

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CITY OF HUNTINGTON BEACH et al.,

Petitioners,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

THE KENNEDY COMMISSION et al.,

Real Parties in Interest.

E070935

(Super.Ct.No. 30-2015-00801675)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Michael J. Stern,  
Judge. Petition granted.

Michael E. Gates, City Attorney, Michael J. Vigliotta, Chief Assistant City  
Attorney, for Petitioners.

No appearance for Respondent.

Jones Day, Roman E. Darmer, Luke W. Holladay; Public Law Center, Ugochi Anaebere-Nicholson, Kenneth W. Babcock, Richard M. Walker; Public Interest Law Project, Craig D. Castellanet, Michael F. Rawson; Legal Aid Society of Orange County, Sarah J. Gregory, Lili V. Graham and Kate Marr for Real Parties in Interest.

In this matter, we have reviewed the petition for a writ of mandate or prohibition, the opposition filed by real parties in interest, and petitioners' reply. We have determined that resolution of the matter involves the application of settled principles of law, and that the equities favor petitioners. We conclude that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178; Code of Civ. Proc., § 1088.)

#### PROCEDURAL HISTORY

This matter involves a familiar dispute in which real parties in interest, The Kennedy Commission, William Adams, and Jason Puleo (collectively, Kennedy) are challenging the validity of a 2015 amendment to the Beach Corridors Specific Plan (BECSP) adopted by petitioners, City of Huntington Beach and the City Council of Huntington Beach (collectively, the City). Our opinion in *The Kennedy Com. v. City of Huntington Beach* (2017) 16 Cal.App.5th 841 (*Kennedy Com.*) contains a detailed description of the history of the litigation. We summarize here only the events relevant to the issues presented by the current petition.

In July 2015, Kennedy filed a petition for alternative writ of mandate and complaint for declaratory and injunctive relief in the superior court challenging the

amendment.<sup>1</sup> The first cause of action was for failure to act consistently with the housing element allegedly in violation of Government Code<sup>2</sup> sections 65454, 65580, 65583, 65587, and 65860. Relying on section 65454, it alleged that a specific plan, which here was the amended BECSP, could not be adopted unless it was consistent with the general plan. The housing element in the general plan complied with the Regional Housing Need Allocation; the amended BECSP was not consistent and reduced the number of low income housing units. Kennedy alleged Kennedy had standing because it was “directly and beneficially” interested in the City’s compliance with all applicable provisions of law. There was no other plain, speedy or adequate remedy.

The second cause of action relied upon sections 65581, 65583, 65587 and 65588. Kennedy sought a writ of mandate for the failure to implement the approved housing element. It sought an order from the superior court requiring the City to implement its housing element as written. The third and fourth causes of action were based on Article XI, section 7 of the California Constitution. The amended BECSP conflicted with state law and was therefore preempted. Further, the amended BECSP violated due process. The fifth cause of action alleged unlawful housing discrimination under section 12900. Failing to provide low income housing had a discriminatory effect.

---

<sup>1</sup> The action was originally filed in Orange County and then transferred to Los Angeles County.

<sup>2</sup> All further statutory references are to the Government Code unless otherwise specified.

The sixth cause of action was for a violation of section 65008. Kennedy alleged that it “believed” that persons who need affordable housing in Huntington Beach were disproportionately racial and ethnic minorities. The amended BECSP had a discriminatory purpose and effect on the production of affordable housing.

The superior court granted the petition for writ of mandate, concluding, “The BECSP Amendment is void *ab initio*. A writ shall issue directing the City to cease enforcing, administering, or implementing the BECSP Amendment. The writ will not include any relief compelling the City to implement the 2013 housing element, the BECSP, or BECSP’s Policies and Programs committing the City to accommodate its [Regional Housing Need Allocation].” Judgment was granted in favor of Kennedy on the first and second causes of action; however, the court did not grant the relief requested for the second cause of action. The City dismissed the remaining causes of action—three through six—without prejudice in order to appeal the judgment immediately. The City’s appeal from the judgment was transferred to this court. Kennedy did not cross-appeal from the court’s failure to grant the relief requested—or, any relief at all—for its second cause of action.

We reversed the judgment. (*Kennedy Com.*, *supra*, 16 Cal.App.5th at p. 860.) Though the writ of mandate required reversal, we noted that “Kennedy should be given an opportunity to address the remaining issues.” (*Id.* at p. 859.) To that end, our disposition reads: “The superior court’s order granting Kennedy’s petition for writ of mandate is reversed, and the matter is remanded to the superior court in order for

Kennedy to move to have the remaining causes of action three through six reinstated. If Kennedy does not seek to reinstate the remaining causes of action within 30 days of the issuance of the remittitur . . . .” (*Id.* at p. 860.) We denied Kennedy’s petition for rehearing but modified the opinion slightly.

Kennedy moved to file an amended petition and complaint in the superior court and included causes of action three through six pursuant to the remand, along with the second cause of action. As to the second cause of action, Kennedy asked for clarification about whether the claim remained active since, as it put it, “the Court of Appeal incorrectly assumed that this Court had denied Petitioners’ Second Cause of Action, and thus did not otherwise address it” and “did not directly affirm or reverse this Court’s Judgment on the Second Cause of Action.” The City opposed reinstatement. The superior court allowed the second cause of action to proceed. Kennedy filed its first amended petition, including the second cause of action, and the City demurred, which was denied.

The City filed this petition for writ of mandate or prohibition. We invited Kennedy to file an informal response and provided the parties notice that we might issue a peremptory writ. We issued a stay of the proceedings in the superior court pending determination of the petition on the merits.

## DISCUSSION

### A. *We Exercise De Novo Review of the Dispositional Language in Our Prior Opinion.*

“Prohibition is a proper remedy to restrain a trial court from proceeding to trial in violation of the terms of a final judgment of the reviewing court.” (*Hampton v. Superior Court* (1952) 38 Cal.2d 652, 656; see Code Civ. Proc., § 1102.) “The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned.” (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.) “When an appellate court’s reversal is accompanied by directions requiring specific proceedings on remand, those directions are binding on the trial court and must be followed. Any material variance from the directions is unauthorized and void.” (*Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982.) If, however, a remittitur is ambiguous, the superior court can interpret it in light of the law and the appellate opinion to determine its duties. (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 863, fn. 7 (*Ayyad*.) Whether the lower court has correctly interpreted an appellate opinion is a question of law reviewed de novo. (*Ducoing Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306, 313 (*Ducoing*.)

B. *The Dispositional Language in Our Prior Opinion Allowed the Third through Sixth Causes of Action to Be Reinstated Only.*

Kennedy claims that we did not expressly limit it to pursuing only the third through sixth causes of action on remand. That is not what we held.

The disposition in our opinion was crystalline. There existed no ambiguity. We plainly spelled out which claims could be revived and left no room for interpretation. Kennedy was free to “have the remaining causes of action *three through six* reinstated.” (*Kennedy Com.*, *supra*, 16 Cal.App.5th at p. 860, italics added.) Our silence about the second cause of action was not an invitation to allow it to be reinstated too. We did not mention the second cause of action because Kennedy *chose* to not appeal the superior court’s denial of their requested relief for the second cause of action. (*Id.* at p. 851, fn. 3.) Had we considered the claim viable, we would have plainly stated in our disposition that Kennedy could move to have “the remaining causes of action *two through six* reinstated.” That allowance was not made because the claim was not *remaining*.

We were not required “to attempt to envision and to set forth in detail the entire universe of matters prohibited by its directions on remand.” (*Ayyad*, *supra*, 210 Cal.App.4th at p. 863.) The lower court’s jurisdiction was limited to considering only those issues specified in our disposition. (*Ibid.*) In this instance, the third through sixth causes of action *only* should have been reinstated. We conclude that by allowing the

second cause of action to proceed against the superior court's order materially departed from our directions on remand, and the superior court exceeded its jurisdiction.

DISPOSITION

Let a peremptory writ of mandate issue, directing the Superior Court of Los Angeles County to vacate its order of March 15, 2018, with respect to allowing the second cause of action to proceed. The order otherwise may remain in effect.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Each party shall bear their own costs.

The stay issued by this court on August 30, 2018, is hereby dissolved.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER  
Acting P. J.

We concur:

CODRINGTON  
J.

FIELDS  
J.