

APR 10 2024

Jorge Navarrete Clerk

S283705

Deputy

IN THE SUPREME COURT OF CALIFORNIA

CYRUS HAZARI, Petitioner,

v.

COURT OF APPEAL, SIXTH APPELLATE DISTRICT et al., Respondents;

MANDY J. BRADY, Real Party in Interest.

The application of petitioner for leave to file a petition for writ of mandate is hereby denied.

GUERRERO

Chief Justice

APPENDIX

US-A

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

DAGMAR HORVATH,
Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent;
MANDY J. BRADY et al.,
Real Parties in Interest.

H051557
Santa Clara County Super. Ct. No. 16CV295730

BY THE COURT:

On November 20, 2023, Cyrus Hazari, as real party in interest, uploaded for filing an untimely "preliminary response" to the petition for writ of mandate *Horvath v. Superior Court* (H051557). (See Cal. Rules of Court, rule 8.487(a).) Because this brief was untimely, it was received, not filed.

Also on November 20, 2023, Mr. Hazari uploaded a disability accommodation request in the same case. We interpret this disability accommodation request as a request for more time to file briefing as a real party in interest to the case. We grant this accommodation by, on our own motion, treating the untimely preliminary response brief as timely filed. The clerk of this court is directed to file that brief forthwith.

Date: 11/28/2023

May J. Lee P.J.

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

DAGMAR HORVATH,
Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent;
MANDY J. BRADY et al.,
Real Parties in Interest.

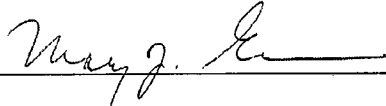
H051557
Santa Clara County Super. Ct. No. 16CV295730

BY THE COURT:

The request for stay and the petition for writ of mandate, prohibition, certiorari, or other relief are denied.

(Greenwood, P.J. and Bromberg, J.
participated in this decision.)

Date: 11/29/2023

 P.J.

APPENDIX

US-B

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DEPARTMENT 20

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FILED
OCT 23 2023

Clerk of the Court
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY
(For Clerks Use Only)
L. ZENZEN

CASE NO.: 16CV295730
DATE: 19 October 2023

TIME: 9:00 am

Cyrus Hazari v. Mandy Brady
LINE NUMBER: 00

Order on Ex Parte Application

---oooOooo---

**Order Striking Peremptory Challenge Filed by
Third-Party Witness Dr. Dagmar Horvath.**

A. Introduction.

"A judge, court commissioner, or referee of a superior court of the State of California shall not try a civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact." (*Code of Civil Procedure*, § 170.6(1).)

As a preliminary matter, *Code of Civil Procedure*, § 170.6 should be construed as broadly as possible to allow a litigant his or her right to challenge a judge. (See *Truck Insurance Exchange v. Superior Court* (1998) 67 Cal.App.4th 142, 146-47 (citing *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 154).) *Code of Civil Procedure*, § 170.6 applies only if the motion has been "duly filed." (*Code of Civil Procedure*, § 170.6(a)(4).)

B. The Current Peremptory Challenge.

This Court notes that Dr. Horvath is Mr. Hazari's longtime friend and proxy, as noted elsewhere in this order and as noted in Ms. Brady's opposition papers and elsewhere in this file and in the related case described below.

In this case, on 18 October 2023 Dr. Horvath has filed a peremptory challenge to disqualify this Judge from further proceedings in this matter.

Ms. Brady has filed opposition to the challenge which this Court reviewed. As of the writing of this order, Dr. Horvath has *reserved* but not as yet *filed* a petition for hearing to the third-party claim against her.

C. Case Number 16CV295730 entitled Hazari v. Brady.

In this action, Mr. Hazari brought claims against Ms. Brady relating to property located at 5320 Felter Road, San Jose, California 95132, title to which was held at all relevant times by Mr. Hazari. Eventually judgment was awarded to Ms. Brady against Mr. Hazari and received an entitlement to attorney's fees.

On November 5, 2020, Mr. Hazari filed a peremptory challenge to this Judge. (See Declaration of Breck E. Milde in Support of Opposition to Third Party Claimant Dagmar Horvath's Motion to Disqualify Judge ("Milde Decl.") ¶ 2, Exh. A.) Ms. Brady filed opposition to the Peremptory Challenge and the Challenge was withdrawn. (Id., ¶¶ 3, 4, Exhs. B, C.)

On 21 February 2023 Dr. Horvath was served by counsel for Ms. Brady to appear and testify in an order of examination as a third-person witness.

On 28 March 2023, Mr. Hazari had filed a "third objection to this Court's continued subversion of law and the subpoena and order of examination of plaintiff's doctor."

On 04 April 2023, Dr. Horvath appeared and testified pursuant to the order of examination without objection. A court reporter transcribed the proceeding.

D. Complaint Number 22CV408499 entitled Horvath v. Brady.

After Ms. Brady sought to enforce her judgment by levying a writ of execution against the Property, Dr. Horvath filed a complaint against Ms. Brady, claiming that she (Dr. Horvath) was the owner of the Property based on an unrecorded Quitclaim Deed from Mr. Hazari. She sought damages for slander of title, cancellation of the levy, and for declaratory relief.

This Court granted Ms. Brady's Special Motion to Strike the Complaint as to all causes of action.

First and foremost, this Court finds that Dr. Horvath does not even have standing to bring a peremptory challenge in this action as she is not an attorney or party to this action.. (*Code of Civil Procedure*, § 170.6(2)¹)

Additionally, while a date for the hearing on the motion described above has been *reserved*, the motion itself has not been *filed*. Therefore, there cannot be a hearing involving a contested issue of law or fact pending on this Court's calendar. "A peremptory challenge cannot be filed or accepted at any time. To the contrary, the plain language of section 170.6, subdivision (1) expressly limits a peremptory challenge to those times when either a trial or a hearing involving a contested issue of law or fact is pending on the trial court's calendar." (*Grant v. Superior Court* (2001) 90 Cal.App.4th 518, 525.)

Code of Civil Procedure, § 170.6 applies only if the motion has been "duly filed." (*Code of Civil Procedure*, § 170.6, subd. (a)(4). Because a challenge filed under section 170.6 has the effect of immediately removing jurisdiction, a duly filed peremptory challenge must be an effective one. (*Frisk v. Superior Court* (2011) 200 Cal.App.4th 402, 412-413.) The challenge is only complete when the judge is removed. (*Ibid.*)

Neither side in a proceeding may make a motion under *Code of Civil Procedure*, § 170.6 after trial has commenced or the trial judge has resolved a disputed issue of fact relating to the merits. (*Code of Civil Procedure*, § 170.6(a)(2); *Stephens v. Superior Court* (2002) 96 Cal.App.4th 54, 60 (*Stephens*).²)

These limitations apply even to third parties who are brought into an action or special proceeding after a challenge has been made or a factual issue has been determined. (See *School District of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1135, discussing *Code of Civil Procedure*, § 170.6(a)(2); *Stephens* at p. 61; *National Financial Lending, LLC v. Superior Court* (2013) 222 Cal.App.4th 262, 269-270.³)

¹ "Any party to or any attorney appearing in any such action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury . . ."

² The issue on appeal involved the interplay between two provisions of *Code of Civil Procedure*, § 170.6 concerning peremptory challenges of judges. Section 170.6(2) contained a provision precluding a peremptory challenge after the judge had decided contested fact issues relating to the merits. The appellate court held that the latter provision precluded a peremptory challenge by a late appearing party in a proceeding in which the judge determined a contested fact issue.

³ In a case such as this, where a trial judge has been assigned for all purposes, a new party or attorney representing a new party must make the motion within 15 days of appearing. (§ 170.6, subd. (a)(2).) However, only one motion may be made for each side in any one action or special proceeding. (§ 170.6, subd. (a)(4).) Moreover, neither side in a proceeding may make a motion under section 170.6 after trial has commenced or the trial judge has resolved a disputed issue of fact relating to the merits. (§ 170.6, subd. (a)(2); *Stephens v. Superior Court* (2002) 96 Cal.App.4th 54, 60.) Importantly, these limitations apply even to third parties who are brought into an action or special proceeding after a challenge has been made or a factual issue has been

Continued on the next page

In this case, Dr. Horvath and plaintiff Hazari have sought the same relief in other actions where determinations were made by this Judge following disputed issues of fact relating to the merits. As recognized in **Stephens** and **National**, there need not be a precise identity between the parties in both proceedings but instead there be an identity of interests in both proceedings. (**Stephens**, supra, 96 Cal.App.4th at pp. 63-64, **National**, supra, 222 Cal.App.4th at pp. 277-278.)

Additionally, it appears to this Court that Mr. Hazari and Dr. Horvath are allied in the litigation involved with this case. Dr. Horvath has even written a letter purporting to find Mr. Hazari in poor health on prior occasions.

"The Legislature was aware of the absolute prohibition against a party in an action exercising more than one peremptory challenge. The prohibition existed in the very statute the Legislature was amending. The existing wording of the provision that "[u]nder no circumstances" was a party permitted to make more than one challenge in "any one action or special proceeding" could hardly have been stronger." (**Matthews v. Superior Court** (1995) 36 Cal.App.4th 592, 597-598.)

E. Res Judicata/Collateral Estoppel Issues.

Although not necessary for the resolution of this issue, this Court wonders if this Court's order in 22CV408499 entitled Horvath v. Brady moots the issue in the current case.

F. Conclusion.

Good cause appearing, the peremptory challenge filed by Dr. Horvath in this case is STRICKEN. The petition of Dr. Horvath for a hearing to determine the validity of the third-party claim shall REMAIN AS SET on 18 January 2024 at 9:00 AM in Department 20.

22 October 2023

DATED:



Hon. Socrates Manoukian

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

determined. (See *School Dist. of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1135 [after challenge made]; **Stephens**, at p. 61.)

APPENDIX

US-C

**Additional material
from this filing is
available in the
Clerk's Office.**