bodily
20 injury," as that term is used in Local Rule 2.3(a)(1), meaning "actual physical damage to

21 (1) Mandatory and Optional Filing of Unlimited Civil Actions.

22 (A) *Mandatory Filing:* Every unlimited civil action for bodily injury, wrongful
23 death, or damage to real property must be filed in the district where the injury or
24 damage occurred. "Bodily injury" is defined as actual physical damage to a person.
25 Actions for emotional distress, defamation, discrimination, and malpractice other than
26 medical malpractice are not included in this definition. "Damage to real property" is
27 defined as actual physical damage to land, buildings or other items affixed to the land,
28 including vegetation. Actions for quiet title, breach of real estate, or breach of
construction contract are not included in this definition.

.....
(B) *Optional Filing:* Except as set forth in subsection (A) above, an unlimited
civil action or proceeding may be filed in the Central District or may be filed in a district
other than the Central District, [Emphasis added.]

1 a person." Neither does either one refer to there being at least any "actual bodily injury,"
2 nor indeed to any type of injury, bodily or otherwise, except that it is some kind of injury
3 to plaintiff, personal injury, not injury to property.

4 To the contrary, the types of personal injuries suffered are clearly alleged to be
5 unknown and possibly of any type. They may be financial, constitutional, statutory, or
6 any other sort, and Plaintiff states she does not know what type they are or may be in the
7 future. Moreover, the crux of the cause of action is demolishing or moving trailers at the
8 property without permits, prior inspections, or notice, which due to these wrongs, may
9 have caused many types of unknown and currently unknowable injuries. The unknown
10 and unknowable nature of the injuries is due to the wrongful acts alleged.

11 That is, if prior inspections, obtaining permits, and giving notice had been done,
12 then observing the baseline status of plaintiff and monitoring for injuries would have been
13 possible. Since these acts were not done, by Defendants, people alleged in the FAC to
14 have had a special relationship and therefore a special duty to take care not to cause
15 any personal injury, not just a bodily injury, Defendants themselves are alleged to be
16 responsible for the uncertainty of what type of damage may have occurred, be occurring,
17 or will occur in the future.

18 Clearly this is not like a car accident, which happened on a certain day in a certain
19 place. It is certainly an emotional injury case, and that type of injury is alleged in other
20 causes of action, but this First Cause of Action asserts there may be other types of
21 personal injury, so it alleges uncertainty and retains the right to give the details of those
22 other types of injury when they are known. Nothing about these allegations comes close
23 to alleging "bodily injury," "actual bodily injury," or "actual physical damage to a person."

24 Moreover, the other eight causes of action clearly are optionally filed in the Central
25 District. No cause of action is about injury to real property. See also, Declaration of
26 Brenda Barnes attached hereto and incorporated as though repeated in full here, ¶ 11.

27 Defendants claim to believe this case concerns not only "actual physical damage
28 to a person," but also "damage to real property" located in the West District. This is

1 because Local Rule 2.3(a)(1), besides requiring "bodily injury" cases to be filed where
2 the "bodily injury" occurred, also requires cases about damage to real property to be filed
3 in the venue where that real property is. As the Declaration of Brenda Barnes attached
4 hereto fully reflects, in ¶ 12, she does not own any real property in the West District, in
5 fact the real property involved peripherally in this Case is owned by some or all of the
6 Defendants, and nothing in any Cause of Action, therefore, is about damage to real
7 property. Defendants are at best disingenuous in claiming to believe this case could in
8 any sense be interpreted to be about damages to real property.

9 (b) Even If Local Rule 2.3(a)(1) Applied to this Case, It Would Be Preempted.

10 Even if Los Angeles Super. Ct. Local Rule 2.3(a)(1) did apply to this Case,
11 nothing in it indicates any intention to try to overcome the preemption of state law about
12 timeliness of making motions to transfer.

13 Los Angeles Super. Ct. Local Rule 2.3(a)(1) does not refer to time of making a
14 motion to transfer. In fact, it does not refer to motions to transfer at all. C.C.P. § 396b
15 has occupied the entire field of when motions to transfer have to be made on the ground
16 of a court having subject matter jurisdiction but being the wrong court. Defendants in
17 support of their Motion—having provided precious little authority of anything—have
18 likewise provided no authority their motion is not preempted, as all state law preempts
19 local rules if they are in opposition to state law, if they apply at all. See, generally,
20 California Constitution, article XI, section 7: a county or city may make and enforce
21 within its limits "all local, police, sanitary, and other ordinances and regulations not in
22 conflict with general laws."²

23 ² In Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897-898
24 [16 Cal.Rptr.2d 215], the Supreme Court summarizes general principles governing
25 preemption law. The California Constitution, article XI, section 7, permits a county or city
26 to make and enforce within its limits "all local, police, sanitary, and other ordinances and
27 regulations not in conflict with general laws."

28 1. " 'If otherwise valid local legislation conflicts with state law, it is preempted by
such law and is void.' [Citations.]
2. " 'A conflict exists if the local legislation " 'duplicates, contradicts, or enters an
area fully occupied by general law, either expressly or by legislative implication.' " '
[Citations.]

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CONCLUSION

For all the reasons stated herein, the Court must deny Defendants' instant untimely Motion to Transfer.

DATED: March 24, 2012

Respectfully submitted,



Brenda Barnes
Plaintiff in pro per

3. " Local legislation is 'duplicative' of general law when it is coextensive therewith. [Citation.]
4. "Similarly, local legislation is 'contradictory' to general law when it is inimical thereto. [Citation.]
"Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: . ." (Sherwin-Williams Co. v. City of Los Angeles, supra, 4 Cal.4th at pp. 897-898.)

1 had sent me the letter could not meet and confer with me. He set an appointment for me to
2 meet and confer after a court appearance we had set for March 5, 2012, with that "lead
3 attorney," Robert E. Kohn, but Mr. Kohn did not show up on that date.

4 7. On March 7, 2012 this law firm, through Robert E. Kohn, wrote me the e-mail attached to the
5 Motion to Transfer as Exhibit 2, about transferring the case to the West District. I did not see
6 the e-mail, and sometime within the next day Mr. Kohn called me to ask me about it, at which
7 time I told him I had not seen it and would immediately look for it. I did not refuse to transfer
8 the case in that telephone call. Instead, I merely stated I would look into the matter when I
9 had found the e-mail.

10 8. Within two hours of the telephone call I wrote and sent the response attached hereto as
11 Exhibit "A" and incorporated by reference as though repeated in full here. I never received
12 any response whatsoever, either telephoned or written, to my e-mailed response.

13 9. Five days later, on March 13, 2012, I received in the mail the Motion to Transfer at issue in
14 this Declaration, in the same envelope as a Case Management Conference Statement for
15 the First Case Management Conference in this matter, scheduled in Department 47 for
16 March 19, 2012. This claims, among other untruths, that I refused to transfer the case in
17 response to Exhibit 2.

18 10. Mr. Kohn and I both appeared at the First Case Management Conference in Department 47
19 on March 19, 2012.

20 This Case Is Not About Either Bodily Injury or Damage to Real Property.

21
22 11. Largely because of the wrongs of Defendants about which I am suing in this case, I do not
23 know what damages I have suffered. I do not know when they started doing the wrongs I am
24 complaining about, and I therefore do not know what the conditions in the air, water, and soil
25 where I live were when those wrongs began. To the extent it is possible, I will determine
26 through discovery all these things. For now, I cannot say what type of personal injuries I
27 have suffered, am suffering, or will suffer.
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12. I do not own any real property in the West District or anywhere else. This case is therefore not about damage to real property, either. Either Defendants, or some of them, own the real property where I live. I have a right under local Rent Control Law to rent the land and put the house my family and I own on that land. Any damage to my house from the wrongs involved in this case would be damages to personal property.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2012, at Santa Monica, California.


BRENDA BARNES

EXHIBIT A

Transfer of Case No. BC473905 - Meet-and-confer

Inbox x

Mar 7 (8 days ago)

Dear Ms. Barnes, In the Los Angeles Superior Court, actions for bodily injury...

Dear Ms. Barnes,

In the Los Angeles Superior Court, actions for bodily injury or damage to real property are required to be filed in the district where the injury or damage occurred. See L.A. Super. Ct. R. 2.3(a). Based upon that mandatory filing rule, I anticipate that a motion to transfer the action to the West District in Santa Monica will be filed by Defendants Marc Luzzatto, Village Trailer Park, Village Trailer Park, LLC.

Would you please let us know promptly whether you intend to oppose that motion? If you do not consent to the motion, please let us know the reason(s) for any opposition.

Thank you.

Regards,

Robert E. Kohn | Attorney at Law | Kohn Law Group, Inc.

1901 Avenue of the Stars, Suite 200 | Los Angeles, CA 90067
tel: [310.461.1520](tel:310.461.1520) | fax: [310.461.1304](tel:310.461.1304) | www.kohnlawgroup.com

Brenda Barnes via gmail.com Mar 8 (7 days ago) to Robert

Mr. Kohn:

Local Rule 2.3(a)(1) refers to Bodily Injury cases as being mandatory to file in the district where the injury occurred. It defines "Bodily Injury" cases as those suing for "actual physical damage to a person." It goes on to state: "Actions for emotional distress, . . . are not included in this definition." "Bodily injury" cases are like car accidents or slip-and-falls.

My review of the 1st Amended Complaint indicates it has a cause of action, one of 9, for "Personal Injury," not "Bodily Injury," and that cause of action does not include allegations of "actual physical damage to a person." Instead, paragraphs 51 and 52 state, as to "injuries,"

"51. Plaintiff is unaware of the nature or amount of injuries she suffered, is suffering now, and will suffer in the future due to the wrongful actions of Defendants detailed herein, and will seek leave of court to amend this 1st Amended FAC [sic.] further at the various junctures after future discovery has been completed, when the nature and extent of her damages becomes more fully known.

52. Plaintiff may also have been damaged and/or will in the future be damaged by such actions by Defendants as alleged above and will have suffered and/or will suffer actual damages in ways and amounts that are subject to

proof. Plaintiff therefore reserves the right to amend this PFC to allege damages to compensation and future similar actions by Defendants before or after trial, according to proof to be presented at the relevant time." Neither of these paragraphs limits the type of "personal injury" to "actual bodily injury." Neither does either one refer to there being at least any "actual bodily injury," nor indeed to any type of injury, bodily or otherwise, except that it is some kind of injury to plaintiff, personal, not injury to property.

The types of personal injuries suffered are clearly alleged to be unknown and possibly of any type. They may be financial, constitutional, statutory, or any other type. Moreover, the crux of the cause of action is demolishing or moving trailers at the property without permits, prior inspections, or notice, which due to these wrongs, may have caused many types of unknown and currently unknowable injuries. The unknown and unknowable nature of the injuries is due to the wrongful acts alleged. That is, if prior inspections, obtaining permits, and giving notice had been done, then observing the baseline status of plaintiff and monitoring for injuries would have been possible. Since these acts were not done, by someone who had a special relationship and therefore a special duty to take care not to cause any personal injury, not just a bodily injury, the cause of action exists.

Moreover, the other eight causes of action clearly are optionally filed in the Central District. No cause of action is about injury to real property.

Finally C.C.P. § 396b provides in relevant part as follows:

(a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court.

Since Defendants answered already, not making a motion to transfer in a timely manner, have appeared twice already before the Dept. 85 judge and have known for months of the case's assignment for all purposes to Judge Weintraub, and since the Central District has jurisdiction of the subject matter and is a proper court for the case given the pleading's actual wording and its actual meaning, there is no reason for me to agree to transfer it. I had an option to file it in the West District or the Central District. I chose the Central District intentionally because I have had numerous examples of officials in Santa Monica predetermining questions in favor of the defendants in this case. To avoid further injustice, the case needed to be where hopefully the judiciary would know none of the parties. I filed it where the best chance of that happening existed, of the two choices available to me.

As to convenience, for me, whatever inconvenience I might suffer, I want justice I have not obtained at the City Council and the Rent Control Board, so I want out of Santa Monica. Given that the Central District is only 14 minutes away, going there should not be a great hardship to those of the defendants who live and work regularly in the West District. Others live and work regularly far South of the West District, so the Central District is more convenient for them.

Very truly yours,

Brenda Barnes

