



CALIFORNIA COURT GRANTS CEQA DEFENDANT DISCOVERY INTO PLAINTIFF-GROUP'S STANDING

by Martin Stratte and Jonathan Shardlow

In California, essentially anyone can file litigation to stall or stop a development project that has been approved under the California Environmental Quality Act (CEQA). Plaintiffs may file these actions under what's known as the "public interest exception" to the traditional standing requirement, which eliminates a petitioner's duty to demonstrate that it has a "beneficial interest" in the action and therefore, the right to litigate. *See, e.g., Bozung v. Local Agency Formation Comm'n*, 13 Cal.3d 263, 272 (1975).

Not surprisingly, the elimination of the traditional standing requirement has allowed CEQA litigation to become widely abused and misused by individuals and organizations. Development project opponents often create unincorporated organizations that exist for the sole purpose of litigation.

Some developers, when faced with litigation filed by a shell group, prefer to seek discovery to investigate the organization, rather than cut a check to settle litigation that is delaying an already-approved project. In *Creed-21 v. City of Wildomar*, 18 Cal.App.5th 690 (2017), the California Court of Appeal examined the scope of a project applicant's ability to utilize such discovery, including depositions, to investigate whether an unincorporated organization has standing to litigate a CEQA action.

The litigation arose from the approval of a Walmart retail center by the City of Wildomar (City) in 2015. After the approval, "Creed-21" also known as "Citizens for Responsible, Economical and Environmental Development," filed litigation pursuant to CEQA, alleging that the City failed to adequately analyze the environmental impacts associated with the project. *Id.* at 692-93.

While the action was pending, counsel for Walmart served notice that it intended to depose Creed-21's "person most qualified" (PMQ) to answer a number of questions. Walmart alleged that the deposition was necessary because "Creed-21 was a shell corporation . . . [with] no assets[.]" *Id.* at 693. Walmart further alleged that the settlement proceeds that various developers have previously paid to Creed-21 have been collected by Creed-21's attorney, Cory Briggs. *Ibid.*

In support of these allegations, Walmart explained that "Creed-21 had filed over 100 lawsuits and Briggs Law Corporation had received all the proceeds from these actions." *Id.* at 698. Walmart also explained that one of Creed-21's two members was Mr. Briggs's cousin; that Creed-21 did not have a bank account; and that Briggs Law Corporation "handled all of the tax filings and corporate filings" for Creed-21. *Ibid.*

Despite multiple attempts by Walmart's counsel to meet with Mr. Briggs and confer about the scheduling of the deposition and the production of various documents that had been requested, he refused to produce Creed-21's PMQ for deposition. Eventually, Walmart filed a motion to compel the deposition, which Creed-21

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opposed on multiple grounds, including its claim that CEQA does not permit discovery in *mandamus* actions. *Id.* at 692-94.

The trial court granted Walmart's motion to compel and ordered Creed-21 to produce its PMQ within 10 days. *Id.* at 695. Thereafter, Creed-21 filed a motion for relief with the trial court, which was denied. *Ibid.* Creed-21 then petitioned the California Court of Appeal, Fourth Appellate District, for relief from the trial court's order, which was also denied. *Id.* at 696. The group then filed an *ex parte* application with the trial court seeking to vacate the order and grant a continuance of the date for the deposition. That was denied, too. *Id.* at 697.

As a result of Creed-21's refusal to produce its PMQ for deposition, Walmart and the City were precluded from including possibly material arguments in their joint brief in opposition to Creed-21's CEQA action. *Id.* at 697. Thereafter, Walmart filed a motion for issue sanctions for Creed-21's continued violation of the trial court's order.

At the hearing, the trial court ruled that the antics of Creed-21 and its counsel were "a calculated attempt to delay and to avoid a deposition" that had previously been noticed approximately seven months prior. The trial court added:

I see that there's no sanction that is going to result in achieving what defense was attempting to achieve when they first noticed the deposition. Nothing has worked. Multiple orders have been made. Sanctions have been imposed. Nothing except further delay in the proceedings. And I don't think at this point in light of the history, the defense should have to choose between getting this deposition and delaying the hearing on the merits.

Id. at 699-700. The court dismiss Creed-21's action under Code of Civil Procedure §§ 2023.030 and 2025.450.

Creed-21 filed an appeal of what it referred to as a "severe issue sanction." *Id.* at 701. On review, the California Court of Appeal, Fourth Appellate District, affirmed the trial court's dismissal of the action. *Id.* at 701-704. Creed-21 subsequently petitioned the California Supreme Court for review of the opinion. However, review was denied in March 2018.

The holding of the Court of Appeal reiterates the principle that

public interest standing is freely available to business interests lacking a beneficial interest in the litigation. No party, individual or corporate, may proceed with a mandamus petition as a matter of right under the public interest exception. As the [*Waste Management of Alameda County, Inc. v. Alameda County* 79 Cal.App.4th 1223 (2000)] court correctly observed, 'Judicial recognition of citizen standing is an exception to, rather than repudiation of, the usual requirement of a beneficial interest. The policy underlying the exception may be outweighed by competing considerations of a more urgent nature. [Citations omitted].'

Save the Plastic Bag Coalition v. City of Manhattan Beach 52 Cal.4th 155, 170, fn. 5 (2011).

Creed-21 v. City of Wildomar removes any doubt as to whether a project applicant may utilize discovery in a CEQA action, including depositions, to investigate whether an unincorporated organization has standing to litigate. The implications of this ruling are significant, given that CEQA actions are filed in opposition to seemingly every new project in California, small or large, brownfield or greenfield, transportation or housing.

The trial court should be commended for leading the way towards overdue judicial reform of CEQA to address the widespread manipulation of public-interest standing for commercial, anti-competitive, or anti-development "NIMBY" (Not In My Backyard) interests, something which the California Legislature continues to ignore.