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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CLELIA R. ALMENDAREZ et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

KIA MOTORS AMERICA, INC.,

Real Party in Interest.

G059881

(Super. Ct. No. 30-2020-01155966)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Derek W. Hunt, Judge. Petition granted. Request for judicial notice granted.

Knight Law Group and Roger Kirnos; Greines, Martin, Stein & Richland LLP, Cynthia E. Tobisman and Jeffrey Gurrola for Petitioners.

Bowman and Brooke, Brian Takahashi, Jimmy Y. Park and Jennifer T. Persky for Real Party in Interest.

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THE COURT:\*

Petitioners Clelia R. Almendarez and Jose R. Preza seek extraordinary relief from an order staying the prosecution of their lawsuit against Kia Motors America, Inc. (Kia). We conclude the trial court abused its discretion when it issued its order without allowing counsel to explain why staying the action was not permitted. We therefore issue a peremptory writ of mandate in the first instance directing the court to vacate its order staying the underlying action.

Petitioners were plaintiffs and class members in a federal class action raising product defect claims against Kia and its parent corporation, Hyundai Motor Company. Petitioners also filed an individual action in Orange County Superior Court on January 6, 2020. The federal district court on May 7, 2020, granted preliminary approval of a class settlement. Petitioners, however, opted out of the federal class action on September 16, 2020, so they could prosecute their pending lawsuit in state court.

Kia filed a demurrer and motion to strike, which the trial court heard on December 18, 2020. In a telephonic hearing the following exchange took place between the court and petitioner's counsel:

“THE COURT: All right. Another pertinent fact is that the plaintiffs, both of them, also claim to be members of a class of plaintiffs in an existing class action in federal court called Brogan against Hyundai. In fact, in fair to 139 of the plaintiff's grossly long complaint, it says, quote, that the facts alleged in the Brogan case are substantially similar, if not identical, to the facts herein, close quote. So if that's the case, I don't see any reason why I should concern myself with today's demurrer or for that matter, with anything else about the case until the class action's resolved. [¶] California law gives the trial court discretion to stay any action if the result is to discourage multiple litigation,

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\* Before Bedsworth, Acting P. J., Aronson, J., and Goethals, J.

avoid unseemly conflicts with other courts. [¶] And so I am putting this demurrer off calendar. I am ordering the case stayed, and I will give you a status conference next June. And you can report to me what is going on in that class action. Myra, give me a date for next June.

“THE CLERK: June 14th.

“THE COURT: June 14th, 2021.

“THE CLERK: That’s a Monday.

“THE COURT: That’s a Monday, so that will be at 8:30 in the morning. Anybody want to be heard?

“MR. LEHRMANN: Well, first, your honor, the class action that you referenced, that is—

“THE COURT: I didn’t reference it. It was referenced in the pleadings.

“MR. LEHRMANN: Right. Yes. That—the Brogan class action that plaintiff referenced in the complaint. At his own—the underlying factor only within regard to the broad cause of action, not the—

“THE COURT: You know what? I don’t care. This is going to be stayed. This is ridiculous. This is just an attenuating litigation when it needn’t happen. Tell me what happens with the class action, and then we will go to work on this case. But as long as your clients are covered by the class action, that’s that. [¶] So I will talk to you on June 14th. If something happens before then, obviously, bring on a hearing of some sort and we can sort it out at that time. Okay. You can both hang up.”

The corresponding minute order states respondent court stayed the underlying action in light of the pending federal class action.

Petitioners filed a petition for writ of mandate and a request for judicial notice on February 4, 2021, challenging respondent court's December 18, 2020 order staying the underlying action. We invited real party in interest to file preliminary opposition or to respond informally. Real party in interest filed an informal letter brief stating it did not oppose petitioners' request for relief from respondent court's order staying the underlying action. Assuming we grant the requested relief, real party in interest requests that we direct respondent court to hear argument and issue a ruling on its pending demurrer and motion to strike.

Petitioners argue respondent court's basis for staying the case was clearly wrong, as they already had formally and timely opted out of the class action litigation and associated settlement. Petitioners contend they have a due process right to pursue their claims directly. They also argue a groundless, lengthy delay in the proceedings cannot be undone and constitutes irreparable harm. We agree.

We review the trial court's order for abuse of discretion. A court abuses its discretion "when it starts from a mistaken premise" about the facts critical to its decision. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393; *People v. Cluff* (2001) 87 Cal.App.4th 991, 998.) Here, the court assumed petitioners were members of a class action in a lawsuit against the same defendant and based on the same facts raised in the petitioners' complaint. But petitioners had opted out of the federal action. As noted in the petition, "[p]otential class members in our state can opt out of the class action litigation and pursue their own litigation against the same class defendant, timely intervene in the action or proceeding, or move to set aside the judgment." (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 272.)

Needless to say, respondent court's preemptory disposition was improper. Had the court permitted petitioners' counsel to speak during the hearing, as it should have, it would have learned petitioners previously had opted out of the class action litigation, and the hearing on the demurrer could have taken place. The California Code

of Judicial Ethics, canon 3B(4), provides “[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity . . . .” Canon 3B(7) imposes an ethical duty to honor the due process right to be heard in the following directive: “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the full right to be heard according to law.” The quoted exchange between the court and counsel demonstrates the court fell short in meeting the standards articulated in these canons.

Trial courts are beset with daily challenges, including large calendars and a lack of resources. Conducting the court’s business during a deadly pandemic undoubtedly added to the burdens and stress judges recently have faced. Regardless, the canons must be followed. As the Advisory Committee Commentary to Canon 3B(8) makes clear: “The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge’s obligation to dispose of matters fairly and with patience.” Likewise, our Supreme Court has observed, “there is a compelling public interest in maintaining a judicial system that both is in fact and is publicly perceived as being fair, impartial, and efficient.” (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1103.)

Respondent court abused its discretion in declining to hear the defendant’s demurrer and staying petitioners’ state court action. Accordingly, we issue a peremptory writ to correct the court’s error. (*Gregg v. Superior Court* (1987) 194 Cal.App.3d 134, 138-139.)

## DISPOSITION

Let a peremptory writ of mandate issue directing respondent superior court to vacate its December 18, 2020 order staying the underlying action, and to enter a new order setting real party in interest’s demurrer to the complaint for hearing. Petitioners’

request for judicial notice is GRANTED. (Evid. Code, § 452, subd. (d).) In the interests of justice, each party shall bear its own costs, and this opinion is final forthwith. (Cal. Rules of Court, rules 8.493, 8.490(b)(2)(A).)