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Attorney for Creditor
MICHAEL A. COBB

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

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In re:)	Case No. 32-32118
)	
CITY OF STOCKTON, CALIFORNIA,)	Chapter 9
)	
Debtor.)	Date: March 5, 2014
)	Time: 9:30 a.m.
_____)	Judge: Hon. Christopher M. Klein

OBJECTION OF CREDITOR MICHAEL A. COBB
TO PLAN AND CONFIRMATION THEREOF

COMES NOW creditor MICHAEL A. COBB, by and through its undersigned attorney, and hereby serves and files this objection to the “First Amended Plan for the Adjustment of Debts of City of Stockton, California (November 15, 2013)” (Doc 1204), the “Plan,” and in support thereof respectfully states as follows:

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INTRODUCTION

1. The Plan, insofar as it relates to creditor and objector MICHAEL A. COBB cannot be confirmed on the basis that this creditor has made his claim for inverse condemnation against the debtor, arising out of claims of the physical taking of the creditor’s real property by debtor, and the debtor’s Plan proposes something other than complete payment of the claim. The claims in inverse condemnation are protected by the Fifth and Fourteenth Amendments to the United States Constitution and cannot be impaired by the Plan. This may be a matter of first impression and directly presents issues concerning the interplay between the power of Congress to make bankruptcy laws on the one hand and the limitations on any governmental action on the other hand.¹

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409

FACTUAL BACKGROUND

3. The debtor CITY OF STOCKTON and the creditor MICHAEL A. COBB, or his predecessor in interest, have been engaged in litigation in the California superior court since 1998, when the debtor initiated an ordinary action in eminent domain seeking to take certain real property of the debtor’s father Andrew C. Cobb located in the CITY OF STOCKTON. After obtaining

¹ Taking the debtor’s suggestion to “encourage all persons [who intend to suggest changes, comments, additions, modifications, etc.] to communicate such suggestions to the City as soon as possible” (see “Notice of Filing of Plan for the Adjustment of Debts of City of Stockton, California, dated October 10, 2013 and of Disclosure Statement,” filed Oct. 10, 2013, Doc. 1135, p. 2), the creditor MICHAEL A. COBB’s counsel wrote to the counsel for debtor on Nov. 8, 2013 about the issues raised by the Plan and this Objection, but received no response. It was hoped that with some prior communication between the parties to this Objection that the issues would be presented to the Court in the narrowest of fashions.

1 possession and making deposit, all as prescribed by state law, the plaintiff debtor permitted the case
2 to languish, resulting in a dismissal for failure to prosecute. Creditor MICHAEL A. COBB, having
3 acquired the real property under state probate and trust succession, initiated a state action against
4 the debtor for inverse condemnation. The history of the matter, to which there is no understood
5 disagreement between the debtor CITY OF STOCKTON and the creditor MICHAEL A. COBB, is
6 recounted in the published decision of the California Court of Appeal that is attached hereto as
7 Exhibit A and incorporated herein by reference.

9 3. While the action for inverse condemnation remained pending, the debtor CITY OF
10 STOCKTON filed its petition for relief under Chapter 9 on June 28, 2012. In its “List of Creditors
11 and Claims Pursuant to 11 U.S.C. §§ 924 and 925” also filed June 28, 2012, the debtor listed the
12 creditor MICHAEL A. COBB as a “Liability Claim” that was “Disputed.” (See List, filed Jun. 28,
13 2012, Doc 2, p. 208 of 211.)

15 4. On August 16, 2013, the creditor MICHAEL A. COBB filed his claim, Claim 229,
16 asserting a debt due from the debtor of \$4,200,997.00, specifically referencing “inverse
17 condemnation and other claims since 1998 on” and attaching the state court second amended
18 complaint for further basis in support of the claim. A true and correct copy of the claim is attached
19 hereto as Exhibit B and incorporated herein by this reference. No objections to the claim were
20 made.

22 5. The debtor’s Plan does not mention creditor MICHAEL A. COBB not does it
23 discuss any claims pertaining to inverse condemnation. Rather, the only claimant categories that
24 might be considered applicable to creditor MICHAEL A. COBB are those under “Class 12,” or
25 “General Unsecured Claims,” and “Class 14,” or “Claims of Certain Tort Claimants.” (See Plan,
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1 Doc. 1204, pp. 39-40.) In both instances, the claimants within those classes are proposed to be
 2 “impaired”: in the case of the Class 12 claimants, other than certain retiree claims, the Plan
 3 proposes to pay “cash on the Effective Date in the amount equal to a percentage of the Allowed
 4 Amount of such Claims, which percentage equals the Unsecured Claim Payout Percentage, or such
 5 other amount as is determined by the Bankruptcy Court before confirmation of this Plan to
 6 constitute a pro-rata payment on such other General Unsecured Claims,” up to a cap of \$500,000.00
 7 before certain installment payments rights are to be allowed; and in the case of the Class 14
 8 claimants, the Plan proposes to pay some barely intelligible “SIR Claim Portion of each Allowed
 9 General Liability Claim will be paid on the Effective Date from the Risk Management Internal
 10 Service Fund, and will receive the same percentage payment on the dollar of Allowed Claim as will
 11 the holders of Allowed Class 12 Claims.”
 12

13 **OBJECTION**

14 **I. THE PLAN CANNOT BE CONFIRMED WHERE IT PROPOSES TO PAY** 15 **INVERSE CONDEMNATION CLAIMANTS ANY AMOUNT OTHER THAN** 16 **FULL “JUST COMPENSATION” MANDATED BY STATE AND FEDERAL** 17 **CONSTITUTIONAL LAW.**

18 6. The claim of MICHAEL A. COBB states, among other things, a physical and
 19 permanent taking of his real property by the debtor CITY OF STOCKTON. It comes against the
 20 backdrop of the debtor’s own eminent domain action to condemn the real property at issue.
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22 7. While the power to make bankruptcy laws are ordained by the U.S. Constitution
 23 (U.S. Const., Art. I, Sect. 8, Clause 4 [Congress may “establish . . . uniform laws on the subject of
 24 Bankruptcies throughout the United States”]), the Constitution also prohibits governmental takings
 25 without payment of just compensation (U.S. Const., Fifth Amend. [“nor shall private property be
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1 taken for public use, without just compensation”]). The Fifth Amendment is binding on the states
2 under the Fourteenth Amendment. (*Dolan v. City of Tigard*, 512 U.S. 374, 383-384, 114 S.Ct.
3 2309, 2316 (1994).) The California constitution similarly imposes the same limitation (Cal. Const.,
4 Art. I, Sec. 19). The principles of eminent domain and inverse condemnation are considered the
5 flip side of the same coin. (See *City of Oakland v. Oakland Raiders*, 32 Cal. 3d 60, 67 (1982)
6 (“[C]ondemnation and inverse condemnation . . . are merely different manifestations of the same
7 governmental power, with correlative duties imposed upon public entities by the same
8 constitutional provisions. . . .”) If an owner’s property is taken for a public use without the initiation
9 of condemnation, the owner may bring an action for permanent or temporary deprivation of his use
10 or enjoyment of his or her land. (*Frustuck v. Fairfax*, 212 Cal.App.2d 345, 357-358 (1963).) It is
11 not considered a “tort” as the debtor CITY OF STOCKTON would have it. (*Reardon v. City &*
12 *County of San Francisco*, 66 Cal. 492, 505 (1885.)

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15 8. The obligation of a governmental entity taking a private landowner’s property,
16 whether a bankrupt or not, is a *condition* imposed on the exercise of the power. (*Long Island Water*
17 *Supply Co. v. Brooklyn*, 166 U.S. 685, 689, 17 S.Ct. 718, 720 (1897).) Any physical taking or
18 invasion entitles the owner to just compensation. (*Kaiser Aetna v. United States*, 444 U.S. 164,
19 179-180, 100 S.Ct. 383 (1979).) The actual payment of compensation is required where there is a
20 taking. (*United States v. 412.715 Acres of Land*, 60 F.Supp. 576, 577 (1945).) No title passes
21 without the payment. (*Kennedy v. Indianapolis*, 103 U.S. 599, 605-606 (1880); *People v.*
22 *Peninsula Title Guaranty Co.*, 47 Cal.2d 29, 33 (1956).)

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24 9. The many allowances and privileges permissible under Chapter 9 do not supersede
25 or “trump” the provisions of the Fifth and Fourteenth Amendments described above mandating the
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1 payment of just compensation. See *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 55
2 S.Ct., 854, 863 (1935) [“The bankruptcy power, like the other great substantive powers of
3 Congress, is subject to the Fifth Amendment.”]:

4 “[T]he Fifth Amendment commands that, however great the nation's need, private
5 property shall not be thus taken even for a wholly public use without just
6 compensation. If the public interest requires, and permits, the taking of property
7 of individual mortgagees in order to relieve the necessities of individual
8 mortgagors, resort must be had to proceedings by eminent domain; so that,
9 through taxation, the burden of the relief afforded in the public interest may be
10 borne by the public.” (*Id.* at p. 602.)

11 See also *United States v. Security Industrial Bank*, 459 U.S. 70, 73-75 (1982) [section 522 lien
12 avoidance not applied retroactively to effect a taking in violation of Fifth Amendment]; *Armstrong*
13 *v. United States*, 364 U.S. 40, 46-49, 80 S.Ct. 1563, 1567-1569 (1961) [“The total destruction by
14 the Government of all value of these liens, which constitute compensable property, has every
15 possible element of a Fifth Amendment 'taking,' and is not a mere 'consequential incidence' of a
16 valid regulatory measure.”]; *In re Lahman Manufacturing Company, Inc.*, 33 B.R. 681, 686
17 (Bankr. D.S.D 1983) [a physical taking of property is not an impairment of a “mere contractual
18 right” that may be adjusted under the bankruptcy laws].)

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20 10. The physical taking of the real property of MICHAEL A. COBB, and its continued
21 retention by the debtor CITY OF STOCKTON, requires payment by the debtor of full “just
22 compensation,” as is constitutionally mandated. While inverse condemnation damages result
23 regardless of the good or bad faith of the governmental entity that effects the taking, the precedent
24 cannot be set that a municipal organization can take a private landowner’s property and then adjust
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Exhibit A

Filed 1/26/11

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

MICHAEL A. COBB, AS TRUSTEE, ETC.,

Plaintiff and Appellant,

v.

CITY OF STOCKTON,

Defendant and Respondent.

C062328

(Super. Ct. No.
CV035015)

APPEAL from a judgment of the Superior Court of San Joaquin County, Humphreys, Judge. Reversed with directions.

Kirsten R. Bowman for Plaintiff and Appellant.

Thomas H. Keeling for Defendant and Respondent.

Nine years after the City of Stockton (City) initiated eminent domain proceedings to acquire real property owned by Andrew C. Cobb, as trustee of the Andrew C. Cobb 1992 Revocable

Trust (the Trust), and after the City constructed a public roadway across the condemned property, the trial court dismissed the action for lack of prosecution (Code Civ. Proc., § 583.360). Plaintiff, Michael A. Cobb, as successor trustee, then initiated this action in inverse condemnation to collect for the taking of the property by virtue of the extant roadway.

The City demurred to the complaint, arguing the inverse condemnation claim is time-barred, inasmuch as the taking occurred more than five years before the complaint was filed. The trial court agreed, sustained the demurrers without leave to amend, and entered judgment for the City. Plaintiff appeals.

We conclude the trial court erred in sustaining the demurrer based on the statute of limitations. Plaintiff's claim for inverse condemnation did not accrue until the City's occupation of the property became wrongful, which did not occur until the eminent domain proceeding was dismissed. We therefore reverse.

FACTS AND PROCEEDINGS

Since this is an appeal from a dismissal following an order sustaining a demurrer, we summarize and accept as true all material allegations of the complaint. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7.) In this instance, plaintiff's only challenge is to dismissal of the inverse condemnation claim contained in his second amended complaint. We therefore take the facts from the second amended complaint.

On October 23, 1998, the City filed an action in eminent domain to acquire a portion of a parcel of property located at 4218 Pock Lane in Stockton (the Property) for the purpose of constructing a roadway. The Property is owned by the Trust. At the time, the City deposited \$90,200 with the trial court as probable just compensation for the Property. On or about December 31, 1998, the court entered an order granting the City prejudgment possession of the Property. The City thereafter constructed the proposed roadway. On November 6, 2000, plaintiff, as successor trustee of the Trust, withdrew the \$90,200 deposit.

On October 9, 2007, the trial court dismissed the eminent domain action for failure to bring the matter to trial within five years (Code Civ. Proc., §§ 583.310, 583.360).

On March 14, 2008, plaintiff filed this action against the City alleging a single cause of action for inverse condemnation. The City demurred on the basis of the statute of limitations, asserting that plaintiff's claim is governed by a five-year limitation period and the claim accrued in 1998, when the City first acquired the Property. The trial court agreed and sustained the demurrer with leave to amend.

Plaintiff filed a first amended complaint, again alleging inverse condemnation. The City again demurred on the basis of the statute of limitations and the trial court sustained the demurrer with leave to amend.

Plaintiff filed a second amended complaint containing a claim for inverse condemnation plus three related claims. The

City again demurred. The trial court sustained the demurrer to the inverse condemnation claim without leave to amend. On the other claims, the court sustained the demurrers with leave to amend.

Plaintiff filed a third amended complaint containing four causes of action, but no claim for inverse condemnation. The City again demurred, and the trial court sustained the demurrers without leave to amend. The court thereafter entered judgment of dismissal.

DISCUSSION

I

Klopping v. City of Whittier

In the second amended complaint, plaintiff alleged that when the trial court proposed to dismiss the eminent domain action for failure to prosecute, he supported the dismissal based on representations by the City that it intended to re-file the action. Plaintiff contends the second amended complaint adequately stated a claim for inverse condemnation, because the City's failure to file a second eminent domain action after promising to do so "subjects the City to inverse condemnation liability under *Klopping v. City of Whittier* (1972) 8 Cal.3d 39 (*Klopping*)."

In *Klopping*, the city initiated condemnation proceedings but later abandoned the action due to a pending lawsuit filed by one of the defendants. At the time of abandonment, the city announced its intention to reinstitute proceedings once the

other lawsuit was resolved. The city later reinstated and completed the condemnation action. The plaintiffs, who were owners of a portion of the target property, filed a complaint in inverse condemnation, claiming the fair market value of their property had declined during the period between the city's announcement of an intention to reinstate the condemnation proceeding and the actual completion of that proceeding. The plaintiffs alleged the condemnation cloud hanging over the property during this period reduced its rental value.

(*Klopping, supra*, 8 Cal.3d at pp. 45-46.)

The California Supreme Court concluded the plaintiffs could recover for the reduced rental value of their property under the circumstances presented. The court first cautioned that any reduction in value occasioned by a routine announcement of condemnation proceedings is not recoverable. (*Klopping, supra*, 8 Cal.3d at p. 51.) "However, when the condemner acts unreasonably in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct, our constitutional concern over property rights requires that the owner be compensated." (*Id.* at pp. 51-52.)

Plaintiff contends the circumstances presented here "provide an even more compelling case for damages than the circumstances in *Klopping*." Plaintiff argues that, under *Klopping*, "the City may be held liable in inverse condemnation arising either (1) from unreasonably delaying filing its promised second eminent domain action after announcing an intent

to file, or (2) from its unreasonable conduct prior to filing any action.”

The City responds that *Klopping* has no bearing on the present matter, because there is no allegation here of unreasonable pre-condemnation activity. Even if the City promised to re-file the eminent domain action, which the City denies, this occurred after the eminent domain action was filed. There was no second filing, as in *Klopping*. Furthermore, the City argues, plaintiff does not allege damage based on a promise to re-file the eminent domain action, but from construction of the roadway across the Property.

We agree *Klopping* has no bearing on the present matter. *Klopping* involved a claim that a party's unreasonable pre-condemnation actions depressed the value of the target property even before any physical invasion of it. In *Klopping*, the mere anticipation of a condemnation proceeding depressed the value of the property. In the present matter, plaintiff does not allege the City's announcement of an intention to condemn or its promise to re-file the condemnation action somehow reduced the value of the Property. Plaintiff's claim is that the *actual* invasion of the Property by the construction of a roadway across it reduced the value of the Property and is a taking requiring just compensation.

II

Statute of Limitations

The trial court concluded plaintiff's inverse condemnation claim is barred by the applicable statute of limitations. In reaching this conclusion, the court determined plaintiff's claim accrued at the time the City took prejudgment possession of the Property on December 31, 1998, and the statutory period expired five years later, on December 31, 2003.

Plaintiff contends the claim did not accrue when the Property was first taken but when that taking became unlawful. Plaintiff argues the City took possession of the Property pursuant to a court order granting such possession, and the City's continued occupancy of the Property by virtue of the constructed roadway did not become unlawful until the eminent domain action was dismissed without a new one being filed.

We agree. The statute of limitations applies to claims for inverse condemnation. (*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048 (*Otay*.) The trial court used the five-year statute of limitations applicable to actions for adverse possession (Code Civ. Proc., § 318). Courts have applied this statute "where a public entity has physically entered and exercised dominion and control over some portion of a plaintiff's property." (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1484.) On the other hand, plaintiff's claim is arguably based on damage to the Property by virtue of the construction of a roadway

across a portion of it. Such a claim may be governed by the three-year statute of limitations for actions based on trespass upon or injury to real property (Code Civ. Proc., § 338, subd. (b)).

We need not decide which limitation period applies here. The City first took dominion over a portion of the Property in December 1998, when the trial court gave the City prejudgment possession, and plaintiff did not file his inverse condemnation claim until March 2008, more than nine years later. Thus, whether we apply the five-year or the three-year statute of limitations, the question of whether the statute has run turns on whether plaintiff's cause of action accrued at the time the City took possession of the Property or later, when the City abandoned its eminent domain action.

The City contends plaintiff's cause of action accrued when the City first took possession of the Property, and the trial court agreed, citing as support *Mehl v. People ex rel. Dept. of Public Works* (1975) 13 Cal.3d 710 (*Mehl*); *People ex rel. Department of Transportation v. Gardella Square* (1988) 200 Cal.App.3d 559 (*Gardella Square*); and *Otay, supra*, 1 Cal.App.4th 1041. However, as we shall explain, those cases are inapposite.

In *Mehl*, the state constructed a freeway on property immediately adjacent to and south of the defendants' property and, to accommodate the natural drainage flow that would otherwise be blocked by the freeway, installed a culvert under the freeway that channeled the runoff onto the defendants'

property. In February 1969, the county condemned a drainage easement down the middle of the defendants' property. The defendants cross-complained against the state in inverse condemnation for partial loss of their property as a result of the freeway construction. The trial court rejected the state's statute of limitations defense and awarded damages to the defendants on their cross-complaint. The Court of Appeal affirmed on all issues except the calculation of damages. (*Mehl, supra*, 13 Cal.3d at pp. 714-715.)

The California Supreme Court agreed the defendants' claim was not barred by the statute of limitations. The court explained: "The taking asserted in this action consists of the channeling of a flow of extra water onto the Mehl property. [In essence, the Mehls asserted that the state had appropriated a drainage easement over their property.] The date the taking occurred is not necessarily the date on which the period of limitation and of claims started to run. [] [Rather, the period begins to run when the damage is sufficiently appreciable to a reasonable man. [Citation.]]" (*Mehl, supra*, 13 Cal.3d at p. 717, fn. omitted.) The trial court found the defendants did not become aware of the drainage system until 1969, and the high court concluded this finding was supported by the evidence. (*Ibid.*)

In *Gardella Square*, the Department of Transportation filed a condemnation action concerning a parcel of unimproved property, and the property owner asserted an affirmative defense of inverse condemnation based on pre-condemnation conduct by the

department that allegedly interfered with the owner's attempts to develop the property prior to condemnation. (*Gardella Square, supra*, 200 Cal.App.3d at pp. 563-564.) In that opinion, which involved issues of prejudgment interest and litigation expenses, not the statute of limitations, the Court of Appeal stated: "[A] cause of action for inverse condemnation arises from a governmental invasion or appropriation of a valuable property right which directly and specifically affects the landowner to his injury." (*Id.* at p. 571.)

In *Otay*, a water district obtained a ranch in 1962 and constructed a reservoir which, inadvertently, also encompassed adjacent property later acquired by the defendant. The water district eventually learned of the error and, in 1989, filed an action to quiet title to a prescriptive easement over the property. The defendant and others cross-complained for inverse condemnation. The trial court granted summary judgment to the water district on both its claim for prescriptive easement and the cross-complaint for inverse condemnation, and the Court of Appeal affirmed. (*Otay, supra*, 1 Cal.App.4th at pp. 1044-1045.)

The appellate court explained the limitations period on inverse condemnation claims normally begins to run when the governmental entity takes possession of the property. (*Otay, supra*, 1 Cal.App.4th at pp. 1048-1049.) "Where, however, there is no direct physical invasion of the landowner's property and the fact of taking is not immediately apparent, the limitations period is tolled until 'the damage is sufficiently appreciable to a reasonable [person]'" (*Id.* at p. 1049.) The

defendant argued he was not aware of the encroachment until the water district filed its action in 1989. The appellate court rejected this argument, concluding the encroachment was open and apparent and the defendant was able to determine the nature and extent of the taking long before the water district filed its action. (*Ibid.*)

None of the foregoing cases addresses the issue presented in this matter. The statement in *Gardella Square* about when a cause of action in inverse condemnation arises was dictum. The case involved pre-condemnation activity that reduced the value of the property, not whether an inverse condemnation claim arises from an invasion that is initially authorized by court order.

In *Mehl* and *Otay*, the question was whether the inverse condemnation action had been brought within the statutory period after the taking should reasonably have been discovered by the property owner. In *Mehl*, the high court concluded substantial evidence supported the trial court's determination that the defendants were unaware of the drainage diversion across their property until the county filed its eminent domain action. In *Otay*, the Court of Appeal concluded the reservoir was obvious to the defendant long before the quiet title action was filed. In both cases, the encroachment had been wrongful at its inception.

In the present matter, there is no question plaintiff's predecessor was aware on December 31, 1998, that the City had taken possession of the Property. However, at the time, the City's possession was pursuant to a court order. In other

words, the City was not in *wrongful* possession of the Property. The question presented here is thus whether, under such circumstances, the statute of limitations begins to run at the time of permissive possession on any inverse condemnation claim that might later arise from that possession.

“Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] “Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not ‘accrue until the party owning it is entitled to begin and prosecute an action thereon.’” [Citation.] In other words, “[a] cause of action accrues ‘upon the occurrence of the last element essential to the cause of action.’” [Citations.]’ [Citation.]” (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815.)

A trespass requires that the entry be without permission. (See CACI No. 2000.) In the present matter, plaintiff could not have maintained an action in trespass against the City while the eminent domain action was pending, because the City’s occupancy was authorized by court order. Hence, the three-year statute of limitations applicable to trespass actions did not begin to run until the City’s occupancy was no longer pursuant to permission of the court, which did not occur until the eminent domain action was dismissed.

Nor could plaintiff have maintained an action against the City to recover real property, within the meaning of the five-year statute of limitations (Code Civ. Proc., § 318). The City

did not possess the Property under a claim of right, as required for adverse possession or a prescriptive easement. (See *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449.) Rather, the City was attempting through the eminent domain action to establish its claim of right to occupy the Property. The City had been given a temporary right of occupancy only. It was only after that temporary right expired, with dismissal of the eminent domain action, that the applicable statute of limitations began to run.

Taken to its logical conclusion, the trial court's ruling would mean that every time a condemning authority takes prejudgment possession of the subject property, the owner would have to file a protective inverse condemnation claim in the event the eminent domain action is later dismissed. Such action would then remain dormant while the eminent domain action ran its course.

Under the circumstances presented, a cause of action for inverse condemnation did not accrue until the City no longer had a right to occupy plaintiff's property. This did not occur until the eminent domain action was dismissed. Only then did the statute of limitations begin to run. Because plaintiff filed the instant action less than a year after the trial court dismissed the eminent domain action, the action was timely, and the trial court erred in sustaining demurrers to the inverse condemnation action of the second amended complaint.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to vacate its order sustaining and enter a new order overruling the City's demurrer to the first cause of action (inverse condemnation) of the second amended complaint. Plaintiff shall receive his costs on appeal.

_____ HULL _____, J.

We concur:

_____ RAYE _____, P. J.

_____ NICHOLSON _____, J.

Exhibit B

UNITED STATES BANKRUPTCY COURT Eastern District of California		PROOF OF CLAIM
Name of Debtor City of Stockton, California	Case Number 12-32118	FILED U.S. Bankruptcy Court Eastern District of CA Wayne Blackwelder, Clerk 8/16/2013
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		COURT USE ONLY
Name of Creditor (the person or other entity to whom the debtor owes money or property): Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust		
Name and address where notices should be sent: c/o Bradford J. Dozier ATHERTON & DOZIER 305 N. El Dorado St., Suite 301 Stockton, CA 95202 Telephone number: (209) 948-5711 email: athdoz@aol.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>4200997</u>		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Inverse condemnation and other claims from 1998 on</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Basis for perfection: _____
Value of Property: \$ _____		Amount of Secured Claim: \$ _____
Annual Interest Rate: ___ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5). Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507(a)(_____).
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

Case 12-32118 Filed 08/16/13 Claim 229-1

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.
- I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)
- I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Bradford J. Dozier

Title: Attorney for Creditor Cobb

Company: ATHERTON & DOZIER

Address and telephone number (if different from notice address above): Filing a proof of claim electronically deems the claim signed by the creditor or authorized person 8/16/2013

(Signature)

(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

1 RICHARDS, WATSON & GERSHON
 A Professional Corporation
 2 REGINA N. DANNER (137210)
 KRISTEN R. BOWMAN (181627)
 3 MARICELA E. MARROQUIN (232321)
 355 South Grand Avenue, 40th Floor
 4 Los Angeles, CA 90071-3101
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FILED
 SUPERIOR COURT - STOCKTON
 2008 SEP -8 PM 3:51
 ROSA JUNQUEIRO, CLERK
 BY DOMINIC WILLIS
 DEPUTY

6 Attorneys for Plaintiff,
 Michael A. Cobb, Trustee of the
 7 Andrew C. Cobb 1992 Revocable Trust
 dated July 16, 1992
 8

9
 10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF SAN JOAQUIN**

12
 13 MICHAEL A. COBB, Trustee of the
 Andrew C. Cobb 1992 Revocable Trust
 14 dated July 16, 1992,

15 Plaintiff,

16 vs.

17 CITY OF STOCKTON, a municipal
 corporation; and DOES 1-50, Inclusive,

18 Defendants.
 19

Case No. CV 035015

**SECOND AMENDED COMPLAINT
 FOR:**

- 1. INVERSE CONDEMNATION
- 2. QUIET TITLE
- 3. DECLARATORY RELIEF
- 4. EJECTMENT

BY FAX

20
 21 Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust
 22 dated July 16, 1992 ("Plaintiff"), alleges as follows:
 23

24 **I. INTRODUCTION**

25 1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb
 26 Trust") owns the real property located at 4218 Pock Lane, Stockton, California 95206
 27 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee.
 28 Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute

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 ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 this action for the protection of the Cobb Property. An affidavit of Acceptance of
2 Trusteeship is attached as Exhibit "1".

3 2. Defendant City of Stockton ("Defendant" or "City") is a municipal
4 corporation organized and existing under the laws of the State of California.

5 3. Plaintiff is ignorant of the true names and capacities of Defendants sued
6 herein as DOES 1-50, Inclusive, and therefore sues these Defendants by such fictitious
7 names. Plaintiff will amend this complaint to allege their true names and capacities when
8 ascertained.

9 4. Plaintiff is informed and believes and based thereon alleges, that each
10 fictitiously named Defendants is in some manner responsible for the injury and damage to
11 Plaintiff as alleged herein.

12 5. On October 23, 1998, Defendant filed an eminent domain action seeking to
13 condemn a permanent easement across one parcel of land owned by the Cobb Trust for
14 the construction of a public roadway. The eminent domain action was filed in the
15 Superior Court of the State of California, County of San Joaquin, and was further
16 identified as Case No. CV006247 ("1998 Action"). Specifically, Defendant sought to
17 acquire an "easement" through the Cobb Property, thereby, bisecting the property into
18 two separate parcels of land. The property that Defendant sought to acquire is legally
19 described in Exhibit "A" to the Complaint in Eminent Domain that was filed in the 1998
20 Action. The Complaint in Eminent Domain is attached as Exhibit "2" to this complaint.
21 The property that was the subject of the 1998 Action will be hereby referred to as the
22 "Property Interest".

23 6. When Defendant filed the 1998 Action, the Cobb Property was owned by
24 the Cobb Trust. Andrew C. Cobb, was the trustee of the Cobb Trust. On or about
25 November 30, 1998, Andrew C. Cobb filed an Answer to the Complaint in Eminent
26 Domain. The Answer to the Complaint in Eminent Domain is attached as Exhibit 3.

27 7. By filing an Answer to the Complaint, Andrew C. Cobb, preserved his
28 constitutional rights to contest Defendant's right to take the Property Interest, and to

1 receive just compensation as determined by a jury. In addition, by filing an Answer,
2 Cobb affirmed that his property rights were adverse to those claimed by Defendant. It
3 was not necessary for Plaintiff to file a cross-complaint for inverse condemnation because
4 he preserved his constitutional rights in his Answer to the Complaint in Eminent Domain.
5 Moreover, Andrew C. Cobb reasonably believed that his constitutional rights were
6 protected by having filed an Answer to the Complaint in Eminent Domain.

7 8. On or about December 31, 1998, Defendant took legal pre-judgment
8 possession of the Property Interest that was the subject of the 1998 Action pursuant to an
9 Order for Prejudgment Possession. A true and correct copy of the Order for Prejudgment
10 Possession is attached as Exhibit "4".

11 9. Andrew C. Cobb was originally represented by the law firm of Atherton and
12 Dozier, who withdrew on October 15, 1999. Andrew C. Cobb continued to represent the
13 Cobb Trust in pro per, and attempted to negotiate with the City of Stockton regarding the
14 Property Interest until he was killed in early 2000. The City of Stockton refused to
15 negotiate personally with Andrew C. Cobb because they felt Mr. Cobb was a threat to the
16 City and therefore, directed all settlement negotiations through their attorneys, Freeman,
17 D'Aiuto, Pierce, Gurev, Keeling and Wolf. A true and correct copy of an Informational
18 Bulletin advising City staff to contact the Vice Unit if Andrew C. Cobb attempted to
19 contact them is attached as Exhibit "5". After Andrew C. Cobb's death, there was a
20 dispute among his heirs regarding the ownership interests of his property. In late 2000,
21 Michael A. Cobb, his son, appeared in the 1998 Action as Executor of the Estate of
22 Andrew C. Cobb and as Successor Trustee of the Trust. In late 2000, Michael A. Cobb
23 withdrew the funds on deposit, thereby waiving any claims regarding the City's right to
24 take, but not his right to a determination of just compensation by a jury. Michael A.
25 Cobb, was also represented by Atherton and Dozier, who assisted in the negotiations with
26 Defendant in 2000 but were never formally designated as the attorneys for the Cobb Trust
27 in the 1998 Action. Michael A. Cobb was not represented by an attorney from 2000 to
28 2007.

1 10. Defendant eventually constructed a public roadway on the Property Interest
2 that runs through the Cobb Property.

3 11. On July 9, 2007, the Court commenced a motion to dismiss the 1998 Action
4 pursuant to Code of Civil Procedure Section 585.360. It came on for hearing before the
5 Honorable Carter P. Holly, Judge Presiding. The matter was argued before the Court and
6 submitted.

7 12. Plaintiff supported the dismissal of the 1998 Action because Defendant
8 threatened to file a second eminent domain action, and Plaintiff did not want his right to
9 just compensation and the property issues to languish in the court system for another nine
10 (9) years.

11 13. On October 9, 2007, the Court dismissed the 1998 Action for Defendant's
12 lack of prosecution. The Court ruled that Code of Civil Procedure Section 585.310
13 required that an action be brought to trial within five years after the action is commenced.

14 14. Defendant failed to prosecute the case for almost nine years, hence, the
15 1998 Action was dismissed, and Defendant's lawful possession of the Property Interests
16 were terminated on October 7, 2007.

17 15. Defendant never obtained a Final Judgment of Condemnation and a Final
18 Order of Condemnation of the Property Interest. The Cobb Trust is still the fee owner of
19 the Property Interest.

20 16. Plaintiff and Defendant's attorneys continued to negotiate through the years,
21 both verbally and in writing. Plaintiff represented the Andrew C. Cobb Trust in Pro per
22 after 2000. Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev,
23 Keeling and Wolf, who represented Defendant in the 1998 Action. The attorneys for
24 Defendant never told Plaintiff that they were unable to negotiate with him, and they
25 promised Plaintiff that they would get back to him regarding the settlement offers that
26 Plaintiff made to Defendant. An example of such a promise is reflected in the attached
27 2000 billing statement from Plaintiff's attorney to Defendant's attorney memorializing a
28 promise by Defendant's attorneys to obtain a written response to Plaintiff's settlement

1 demand. A true and correct copy of the billing statement dated November 20, 2000 is
2 attached as Exhibit "6". The 1998 Action never settled, and finally, in frustration,
3 Plaintiff advised the attorneys for Defendant that he would just let a jury decide his right
4 to compensation in the 1998 Action. No one from the Defendant's attorney's office
5 advised him that it was necessary for him to prosecute the 1998 Action or that he should
6 file a cross-complaint if he wished to preserve his rights in the 1998 Action. The
7 attorneys for Defendant acknowledged, in other pleadings, that they believed that they
8 were not able to negotiate with Plaintiff because he was not represented by an attorney;
9 yet, they continued to lead Plaintiff into believing that they could negotiate a settlement,
10 and thereby induced him into not filing a cross-complaint to protect his rights for greater
11 compensation. Plaintiff detrimentally relied upon Defendant and its attorneys to continue
12 to engage in good faith negotiations, and to prosecute the 1998 Action. Since Andrew C.
13 Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his
14 father had preserved the Trust's right to have just compensation determined by a jury.
15 Once Plaintiff indicated that he wanted a jury to decide his right to just compensation in
16 the 1998 Action, the attorneys for Defendant should have advised Plaintiff that it was
17 necessary to file a cross-complaint to preserve his rights or to continue to prosecute the
18 1998 Action, yet failed they to do so. Plaintiff had no idea that the Defendant intended to
19 acquire the Property Interest by obtaining legal possession of the Property Interest in
20 1998, falsely negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-
21 complaint and not prosecute the action resulting in a dismissal of the 1998 Action.

22 17. Defendant's attorneys by their own admission, failed to prosecute the 1998
23 Action under the premise that it could not prosecute the 1998 Action against the Trust
24 alleging Plaintiff, Michael A. Cobb never retained counsel. Hence, unbeknownst to
25 Plaintiff, Defendant had no intention of settling the 1998 Action.

26 18. When the Court dismissed the 1998 Action, Plaintiff's right to receive
27 probable just compensation as determined by a jury was terminated, and therefore, the
28 taking by the City without the payment of just compensation occurred.

1 jury. Plaintiff had no idea that Defendant intended to acquire the Property Interest by
2 obtaining possession of the Property Interest in 1998, falsely negotiate with the Plaintiff,
3 do nothing to move the case forward, and then allow the Court to dismiss the 1998
4 Action.

5 24. Plaintiff represented the Andrew C. Cobb Trust in Pro per after 2000.
6 Plaintiff spoke directly to the attorneys, Freeman, D’Aiuto, Pierce, Gurev, Keeling and
7 Wolf, who represented Defendant in the 1998 Action. The attorneys for Defendant never
8 told Plaintiff that they were unable to negotiate with him, and they promised Plaintiff that
9 they would get back to him regarding the settlement offers that Plaintiff made to
10 Defendant. The matter was not settled, and finally, in frustration, Plaintiff advised the
11 attorneys for the City of Stockton that he would just let the Court decide his right to
12 compensation in the 1998 Action. No one from the attorney’s office advised him that it
13 was necessary for him to prosecute the 1998 Action or that he should file a cross-
14 complaint if he wished to preserve his rights in the 1998 Action. Since Andrew C. Cobb
15 filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his father
16 had preserved the Trust’s right to have just compensation determined by a jury. Once
17 Plaintiff indicated that he wanted a jury to decide his right to just compensation in the
18 1998 Action, the attorneys should have advised Plaintiff that it was necessary to file a
19 cross-complaint to preserve his rights or to continue to prosecute the 1998 Action, yet
20 failed they to do so. Plaintiff had no idea that the Defendant intended to acquire the
21 Property Interest by obtaining legal possession of the Property Interest in 1998, falsely
22 negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-complaint and not
23 prosecute the action resulting in a dismissal of the 1998 Action.

24 25. When the Court dismissed the 1998 Action, Plaintiff’s right to receive
25 probable just compensation as determined by a jury was terminated, and therefore, the
26 taking by Defendant without the payment of just compensation occurred.

27 26. Defendant’s acts constitute a taking because Defendant has physically
28 invaded and appropriated a valuable property right for a public use. Defendant’s taking

1 has caused the Cobb Property to diminish in value. The Cobb Property cannot be
2 developed with a road running through it.

3 27. Defendant took and damaged the Cobb Property for a public use because it
4 used the Cobb Property to construct a public roadway. The general public has continually
5 used the roadway since it was constructed without any benefit to the property owner and
6 without payment of just compensation.

7 28. Defendant's actions caused injury to the Cobb Property because the
8 construction of the public roadway through the Cobb Property precluded the development
9 of the Cobb Property. The construction of the public roadway rendered the remaining
10 land an uneconomic remnant and thus constitutes a taking of the Cobb Property in fee.

11 29. Defendant has not paid Plaintiff just compensation for the taking. On
12 October 23, 1998, Defendant deposited the sum of Ninety Thousand Two Hundred
13 Dollars (\$90,200.00) with the Court in order to obtain prejudgment possession of the
14 Property Interest. On November 6, 2000, pursuant to a stipulation between Michael A.
15 Cobb, as Executor of the Cobb Trust and Defendant, Michael A. Cobb withdrew the funds
16 on deposit with the Court. The issue of just compensation in the 1998 Action was never
17 tried before a judge or jury and remained unresolved upon the dismissal of the 1998
18 Action.

19 30. Defendant has the power of eminent domain and, thus, may be sued for
20 inverse condemnation. Although Defendant took possession of the Property Interest in
21 1998, Plaintiff's cause of action accrued when Plaintiff was denied the right to a
22 determination of just compensation by a jury when the 1998 Action was dismissed for
23 failure to prosecute. Prior to the action being dismissed, it was not necessary to file this
24 action because the eminent domain action was still pending, and Plaintiff had preserved
25 his rights to just compensation by having Answered the Complaint in Eminent Domain.

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SECOND CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS (Quiet Title-Adverse Possession)

31. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 30, inclusive of this Second Amended Complaint and incorporates the same by this reference as though fully set forth herein.

32. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 (“Cobb Trust”) is the fee owner of the real property located at 4218 Pock Lane, Stockton, California 95206 identified as San Joaquin Assessor’s Parcel Number 179-180-07 (“Cobb Property”) in fee. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute this action for the protection of the Cobb Property.

33. Plaintiff’s title is based upon a Deed of Trust recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, and is based upon his actual, open, notorious, exclusive, hostile, and adverse possession of the Cobb Property for at least five years preceding the commencement of this action, together with Plaintiff’s payment of all taxes assessed against the Cobb Property for the same five year period, which taxes include assessments for the road constructed on the Cobb Property.

34. Defendant claims an interest adverse to Plaintiff in the above described parcel, in that Defendant alleges that it had legal possession, as a highway, easement of portions of the Cobb Property, which commenced in 1998, and was terminated on October 9, 2007.

35. Defendant never obtained a Final Order of Condemnation and Judgment in Condemnation; hence, Defendant’s possession is no longer lawful.

36. Plaintiff is seeking to quiet title against all adverse claims of Defendant.

37. The adverse claims of Defendant are without any right whatsoever. Defendant has no right, title, estate, lien, or interest whatsoever in the Cobb Property, and which are adverse to Plaintiff’s title.

38. Plaintiff seeks to quiet title as of November 30, 1998, which is the date that Plaintiff Answered the 1998 Action, or in the alternative as of December 31, 1998, when

1 Defendant obtained possession of the Property Interests, or finally, in the alternative,
2 Plaintiff seeks to quiet title as of December 2003, which is the date five years after the
3 Defendant obtained possession of the Property.

4
5 **THIRD CAUSE OF ACTION**

6 **AS AGAINST ALL DEFENDANTS (Declaratory Relief)**

7 39. Plaintiff repeats and realleges each and every allegation set forth in
8 paragraphs 1 through 38, inclusive of this Second Amended Complaint and incorporates
9 the same by this reference as though fully set forth herein.

10 40. An actual controversy has arisen and now exists between Plaintiff and
11 Defendant concerning their respective rights and duties under Defendant's taking or
12 appropriation of Plaintiff's property for a public purpose without the payment of just
13 compensation to be a determined by a jury under Article I Section 19 of the California
14 Constitution. An actual controversy has also arisen and now exists between the parties
15 regarding Defendant's wrongful occupation of Plaintiff's property, and therefore, Plaintiff
16 contends that Defendant must remove the roadway, which is claimed to occupy those
17 portions of the Cobb Property, identified as the Property Interests.

18 41. A judicial declaration is necessary and appropriate at this time, and under
19 the circumstances, in order to determine the rights and duties of the parties under
20 Defendant's taking or appropriation of Plaintiff's property, and determine the
21 compensation and title hereunder.

22
23 **FOURTH CAUSE OF ACTION**

24 **AS AGAINST ALL DEFENDANTS (EJECTMENT)**

25 42. Plaintiff repeats and realleges each and every allegation set forth in
26 paragraphs 1 through 41, inclusive of this Second Amended Complaint and incorporates
27 the same by this reference as though fully set forth herein.

28

1 43. A roadway is located on the Cobb Property, specifically over the Property
2 Interests, and Defendant, thus, is possessing and withholding the use and enjoyment of
3 that property to the exclusion of Plaintiff.

4 44. So long as Defendant wrongfully continues to possess and withhold the use
5 and enjoyment of the Property Interests, Plaintiff is wrongfully being denied the full use
6 and enjoyment of the Cobb Property.

7
8 **PRAYER FOR RELIEF**

9 Plaintiff hereby prays as follows:

10 ON THE FIRST CAUSE OF ACTION

- 11 1. That the amount of just compensation for the Property Interest be
- 12 ascertained and determined;
- 13 2. For damages in an amount yet to be ascertained with interest thereon at the
- 14 legal rate from the date of those damages;
- 15 3. Attorney’s fees and litigation expenses;
- 16 4. Costs of suit;
- 17 5. Real estate taxes, maintenance costs, insurance costs; and
- 18 6. For such other relief as the Court deems just and proper

19 ON THE SECOND CAUSE OF ACTION

- 20 1. For a Judgment that Plaintiff is the owner in fee simple of the portion of the
- 21 roadway, which encroaches on the Cobb Property, and that Defendant has no interest in
- 22 the Cobb Property; and
- 23 2. For an order that Defendants be enjoined from making any further claim
- 24 adverse to Plaintiff, by legal action or otherwise, relating to the portion of the Cobb
- 25 Property onto which the roadway encroaches.

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ON THE THIRD CAUSE OF ACTION

1. For a judicial declaration that Defendant's taking or appropriation of Plaintiff's property was without the payment of just compensation under Article I, Section 19 of the California Constitution. .

2. For a judicial declaration that Plaintiff owns the Cobb Property in fee, to the exclusion of any claim by Defendant, to the portion of Plaintiff's Property that is encroached upon by the roadway.

ON THE FOURTH CAUSE OF ACTION

1. For restitution of the premises to Plaintiff.

DATED: September 8, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
KIRSTEN R. BOWMAN
MARICELA E. MARROQUIN

By: 
Kirsten R. Bowman
Attorneys for Defendant
MICHAEL A. COBB, Trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

EXHIBIT 1

In re CITY OF STOCKTON, CALIFORNIA, Debtor

United States Bankruptcy Court, Eastern District of California, Sacramento Division

Case No. 2012-32118

Creditor: Michael A. Cobb, Trustee of the 1992 Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

STATEMENT OF INTEREST AND OTHER CHARGES IN ADDITION TO PRINCIPAL

This claim arises out of a state court action of Michael A. Cobb, Trustee of the 1992 *Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992, Plaintiff, vs. City of Stockton, a municipal corporation, et al., Defendants*, Superior Court of California, County of San Joaquin, case number CV 035015. A copy of the operative SECOND AMENDED COMPLAINT is attached also to this Proof of Claim.

Principal of claim (value of land taken by debtor at valuation date of taking)	\$1,540,000.00
Interest on value from of land taken from 10-23-1998 (date of filing by debtor of eminent domain action) to August 16, 2013 at 10% per annum (and continuing at the daily rate of \$421.92 thereafter)	\$2,282,997.26
Attorney's fees and litigation expenses (estimated to date)	\$350,000.00
Costs of suit (estimated to date)	\$13,000.00
Real estate taxes, maintenance costs, insurance costs	<u>\$15,000.00</u>
TOTAL	\$4,200,997.26

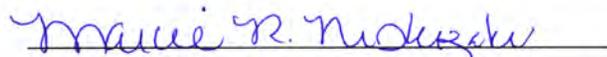
PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am over eighteen years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is 305 N. El Dorado St., Suite 301, Stockton, CA 95202.
3. On February 10, 2014, I mailed from Stockton, San Joaquin County, California, the attached "Objection of Creditor Michael A. Cobb to Plan and Confirmation Thereof."
4. I served the document by enclosing it in an envelope and depositing the sealed envelope with the United States Postal Service with the postage fully prepaid, first-class.
5. The envelope(s) was/were addressed and mailed as follows, with the following name(s) and address(es) of the person(s) served:

John M. Luebberke City Attorney's Office 425 N. El Dorado St., 2nd Floor Stockton, CA 95202	Marc A. Levinson Orrick, Herrington & Sutcliffe LLP 400 Capitol Mall, Suite 3000 Sacramento, CA 95814-4497
Steven H. Felderstein Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP 400 Capitol Mall, Suite 1750 Sacramento, CA 95814	Debra A. Dandeneau Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153
Jeffrey E. Bjork Sidley Austin LLP 555 West 5th Street Los Angeles, CA 90013	David Dubrow Arent Fox LLP 1675 Broadway New York, NY 10019-5820
James O. Johnston Jones Day 555 South Flower Street, Fiftieth Floor Los Angeles, CA 90071	William W. Kannel Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. One Financial Center Boston, MA 02111
Michael J Gearin K&L Gates LLP 925 Fourth Avenue, Suite 2900 Seattle, WA 98104	

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Date: February 10, 2014


 Marcie R. Nishizaki