

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME:	10:00 a.m. July 26, 2013	DEPT. NO.:	14
JUDGE:	HON. EUGENE L. BALONON	CLERK:	P. MERCADO
<p>CITY OF GALT; CITY OF GALT AS THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF GALT; and JASON BEHRMANN</p> <p style="text-align: center;">Petitioners and Plaintiffs,</p> <p>v.</p> <p>ANA J. MATOSANTOS, Director of the Department of Finance; and DOES 1-30,</p> <p style="text-align: center;">Respondents and Defendants,</p> <hr/> <p>CALLANDER ASSOCIATES LANDSCAPE ARCHITECTURE, INC, a California Corporation</p> <p style="text-align: center;">Real Party in Interest.</p>		<p>Case No.: 34-2013-80001380</p>	
Nature of Proceedings:		PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF	

TENTATIVE RULING

The following shall constitute the Court’s tentative ruling on the above matter, set for hearing in Department 14, on Friday, July 26, 2013, at 10:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

If a hearing is requested, oral argument shall not exceed 20 minutes per side.

Petitioners/Plaintiffs (Petitioners), which include City of Galt (City) and the Successor Agency to the former Redevelopment Agency of the City of Galt (Successor Agency),

have filed a petition for writ of mandate and related complaint for declaratory and injunctive relief (Petition).

The Petition challenges a decision of Respondent Matosantos, director of the Department of Finance (DOF), in response to the Successor Agency's submission of its Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2013 to June 30, 2013 (ROPS III). Petitioners contend that DOF improperly found that an agreement and "project delivery costs" were not enforceable obligations.

BACKGROUND

The former redevelopment agency for the City of Galt (RDA) and the City entered into a Cooperative Agreement, effective January 21, 2011. The Cooperative Agreement was an agreement to implement various projects within the "Galt Redevelopment Project Area." The City agreed to make improvements for redeveloping the Project Area, and the RDA would pay or reimburse the City for such actions (AR, 1:18:000151-159.)

The Cooperative Agreement sets forth in an exhibit nine public improvement projects that the City agreed to undertake. The same exhibit also lists specified amounts that the RDA agreed to reimburse the City for each project. These projects include the Central Galt Corridor Improvement Project, the UPRR Parking Lot and Landscaping Project, Simmerhorn Commercial Property Acquisition Project, Simmerhorn Infrastructure Improvements Project, Industrial Way/ Live Oak Road Improvement Project, SR 99 Water Crossing Improvement Project, Old Town Property Acquisitions Project, Theatre Property Acquisition and Infrastructure Improvement Project, and Brewster Building Rehabilitation Project. The total cost for such projects was \$22,015,000.¹ (AR, 1:18:000151-159.)

On January 6, 2011, the City and Real Party in Interest Callendar Associates Landscape Architecture, Inc. (Callendar) entered into an agreement. Callendar agreed to provide design and engineering services associated with the Galt Corridor Rehabilitation and UPRR Parking Lot Improvement Project, as set forth in Exhibit A to the agreement, and although the agreement does not clearly state, the City agreed to pay Callendar for those services. (*See*, AR 1:12:00066-74.) This agreement was amended several times to include work for additional design services. (AR 1:12:000100-127.)

On February 1, 2011, the RDA authorized issuance of tax allocation bonds (TA bonds), in an amount not to exceed \$17 million. (AR, 1:23:000181-183.) On or about March 1, 2011, TA bonds in the amounts of \$7,720,000 and \$6,005,000 issued, pursuant to an Indenture of Trust (Indenture). (AR, 1:25-26:000186-266.)

On March 14, 2011, the RDA and City filed a validation action in Sacramento Superior Court Case No. 34-2011-00099296 to determine the validity of the Cooperative Agreement. (AR, 2:30:000448-471.) This Court entered a validation judgment affirming the validity of the Cooperative Agreement on October 26, 2011. (2:32:000477-492.)

¹ The cost of one project, not at issue here, was \$10.1 million.

On June 28, 2011, the Legislature enacted the first component of the Dissolution Law, AB X1 26, which provided for the dissolution of redevelopment agencies. In June 2012, the Legislature passed AB 1484, the second component of the Dissolution Law.

On February 1, 2012, the RDA dissolved.

The City assumed status as the RDA's Successor Agency, assumed the RDA's assets and obligations, and was charged with winding down the RDA's affairs. As required by law, the Successor Agency began to submit to DOF for approval ROPS for upcoming six-month periods. These ROPS submissions listed putative enforceable obligations of the former RDA, for which the Successor Agency must now make payment. (Health & Saf. Code, §§ 34171; 34177; 34179(h), 34180.)

The Successor Agency could not issue new debt, or make payments on existing debt, except for items deemed to be enforceable obligations. (Health & Saf. Code, §§ 34164, 34167, 34171(d), 34177.) Thus, the effect of DOF's review and approval of ROPS items is that the Successor Agency may not make payments on items that DOF does not find to be enforceable obligations.

On June 28, 2012, the Successor Agency Oversight Board issued resolutions approving use of a portion of the TA bonds not to exceed \$4,176,900 for the C Street/Central Galt Complete Streets Project, Fourth Street Parking Lot and Open Space Project, and use of \$432,500 in bonds for purchasing parcels of property. (AR 3:61:000695-697.)² 3:62:000698-700.)

On August 30, 2012, the Successor Agency submitted ROPS III to DOF for review and approval. The ROPS III submission listed the TA bonds and Cooperative Agreement as debts or enforceable obligations of the Successor Agency. (AR, 3:70:000787, ROPS III.) The ROPS III Submission listed as putative enforceable obligations: (1) \$118,518 owed to Callendar for engineering services pursuant to a February 15, 2011 agreement³ (Item Nos. 14, 17) and (2) "continuation of rehabilitation projects pursuant to bond covenants" of \$7,374,530 payable to "various" (Item No. 23). (*Id.*)

On December 18, 2012, DOF denied items No. 14, 17 and 23 as enforceable obligations. DOF found that the Callendar Agreement was not an enforceable obligation, because the RDA was not a party and because the Validation Judgment did not specify whether such agreement was an enforceable obligation for purposes of the Dissolution Law. DOF found that the "project delivery costs" were not enforceable obligations because there were no contracts in place for the various projects.

² The Resolution indicates that these projects are the same as the Central Galt Corridor and UPPR Parking Lot and Landscaping Projects in the Cooperative Agreement.

³ The Court has reviewed the portion of the administrative record at which the Callendar Agreement is located. Although the Callendar Agreement was amended several times, the Court is unable to find any agreement or amendment bearing this date. (AR, 1:12:000066-127.)

The Petition was filed on January 30, 2013.

DISCUSSION

Evidentiary Objections and Requests for Judicial Notice

The Court **GRANTS** Petitioners' request for judicial notice in support of its memorandum of points and authorities, Petitioner's supplemental request for judicial notice, and Respondent's request for judicial notice in support of its opposition.

The Court **OVERRULES** Respondents' evidentiary objections.

Standard of Review

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review DOF's determinations. The applicable standard of review is whether DOF abused its discretion. (*See Ridgecrest Charter Sch. v. Sierra Sands Unif. Sch. Distr.* (2005) 130 Cal.App.4th 986, 1003.)

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 independent judgment. (*California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4th 1454, 1460.) The weight to be given an agency's interpretation of law depends upon the thoroughness of its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 14.) However, final responsibility for interpreting the law rests with the Court. (*Id.* at p.7.)

Issuance of the Bonds Did not Create an Enforceable Obligation to Use the Proceeds for Cooperative Agreement Projects

Petitioners argue that DOF's denial of the items was improper because issuance of \$7,720,000 and \$6,005,000 in bonds created an enforceable obligation under Health and Safety Code Section 34171(d),⁴ and that the Successor Agency must now use the bond proceeds for the various projects in the Cooperative Agreement.

Section 34171(d)(1)(A) states that enforceable obligations include:

Bonds, as defined by Section 33602 and bonds issued pursuant to Chapter 10.5 ... including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency....

⁴ Unless otherwise specified, all references shall be to the Health and Safety Code.

Petitioners argue that use of the bonds for the Cooperative Agreement projects is a “payment required under the indenture” and thus, the bonds are an enforceable obligation. The Court disagrees.

The Indenture states that the bonds are issued to “finance additional redevelopment activities within or of benefit to the “Redevelopment Project.” The Indenture defines the Redevelopment Project as the project within the “Redevelopment Plan for the Galt Redevelopment Project Area,” which was approved by various ordinances from 1983-1994, and amendments thereto. (AR, 1:25:000189, 198-199.)

Petitioners cite to a document entitled “Official Statement” that pertains to the two TA bond amounts as evidence that the bonds are required to be used for the Cooperative Agreement Projects. The “Official Statement’s” purpose is informative, and it states that it is “not to be construed as a contract with the purchasers of the Bonds.” (AR, 2:27:000269, 000273.) The Official Statement states that the RDA expects to use the bonds to “finance, in part a rehabilitation project for the Central Galt Corridor and development of a portion of Union Pacific Railroad Property.” (AR, 2:27:000276.) The Official Statement also describes the Central Galt Corridor project and notes that the City awarded a contract to Callendar Associates. (*Id.*)

Petitioners have not shown that the language in the “Official Statement” is binding or decrees that the bonds be used for such purposes. Further, the terms of the Indenture do not compel that the bonds must be used for the specific projects cited by Petitioners. Accordingly, the bonds did not create enforceable obligations requiring the proceeds to be used for the projects. DOF did not abuse its discretion in denying the items as enforceable obligations on this basis.

Petitioners also argue that DOF improperly denied these items as enforceable obligations, pursuant to Section 34191.4(c), on the basis that the bonds issued before December 31, 2010.

Section 34191.4(c) was enacted in June 2012, as part of AB 1484, the second component of the Dissolution Law. This statute applies to all successor agencies that have received a Finding of Completion⁵ from DOF.

DOF interprets Section 34191.4(c) to state that, because the bonds issued after December 31, 2010, the bond proceeds may not be used for project delivery costs. Petitioners argue that Section 34191.4 is inapplicable and Section 34177, which states that bond proceeds shall be used for the purposes for which the bonds were sold, controls. Because the Court has already found that the Indenture did not require the bond proceeds to be used for the specific projects cited by Petitioners, it does not address this argument.

⁵ The Successor Agency has not received a Finding of Completion.

Petitioners' Argument Regarding Impairment of Contracts is Premature

Petitioners argue that DOF's denial of the items as enforceable obligation creates an impairment of contract, because it prohibits the Successor Agency from using bond funds to pay for the projects, and apparently, the City cannot enter into contracts for the projects set forth in the Cooperative Agreement. The Court of Appeal has rejected similar arguments regarding impairment of contracts as premature and unsupported by evidence that an entity cannot enter contracts. (*See, California Redevelopment Association v. Matosantos* (2013) 212 Cal.App.4th 1457, 1493-1494.) Accordingly, the Court rejects Petitioners' argument.

DOF Did Not Abuse its Discretion in Rejecting the "Project Delivery Cost" Item as an Enforceable Obligation

DOF found that ROPS III item 23, marked as "project delivery costs," was not an enforceable obligation, because the Successor Agency did not submit any contracts in place for the various projects, for which "project delivery costs" were claimed.

Petitioners argue that the project delivery costs are enforceable obligations, because they flow from the 2011 Cooperative Agreement, which was validated by the Court's Validation Judgment.

The Dissolution law defines "enforceable obligations" to include bonds, judgments, loans, and any legally binding and enforceable contract that is not otherwise void as violating the debt limit or public policy. (Section 34171(d).) Generally, enforceable obligations do not include agreements between the former redevelopment agency and the city or county that created it. (Section 34171(d)(2).) Petitioners argue that the Validation Judgment validated the Cooperative Agreement, which created an enforceable obligation of the RDA.

The Validation Judgment was issued in October 2011, after AB X1 26 passed. It states that the Cooperative Agreement between the City and RDA "providing for 'activities, services, and improvements the City will undertake or make available to the [RDA] in furtherance of redevelopment of the Project Area, and to provide that the [RDA] will pay for or reimburse the City for actions undertaken and costs and expenses incurred for and on behalf of the [RDA] or otherwise in furtherance of the redevelopment of the Project Area' ...and each and every provision of the Cooperative Agreement are valid. The Validation Judgment further provides that the Cooperative Agreement is valid and binding upon the respective parties. (AR, 2: 32:000479.)

The Validation Judgment validated the Cooperative Agreement. However, the Validation Judgment does not mean that any and all actions that ostensibly further the Cooperative Agreement are validated or are enforceable obligations.

First, neither the Validation Judgment nor Cooperative Agreement expressly state that the City will carry out the "activities, services, and improvements" it undertakes in

furtherance of the Cooperative Agreement by contracting for services. Petitioners argue that it is implied that the City will contract for such services. However, in this case, Petitioners have only furnished one contract, the Callendar Agreement, purportedly issued pursuant to the Cooperative Agreement, which the Court will address in a later section.

Petitioners cite to *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, to argue that the Cooperative Agreement is, by itself, evidence of indebtedness, and Petitioners are not required to submit further contracts to show that the indebtedness was incurred. In *Marek*, the California Supreme Court found that the costs of a redevelopment agency to perform under a binding contract with a developer, were an “indebtedness,” requiring the county auditor controller to pay the redevelopment agency. *Marek* is distinguishable in that it was decided long before the Dissolution Law.

Underpinning *Marek*'s holding was the Court's conclusion that the purpose of the Community Redevelopment Law, and the power it gives to redevelopment agencies, supports a broad interpretation of “indebtedness.” (*Marek, supra*, 46 Cal.3d at 1082.) This is no longer the case. The Dissolution Law was enacted to dissolve redevelopment agencies and limit new contractual obligations from being made. Accordingly, DOF would not be bound to accord Petitioners the same broad view of “indebtedness” and consider the Cooperative Agreement to be an enforceable obligation, in the absence of contracts or other indebtedness taken in furtherance of it.

Moreover, the Cooperative Agreement demonstrates that the RDA's duty to pay the City is conditional and arises when such costs are incurred: “the Parties agree that if and to the extent any payment obligation incurred by the [RDA]...”; the Agency will “pay for or reimburse” the City; “The following public improvements, loans and property acquisitions shall be undertaken by the City, on behalf of the [RDA]. Reimbursement for such improvements, loans and property acquisitions shall be made by the [RDA] on a monthly basis....The [RDA]'s obligation to reimburse or repay to the City is limited to the remaining available tax increment after retiring any other indebtedness.”

DOF denied the “project delivery costs” as enforceable obligations because the Successor Agency showed no contracts that came within the Cooperative Agreement. Here, Petitioners have only provided DOF with the costs of “project delivery.” Petitioners have furnished no evidence that contracts have been executed or documentary evidence the City has incurred expenses to carry out the Cooperative Agreement. Without such evidence, DOF could not have determined the RDA was required to reimburse the City under the Cooperative Agreement.

Accordingly, DOF did not abuse its discretion in denying the “project delivery cost” item as an enforceable obligation.

DOF Did Not Abuse its Discretion in Denying the Callendar Agreement as an Enforceable Obligation

Petitioners also argue that DOF abused its discretion when it determined that the Callendar Agreement was not an enforceable obligation. The Court disagrees.

First, the RDA was not a party to the Callendar Agreement, nor was it mentioned as such. Thus, it could not be an enforceable obligation of the Successor Agency. Petitioners argue that this is of no import, because the Callendar Agreement was encompassed by the subsequently validated Cooperative Agreement, and was thus made an enforceable obligation of the RDA by the Validation Judgment.

For the Court or DOF to reach this conclusion, however, there must be some evidence that the City entered the Callendar Agreement to carry out the Cooperative Agreement.

A contract must be interpreted to give effect to the mutual intent of the parties as it existed at the time of the contract, so long as the intent was ascertainable and lawful. (Civ. Code, § 1636.) The intent must be determined from the language of the contract itself. (Civ. Code, §§ 1638, 1639; *City of Chino v. Jackson* (2002) 97 Cal.App.4th 377, 382.) In ascertaining intent, the Court must view the contract as a whole, and avoid constructions that render that part of the contract surplusage, irrelevant, or meaningless. (Civ. Code, § 1641; *Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1753, fn. 4.)

Here the Callendar Agreement and Cooperative Agreement do not mention or reference each other, nor is the Callendar Agreement referenced in the Validation Judgment. Although the Callendar Agreement mentions services that appear to be related to projects listed in Exhibit B to the Cooperative Agreement, DOF could have concluded that there was insufficient evidence that the City entered or amended the Callendar Agreement to carry out the Cooperative Agreement. Moreover, the initial Callendar Agreement was executed before the Cooperative Agreement. If the City intended that this agreement was of the sort for which it would receive reimbursement by the RDA, this should have been reflected in the Cooperative Agreement.

The Validation Judgment does not assist Petitioners. It does not reference the Callendar Agreement, nor does it discuss contracts or agreements that may be made by the City to further the Cooperative Agreement.

Accordingly, DOF did not abuse its discretion when it rejected the Callendar Agreement as an enforceable obligation.

DOF's Denial of the Items as Enforceable Obligations Does Not Violate the Doctrine of Separation of Powers

Petitioners argue that DOF's denial violates the separation of powers doctrine because it intrudes upon a judgment entered by a court. The Validation Judgment did not require DOF to find that the Cooperative Agreement, standing alone, became an enforceable

obligation. DOF could deny the items as enforceable obligations while still recognizing the Validation Judgment. Thus, DOF did not violate the separation of powers doctrine.

DOF Is Not Equitably Estopped from Denying the ROPS III Items as Enforceable Obligations

Petitioners argue that DOF is equitably estopped from denying the “project delivery costs” and Callendar Agreement as enforceable obligations.

Petitioners argue that DOF is estopped from denying the items because it approved them as enforceable obligations on ROPS I and ROPS II submissions.⁶ Petitioners also argue that DOF is estopped from denying these items, because it did not object to action taken by the Successor Agency Oversight Board committing the use of bond proceeds for certain redevelopment projects.⁷

Estoppel may be applied against a government agency in limited circumstances. The government may be bound by estoppel in the same manner as a private party when the requisite elements are present and the injustice that would result from failure to uphold the estoppel justifies any effect upon public interest. (*Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497.) The elements for estoppel are that: (1) the party to be estopped is apprised of the facts; (2) intends that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party is ignorant of the true state of facts; and (4) he relies upon the conduct to his injury. (*Id.*, at p. 469.)

DOF does not dispute that it previously approved these items as enforceable obligations. The Court agrees that Petitioners have indicated that they have taken action on the Cooperative Agreement projects and Callendar Agreement after DOF’s May 2012 letter, and DOF’s failure to seek review in June 2012.

The City asserts that it relied to its detriment by proceeding with Cooperative Agreement Projects, incurring additional expenses, purchasing Old Town properties and negotiating construction, development and other agreements for Cooperative Agreement projects. (Memorandum of Points and Authorities, p. 29:2-6; Declaration of Jason Behrmann, ¶¶9, 12, 13, 14.)

⁶ The administrative record indicates that the ROPS submissions for the period of January 2012-June 2012 and July 2012-December 2012 listed as putative enforceable obligations totaling approximately \$120,000 or \$140,000 due to Callendar Associates for “engineering services” pursuant to a February 15, 2011 agreement, and other items labeled “project delivery costs,” which Petitioners assert issue from the Cooperative Agreement. (AR, 3:51:000645, 650.)⁶ DOF did not object to these items as enforceable obligations in DOF’s May 31, 2012 letter. (AR, 3:52:000652-653.)

⁷ On June 28, 2012, the Oversight Board adopted resolutions approving the use of \$4.17 million in bond proceeds for the C Street/Central Galt Complete Streets Project, and Fourth Street Parking Lot and Open Space Improvements. (AR, 3:61:000696-697.) The Oversight Board notified DOF, but DOF did not request a review of the Oversight Board’s action within 5 days pursuant to Section 34179(h).

Additionally, there is evidence that Petitioners may have relied on prior actions of DOF, in continuing to contract with Callendar. The administrative record shows that the initial agreement was entered January 6, 2011, with several amendments in 2011 and one amendment entered July 17, 2012. The July 17, 2012 amendment modifies the scope of services to include additional work and set additional compensation for this work. (AR, 1:12:000116-117.)

DOF responds that Petitioners should have known that DOF's prior approvals were not binding, and that Petitioners did not reasonably rely on them. First DOF argues that it could reject the Callendar Agreement, because the RDA is not a party. The Court agrees that Petitioners knew that such agreements are not enforceable obligations. Petitioners also knew that the Cooperative Agreement, which was between the City and RDA would become invalid when the Dissolution Law was enacted. This is why Petitioners filed an action to validate the Cooperative Agreement before the first component of the Dissolution Law was enacted. Thus, Petitioners knew these items were vulnerable to being rejected as enforceable obligations.

DOF also argues that because DOF had not issued a "final and conclusive determination" pursuant to Section 34177.5(i) whether the items were enforceable obligations, DOF could freely conclude that the items were not enforceable obligations on future ROPS submissions. Section 34177.5(i), which was enacted in June 2012, provides:

(i) If an enforceable obligation provides for an irrevocable commitment of property tax revenue and where allocation of such revenues is expected to occur over time, the successor agency may petition the Department of Finance to provide written confirmation that its determination of such enforceable obligation as approved in a Recognized Obligation Payment Schedule is final and conclusive, and reflects the department's approval of subsequent payments made pursuant to the enforceable obligation. If the confirmation is granted, then the department's review of such payments in future Recognized Obligation Payment Schedules shall be limited to confirming that they are required by the prior enforceable obligation.

Thus, this statute put successor agencies on notice that if they wanted to ensure that DOF continued to approve a certain item as an enforceable obligation, successor agencies should petition DOF for this determination. This statute was enacted in June 2012. Petitioners did not seek this determination, but continued to take action to further the Cooperative Agreement projects. Accordingly, because Petitioners knew that DOF could deny the items as enforceable obligations, and because they did not request the finding from DOF, the Court concludes that Petitioners did not reasonably rely to their detriment and that the requirements for estoppel are not met.

Accordingly, DOF was not equitably estopped from denying these items as enforceable obligations.

DOF also argues that Petitioners failed to name indispensable parties. The Court concludes that this claim is without merit.

DISPOSITION

The petition for writ of mandate is **DENIED**. Counsel for DOF is directed to prepare the judgment and writ of mandate, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with Rule of Court 3.1312.