SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

VENTURA COUNTY TRANSPORTATION COMMISSION, Plaintiff/Respondent, vs. FILLMORE & WESTERN RAILWAY, INC., Defendant/Appellant.	Case No.: 56-2014-00449769-CL-UD-VTA OPINION AND JUDGMENT

We in the law like labels. Black's Law Dictionary is full of them. We have labels for different types of actions, motions, parties, and procedures. It is well that we do. Through a word, a statute number, or a phrase we can quickly identify some established body of law associated with a given thing, process or situation.

But the labels we use have no significance in themselves. Each is merely a shorthand expression. And as useful as they may be, sometimes they can lead us astray. Thus, the law bids we look beyond labels, lest a misnomer prompt us to apply concepts of law where they do not belong.

This appeal comes to us with labels attached: it is styled an appeal from a judgment for possession in an unlawful detainer action. But before embracing those labels, we pause to ask whether they really fit.

When we look to the essence of the matter, we find that this "unlawful detainer" action is not one and the judgment awarding "possession" does not. Rather, this is an action to determine

the parties' interests in the use of a rail line. And the relief granted by the judgment is in the form of a permanent injunction restricting defendant's use of that line, a remedy the trial court was without jurisdiction to award in this limited civil action. Therefore, we reverse.

BACKGROUND

Fillmore & Western Railway, Inc. (F&W) appeals from a judgment purportedly awarding possession of a rail line to plaintiff and respondent, Ventura County Transportation Commission (VCTC). This judgment was entered after the trial court denied F&W's motion to dismiss and granted VCTC's motion for summary judgment.

F&W, the defendant in the underlying limited civil action, contends that the judgment should be reversed because (1) F&W was entitled to possession of the rail line in question under a collateral agreement which was not adequately addressed in VCTC's motion; and (2) the superior court lacked jurisdiction to hear this dispute because the rail line is part of an interstate rail network and state court jurisdiction is preempted by federal law. VCTC disputes both of these contentions and asserts the trial court correctly entered judgment in its favor as a matter of law.

VCTC owns a rail line just over 31 miles in length stretching between Montalvo and Piru in Ventura County, commonly known as the Santa Paula Branch Line (SPBL). The western most portion of the line is known as the "Santa Paula Segment," starting in Montalvo and ending in Santa Paula. The portion of the SPBL east of the Santa Paula Segment, approximately 20 miles long, is known as the "Fillmore Segment."

In June 2001 VCTC entered into two lease agreements concerning the SPBL. The first was a lease between VCTC and the City of Fillmore Redevelopment Agency (FRDA), which permitted FRDA certain uses of the Fillmore Segment (i.e., the east end of the SPBL). The permitted uses included the right to operate tourist and excursion trains on the segment. The second lease was between VCTC and F&W, which has been referred to as the "Direct Lease." This lease granted F&W the right to use the entire SPBL for certain purposes, including the Fillmore Segment. However, unlike the other lease, the Direct Lease did not grant a right to operate tourist or excursion trains on the Fillmore Segment.

The next month, July 2001, FRDA subleased its rights to the Fillmore Segment to F&W. Subsequently, FRDA was dissolved by state law and the City of Fillmore (City) assumed its interests in the VCTC-FRDA lease and the sublease to F&W.

On March 6, 2014, VCTC commenced the underlying action by filing its complaint for unlawful detainer. It alleged that it was the owner of the SPBL. VCTC alleged the existence of the three agreements created in 2001: the VCTC-FRDA lease, the corresponding sublease to F&W, and the Direct Lease between VCTC and F&W.[1] It also alleged that the Direct Lease did not grant F&W the right to conduct tourist and excursion trains on the Fillmore Segment but that the sublease did. According to the complaint, each of the three agreements was terminated in December 2013; yet, F&W remained in possession and continued to operate tourist and excursion trains on the Fillmore Segment.

The prayer of the complaint sought two principal forms of relief. First, VCTC sought possession of the Fillmore Segment. Specifically, VCTC prayed for "possession of the [Fillmore Segment] . . . for [VCTC's] exclusive use to permit or refuse to permit the operation of tourist and excursion trains." Second, VCTC prayed for "an order precluding [F&W] from operating tourist and excursion trains on the [Fillmore Segment]."

In July 2015, each side made potentially dispositive motions. VCTC moved for summary judgment, and F&W moved for dismissal on the theory that jurisdiction rested solely with the federal Surface Transportation Board. Both motions were opposed. The court denied F&W's motion to dismiss and granted VCTC's motion for summary judgment.

Concerning F&W's motion to dismiss, the court found that F&W's use of the rail line did not involve interstate commerce and, therefore, jurisdiction was properly vested in the superior court.

On the motion for summary judgment, the trial court found the following facts were established without controversy: VCTC had entered into a lease with FRDA; that lease provided

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[1] We refer to these agreements at times as "leases." We do this simply to adopt the nomenclature used by the parties. We express no opinion as to the nature of these agreements. See footnote 4, *infra*.

for termination without cause upon written notice; FRDA had subleased its rights under that lease to F&W; the sublease could also be terminated without cause on notice; VCTC terminated the master lease by notice to the City (FRDA's successor) and the City terminated the sublease by notice to F&W; and F&W remained in possession.

The court entered judgment for VCTC. F&W timely filed a notice of appeal from that judgment. The trial court stayed the execution of the judgment pending the resolution of this appeal.

REQUESTS FOR JUDICIAL NOTICE

F&W moved for judicial notice of several documents. That request was denied by minute order dated April 30, 2015.

VCTC filed two motions for judicial notice. On June 3, 2015, VCTC asked this court to take judicial notice of a decision of the Surface Transportation Board, Docket No. FD 35813. On August 21, 2015, VCTC requested judicial notice of a series of pleadings and court papers filed in other litigation between the parties. All of the documents proffered by VCTC for judicial notice came into existence after the judgment here was entered.

Generally, it is not the function of an appellate court to receive evidence and make factual findings. (See *Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591, 605.) "Augmentation does not function to supplement the record with materials not before the trial court. [Citation.] Reviewing courts generally do not take judicial notice of evidence not presented to the trial court. Rather, normally 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.)

VCTC's requests for judicial notice are denied.

STANDARD OF REVIEW OF ORDER GRANTING SUMMARY JUDGMENT

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th

826, 843.) "A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476, citing Code Civ. Proc., § 437c, subd. (c).) "The pleadings determine the issues to be addressed by a summary judgment motion [citation] and the declarations filed in connection with such motion 'must be directed to the issues raised by the pleadings.' " (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84.)

A plaintiff moving for summary judgment bears the burden of persuasion that "each element of" the "cause of action" in question has been "proved," and hence that "there is no defense" thereto. (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 850; citing Code Civ. Proc., § 437c, subd. (q)(1).) A party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if the moving party carries that burden of production, the burden shifts, and the opposing party is then subjected to a burden of production to make a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*) A burden of production entails only the presentation of "evidence." (*Ibid.*) If a plaintiff who would bear the burden of proof by a preponderance of evidence at trial moves for summary judgment, he must present evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not -- otherwise, the plaintiff would not be entitled to judgment as a matter of law. (*Id.*, at 851.)

"We review an order granting summary judgment de novo, considering all the evidence set forth in the moving and opposition papers, except that to which objections have been made and sustained. [Citation.] In undertaking our independent review, we apply the same three-step analysis as the trial court. First, we identify the issues framed by the pleadings. Next, we determine whether the moving party has established facts justifying judgment in its favor. Finally, if the moving party has carried its initial burden, we decide whether the opposing party has demonstrated the existence of a triable issue of material fact. [Citation.] 'We need not defer to the trial court and are not bound by the reasons for [its] summary judgment ruling; we review the ruling of the trial court, not its rationale.' [Citation.]" (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 101.)

SUMMARY JUDGMENT

VCTC moved for summary judgment on its complaint for unlawful detainer. VCTC's papers framed the "narrow issue" presented as F&W's "right to possession of the Fillmore Segment of the rail line for the purpose of running tourist or excursion trains." VCTC argued that F&W's right to operate tourist or excursion trains over the Fillmore Segment derived solely from the VCTC-FRDA lease and the sublease between FRDA and F&W. That right, VCTC contended, ended when each of those leases was terminated.

In support of its motion, VCTC relied on the declaration of Darren Kettle, the executive director of VCTC, filed with the complaint. That declaration authenticated copies of the three agreements at issue here (including the Direct Lease) and correspondence purportedly terminating the VCTC-FRDA lease and the sublease to F&W.[2]

F&W opposed the summary judgment motion. It argued that VCTC had not established a right to possession of the Fillmore Segment because F&W had a right to continue to use the rail line under the Direct Lease (albeit for purposes other than operating tourist and excursion trains). In addition, F&W asserted that the VCTC-FRDA lease and sublease to F&W granted an irrevocable license apart from any lease, and therefore the termination of those leases did not end F&W's right to use the line. Finally, F&W reiterated its objection to the court's jurisdiction, contending that the matter was exclusively within the jurisdiction of the Surface Transportation Board. F&W submitted a declaration of David Wilkinson, the president of F&W, in support of its opposition to VCTC's motion. Mr. Wilkinson declared, among other things, that the Direct Lease had not been "lawfully terminated."

VCTC responded to F&W's arguments by, inter alia, asserting that the Direct Lease was "irrelevant." The trial court, VCTC asserted, had so ruled at a prior hearing. VCTC's counsel

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[2] VCTC's separate statement also cited requests for admission which had been served on F&W. The parties dispute whether those requests were deemed admitted by the trial court. Ultimately, the trial court ruled that the "issue of the admissions" was moot, and it determined the summary judgment motion based solely on other evidence. Therefore, it appears the requests were not treated as evidence by the trial court, and we have not considered them on this appeal.

elaborated on this contention at the hearing on the summary judgment motion:

> "[T]he direct lease has already been ruled by this court as irrelevant. This case involves the Fillmore lease and the Fillmore sublease. In that sense, once this unlawful detainer is granted, then VCTC gets back its possessory right to the Fillmore Segment of the line. And [F&W] no longer has a right *to operate an excursion train on the segment.* [¶] The direct lease, which is not at issue in this case, grants [F&W] *other rights on segments of the line.* And we believe that contract has been terminated, *but that is not before the court at this time.*" [Emphasis added.]

The trial court granted summary judgment. The judgment, which tracked the language of the prayer to the complaint, awarded two principal forms of relief. First, it granted "possession" of the Fillmore Segment to VCTC "for VCTC's exclusive use to permit or refuse to permit the operation of tourist and excursion trains." Second, the judgment directed that F&W "must cease operating tourist and excursion trains" on the Fillmore Segment.

IS THIS AN UNLAWFUL DETAINER CASE?

We invited the parties to submit letter briefs addressing the nature of the underlying action. Specifically, we asked them whether the action was properly characterized as one for unlawful detainer, as opposed to an action for a permanent injunction. We also asked whether the relief awarded here could be granted in a limited civil action.

The answers to these inquiries go to the very heart of the court's jurisdiction in this limited civil action.[3] "The designation of a case as either a limited or an unlimited action has significant implications because the available relief and applicable procedures differ as to each." (*Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 274.) The court's jurisdiction in limited civil cases is defined by statute, and it has no power to award relief in excess of that permitted by

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[3] An action is initially classified as a limited civil action based on the plaintiff's designation appearing on the face page of the complaint. (See Code Civ. Proc., § 422.30, subd. (b).) VCTC's complaint does not bear such a designation. However, concurrent with the filing of the complaint, VCTC submitted a Civil Case Cover Sheet, executed by VCTC's counsel, which identified the case as a limited civil action. The clerk, the court and the parties treated it as such, and so do we.

statute. (*Ytuarte v. Superior Court, supra,* 129 Cal.App.4th at p. 274; Code Civ. Proc., § 85.)

Code of Civil Procedure section 86 defines the court's jurisdiction in limited civil actions. Among the matters which a court may hear as a limited civil case is "[a] proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars ($25,000) or less." (Code Civ. Proc., § 86, subd. (a)(4).) In addition, a court hearing a limited civil action has limited injunctive power. Such a court may issue temporary restraining orders and preliminary injunctions (see Code Civ. Proc., § 86, subd. (a)(8)), but may not issue permanent injunctions (see Code Civ. Proc., 580, subd. (b)(1); *Balsam v. Trancos, Inc.* (2012) 203 Cal.App.4th 1083, 1104-050). Therefore, succinctly stated: if the underlying action was one for unlawful detainer, the trial court had jurisdiction, and if it was one for a permanent injunction, it did not.

Because the code defines a court's jurisdiction in limited civil matters in terms of the remedies permitted, our focus is on the judgment awarded here. As noted above, the judgment granted two principal forms of relief. It awarded VCTC "possession" of the line "for VCTC's exclusive use to permit or refuse to permit the operation of tourist and excursion trains." In addition, the judgment provided that F&W "must cease operating tourist and excursion trains" on the line. We address the second part first.

An order directing a party to cease to perform a certain act is the classic form of a prohibitory injunction. "An injunction is a writ or order requiring a person to refrain from a particular act." (Code Civ. Proc., § 525.) An order which limits a party's use of a rail line is an injunction. (See *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80.) Because a court has no jurisdiction to issue a permanent injunction in a limited civil action, the trial court could not order F&W to cease operating tourist and excursion trains on the Fillmore Segment.

The second part of the judgment awarded "possession" of the Fillmore Segment to VCTC. If the phrase ended there, its meaning would be clear. It did not. Rather, it continued with this modifier: "for VCTC's exclusive use to permit or refuse to permit the operation of tourist and excursion trains." What this means is not entirely clear. Arguably, this part of the

judgment awards full possession of the segment to VCTC and the modifier should be ignored as superfluous verbiage. Alternatively, the language awarding "possession" may be construed to be limited by the modifier such that the only "possession" restored to VCTC is for the described use: the operation of tourist and excursion trains. We believe the latter is the meaning intended by VCTC, in light of its consistent assertion that it was only litigating F&W's right to operate tourist and excursion trains under the VCTC-FRDA lease and the sublease.[4] But as we shall explain, it makes no difference. In either instance, the judgment cannot stand.

A party moving for summary judgment must establish, through the presentation of uncontroverted evidence, its entitlement to judgment as a matter of law. (See *supra*, p. 5.) VCTC alleged in its complaint that F&W had a limited right to use the entire SPBL, including the Fillmore Segment, under the Direct Lease. (See Complaint, ¶ 6.) A copy of the Direct Lease was in evidence on the motion.

That evidence established that the purpose of the Direct Lease was to permit F&W to use the SPBL, or parts of it, in specified ways. As relevant here, the Direct Lease gave F&W the right to use the Fillmore Segment for still and motion picture productions, freight services, and mail and express service. The agreement placed on F&W the burden to maintain or replace the tracks and track support structures within the Fillmore Segment, although it was not permitted to construct new permanent improvements.

Consequently, if VCTC sought a judgment completely expelling F&W from the Fillmore Segment, it was incumbent on it, as the moving party, to show why it was entitled to full possession notwithstanding the rights granted F&W under the Direct Lease. VCTC has advanced two arguments in this regard, neither of which is compelling.

First, VCTC asserts that the trial court ruled the Direct Lease was "irrelevant." But this misconstrues the trial court's order. The court's analysis centered on the parole evidence rule. It

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[4] In its letter brief to this court, VCTC reiterated this position: "This judgment affirms that the possessory interest granted F&W under the Fillmore Sublease reverts to VCTC. If F&W had any other, existing rights pursuant to other contracts, this judgment would not affect those rights."

found that the VCTC-FRDA lease and the sublease were both integrated agreements and, therefore, the language of the Direct Lease could not be used to explain or augment the terms of those other two leases. However, the trial court correctly noted, "[I]f the documents [F&W] seek to introduce inform the question of possession then they would not be barred." Here, the Direct Lease was relevant, not to aid in the interpretation of the other agreements, but because it established an independent right for F&W to use the Fillmore Segment.

Second, VCTC argues that the Direct Lease had been terminated, and, therefore, any right to possession established by it was also terminated. However, VCTC presented no evidence supporting this contention, and, in opposition, F&W asserted that the purported termination was legally ineffective. A party seeking summary judgment has both a burden of production and persuasion on material issues raised by the pleadings. (See *supra*, p. 5.) Inasmuch as VCTC's complaint alleged F&W's rights under the Direct Lease, it was incumbent upon VCTC to prove those rights had been terminated if it wished to completely exclude F&W from the line. VCTC offered no such proof. In fact, at oral argument on the motion, VCTC's counsel assured the trial court that the issue of the termination of the Direct Lease was not before the court and counsel has reiterated that position to this court.

For these reasons, we conclude that if the intent of the judgment was to award full possession of the Fillmore Segment to VCTC, the evidence presented in support of the motion for summary judgment did not establish VCTC's entitlement to that relief because a triable issue remained as to F&W's right to use the segment under the Direct Lease.

Most probably, however, the intended meaning of this portion of the judgment – and plainly the meaning intended by VCTC – was that it would not restore *full* possession of the Fillmore Segment to VCTC. Rather, the "possession" being restored was only the right to operate tourist and excursion trains pursuant to the VCTC-FRDA lease and the sublease. Under this construction of the judgment, evidence of the Direct Lease *was* immaterial because that agreement did not confer to F&W a right to operate tourist and excursion trains on the Fillmore Segment. But this interpretation of the judgment begs the question: Can an unlawful detainer action be used to litigate some of the defendant's uses of a premises but not others? To answer

this question, we consider the purpose and distinguishing characteristics of the unlawful detainer procedures and remedies.

"The summary remedy of unlawful detainer is purely statutory in origin and is available only in those specific types of actions provided in the code. This summary procedure is not available to recover possession of real property in any other situation . . . ." (Miller and Starr, *California Real Estate*, 7 Cal. Real Est. § 19:218 (3d ed.).) "Because unlawful detainer affords the defendant fewer procedural entitlements [citation], the plaintiff must clearly bring itself within the purview of the unlawful detainer statutes. [Citation.]" (*Smith v. Municipal Court* (1988) 202 Cal.App.3d 685, 689.)

An action for unlawful detainer is fundamentally an action for possession. The judgment in an unlawful detainer case "shall be entered for the possession of the premises." (Code Civ. Proc., §§ 1161, 1174, subd. (a).) " 'The remedy of unlawful detainer is designed to provide means by which the timely possession of premises which are wrongfully withheld may be secured to the person entitled thereto.' [Citation.]" (*Green v. Superior Court* (1974) 10 Cal.3d 616, 632.) Indeed, only the issue of possession and matters collateral to it may be properly litigated in an action for unlawful detainer. (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385.)

Generally, possession of real property is the right to use and enjoy the property to the exclusion of others, including the owner. (E.g., *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC* (2011) 192 Cal.App.4th 1183, 1190-91; *Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11.) A lease is the textbook example of a possessory interest in real property. (See *Golden West Baseball Co. v. City of Anaheim, supra,* 25 Cal.App.4th at p. 35.) But possession is more than the mere right to use property. A person who uses real property pursuant to an easement does not "possess" the property. (*Ibid.*) This is because the grantor of the easement retains every incident of ownership and may make any use of the burdened property which is not inconsistent with the easement. (*Ibid.*) The right to use a segment of a rail line for a limited and specific purpose is not necessarily a possessory right, but

rather it may be an interest in the nature of a license, a right-of-way, or an easement.[5] (For example, see *Union Pacific Railroad Company v. Santa Fe Pacific Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 171.)

The expedited resolution of the issue of possession is the principal function of the unlawful detainer statutes. (See *Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263, 1297; *Hudec v. Robertson* (1989) 210 Cal.App.3d 1156, 1162.) Historically, without resort to the expedited unlawful detainer procedures, a landlord lacked a peaceful, effective means to quickly reclaim possession from a holding over tenant. The problem has been described this way:

" 'The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord, continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property. Holding over by the tenant beyond the term of his agreement or holding without payment of rent has proved a virulent source of friction and dispute.' [Citation.]" (*Board of Trustees of the Leland Stanford Junior University v. Ham* (2013) 216 Cal.App.4th 330, 339.)

Provisional remedies, often used to mitigate prejudice to a party during litigation, are generally ineffective to address this problem. A landlord would have a difficult time obtaining a temporary restraining order or preliminary injunction compelling a tenant to vacate the premises

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[5] The parties dispute whether the agreements in issue created leases or licenses, or both. This issue is collateral to our determination. An unlawful detainer action may be properly brought to remove either a holdover lessee or licensee. (See Code Civ. Proc., §1161, para. (1); *Goetze v. Hanks* (1968) 261 Cal.App.2d 615, 616 [licensee].) But an unlawful detainer judgment against either requires the defendant vacate the premises completely. The issue here is whether an unlawful detainer judgment may order something less.

completely before trial. The law generally disfavors mandatory preliminary injunctions (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625), and the hardship to the tenant from such an order would usually be great. The unlawful detainer procedures were intended to fill this void by allowing an expeditious determination of the issue of possession while the tenant remains in possession.

But the competing equities are considerably different in a situation where only certain uses of the property are sought to be enjoined and, whatever the outcome, the defendant will remain in the property. In such a case, the plaintiff could credibly move for a provisional remedy mitigating substantial harm caused by some discrete aspect of the defendant's use of the property. The circumstances presented here are much more akin to this hypothetical situation than that which the unlawful detainer statutes were intended to address.

Another defining characteristic of an unlawful detainer action is that a judgment for possession may be enforced through the issuance and execution of a writ of possession. (See Code Civ. Proc., §§ 712.010, 1174.) Such a writ permits the levying officer to forcibly remove the defendant from the premises. A writ of possession, however, could not be effectively used to compel a defendant to stop using the property in some ways but allow the defendant to continue to use it in others. If this were attempted, the levying officer would be cast in the inappropriate role of having to determine which of the defendant's uses were permitted and which were not. Rather, to enforce a judgment like the one entered here, the prevailing party would be required to resort to the court's contempt power. Thus, a judgment like the one here would be enforced in the same manner that any judgment for a permanent injunction would be enforced and not in the manner that most unlawful detainer judgments are enforced.

We fall back on the "folk wisdom" famously invoked by Justice Stanley Mosk, "that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck." (*In re Deborah C.* (1981) 30 Cal.3d 125, 141 (conc. opn of Mosk, J.).) Here, neither VCTC's cause of action nor the judgment entered thereon bear the hallmark features of an unlawful detainer case. We find the judgment here is not one for unlawful detainer.

Inasmuch as the underlying action was not "[a] proceeding in forcible entry or forcible or

unlawful detainer" within the meaning of Code of Civil Procedure section 86, subdivision (a)(4), but rather was an action for a permanent injunction to restrain certain uses of real property, the trial court lacked jurisdiction to enter the judgment it did in this limited civil action.

Therefore, the trial court erred by granting summary judgment on the terms requested by VCTC.

MOTION TO DISMISS

F&W also challenges the trial court's ruling denying its motion to dismiss for want of subject matter jurisdiction. Although we find that the judgment must be reversed on other grounds, we consider F&W challenge to the superior court's subject matter jurisdiction because the resolution of that issue determines how the trial court must proceed on remand.

F&W contends that the issues presented here involve transportation by a rail carrier as part of the interstate rail network, and, therefore, that the Surface Transportation Board (STB) has exclusive jurisdiction. The trial court denied the motion, finding that F&W's use of the Fillmore Segment did not involve interstate commerce.

"We consider de novo a motion to dismiss for lack of subject matter jurisdiction where the question is purely one of law. [Citation.] Where the question depends on findings of fact, we apply the substantial evidence test if the facts are disputed. [Citation.] If the facts are undisputed, we resolve the question as a matter of law. [Citation.]" (*Singletary v. Local 18 of the International Brotherhood of Electrical Workers* (2012) 212 Cal.App.4th 34, 41.)

The Interstate Commerce Commission Termination Act (ICCTA; 49 U.S.C. § 10101 et seq.) established the STB. " 'The purpose of the ICCTA was to 'eliminate many outdated, unnecessary, and burdensome regulatory requirements and restrictions on the rail industry.' [Citation.] To that end, the ICCTA includes a broadly worded express preemption provision." (*People v. Burlington Northern Santa Fe R.R.* (2012) 209 Cal.App.4th 1513, 1517.)

The preemption provision of the ICCTA " 'creates exclusive federal regulatory jurisdiction and exclusive federal remedies.' [Citation.] The STB has jurisdiction over transportation by rail carrier that is within the same state if it is 'part of the interstate rail network.' (49 U.S.C. § 10501, subd. (a)(1)(A) & (2)(A).)" (*Town of Atherton v. California*

High-Speed Rail Authority (2014) 228 Cal.App.4th 314, 329-30; *Oregon Coast Scenic R.R. LLC v. Oregon, Dept. of State Lands* (D. Or., Apr. 18, 2014, 3:14-CV-00414-HZ) 2014 WL 1572445, at *1.)

> "Although the ICCTA does not define 'interstate rail network,' the STB has interpreted the phrase to include facilities or services 'that are part of the general system of rail transportation and are related to the movement of passengers or freight in interstate commerce.' [Citation.] If 'however, an activity, even though it is on rail property, is not considered "transportation by a rail carrier" under § 10501(a), no federal preemption applies, and states and localities are free to regulate the activity.' [Citation.] Therefore, to fall under the STB's jurisdiction, moving passengers or freight in interstate commerce is requisite for being considered 'transportation by a rail carrier.' " (*Oregon Coast Scenic R.R. LLC v. Oregon, Dept. of State Lands, supra,* 2014 WL 1572445, at *3.)

The focus of the inquiry, as the trial court noted, is not on the tracks themselves, but on the transportation conducted by the rail carrier – i.e., the carrier's use of the tracks. (*Oregon Coast Scenic R.R. LLC v. Oregon, Dept. of State Lands, supra,* 2014 WL 1572445, at *4.)

The trial court found there was no "compelling evidence that [F&W] transports either passengers or freight between states (or even that originate in other states)." This conclusion is supported by the record and dispositive of F&W's motion.

The trial court correctly denied the motion to dismiss.

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CONCLUSION

The judgment is reversed and the matter is remanded to the trial court with directions to enter a new order denying VCTC's motion for summary judgment. Although the trial court lacked jurisdiction to enter the judgment it did, dismissal of the action is not required. VCTC may move to have the action reclassified as an unlimited civil action and/or move to amend its complaint to seek different relief.

The clerk is directed to give notice.

Dated: September 18, 2015

MARK S. BORRELL
Judge of the Superior Court

WE CONCUR:

MATTHEW P. GUASCO
Judge of the Superior Court
Presiding Judge, Appellate Division

FREDERICK H. BYSSHE
Judge of the Superior Court

DECLARATION OF MAILING
APPELLATE DIVISION

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

Case No.: 2014-00449769-CL-UD-VTA
Case Title: Ventura County Transportation Commission vs. Fillmore & Western Railway, Inc.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, California 93009. On the date set forth below, I served the within:

OPINION AND JUDGMENT

On the following named party(ies)

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Ventura County Superior Court
Inter Office Mail

_____ **BY PERSONAL SERVICE**: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____at _____ a.m./p.m.

__X___ **BY MAIL**: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

and___**BY FACSIMILE**: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above with no notice of error at _____ from telephone number ____.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **September 18, 2015** at Ventura, California.

By: _____
Hellmi McIntyre, Judicial Secretary