

***Cohen v. Superior Court (Shwartz)***  
**2024 DJDAR 4955**

Only the government, not private individuals, can bring claims under Gov Code 36900 for civil redress of municipal code violations, unless the private individual can prove that they fall into one of the distinct categories where there is an exception.

**FACTS/PROCEDURE**

Shwartz and Cohen live across the street from each other in Los Angeles. Shwartz brought a complaint against Cohen saying that Cohen's trees and plants exceed the height limits specified in Los Angeles Municipal Code section 12.22 subdivision C.20. Further, Shwartz alleged that Cohen removed trees and plants from his parkway fronting and replaced it with landscaping noncompliant with the Residential Parkway Landscaping Guidelines adopted by the Los Angeles Board of Public Works and in violation of another Los Angeles municipal code, 62.129.

Shwartz asserted four causes of action 1) nuisance; 2) violation of Municipal Code 12.22 subdivision C; 3) violation of Municipal Code section 62.129; and 4) declaratory relief. They bring their 2<sup>nd</sup> and 3<sup>rd</sup> causes of action under Gov. Code §36900. Cohen demurred all four causes of action and the court sustains the demurrer for 1 and 4, saying that they did not allege facts to support their nuisance claim as they didn't describe how the conduct comprised their ability to enjoy the property, and they sustained the demurrer on the declaratory relief cause of action because it was duplicative. The court overruled Cohen's demurrer on the 2<sup>nd</sup> and 3<sup>rd</sup> counts, and Cohen filed a petition to vacate the ruling. The court now discusses whether the trial court's overruling of Cohen's demurrer as to Shwartz 2<sup>nd</sup> and 3<sup>rd</sup> causes of action was proper.

**HOLDING/DISCUSSION**

**Holding:** Petition granted. The trial court erred in overruling the demurrer on the 2<sup>nd</sup> and 3<sup>rd</sup> causes of action alleged by Shwartz. This is because the court finds that private parties are not empowered under Gov Code §36900 to redress ordinance violations through criminal prosecution or civil action. Shwartz relied on this court's 2002 ruling in *Riley v. Hilton Hotels Corp.* which held that §36900 expressly permits violations of city ordinances to be redressed by civil actions which includes actions brought by private citizens (*Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599.). However, this court agrees with Cohen, who argued that the decision in *Riley* must be reexamined. The court explains that the portion of the *Riley* decision which held that private citizens are empowered in this way under §36900 did not have a reasoned analysis in making that decision. The *Riley* court made their conclusion that §36900 applies to private citizens without explanation, they did not discuss the context of the statutory language, and they did not address ambiguities present in the statutory language.

The court then engages in statutory interpretation under the analytical framework set out in *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592. In *Lu* the supreme court of California decided that in determining if a private right of action exists under a statute, the court examines the statute in a two-step analytical framework. First, the court will examine the statutory language to see if there is clear unmistakable intent by the legislature, and second, if the statute is ambiguous as to the first step, then the court will look into the legislative history of the statute. The court here determined that the language of §36900 is ambiguous, so they turn to the legislative history of the statute.

§36900 is derived from sections 769 and 867 of the Municipal Incorporation Act of 1883, which has most of the same language as §36900 except it includes language that specifically indicates that only city authorities are empowered to redress municipal violations through civil action. Senate Bill 750 adds §36900 to the Government Code and it does not include that specific language. However, Senate Bill 750 was specifically intended to not make any substantive changes to existing law, so the substantive parts of §769 and 867 were not to be changed. Therefore, the court reasons that §36900 was not meant to deviate from those sections in the sense that only city authorities were empowered under the statute. In coming to this conclusion, the court overrules the decision in *Riley*.

Schwartz further argues that even if §36900 does not authorize their action, they should still be able to pursue a claim based on Cohens municipal violations because case law in California has repeatedly held that they can. However, the court quickly points out that the case law Schwartz is referring to only authorizes such action when an individual either (1) “suffers a ‘special injury to himself in person or property of a character different in kind from that suffered by the general public’”; or (2) “is a ‘member of the community for whose particular welfare the ordinance was enacted.’” (*Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1152–1153 [224 Cal. Rptr. 380].) As Schwartz does not fit into either of those distinct categories in the present action, he is also not empowered by California Case Law to bring the present action.

Relevant Statute.

**Cal. Gov. Code 36900**

(a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.