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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

MARGARET HAWKINS, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA EDISON COMPANY, et al., Defendants and Respondents.	B295675 (Los Angeles County Super. Ct. No. BC716875)

APPEAL from judgments of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Marshall E. Rosenbach for Plaintiff and Appellant.

Greines, Martin, Stein & Richland, Robin Meadow for Defendant and Respondent Southern California Edison Company; Michael Maguire & Associates, Paul Kevin Wood and Ariella Perry for Defendant and Respondent Belmont Brokerage and Management, Inc.

INTRODUCTION

Plaintiff and appellant Margaret Hawkins appeals from judgments entered after the trial court sustained demurrers by defendants and respondents Southern California Edison Company (Edison) and Belmont Brokerage and Management, Inc. (Belmont) to her complaint for negligence. Hawkins alleged she sustained personal injury due to exposure to electromagnetic fields (EMF) emitted by Edison's electrical equipment at her apartment building managed by Belmont. She contends the trial court erred in holding the California Public Utilities Commission (PUC) has exclusive jurisdiction over the action. We conclude the trial court correctly determined it lacked subject matter jurisdiction and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hawkins' first amended complaint (FAC) against Edison, Belmont, and Charter Communications, Inc.[1] alleges a single cause of action for negligence. "In considering whether [a] demurrer should have been sustained, we treat the demurrer as an admission by defendants of all material facts properly pled in plaintiff's first amended complaint—but not logical inferences, contentions, or conclusions of fact or law. [Citation.]" (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152 (*Winn*).)

Hawkins lived in an apartment building in Long Beach (defined as the "Subject Premises"). Edison "provided electricity to the Subject Premises and to the areas surrounding the Subject Premises" and owned nearby electrical equipment. The FAC alleges Edison and Belmont "created and permitted the existence of dangerously high [EMF] exposure at the Subject Premises in excess of [that] allowed by law, causing [Hawkins] to sustain personal injuries and damages to her health." The FAC further

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1 Charter Communications, Inc. is not a party to this appeal.

alleges Edison had a duty to maintain, and Belmont had a duty to manage, the electrical equipment at the Subject Premises "so that it would be safe for residents." Edison allegedly breached its duty by "failing to properly construct, operate, manage, inspect, control, and/or maintain [its] equipment . . . so that [it] would not create dangerously high and unhealthy [EMF] emissions in excess of those allowed by law." Belmont allegedly breached its duty by "failing to take reasonable or adequate actions to reduce the [EMF] exposure at the Subject Premises to safe and healthy levels, to properly inspect same, and by failing to warn residents of the high levels of [EMF] exposure in excess of those allowed by law at the Subject Premises."

Edison demurred to the FAC on the ground it failed to state a cause of action against Edison because the PUC "has exclusive jurisdiction over issues related to EMF exposure from regulated utility facilities." In support of its demurrer, Edison requested the court take judicial notice of the following: (1) Edison is a utility regulated by the PUC; (2) the PUC has comprehensive jurisdiction over questions of public health and safety arising from utility operations; and (3) two PUC decisions (Cal.P.U.C. Dec. Nos. 93-11-013 and 06-01-042.) The trial court granted the first and third requests, and denied the second request, holding it is a "legal conclusion [] not subject to judicial notice . . . ."

Hawkins did not oppose Edison's demurrer. The trial court sustained the demurrer without leave to amend, holding Hawkins' "FAC arises from personal injuries sustained from EMFs emanating from Edison's equipment. (FAC ¶¶14-16.) Therefore, on the [FAC's] face, this will fall into the purview of [the] []PUC's exclusive jurisdiction regarding EMF liability."

Belmont filed a separate demurrer to the FAC, and a request for judicial notice mirroring Edison's. Hawkins opposed the demurrer, arguing her action is not within the exclusive jurisdiction of the PUC because the PUC's policies on EMF would not be hindered by her suit. The trial court issued a tentative

ruling sustaining Belmont's demurrer, stating it "previously found that the []PUC has exclusive jurisdiction over [Hawkins'] claims against Edison regarding the EMF exposure, thus, the Court cannot decide whether Belmont breached its duty as a landlord based on unsafe EMF exposure until the []PUC has found that the EMF exposure arising out of Edison's acts was unsafe." It provided Hawkins an opportunity to amend the FAC, however, to allege new facts stated in her opposition "such as the dangerousness presented by . . . electrical [equipment]" not arising from "Edison's creation of EMF exposure."

The parties submitted on the tentative ruling. Hawkins did not further amend the FAC. Thus, the trial court entered judgments in favor of Edison and Belmont. Hawkins timely appealed.

DISCUSSION

Hawkins contends the trial court erred in holding the PUC has exclusive jurisdiction over her negligence action for alleged personal injury due to exposure to EMF. "[W]e apply the de novo standard of review in an appeal following the sustaining of a demurrer . . . ." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

The PUC is "'a state agency of constitutional origin with far-reaching duties, functions, and powers. (Cal. Const., art. XII, § 1-6.).'" (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 914 (*Covalt*).) The PUC's powers are not restricted to those expressly mentioned in the Constitution. (Cal. Const., art. XII, § 5 [the Legislature has "plenary power . . . to confer additional authority and jurisdiction upon the [PUC]."].) To that end, the Legislature enacted the Public Utilities Act (Pub. Util. Code[2] § 201 et seq.), authorizing the PUC to "supervise and

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[2] All further undesignated statutory references are to the Public Utilities Code.

regulate every public utility in the State" and to "do all things . . . which are necessary and convenient in the exercise of such power and jurisdiction." (§ 701.) That authority "includes not only administrative but also legislative and judicial powers. [Citation.]" (*Covalt, supra,* 13 Cal.4th at p. 915.) As relevant here, section 1759, subdivision (a) divests the trial courts of jurisdiction to entertain lawsuits that would interfere with the PUC's regulation of utilities: "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution of operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties . . . ."[3]

In *Covalt*, plaintiffs contended their real property had diminished in value due to public fear of health-endangering EMFs from nearby powerlines. (*Covalt, supra*, 13 Cal.4th at pp. 910-914.) Our Supreme Court articulated a three-prong test for determining whether plaintiffs' claim was subject to the PUC's exclusive jurisdiction: (1) whether the PUC had the authority to adopt a regulatory policy on the subject matter of the litigation; (2) whether the PUC actually exercised that authority; and (3) whether a superior court action would hinder or interfere with the PUC's exclusive exercise of that authority. (*Covalt, supra*, 13 Cal.4th at pp. 923, 926, 935.)

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[3] Section 2106 authorizes "an action for damages brought by the injured party in superior or municipal court against any public utility that does any act prohibited—or omits to do any act required—'by the Constitution, any law of this State, or any order or decision of the commission' [citation]." (*Covalt, supra,* 13 Cal.4th at p. 916.) That section is limited, however, to "'those situations in which an award of damages would not hinder or frustrate the commission's declared supervisory and regulatory policies.'" (*Id.* at pp. 917-918, quoting *Waters v. Pacific Tele. Co.* (1974) 12 Cal.3d 1, 4.)

Applying the three-prong test, the court held plaintiffs' nuisance action was barred by section 1759. *(Covalt, supra*, 13 Cal.4th at pp. 935, 939.) It concluded the PUC had exercised its authority to adopt an EMF policy for electric utility facilities, citing a PUC decision issued in 1993. (*Order Instituting Investigation on the Commission's own motion to develop policies and procedures for addressing the potential health effects of electric and magnetic fields of utility facilities* (1993) 52 Cal.P.U.C.2d 1, 27; *Covalt, supra*, 13 Cal.4th at p. 930.) In that decision, the PUC reviewed the report of its advisory panel and an assessment of the scientific evidence provided by the State Department of Health Services and found the studies did not show an EMF health hazard existed. (*Ibid*.) The court further concluded an award of damages in plaintiffs' nuisance action would interfere with the PUC's policy on EMFs because "the trier of fact would be required to find that reasonable persons viewing the matter objectively (1) would experience a substantial fear that [EMFs] cause physical harm and (2) would deem the invasion so serious that it outweighs the social utility of [the utility's] conduct. Such findings, however, would be inconsistent with the [PUC's] conclusion . . . that the available evidence does *not* support a reasonable belief that [EMFs] present a substantial risk of physical harm." (*Covalt, supra*, 13 Cal.4th at p. 939.)

Without distinguishing *Covalt*, Hawkins argues the second and third prongs of the *Covalt* test "could not be found by the trial court in favor of Edison or Belmont as a matter of law at this stage in the proceedings." We disagree.

First, the *Covalt* court stated "[t]here is no doubt that the commission is still actively pursuing the broad policy inquiry into the potential health effects of powerline electric and magnetic fields that it initiated in 1991 . . . ." (*Covalt*, *supra*, 13 Cal.4th at p. 934.) Nothing has changed since *Covalt*. (See e.g. *Order Instituting Rulemaking to update the Commission's policies and procedures related to electromagnetic fields emanating from*

regulated utility facilities (2006) Cal.P.U.C. Dec. No. 06-01-042, 248 P.U.R.4th 295 [reaffirming that "at this time we are unable to determine whether there is a significant scientifically verifiable relationship between EMF exposure and negative health consequences" and "our continuing EMF policy is one of prudent avoidance, and application of low-cost/no-cost principles to mitigating EMF exposure"]; see also *Application of PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, for a Permit to Construct the Fulton-Fitch Mountain Reconductoring Project* (U39E) (2019) Cal.P.U.C. Dec. No. 19-09-011 [the PUC requiring compliance with its "no-cost" "low-cost" EMF policy in evaluating an energy project.].)[4]

Second, the PUC's EMF policy is premised on the finding that the evidence is not sufficient to establish that any level of EMF exposure is dangerous. The policy would be hindered by Hawkins' personal injury claim because, to be successful, it would require a finding that Hawkins was harmed by some level of EMF exposure. (See *Covalt, supra*, 13 Cal.4th at p. 947 ["After reviewing the current scientific evidence the commission has determined that it is *not* sufficient at this time to establish that electric and magnetic fields are dangerous, and on that basis has adopted a detailed interim policy on the subject . . . . A superior court determination that essentially the same evidence *is* sufficient to answer the question and that such fields are in fact dangerous would plainly undermine and interfere with that policy." (Emphasis in original)]; See also *Ford v. Pacific Gas & Electric Co*. (1997) 60 Cal.App.4th 696, 704, fn. omitted ["Section 1759 . . . makes no exception for personal injury actions. Moreover, [plaintiff's personal injury claim due to EMF exposure] is arguably even more directly opposed to the PUC's EMF policy

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[4] We granted Edison's request for judicial notice of the PUC decisions on April 15, 2020.

[compared to the nuisance claim brought in *Covalt*], which finds no established threat to human health."].)

Hawkins' reliance on this Division's opinion in *Wilson v. Southern California Edison Co.* (2015) 234 Cal.App.4th 123 (*Wilson*) is misplaced. There, plaintiff alleged "she began to feel low levels of electricity in her shower because the shower had metal pipes and the drain was connected to the ground, which allowed the stray electricity to flow when someone touched the shower while in contact with the drain." (*Wilson, supra*, 234 Cal.App.4th at p. 129.) A different panel of this court held plaintiff's claims involving stray voltage were not within the exclusive jurisdiction of the PUC. We noted that, unlike the PUC's investigations into the health effects of EMF, there is an "absence of any indication that the PUC has investigated or regulated the issues of stray voltage." (*Id.* at p. 151.)

Accordingly, we conclude Hawkins' FAC alleging injury due to EMF (not stray voltage) emanating from facilities of a regulated public utility falls under the exclusive jurisdiction of the PUC. And, because Belmont's liability, if any, would be premised on a determination that EMF exposure caused Hawkins' claimed injuries, the very matter that the PUC continues to study, the trial court correctly determined it could not "decide whether Belmont breached its duty as a landlord based on unsafe EMF exposure until the []PUC has found that EMF exposure arising out of Edison's acts was unsafe."

DISPOSITION

The judgments are affirmed. Edison and Belmont are awarded their costs on appeal.

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CURREY, J.

We concur:

MANELLA, P.J.

WILLHITE, J.