SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CITY OF EMERYVILLE, a municipal corporation; SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY, a public entity,

Petitioners and Plaintiffs,

v.

ANA J. MATOSANTOS, in her official capacity as Director of the State of California Department of Finance,

Respondents and Defendants.

Case No. 34-2012-80001264-CU-WM-GDS

RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

The present case arises out of the efforts to wind down the affairs of former redevelopment agencies after their dissolution under AB 1X 26 and AB 1484 (referred to generally in this ruling as "the redevelopment dissolution laws"). Plaintiffs/petitioners The City of Emeryville and the Successor Agency to the Emeryville Redevelopment Agency have filed a petition for writ of mandate under Code of Civil Procedure section 1085, along with a complaint for declaratory and injunctive relief. The petition and complaint challenges the action of respondent Matosantos, acting as the Director of the Department of Finance ("DOF"), rejecting several agreements that the Successor Agency requested to be placed on its

Recognized Obligation Payment Schedules ("ROPS").

The critical issue before the Court is whether the Emeryville Successor Agency, with the approval of its Oversight Board, had legal authority under the redevelopment dissolution laws to re-enter into contracts that previously had been entered into between the (now dissolved) Emeryville Redevelopment Agency and the City of Emeryville, after those original contracts were invalidated by the redevelopment dissolution laws. If the Successor Agency had such authority, then DOF's action disapproving the contracts at issue in this case was not valid, and plaintiffs/petitioners are entitled to relief.

The Court heard oral argument on the petition and complaint on March 8, 2013, without previously posting a tentative ruling. At the close of the hearing, the Court took the matter under submission for issuance of a written ruling. The following shall constitute the Court's ruling on the petition and complaint.[1]

Factual and Procedural Background

The relevant facts are essentially undisputed, and may be summarized as follows.

On February 15, 2011, prior to the passage of the redevelopment dissolution laws, the City of Emeryville and the Emeryville Redevelopment Agency entered into a contract entitled the "Amended and Restated Public Improvements Reimbursement Agreement", under which the Redevelopment Agency pledged funds to the City for the redevelopment of 27 projects within the city limits. The parties entered into the contract with knowledge that the Legislature was deliberating changes to the Community Redevelopment Law that might limit the ability of redevelopment agencies to devote tax increment revenues to redevelopment projects.

On June 26, 2011, the Legislature enacted AB 1X 26, which provided for the dissolution of all redevelopment agencies in California and established a complex procedure for winding down their affairs. Although the legislation was challenged on a number of constitutional grounds, the California Supreme Court ultimately upheld it on December 29, 2011 in *California Redevelopment Association v. Matosantos* (2011) 53 Cal. 4th 231. As part of its decision, the Supreme Court reformed certain deadlines contained in

[1] Petitioner filed requests for judicial notice on January 22, 2013 and February 21, 2013. The requests, which were not objected to, are granted.

AB 1X 26, with the effect that redevelopment agencies such as the Emeryville Redevelopment Agency were dissolved as of February 1, 2012, and their affairs taken over by successor agencies as of that date.

One provision of AB 1X 26, codified as Health and Safety Code section 34178(a), provided, in its first clause, that "[c]ommencing on the operative date of this part, agreements, contracts, or arrangements between the city, county or city and county that created the redevelopment agency and the former redevelopment agency are invalid and shall not be binding on the successor agency." Health and Safety Code section 34171(d)(2) also provided that such agreements were not considered to be "enforceable obligations" of successor agencies. The City and the Successor Agency recognized that these provisions rendered the Amended and Restated Public Improvements Reimbursement Agreement invalid.

The second clause of Section 34178(a), however, provided that "a successor agency wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining approval of its oversight board."

Pursuant to that provision, on June 19, 2012 the Successor Agency and the City resolved to re-execute the Amended and Restated Public Improvements Reimbursement Agreement as to five obligations in the form of five "Re-Executed Reimbursement Agreements", contingent on approval from the Oversight Board of the Successor Agency. The Re-Executed Reimbursement Agreements were intended to restore funding for four of the projects covered by the original reimbursement agreement, including the following: (1) Emeryville Center of Community Life; (2) South Bayfront Pedestrian/Bicycle Bridge and Horton Landing Park Funding and Transfer Agreement (the Horton Landing Project); (3) Transit Center Public Parking Funding and Sublease Assignment Agreement (the Transit Center Project); and (4) Art and Cultural Center Funding and Property Transfer Agreement. The Re-Executed Reimbursement Agreements also were intended to restore funding for repayment of the Capital Incentives for Emeryville's Redevelopment and Remediation loans for the environmental cleanup of certain polluted "brownfield" sites within the city (the CIERRA loans).

One week later, on June 26, 2012, the Oversight Board approved three of the five Re-Executed Reimbursement Agreements, specifically, those related to the Horton Landing Project, the Transit Center

Project and the CIERRA loans. The three agreements involve projects that had been started under the authority of the former Redevelopment Agency, two of which were on-going but not completed. As alleged in the petition and complaint, the Horton Landing Project and the Transit Center Project had their roots in the 1990s, and involved components of larger redevelopment projects that had been planned but not yet built. The CIERRA loans repayment agreement was related to the environmental remediation of two "brownfield" sites in the City. The City had loaned the former Redevelopment Agency the funds for the work from a revolving loan fund the City administered based on grants from the U.S. Environmental Protection Agency. The remediation work had been completed, but the Redevelopment Agency had not yet repaid the loans.

After approving these three agreements, the Oversight Board directed that the obligations in the agreements should be added to the Successor Agency's Recognized Obligation Payment Schedule ("ROPS") for the period July-December 2012. The ROPS previously prepared was amended to include these items and the Amended July-December ROPS was submitted to DOF for review and approval on June 28, 2012.

On June 27, 2012, one day after the Oversight Board acted, the Governor signed AB 1484, which was urgency legislation amending AB 1X 26. One of the provisions of AB 1484 was codified as Health and Safety Code section 34177.3, entitled "Limitations of authority of successor agencies". The statute became effective on the day the Governor signed it.

Subdivision (a) of the statute states: "Successor agencies shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011."

Subdivision (e) of the statute states: "The Legislature finds and declares that the provisions of this section are declaratory of existing law."

On July 3, 2012, DOF notified the Successor Agency that it was initiating a review of the three Re-Executed Reimbursement Agreements listed on the amended ROPS. Nine days later, on July 12, 2012,

DOF notified the Successor Agency that it already had completed its review of 2012 ROPS and that it was not accepting revised ROPS or requests to reconsider denied items, or making any revisions to existing requests. All revised ROPS submitted for previous ROPS periods therefore were rejected, including the petitioners' amended July-December 2012 ROPS.

The legal effect of DOF's July 12, 2012 letter as to petitioners was to disapprove the three Re-Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans. Petitioners filed the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief on September 11, 2012.

Summary of the Contentions of the Parties

The legal contentions of the parties are relatively straightforward, at least in summary.

Petitioner contends, and respondent denies, that the three Re-Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans are valid and enforceable agreements because the Successor Agency entered into them with the approval of the Oversight Board under Health and Safety Code 34178(a). Thus, petitioner contends, the agreements were "enforceable agreements" under Health and Safety Code section 34171(d)(1)(E), which applies to "[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy", and DOF should have treated them as such for purposes of the redevelopment dissolution laws.

Respondent contends, and petitioner denies, that the three agreements are invalid under Health and Safety Code section 34177.3(a). Thus, respondent contends, the agreements were not "enforceable agreements" for purposes of the redevelopment dissolution laws.

Standard of Review

As presented by the parties, this case focuses on the application of statutes to undisputed facts. The interpretation of statutes in such a case is an issue of law on which the court exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal. App. 4th 1070, 1082.)

In exercising its independent judgment, the Court is guided by certain established principles of

statutory construction, which may be summarized as follows. The primary task of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbara* (1995) 9 Cal. 4th 863, 871.) The starting point for the task of interpretation is the words of the statute itself, because they generally provide the most reliable indicator of legislative intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal. 4th 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal. 4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplusage or a nullity. (See, *Reno v. Baird* (1998) 18 Cal. 4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 390.)

Beyond that, the court must consider particular statutory language in the context of the entire statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious purpose of the statute where the language appears, and harmonizing the various parts of the statutory enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley* (2008) 160 Cal. App. 4th 779, 793.)

The Court notes that no reported appellate decision has construed the statutory language at issue in this case, which appears to present an issue of first impression.

Discussion

Application of Health and Safety Code Section 34178(a):

The issue of whether the three Re-Executed Reimbursement Agreements are valid and enforceable agreements depends in the first instance on whether the Successor Agency had authority to enter into them with the approval of the Oversight Board under Health and Safety Code section 34178(a). The Court concludes that petitioners have the better argument on this issue.

Analysis begins with the language of the statute itself. Health and Safety Code section 34178 indisputably invalidated the original reimbursement agreements between the City and the former Redevelopment Agency, and petitioners do not contend otherwise. But the statute also unambiguously

provided that the Successor Agency could "enter or reenter" into agreements with the City upon approval of the Oversight Board. In this case, the Successor Agency entered, or reentered, into three agreements with the City that previously had been entered into between the former Redevelopment Agency and the City. The Oversight Board approved the agreements. The action taken falls squarely within the plain meaning of the terms of the statute.

In essence, respondent argues that agreements between a former redevelopment agency and the city that created it are invalid and under no circumstances may be revived through an agreement between the successor agency and the city. This argument ignores the use of the term "reenter" in Health and Safety Code section 34178(a). The concept of "reentering" into an agreement presupposes the existence of a prior agreement, in this case an agreement between the former Redevelopment Agency and the City. Indeed, by first declaring that agreements between the former redevelopment agency and its city sponsor are invalid, and then providing that the successor agency may "reenter" into an agreement with the city with oversight board approval, the statute plainly permits the revival of an invalidated agreement if the oversight board approves. Respondent's interpretation of the statute essentially would read the word "reenter" out of it altogether, in violation of the principle that the court should give meaning to every word of a statute.

More generally, respondent contends that the statute should not be read as permitting a successor agency to enter into the types of agreements at issue in this case, at least two of which involve the continuation of on-going redevelopment projects, because the intent of the redevelopment dissolution statutes, seen as a whole, was immediately to wind down all redevelopment activities and marshal redevelopment assets and revenues for the benefit of taxing entities.

Respondent cites various provisions of the redevelopment dissolution laws that it contends demonstrate this purpose, with particular reliance on Health and Safety Code section 34167(a), which provides that restrictions on the powers of former redevelopment agencies are "...intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund

core governmental services including police and fire protection services and schools...", and which further states that the provisions of the law "...shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible".

Based on these principles, respondent argues that Health and Safety Code section 34178(a) may not be interpreted as permitting a successor agency to enter or reenter into an agreement that involves the completion of on-going redevelopment work, because such an agreement is inconsistent with the purpose of a rapid wind-down of redevelopment activities and the immediate application of redevelopment assets and revenues for the benefit of taxing entities.

Respondent's arguments are not persuasive. As petitioner demonstrates, the redevelopment dissolution laws enacted in AB 1X 26 do not preclude, and in fact show an intent to permit, a wind-down of redevelopment activities that includes the completion of on-going projects so as to maximize the ultimate benefit to taxing entities over the longer term. For example, various provisions of the redevelopment dissolution laws provide that oversight boards, which consist of representatives of taxing entities, have a fiduciary responsibility to taxing entities, and must direct successor agencies to dispose of assets of former redevelopment agencies in a manner aimed at maximizing value. (See, Health and Safety Code sections 34179(j), 34181.) Similarly, successor agencies are directed to enforce all former redevelopment agency rights for the benefit of the taxing entities. (See, Health and Safety Code section 34177(e).) Depending upon the circumstances, completing on-going projects may be entirely compatible with the goal of disposing of the assets of former redevelopment agencies in a manner aimed a maximizing their value for taxing entities or with enforcing former redevelopment agency rights for their benefit. The same could be said for authorizing the repayment of money into a revolving loan fund used to support the remediation of polluted sites on or near redevelopment project sites.

Indeed, Health and Safety Code section 34173(g) strongly indicates that the Legislature recognized that the completion of certain projects was compatible with the goal of maximizing value for taxing entities. The statute provides that a successor agency succeeds to the organizational status of the former redevelopment agency, but without any legal authority to participate in redevelopment activities,

"...except to complete any work related to an approved enforceable obligation". This statute indicates that the completion of on-going redevelopment projects is not necessarily precluded, and is a clear recognition of the common-sense concept that leaving partially-built or even planned projects uncompleted may not provide the maximum possible benefit to taxing entities.[2]

In this case, the record shows that the Oversight Board thoroughly debated the proposed agreements, which originally were five in number, and in the end approved only the three at issue in this case. The record thus suggests that the Oversight Board carefully exercised its fiduciary responsibility to taxing entities and approved the three agreements at issue here because it determined that allowing the completion of those projects maximized ultimate value and thus was in the long-term best interests of those taxing entities.[3]

The Court therefore concludes that Health and Safety Code section 34178(a) explicitly permitted the Successor Agency in this case to enter, or reenter, into the three contracts with the City that are at issue in this case with approval of the Oversight Board, and that interpreting the statute in this manner is in harmony with the purposes of the redevelopment dissolution laws.

Application of Health and Safety Code Section 34177.3:

Even if Health and Safety Code section 34178(a) authorized the Successor Agency to enter, or reenter, into the three agreements at issue in this case with the approval of the Oversight Board, respondent nonetheless contends that the agreements were invalidated retroactively by the passage of Health and Safety Code section 34177.3 one day after the Oversight Board approved the agreements.

---

[2] The Court also notes petitioners' argument, made in the reply brief, that the statutes and declarations of legislative intent regarding immediate wind-down of redevelopment agencies and the marshalling of assets for taxing entities appear in a separate part of the redevelopment dissolution laws than the statutes and declarations of legislative intent regarding the authority of successor agencies and the fiduciary responsibility of oversight boards to taxing entities. This division into two parts supports petitioners' contention that the redevelopment dissolution laws, at least as originally enacted, were intended to further more than one purpose.

[3] See, Administrative Record ("A.R."), Vol. 28, Tab 172, pages EMER 0732-07134 (transcript of Oversight Board hearing on June 26, 2012. An example drawn from one of the staff reports provided to the Oversight Board explaining the benefits of completing the Transit Center project is illustrative. The report stated that if the project were to be completed, "...the taxing entities will receive a sum of property tax revenues significantly in excess of their share of the sum they would otherwise receive on an annual basis from the Mound Parcel if it remained as a surface parking lot over an engineered hazardous waste dump, in addition to their one-time share of the amount of money pledged pursuant to this Agreement if it were distributed to the taxing entities in accordance with the Dissolution Act." (See, A.R., Vol. 26, Tab 170, page EMER 06621.)

Petitioners do not appear to dispute the proposition that Health and Safety Code section 34177.3 would apply to, and invalidate, the agreements at issue in this case if those agreements had been entered into and approved after the enactment of the section on June 27, 2012, because the agreements were not in compliance with an enforceable obligation that existed prior to June 28, 2011. The only issue presented by this case is whether Health and Safety Code section 34177.3 operates retroactively to invalidate agreements that were entered into and approved prior to the effective date of the statute.

A fundamental principle of statutory interpretation is that statutes generally operate prospectively only, and will not be given a retrospective operation that interferes with antecedent rights unless such is the unequivocal and inflexible import of the terms of the statute and the manifest intention of the Legislature. (See, *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 840.) Thus, a statute that interferes with antecedent rights may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application. (See, *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1140.) There is a strong presumption against retroactivity. (See, *McClung v. Employment Development Department* (2004) 34 Cal. 4th 467, 475.)

In this case, Health and Safety Code section 34177.3 unquestionably interferes with an antecedent right, specifically, the right the Successor Agency in this case exercised to enter, or reenter, into agreements with the City subject to approval by the Oversight Board. To demonstrate that this retroactive application is legitimate, respondent relies heavily on subdivision (e) of the statute, which states: "The Legislature finds and declares that the provisions of this section are declaratory of existing law."

By itself, this statement is not sufficient to overcome the strong presumption against retroactivity, because it does not show a "clear and unavoidable intent to have the statute operate retroactively", and because it does not demonstrate that the Legislature "affirmatively considered the potential unfairness of retroactive application and determined that it was an acceptable price to pay for the countervailing benefits". (See, *McClung v. Employment Development Department, supra,* 34 Cal. 4th at 476.)

Indeed, subdivision (e) is not really a statement of retroactivity, but rather an attempt by the

Legislature to interpret pre-existing provisions of the redevelopment dissolution laws as already including the limitations set forth in the new statute.

As such, this statement is not entitled to deference, because the Legislature has no authority to interpret a statute. It may define the meaning of statutory language by present legislative enactment, which it may deem retroactive, but it has no legislative authority to say what it did mean. Accordingly, the court cannot accept a legislative statement that an unmistakable change in the law is nothing more than a clarification or restatement of its terms. (See, *McClung v. Employment Development Department, supra,* 34 Cal. 4th at 473.) As the California Supreme Court has stated, quoting from first principles of judicial review: "It is, emphatically, the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. (*Marbury v. Madison* (1803) 5 U.S. 137, 177 L. Ed. 2nd 60.)" (See, *McClung v. Employment Development Department, supra,* 34 Cal. 4th at 469-470.)

To the extent that the Legislature purported to declare, as respondent contends here, that the redevelopment dissolution laws as they existed prior to the enactment of AB 1484 prohibited successor agencies from entering into contracts with cities that had the effect of reviving contracts between former redevelopment agencies and their sponsor cities that had been invalidated by the redevelopment dissolution laws, that declaration was simply incorrect. As the Court concluded in its analysis of Health and Safety Code section 34178(a), above, the redevelopment dissolution laws as enacted in AB 1X 26 explicitly authorized such action. The Legislature may well have changed its collective mind about the wisdom of permitting such action, and certainly had the authority to forbid it on a prospective basis. Indeed, the Legislature had the authority to invalidate actions already taken on a retroactive basis by making a proper declaration of its intent to do so. However, the Legislature could not do what it did – interpret the law by asserting that it was only restating the law as originally enacted.

The Court accordingly concludes that Health and Safety Code section 34177.3 does not have retroactive effect, and therefore does not invalidate the agreements at issue in this case.

Issues Regarding Other Agreements:

The briefing in this case also addresses three other agreements involving the former Redevelopment Agency: (1) the so-called "Second Amendment to First Implementation Agreement" between the former Redevelopment Agency and the Chiron Corporation, which involves the construction of a park in the Horton Landing Project; (2) the so-called "Doyle-Hollis Loan Agreement", which is an agreement between the former Redevelopment Agency and the City representing one of the CIERRA loans; and (3) the so-called "Parcel D Loan Agreement", which is another agreement between the former Redevelopment Agency and the City representing the other CIERRA loan. Petitioners listed these agreements on the January-June 2012 ROPS, and DOF rejected them.

The Court finds it unnecessary to address the issue of whether DOF erred in rejecting these three agreements, because the subject matter of those agreements was subsumed into the three Re-Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans, which the Court has found to be valid.[4] The issue of whether the prior agreements were valid is now essentially moot.

Conclusion

The Court finds that the Re-Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans were valid agreements under Health and Safety Code section 34178(a), and were not retroactively invalidated by Health and Safety Code section 34177.3. On the basis of this finding, the Court further concludes that these three agreements were "enforceable obligations" within the meaning of Health and Safety Code section 34171(d)(1)(E), and that respondent DOF erred when it failed to approve them as such.[5] Petitioners are entitled to issuance of a writ of

---

[4] As the Successor Agency's special counsel, Leah Castella, explained at the Oversight Board's hearing on June 26, 2012, the reason for proposing the three new funding agreements was to allow the disapproved contracts to become enforceable obligations under a different legal theory involving Health and Safety Code 34178. (See, A.R., Vol. 28, Tab 172, pages EMER 0755-0756.)

[5] DOF does not contend that the three agreements at issue in this case, if valid under Health and Safety Code section 34178(a), would not be "enforceable agreements" within the meaning of Health and Safety Code section 34171(d)(1)(E). It did raise the argument that the superseded Second Amendment to First Implementation Agreement, Doyle-Hollis Loan Agreement, and Parcel D Loan Agreement, were not enforceable as a matter of law. For the reasons stated above, the Court finds that argument to be moot.

mandate, and to a judicial declaration, requiring DOF to recognize these agreements as valid enforceable obligations for purposes of the redevelopment dissolution laws.

In reaching this conclusion, the Court has considered DOF's contentions that this matter is not ripe for adjudication, that petitioners fail to state claim against DOF for writ relief, that petitioners' non-writ causes of action are not cognizable, and that petitioners failed to join indispensable parties (affected taxing entities), and finds those contentions to be without merit.

The petition for writ of mandate is granted, and a declaratory judgment shall be entered in favor of petitioners. In accordance with Local Rule 2.15, counsel for petitioners is directed to prepare the judgment and writ of mandate; submit them to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).

DATED: May 9, 2013

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

J. LEAH CASTELLA, ESQ.
MATTHEW D. VISICK, ESQ.
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612-3501

PETER J. SOUTHWORTH
Supervising Deputy Attorney General
RYAN MARCROFT
Deputy Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Superior Court of California,
County of Sacramento

Dated: May 9, 2013

By: S. LEE
Deputy Clerk