

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

MARIANO MEJIA, et al.

Petitioners,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

Z-VALET, INC.,

Real Party in Interest.

B 182259

(Super. Ct. No. BC 284323)

ORDER

COURT OF APPEAL - SECOND DIST.
FILED
APR 19 2005

JOSEPH A. LANE Clerk
J. GUZMAN Deputy Clerk

TO THE SUPERIOR COURT OF LOS ANGELES COUNTY:

We have considered petitioner Mariano Mejia's April 8, 2005 petition for a writ of mandate, challenging the court's March 29, 2005 ruling denying Mejia's ex parte request for leave to file an amended complaint and continue trial, the supporting record, and the opposition to the petition filed April 15, 2004 by real party in interest Z-Valet.

It appears that the trial court issued three orders material to the petition. On February 15, 2005, the court issued an order that was denominated a denial of Z-Valet's motion for judgment on the pleadings, but in fact partially granted the motion, precluding Mejia from maintaining a representative action. That order was silent concerning whether Mejia was granted leave to amend to attempt to allege a class action. On March 17, 2005 the court clarified the February 15, 2005 order to state that "[t]his case shall proceed to trial on April 25, 2005 as an individual action only and not 'on behalf of the general public.'" On

March 19, 2005 the court denied Mejia's ex parte motion for leave to file an amended complaint and to continue trial.

It appears that the superior court erred in not granting Mejia leave to amend to attempt to allege a class action (*Benson v. Kwikset* (2005) 126 Cal.App.4th 887, 907-908; *Lytwyn v. Fry's Electronics* (2005) 126 Cal.App.4th 1455, 1481) and in not continuing trial to allow him to do so.

Accordingly, this court is considering issuing a peremptory writ of mandate in the first instance (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180), unless the superior court notifies this court by May 11, 2005 that it has amended its February 15, 2005 order nunc pro tunc to grant Mejia leave to amend.

In the event the superior court elects to amend its February 15, 2005 order, it shall send to this court by May 11, 2005 a copy of its minute order amending the order (and vacating as moot the March 17, 2005 and March 29, 2005 orders). An amendment to the February 15, 2005 order that grants Mejia leave to amend would of course be without prejudice to the court's sound exercise of its discretion under California Rules of court, rule 1854.

In the event the court elects not to amend the February 15, 2005 order, Z-Valet is directed to serve and file opposition to the petition on or before May 25, 2005. Mejia's reply, if any, is to be served and filed on or before June 6, 2005.

Mejia will serve copies of this order on respondent and real party in interest on or before April 22, 2005, and file proof of such service by April 25, 2005.

All further proceedings in this matter are stayed pending further order of this court.


BOREN, P.J.


DOI TODD, J.


NOTT, J.*

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to Article VI, section 6, of the California Constitution.