



This is an excerpt of the Minute Order issued by the Superior Court on February 26, 2015 in reference to National Grange v. The California State Grange Case #2012-00130439-CU-MC

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 1.06.

Parties requesting services of a court reporter shall advise the court at the number stated above no later than 4:00 p.m. the court day before the hearing. Please be advised there is a \$30.00 fee for court reporting services, which must be paid in Room 102 prior to the hearing unless otherwise ordered, for each civil proceeding lasting less than one hour. Govt. Code §68086(a)(1)(A).

The Court Reporter will not report any proceeding unless a request is made and the requisite fees are paid in advance of the hearing.

**Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
David I. Brown, Judge
E. Brown, Clerk
C. Chambers/J. Green,, Bailiff**

Friday, February 27, 2015, 2:00 PM

Item 2 **2012-00130439-CU-MC**
The National Grange vs. The California State Grange
Nature of Proceeding: Hearing on Demurrer
Filed By: Reeves, Brandon L.

Defendant Robert McFarland's demurrer to Plaintiffs-In-Intervention Ed Kosinski and the California State Grange, Inc.'s ("Intervenors") First Cause of Action for Declaratory Judgment in the Complaint in Intervention ("CII") is overruled.

This action was initiated when Plaintiff National Grange of the Order of Patrons of Husbandry filed suit against Defendant California State Grange, Inc., Robert McFarland et al., regarding a dispute over the California State Grange and its leadership. Intervenors claim to be the newly reorganized California State Grange, Inc. authorized under the rules of the Grange while alleging that another group constituted of former officers and members of the California State Grange is operating in defiance of the Grange's rules. Intervenors assert causes of action for declaratory judgment, breach of fiduciary duty, accounting, conversion and ejectment in their complaint in intervention.

Defendant demurs only to the first cause of action for declaratory judgment on the basis that declaratory relief is not available where an accrued cause of action for damages provides an adequate remedy. The demurrer is overruled.

A cause of action "for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court." (*Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947.) The first cause of action clearly meets this standard. Intervenors alleged that defendants, including Defendant McFarland are former officer of the California State Grange and continue to hold themselves out as officers. (CII ¶¶ 6-9.) Intervenors set forth the rules governing the California State Grange allege that they are the current California State Grange entitled to use and control its property and that Defendant refuse to relinquish control. (Id. ¶¶ 3-4, 11-88, 101-103, 111-113, 116-122, 125-127, 129.) These allegations allege an actual ongoing controversy relating to the legal rights and duties of the parties regarding the control of the California State Grange and its property. (Id. ¶¶ 130-132.) Thus, there is in fact a current dispute between the parties and therefore an actual controversy for purposes of CCP § 1060 that "admits of definitive and conclusive relief within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do." (*Selby Realty Co. v. City of Buenaventura* (1973) 10 Cal.3d 110, 117.)

Defendant's argument that the availability of damages precludes declaratory relief is incorrect. Indeed, CCP § 1060 recognizes the availability of causes of action seeking damages in addition to declaratory relief. (CCP § 1060 [stating that a party may bring a request for declaratory relief "either alone or with other relief..."].) Further, CCP § 1062 makes clear that a request for declaratory relief "shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party to the action, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts." For example, "if parties to a contract seek declaratory relief as to the validity of a contract, the court can declare the contract to be valid and enforceable and award damages for its breach in the interest of disposing of the entire controversy between the parties and granting complete relief." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 608.) The instant action is no different. While Intervenors allege causes of action seeking damages, they nevertheless have alleged a valid cause of action for declaratory relief

setting forth an actual ongoing controversy between themselves and Defendants regarding the control of the California State Grange and its property. The causes of action for damages will simply allow the Intervenor to obtain complete relief in one action. If successful, Intervenor will obtain compensation for the alleged losses already caused by Defendants' acts and will also obtain a declaration setting forth the rights and duties of the parties going forward thereby preventing future damage.

The cases cited by Defendant do not dictate a different result. Indeed, the cases involve situations where the rights of the party seeking declaratory relief has " 'crystallized into a cause of action for past wrongs' such that a money judgment will fully resolve the dispute." (*Cardellini v. Casey* (1986) 181 Cal.App.3d 389, 396.) Here, however, the CII does not solely involve past wrongs but rather an ongoing dispute with respect to the control of the California State Grange and its property. Further, contrary to Defendant's suggestion declaratory relief is not restricted to situations where the parties have a contractual relationship. Indeed the cited case simply highlighted the example of an ongoing contractual relationship as one "which will continue after resolution of the immediate dispute, and may give rise to additional claims" such that "declaratory relief can help guide their future conduct and avoid multiple lawsuits." (*Id.*) This is the situation at hand. If Defendant's argument were accepted, and CII were limited to damages, it would have to file multiple actions to recover for Defendants' alleged conduct of operating the California State Grange despite the allegations that they have no right to do so. This would invite the very danger that a declaratory relief action seeks to prevent. In other words, declaratory relief is entirely appropriate here as it will "guide [the parties'] future conduct and avoid multiple lawsuits." Further, *Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 408 did not hold as Defendant suggests, that a right of action for damages precludes declaratory relief. Rather the court there found that a plaintiff who sought declaratory relief against a hospital where she had been treated for rape and allegedly failed to provide adequate options to prevent pregnancy failed to allege facts showing she would suffer future damages and could be fully compensated by an award of money damages. (*Id.* at 414.)

In addition, the Court rejects the claim that declaratory relief is inappropriate and duplicative of the request made by Plaintiff National Grange of the Order of Patrons of Husbandry in the main complaint. Not only is no authority cited for this proposition, but the Court simply notes that the CII alleges an actual controversy between Intervenor and Defendants while the complaint alleges an actual controversy between the National Grange and Defendants. Nothing precludes Intervenor from seeking to obtain a declaration as between themselves and Defendants even if the request is based on similar facts as the request made by National Grange as between itself and Defendants.

Defendant's arguments in reply that the declaratory relief cause of action is improper because it seeks to remove him from his position as president of the California State Grange and otherwise seeks an improper declaration which would result in the involuntary dissolution of a non-profit corporation are not considered by the Court. These arguments that the declaratory relief cause of action is improper because it seeks relief which the Court has no power to grant are based on citation to authority that was not cited to in the demurrer. Indeed, the reply reads as an entirely different basis for the demurrer which simply argued that an accrued cause of action exists for damages.

The demurrer is overruled.

Defendant shall file and serve his answer no later than March 9, 2015.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or other notice is required.
