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Santa Barbara Pistachio Ranch v. Chowchilla Water Dist., 105 Cal Rptr. 2d 856
(Cal. Ct. App. 2001)

CALIFORNIA

Santa Barbara Pistachio Ranch v. Chowchilla Water Dist., 105 Cal Rptr. 2d 856 (Cal. Ct. App. 2001) (holding the trial court erred in granting nonsuit where lost profits could potentially be considered in determining costs of restoring damaged pistachio groves, and error in a summary judgment ruling for failure to provide a sufficient basis for the decision).

Santa Barbara Pistachio Ranch and Maple Leaf Pistachio Ranch (collectively "Santa Barbara") alleged Chowchilla Water District ("Chowchilla") provided contaminated irrigation water, that killed Santa Barbara's pistachio trees. Santa Barbara's trees, which traditionally take seventeen years to reach maturity and produce a full crop, started to die from verticillium wilt—a fungal disease. Santa Barbara subsequently learned the contaminant responsible likely came from tailwater drains dispensing Chowchilla irrigation water back into the canal and downstream to other growers. Tests confirmed verticillium contamination within Chowchilla's water.

Santa Barbara filed suit asserting three causes of action: (1) negligence with resulting property damage; (2) nuisance; and (3) an untitled claim for additional damages suffered by Santa Barbara Pistachio Ranch in the 1997-1998 crop year. Chowchilla filed a motion for summary judgment. The trial court denied the motion on all claims but Santa Barbara's claim for negligence. At trial, Chowchilla moved to exclude testimony regarding lost profits in determining damages. The trial court held the proper measure of damages included the cost of restoring the pistachio groves, and the difference in the value of Santa Barbara's land before and after the restoration, but not lost future profits. Absent consideration of lost future profits, Santa Barbara's damages were minimal. Thus, the court granted nonsuit in favor of Chowchilla.

In response, Santa Barbara filed suit with the California Court of Appeals charging the trial court erred in granting nonsuit by improperly limiting the means of measuring damages. Under the appropriate standard of review, a court may grant nonsuit, as a matter of law, if the plaintiff's evidence is insufficient to permit the trier of fact to find for the plaintiff. Therefore, the court must accept the evidence most favorable to the plaintiff as true and must disregard conflicting evidence. A modicum of varying evidence is not a conflict; a legitimate conflict arises only where substantial evidence exists.

In its analysis, the court reasoned that it could conceivably consider lost profits in valuing the lost pistachio trees, particularly where mature trees could not replace injured trees. The court explained the cost of replacing the pistachio trees or restoring the groves to their original condition was dependent on the value of the trees. Thus, the court reversed the trial court's decision, holding it

erred in automatically precluding evidence of lost future profits in determining the applicable restoration costs. The court considered several options to determine damages in a tort action. Ultimately, the court found the means of measuring damages flexible, and one that would vary with the particular circumstances of each case. Accordingly, the court remanded the case back to the trial court, not to require consideration of lost future profits, but because the trial court could not automatically preclude review of lost future profits.

The court also reviewed the trial court's grant of summary judgment to Chowchilla on Santa Barbara's negligence claim. In reversing the summary judgment decision, the court cited the trial court's failure to give a sufficient statement of reasons for granting the motion. The Code of Civil Procedure required the trial court to specify the reasons for its determination in a written or oral order, and to specifically refer to the applicable supporting and opposing evidence. Here, although the trial court identified contradictions between the declarations prepared for the motion and the testimony given in disposition, it failed to give written or oral documentation. Therefore, the court reversed the trial court's grant of summary judgment pertaining to the negligence claim.

Christine Ellison

COLORADO

Farmers Reservoir & Irrigation Co. v. Consolidated Mutual Water Co., No. 00SA229 (Colo. Oct. 15, 2001) (holding historic consumptive use determinations non-reviewable under the retained jurisdiction provision unless the case comes on appeal).

Consolidated Mutual Water Co. ("Consolidated Mutual") originally diverted water for irrigation purposes, but in the 1960s they began using the water for domestic and municipal purposes. They did not apply for a change of use application until 1991. This was Priority 12 water transferred from the Lee, Stewart & Eskins Ditch ("LSE Ditch").

In the 1960s, the Water Court allocated 287 acre-feet annually to Golden from the LSE Ditch. In 1993 proceedings before the Water Court, Golden relied on its expert Gary Thompson. He testified that Consolidated Mutual received 124 acre-feet annually from the LSE Ditch and an additional 302 acre-feet annually from the LSE junior rights. The Water Court adopted the expert's calculations. No one appealed the decision. Farmers Reservoir & Irrigation Co. ("Farmers") brought a second suit claiming that Golden consumed more water than allowed. The Water Court held and the Colorado Supreme Court agreed that claim preclusion prohibited volumetric limits of the 1960s change decrees. Finally, Farmers Reservoir filed petitions requesting the Water Court extend or invoke the period of retained