

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

MARINA LIMON, et al.

v.

**STATE OF CALIFORNIA,
DEPARTMENT OF FINANCE, et al.**

**CITY OF GARDEN GROVE, as
Successor Agency to the Garden
Grove Agency for Community
Development, et al.**

Case Number: 34-2014-80001994

RULING ON SUBMITTED MATTER

Date: June 5, 2015

Time: 1:30 p.m.

Dept.: 29

Judge: Timothy M. Frawley

On June 4, 2015, the court issued a tentative ruling in the above-entitled proceeding. On June 5, 2015, at 1:30 p.m., the matter came on for hearing with counsel present as indicated on the record. The matter was argued and submitted. Having taken the matter under submission, the court now affirms its tentative ruling, with modifications, as set forth below.

Introduction

This is another in a long line of cases challenging the actions of the Department of Finance (DOF) in administering the dissolution and wind-down of California's redevelopment agencies.

Petitioners and Plaintiffs Marina Limon, Alfredo Cordero, Celia Gonzalez, Jose Sanchez, Ana Rosa Olea, Elidia Gonzalez, Ivan Torres, and Javier Ibarra are members of low- and very low-income households that resided at the Travel Country RV Park in Garden Grove, California (the "RV Park"). The Petitioners were displaced after the City of Garden Grove's former redevelopment agency ("Redevelopment Agency") acquired

the RV Park to demolish it and transfer the site to a private developer to build a hotel and water park.

The individual Petitioners, along with Petitioner Kennedy Commission, a nonprofit organization advocating for the production of affordable housing, filed suit against the City, City Council, the former Redevelopment Agency and its "Successor Agency," and the Garden Grove Housing Authority, challenging the displacement of the individual Petitioners from their homes and the removal of the low income dwellings from the community housing market. After years of litigation, the parties agreed to a stipulated judgment, which requires the Successor Agency to provide relocation assistance funds, construct replacement affordable housing, and pay Petitioners' attorneys' fees.

The Successor Agency subsequently listed the stipulated judgment as an item in its "Recognized Obligation Payment Schedule." The Oversight Board approved the item as an "enforceable obligation," but DOF rejected it.

In this action, Petitioners seek a judicial determination that the stipulated judgment is an enforceable obligation, and a writ of mandate or injunction compelling Respondents and Real Parties in Interest to treat the judgment as an enforceable obligation. The court shall grant the petition and complaint for declaratory relief.

Background Facts and Procedure

The individual Petitioners are former low-income residents of the RV Park. With the exception of Petitioner Limon, who rented an apartment, each individual Petitioner owned a trailer/vehicle for which they rented space at the RV Park. The individual Petitioners lived at the Park for many years, with an average tenure of 11 years.

In 2003, the former Redevelopment Agency began taking steps to acquire the RV Park site with the goal of demolishing it and developing the area into a hotel and water park.

In 2009, the Redevelopment Agency finalized a Disposition and Development Agreement with a private developer. The Development Agreement called for acquisition of the site and relocation of all existing occupants, demolition and removal of all existing structures, and development of a new hotel and water park on the site. The Development Agreement specifically required the Redevelopment Agency to relocate all occupants of the site "in compliance with all applicable federal, state[,] and local laws and regulations concerning displacement and relocation."

In August of 2009, shortly after approval of the Development Agreement, the individual Petitioners and other persons (the "Orange County plaintiffs") filed a lawsuit in Orange County Superior Court against the Redevelopment Agency and the City challenging the proposal to demolish the RV Park and displace its low-income residents. The lawsuit alleged that the defendants violated the California Relocation Assistance Act and the Community Redevelopment Law by agreeing to displace the residents and remove their low-income housing units without providing an adequate replacement housing plan, adequate relocation assistance payments, and comparable replacement affordable housing.

In June of 2011 the Legislature enacted AB 26, which eliminated redevelopment agencies and specified a process for the orderly wind down of their affairs. The California Supreme Court upheld the constitutionality of AB 26 on December 29, 2011, and the law's provisions went into full effect on February 1, 2012. (*California Redevelopment Assoc. v. Matosantos* (2011) 53 Cal.4th 231, 276.) In June of 2012, the Legislature adopted AB 1484 to modify and "clean up" the provisions in AB 26. Together, AB 26 and AB 1484 constitute the "Dissolution Law."

While the Dissolution Law generally prohibits redevelopment agencies from incurring new redevelopment obligations, the Legislature did not intend to impair the former redevelopment agencies' existing obligations. (Cal. Health & Saf. Code § 34169.) Under the Dissolution Law, redevelopment agencies (and their successor agencies) must continue to make payments due for, and perform the obligations required by, the enforceable obligations of the former redevelopment agencies.

To this end, the Dissolution Law requires each successor agency to prepare a "Recognized Obligation Payment Schedule" (or ROPS) listing the "enforceable obligations" of the former redevelopment agency. (Cal. Health & Saf. Code § 34177.) The successor agency is required to prepare a separate ROPS for each six-month period until the former redevelopment agency's enforceable obligations are paid off or retired. After a ROPS is complete, the successor agency must submit it for approval to the successor agency's "oversight board" and DOF. DOF may review and reject items listed on a ROPS. (Cal. Health & Saf. Code §§ 34177, 34179(h).)

The successor agency receives an allocation of funds from the county auditor-controller to pay the enforceable obligations in an approved ROPS. The Dissolution Law prohibits successor agencies from making any payment that is not listed in an approved ROPS.

When the Redevelopment Agency was dissolved, the Garden Grove City Council designated the City as the Successor Agency to the former Redevelopment Agency.

Following passage of the Dissolution Law, the Successor Agency listed, and DOF approved, the Development Agreement as an "enforceable obligation" on the Successor Agency's ROPS.

The Orange County lawsuit continued after dissolution of the Redevelopment Agency. Pursuant to section 34173(g) of the Dissolution Law, all litigation involving the former Redevelopment Agency automatically transferred to the City, as the Successor Agency.

In October 2012, the Orange County plaintiffs amended their petition/complaint to formally name the Successor Agency as an additional defendant in the lawsuit. As amended, the Third Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate alleged eight causes of action against the City and its City Council, the former Redevelopment Agency and its Successor Agency, and the Garden Grove Housing Authority (Housing Authority) as the successor housing entity.

The First, Second, and Third Causes of Action, seeking mandamus, declaratory, and injunctive relief, alleged that the Redevelopment Agency violated the Community Redevelopment Law and the California Relocation Assistance Act by failing to adopt an adequate replacement housing plan that, among other things, provides adequate rental assistance payments and assures comparable replacement housing units are available to the RV Park's former residents.

The Fourth and Fifth Cause of Action, seeking declaratory and injunctive relief, alleged that the Redevelopment Agency, Successor Agency, and Housing Authority violated the Community Redevelopment Law by failing to develop or require a sufficient supply of affordable housing units and by failing to comply with replacement affordable housing obligations.

The Sixth Cause of Action, for writ of mandate, alleged that the City violated the Government Code by failing to prepare and adopt a legally sufficient Housing Element as part of its General Plan.

The Seventh Cause of Action, seeking injunctive relief, alleged that the defendants' actions in failing to provide adequate affordable housing, failing to provide replacement housing units, failing to provide adequate relocation assistance, failing to provide an adequate relocation plan, and failing to adopt an adequate Housing Element, violated

the Fair Employment and Housing Act because they had an adverse and disproportionate impact on Hispanic households.

The Eighth Cause of Action sought additional declaratory and injunctive relief based on the factual allegations described in the other causes of action.

In March 2014, the Orange County parties executed a Stipulation for Entry of Interlocutory Judgment (Stipulation) that, among other things, required the Successor Agency to (1) pay \$141,540 in additional relocation assistance benefits to former residents of the RV Park; (2) develop (or cause to be developed) up to 38 additional replacement low-income housing units; (3) give priority in the replacement low-income housing units to the displaced residents; and (4) pay \$795,000 in attorneys' fees to plaintiffs' counsel. The Stipulation also provided that the obligations contained in the Stipulation shall be treated as "enforceable obligations" of the former Redevelopment Agency, to be listed on the Successor Agency's ROPS and paid with available property tax revenues.

The Stipulation was approved and executed by the Successor Agency, the plaintiffs, and the City Council. Although the parties had submitted Joint Status Conference Reports indicating that the proposed settlement would be subject to approval by the Oversight Board and DOF, the Stipulation was not submitted to or approved by the Oversight Board or DOF.

On May 8, 2014, the Orange County Superior Court entered an "Interlocutory Judgment" mirroring the terms of the Stipulation. The Stipulated Judgment was entered without DOF having any knowledge of the litigation, the Stipulation, or the proposed Judgment.

The Successor Agency submitted its ROPS 14-15B to DOF in September 2014. Item number 40 on the ROPS listed \$1,935,540 as an outstanding debt owed because of the Stipulated Judgment, and requested \$936,540 in payments due for the period January 1, 2015, through June 30, 2015, to be used as follows: \$141,540 for relocation assistance payments to former residents of the Park, and \$795,000 to pay attorney fees. DOF issued a preliminary finding in which it rejected Item number 40 because the Stipulated Judgment was not approved by the Oversight Board.

In November 2014, following DOF's initial determination, the Oversight Board adopted a resolution approving the Stipulated Judgment. However, in December 2014, DOF disapproved this action, stating that the Oversight Board did not have authority to

retroactively approve the Successor Agency's actions. DOF subsequently issued its final determination rejecting funding for Item number 40 on the ROPS 14-15B.

On December 12, 2014, Petitioners filed this action. Petitioners seek a judicial determination that the Stipulated Judgment is an enforceable obligation, and a writ of mandate or injunction compelling DOF and the County Auditor-Controller to treat the Judgment as an enforceable obligation and approve Item number 40 on the Successor Agency's ROPS 14-15B.

On December 19, 2014, Petitioners filed an *ex parte* application for a temporary restraining order and order to show cause re preliminary injunction. Petitioners sought to temporarily restrain DOF's disapproval of Item number 40 on ROPS 14-15B and to restrain the County Auditor-Controller and the Successor Agency from disbursing the funds necessary to pay those obligations. Petitioners also requested an order to show cause why DOF's disapproval should not be set aside and the funds immediately distributed in the manner specified in the ROPS.

The court granted the *ex parte* application for a temporary restraining order and order to show cause re preliminary injunction, in part. The court's order sequestered the amount of property tax revenues identified in the ROPS for relocation assistance payments to former residents of the RV Park (\$141,540) and temporarily restrained Respondents from disbursing such funds. The court also ordered Respondents to show cause why a preliminary injunction should not be issued commanding Respondents to recognize the relocation assistance payments as an enforceable obligation and disburse the funds for that purpose as identified in the ROPS.

The court subsequently granted Petitioners' request for a preliminary injunction to sequester the challenged funds pending a decision on the merits, but denied Petitioners' request for a preliminary mandatory injunction ordering the funds to be immediately disbursed.

Requests for Judicial Notice

The requests for judicial notice filed by Petitioners and DOF, all of which are unopposed, are granted.

Standard of Review

The applicable standard of review is whether DOF abused its discretion. In determining whether an abuse of discretion has occurred, a court may not substitute its judgment for

that of the administrative agency, and if reasonable minds may disagree as to the wisdom of the agency's action, the agency's determination must be upheld. A decision is an abuse of discretion only if it is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 106.)

When the agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the court exercises its independent judgment. (*California Correctional Peace Officers' Ass'n. v. State of California* (2010) 181 Cal.App.4th 1454, 1460.)

While an agency's interpretation of the meaning and legal effect of a statute is entitled to consideration and respect, agency interpretations are not binding or necessarily even authoritative. (*Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1264.) The weight accorded to an agency's interpretation is fundamentally situational, turning on a "legally informed, commonsense assessment" of its contextual merit. An agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, or convincing. Other times, it may be of little worth. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8.) Regardless of how much weight the agency's interpretation is given, the court itself is the ultimate arbiter of the interpretation of the law. (*C.E. Buggy, Inc. v. Occupational Safety & Health Appeals Bd.* (1989) 213 Cal.App.3d 1150, 1156.)

Nevertheless, the challenged administrative agency action comes before the court with a strong presumption that the agency's official duty has been regularly performed, and it is the petitioner's burden to show that the agency's action is invalid. (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.)

Discussion

Petitioners argue that the obligations of the Stipulated Judgment are "enforceable obligations" arising from the Redevelopment Agency's failure to perform statutory duties under the Community Redevelopment Law and California Relocation Assistance Act. (See Health & Saf. Code §§ 33413, 33413.5; Gov. Code § 7260 et seq.; 25 C.C.R. §§ 6008, 6034, 6038, 6054, 6084, 6104.) According to Petitioners, these statutory obligations remained unfulfilled prior to the Orange County litigation. The Dissolution Law authorized the Successor Agency to settle the litigation against the former Redevelopment Agency by entering into the Stipulated Judgment, and the Dissolution Law commands Respondents to recognize that Judgment as an enforceable obligation. (See Health & Saf. Code §§ 34171(d)(1)(D), 34173(g).)

DOF contends it properly rejected the Stipulated Judgment as an enforceable obligation, for four reasons. First, the Successor Agency lacked authority under the Dissolution Law to settle the litigation and create new “enforceable obligations.” Second, the Stipulated Judgment does not fit into any Dissolution Law definition of an “enforceable obligation.” Third, the Stipulated Judgment is invalid because the Successor Agency failed to give notice to the Oversight Board and obtain its approval before entering into the agreement. Fourth, the Stipulated Judgment is contrary to the “legislative spirit” of the Dissolution Law because it unfairly burdens taxpayers with obligations that should be borne by the City.

All of DOF’s arguments lack merit. To begin, the Dissolution Law defines “enforceable obligation” to include “[j]udgments or settlements entered by a competent court of law . . . against the former redevelopment agency.” (Health & Saf. Code § 34171(d)(1)(D), (E).) The Stipulated Judgment falls within this definition.

The Stipulated Judgment is a valid judgment entered by a competent court of law. Although it was negotiated and signed by the Successor Agency, the Judgment is “against the redevelopment agency” in the sense that it compromised claims brought against the former Redevelopment Agency before dissolution.

Section 34173(g) of the Dissolution Law provides that, upon dissolution, all litigation involving redevelopment agencies “shall automatically be transferred to the successor agency.” (Health & Saf. Code § 34173(g).) Thus, the Legislature clearly did not intend the Dissolution Law to extinguish all litigation pending against redevelopment agencies. Rather, it intended successor agencies to step into the shoes of the redevelopment agencies for purposes of resolving such litigation. (See also Health & Saf. Code § 34171(d)(1)(D) [vesting successor agencies and the oversight board with authority and standing to appeal any judgment, settlement, or arbitration decision]; see also § 34177(b) [successor agencies shall expeditiously wind down the affairs of the redevelopment agency].)

Had the Legislature wanted to limit the definition of enforceable obligations to judgments entered against redevelopment agencies before the effective date of the Dissolution Law, it easily could have done so. It did not. Thus, the court agrees with Petitioners that the Stipulated Judgment meets the definition of an “enforceable obligation” under section 34171(d)(1)(D).

The Stipulated Judgment is not rendered unenforceable by section 34177.3. That section prohibits successor agencies from “creat[ing] new enforceable obligations under

the authority of the Community Redevelopment Law . . . , except in compliance with an enforceable obligation that existed prior to June 28, 2011." (Health & Saf. Code § 34177.3) That language does not apply because the Stipulated Judgment did not create "new" enforceable obligations; it compromised claims relating to pre-existing statutory obligations that were unfulfilled by the development project prior to June 28, 2011.

Further, even if the Stipulated Judgment created "new" enforceable obligations, they were created under the Dissolution Law, not under the Community Redevelopment Law. (See Health & Saf. Code §§ 34173(g); see also § 34177.3(b) [successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency].)

The Stipulated Judgment also is not rendered unenforceable under sections 34178 and 34180. Section 34178(a) generally invalidates agreements between a redevelopment agency and the city or county that created the redevelopment agency (sometimes called a "sponsoring city/county"), but it provides that a successor agency wishing to "enter or reenter" into such an agreement "may do so upon obtaining the approval of its oversight board." DOF argues that because both the City and the Successor Agency (representing the former Redevelopment Agency) are parties to the Stipulated Judgment, the Stipulated Judgment was required to be approved in advance by the Oversight Board. (Health & Saf. Code §§ 34178(a), 34180(h), (i); see also § 34171(d)(2).)

However, to avoid serious constitutional questions about the enforceability of sections 34171(d)(2) and 34178(a) if those statutes are construed to allow impairment of contracts involving third parties, this court necessarily must interpret those sections as applying only to contracts entered into *solely* between a sponsoring city/county and its redevelopment agency. (See *International Assn. of Plumbing etc. Officials v. California Building Stds. Com* (1997) 55 Cal.App.4th 245, 256.) The agreement at issue here is different.¹ The Stipulated Judgment is not an agreement solely between a sponsoring

¹ The court also questions whether the Stipulated Judgment constitutes a "contract" between the Redevelopment Agency and the City for purposes of those sections. (See *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 663-664 [recognizing that stipulated judgments have a dual character that has resulted in different treatment for different purposes].) Under the Dissolution Law, litigation involving the former Redevelopment Agency transferred to the Successor Agency. The primary claims in the Orange County litigation were against the Redevelopment Agency and the Housing Authority. The claims against the City were related to the sufficiency of the Housing Element in its General Plan. The Stipulated Judgment requires the Successor Agency to satisfy obligations that the plaintiffs claimed were not performed by the Redevelopment Agency when the law required.

city and its redevelopment agency; the Orange County plaintiffs also are parties to the Stipulated Judgment. Thus, the provisions in sections 34178 and 34180 do not apply.²

This construction is supported somewhat by the language in section 34171(d)(1)(D) stating that oversight boards shall have authority and standing to appeal any judgment or “set aside any settlement or arbitration decision.” Giving oversight boards authority to “set aside” settlements suggests recognition that settlements would be reached without prior board approval.

DOF’s final argument is that the Stipulated Judgment should not be honored because it is a “windfall” to the City, compromising claims against the City using “other people’s money.” There are two problems with this argument. First, DOF has failed to prove that the Successor Agency agreed to use “Redevelopment Property Tax Trust Funds” (RPTTF) to pay obligations for which City funds should have been used. (See footnote 1.)

Second, the Dissolution Law does not give DOF discretion to reject a valid stipulated judgment merely because it believes the settlement could have been “better” for affected taxing entities. (See *City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 303-304 [general legislative purpose cannot be ascribed at odds with the intentions articulated in the specific statutes]; *County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42, 48 [rejecting “legislative spirit” argument].) DOF cannot reject an enforceable obligation simply because it requires the expenditure of property tax funds that DOF would rather see directed to affected taxing entities.

Disposition

For the reasons described above, the court grants the petition. Judgment shall issue commanding Respondents to recognize and treat the Stipulated Judgment as an enforceable obligation for purposes of ROPS 14-15B and future ROPS, and to approve for payment (on current or future ROPS) funds for the relocation assistance, replacement housing, and attorney fee obligations that are due and owing under the Stipulated Judgment.

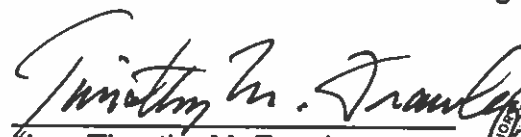
The court’s judgment shall further command that the \$141,540.00 in RPTTF funds previously sequestered by this court be promptly disbursed by Respondent Orange-County Auditor-Controller to the Successor Agency for the purpose of relocation

² Moreover, if Oversight Board approval was required, it was given. The Oversight Board passed a resolution supporting the Stipulated Judgment after having approved it on the ROPS. While DOF ultimately disapproved the Oversight Board’s action, it is unclear whether DOF did so within the time limits imposed by section 34179(h).

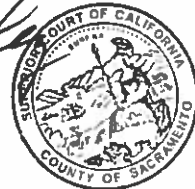
assistance, as identified in Item 40 of the Successor Agency's ROPS 14-15B. Upon payment, the \$141,540.00 in relocation assistance funds shall no longer be considered due and owing, and the preliminary injunction previously ordered by this court shall be discharged.

Counsel for Petitioners is directed to prepare a formal judgment (incorporating this ruling as an exhibit) and writ (consistent with the judgment); submit them to opposing counsel for approval as to form; and thereafter submit them to the court for signature and entry of judgment.

Dated: June 10, 2015



Hon. Timothy M. Frawley
California Superior Court Judge
County of Sacramento



CERTIFICATE OF SERVICE BY E-MAILING

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **RULING ON SUBMITTED MATTER** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed to:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2015

Signed: _____
Frank Temmerman, Deputy Clerk,
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BY: F. Temmerman
Deputy Clerk