

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

**COPY**

Court of Appeal - Sixth App. Dist.  
**FILED**

NOV 26 2012

MICHAEL J. YERLY, Clerk

By \_\_\_\_\_  
DEPUTY

SALMA MERRITT et al.,  
Petitioners,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY

Respondent;

ANGELO MOZILO et al.,

Real Parties in Interest.

H038883

Santa Clara County No. CV159993

BY THE COURT:

To permit further consideration of the issues raised by the petition for writ of mandate, all proceedings in *Merritt v. Mozilo*, 1-09-CV-159993, are stayed until further order of this court.

Let an alternative writ of mandate issue commanding respondent court to vacate the order denying petitioners' Code of Civil Procedure section 170.1 challenge for cause against Judge James Stoelker and to enter a new and different order disqualifying Judge James Stoelker on the ground that he did not answer petitioners' statement in favor of disqualification within 10 days and is therefore deemed to have consented to his disqualification (see Code Civ. Proc., § 170.3, subd. (c)(3), (4)); or to show cause before this court at a time and place to be specified by court order why a peremptory writ of mandate should not issue to compel the foregoing actions.

The alternative writ is to be issued, served, and filed on or before December 3, 2012 and shall be deemed served upon mailing of certified copies of this order and the alternative writ by the Clerk of this Court to respondent court and all parties.

Before complying with the alternative writ, respondent court should give the parties notice and an opportunity to be heard. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250, fn. 10.)

On or before December 11, 2012 the parties shall inform this court whether respondent court has filed this order, has filed the alternative writ, or has scheduled any hearings pursuant to *Brown, Winfield & Canzoneri, Inc. v. Superior Court, supra*, 47 Cal.4th at p. 1250, fn. 10 to consider objections, if any, to respondent court's compliance with the alternative writ.

Thereafter, on or before December 26, 2012, the parties shall inform this court in writing whether respondent court has complied with the alternative writ and shall serve and file any new order issued by respondent court.

If respondent court complies with the alternative writ, this court will promptly discharge the alternative writ and summarily deny the petition as moot.

If respondent court does not comply with the alternative writ, real parties in interest may file a written return to the alternative writ on or before January 10, 2013. If real parties in interest file a written return, petitioners may reply to the return within 20 days after it is filed in this court. The matter will be heard before this court when it is ordered on calendar.

Any party desiring oral argument shall so inform the court by completing and returning the enclosed Request for Oral Argument form to the court on or before January 25, 2013.

(Premo, Acting P.J., Elia, J., and Márquez, J. participated in this decision.)

Dated NOV 26 2012

**PREMO, J.**

Acting P.J.

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Petitioners,

v.

THE SUPERIOR COURT OF SANTA  
CLARA COUNTY,  
Respondent;

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Real Parties in Interest.

No. H038883

By \_\_\_\_\_  
DEPUTY

(Super. Ct. No. CV159993)

Santa Clara County

ALTERNATIVE WRIT OF MANDATE

The petition for writ of mandate on file herein having been considered, and good cause appearing for the issuance of the alternative writ of mandate,

WE DO COMMAND YOU, forthwith upon receipt of this writ, to:

(1) vacate the order denying petitioners' Code of Civil Procedure section 170.1 challenge for cause against Judge James Stoelker and enter a new and different order disqualifying Judge James Stoelker,

or

(2) show cause before this court at a time and place to be specified by court order why a peremptory writ of mandate should not issue compelling you to take the foregoing action.

Before complying with the alternative writ, respondent court should give the parties notice and an opportunity to be heard. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250, fn. 10.)

Witness the Honorable Eugene M. Premo, Acting Presiding Justice of the Court of Appeal of the State of California, Sixth Appellate District.

Attest my hand and the Seal of this Court on this 26th of November, 2012.

MICHAEL J. YERLY, CLERK OF THE COURT OF APPEAL, STATE OF CALIFORNIA, SIXTH APPELLATE DISTRICT. DO HEREBY CERTIFY THAT THE FOREGOING AND ANNEXED IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE WITH MY OFFICE. WITNESS MY HAND AND THE SEAL OF COURT.



NOV 26 2012

Michael J. Yerly, Clerk

J. VALDEZ FLOR

By \_\_\_\_\_  
Deputy Clerk

DATED \_\_\_\_\_  
BY: J. Valdez Flor CLERK  
DEPUTY