

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

FRIENDS OF CALWA, INC. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

CALIFORNIA DEPARTMENT OF
TRANSPORTATION,

Real Party in Interest.

F088939

(Fresno Super. Ct. No. 23CECG04109)

**ALTERNATIVE WRIT OF
MANDATE**

TO: THE SUPERIOR COURT OF FRESNO COUNTY

This court is in receipt of the “Petition for Writ of Mandate, Prohibition, or Other Appropriate Writ,” brought by petitioners Friends of Calwa, Inc., and Fresno Building Healthy Communities, and filed on November 15, 2024. Petitioners challenge respondent court’s order filed on October 17, 2024, granting a motion for summary adjudication brought by real party in interest, the California Department of Transportation (Caltrans), resulting in the dismissal of the first cause of action in petitioners’ combined petition and complaint, alleging various violations of the California Environmental Quality Act (CEQA).

While appellate courts generally avoid using extraordinary writs to review interlocutory summary adjudication orders, even though a review is statutorily authorized (See Code Civ. Proc., § 437c, subd. (m)(1)), such a review may be undertaken when a significant legal question is raised or where intervention by writ will substantially simplify future proceedings. (*Quidel Corporation v. Superior Court* (2020) 57 Cal.App.5th 155, 163.) “We review a motion for summary adjudication de novo... [and] independently assess the correctness of the ruling, applying the same legal standard as the trial court to determine if there are genuine issues of material fact.” (*Id.* at p. 164.)

Caltrans's motion for summary adjudication on the CEQA claims argued the statute of limitations barred these specific claims made by petitioners. When granting the motion for summary adjudication, respondent court stated:

“Caltrans has met its burden in proving that the doctrine of equitable tolling, even if applicable, would not serve to toll the statute of limitations on Petitioners' CEQA claims to the commencement date of this action. Petitioners' CEQA claims are, thus, time-barred by Public Resources Code section 21167.”

First, we note that the federal action containing the original CEQA claims was still pending at the time the state action with the restated CEQA claims was filed. Case law has consistently held that while an alternative action is still pending, the relevant statute of limitations is tolled. (See *Addison v. State of California* (1978) 21 Cal.3d 313, 319.) We have not been provided authority by any party holding otherwise.

The doctrine of equitable tolling can be used to toll statutes of limitations. (*Tarkington v. California Unemployment Ins. Appeals Bd.* (2009) 172 Cal.App.4th 1494, 1503.) It “is a judge-made doctrine ‘which operates independently of the literal wording of the Code of Civil Procedure’ to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.” (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370.)

The most recent California Supreme Court decision addressing this issue states, “[c]ourts draw authority to toll a filing deadline from their inherent equitable powers—not from what the Legislature has declared in any particular statute.” (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 720.) The *Saint Francis* court noted the doctrine should be applied “ ‘occasionally and in special situations’ to ‘soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.’ ” (*Id.* at p. 719.) To accomplish this task, the *Saint Francis* court adopted the equitable tolling doctrine with its three part test considering whether: (1) a defendant was provided timely notice of the action, (2) the defendant would be prejudiced if the statute of limitations was tolled, and (3) if the plaintiff engaged in reasonable and good faith conduct while delaying the filing of the new claim. (*Saint Francis*, at pp. 724–725.)

When ruling on the motion for summary adjudication, respondent court concluded Caltrans had notice of the CEQA claims and would not be prejudiced by the filing of the new claim in the state action. Respondent court also concluded that while petitioners did not act in bad faith, they acted unreasonably by not filing the new case once it was clear Caltrans would not waive its sovereign immunity defense.¹ We disagree with respondent court's conclusion on the element of reasonableness, and believe the facts are in dispute on this point.

¹ To the extent the trial court also employed a “stop/start” test, we do not believe that test is applicable or appropriate under the doctrine spelled out in the *Saint Francis* opinion.

Our review of the separate statements of undisputed facts submitted by both parties, along with their responses, reveals that although the vast majority of the stated facts are “undisputed,” when comparing many of the undisputed facts, actual disputes are revealed. For instance, while Caltrans stated it informed petitioners they had no intent to waive the affirmative defense of sovereign immunity, they continued to negotiate a stipulation petitioners believed would permit them to refile their CEQA claims in a state court. In fact, one “undisputed” fact specifically admits that in August 2023, the parties were still talking about the possibility of pursuing a waiver of immunity. Another “undisputed” fact acknowledged that the question of tolling was still being pursued in September 2023.

After reviewing the trial court’s ruling on the motion for summary adjudication de novo, and independently assessing the correctness of the ruling, we believe there is a genuine dispute on the question of reasonableness under the equitable tolling doctrine. The test on summary adjudication is whether there is a genuine dispute on the material facts, not whether one party has met its burden of proof.

Accordingly, good cause appearing, let an alternative writ issue directing respondent court to:

- (a) Vacate its October 17, 2024, order granting Caltrans’s motion for summary adjudication on petitioners’ first cause of action, and conduct further proceedings during which respondent court must consider whether there are undisputed facts supporting the conclusion petitioners’ CEQA claims alleged in the first cause of action should be barred by the applicable statute of limitations, because their delay in filing the state action was unreasonable; OR
- (b) Show cause before this court why the requested relief should not issue.

Before complying with this alternative writ, respondent 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.)


Respondent shall inform this court of its decision on or before 30 days from the date of this order. If respondent elects to show cause, this matter will be set for briefing and a hearing.

WITNESS the Honorable Donald Franson, Acting Presiding Justice of the Court of Appeal of the State of California, Fifth Appellate District.

ATTEST my hand and seal of this court this 12th day of March, 2025.



BRIAN COTTA, Clerk/Executive Officer,

By 
Deputy Clerk