SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME **JUDGE**	**March 22, 2013, 1:30 p.m.** **HON. ALLEN SUMNER**	**DEPT. NO** **CLERK**	**42** **M. GARCIA**
FORTY NINERS SC STADIUM CO., LLC, **Petitioner,** **v.** **OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY, et al.** **Respondents.**		**Case No.: 34-2012-80001192**	
Nature of Proceedings:	**PETITION FOR WRIT OF MANDATE**		

Following is the court's tentative ruling granting in part the petition for writ of mandate filed by Forty Niners SC Stadium Co. ("Forty Niners") scheduled for March 22, 2013, at 1:30 p.m., in Department 42. 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.

INTRODUCTION

Seeking to increase the share of property taxes going to cities, counties, schools and other local agencies, the Legislature eliminated most redevelopment agencies and reallocated their property tax revenues. However, in dissolving redevelopment agencies, the Legislature directed that the agencies' enforceable obligations must still be honored: bonds issued by redevelopment agencies or loans they had incurred would be paid, and contracts they had agreed to would be fulfilled.

Before redevelopment agencies were dissolved, the Forty Niners contracted with the City of Santa Clara's Stadium Authority and redevelopment agency to finance construction of a new stadium to be owned by the City and

used by the Forty Niners. Do those contracts survive dissolution of the redevelopment agencies? The court concludes they do.

BACKGROUND

The Stadium Agreements

The Santa Clara Stadium Authority ("Stadium Authority") is a joint powers agency formed by the City of Santa Clara ("City") and the Redevelopment Agency of the City of Santa Clara ("Agency"). The Stadium Authority is constructing a stadium in Santa Clara that will be used by the San Francisco Forty Niners football team, as well as for other events. (JAR 1, 40-41.)

On February 28, 2011, the Agency entered into a Cooperation Agreement with the Stadium Authority, agreeing to contribute up to $40 million for stadium development costs. (JAR 1-10, § 3.2.) The Forty Niners are identified in the Cooperation Agreement as an express third party beneficiary, recognizing they would expend substantial resources constructing the stadium in reliance on the promises of the Stadium Authority and the Agency.[1] (JAR 7, § 4.4)

On March 21, 2011, the Stadium Authority, the Agency, and the Forty Niners executed a "Predevelopment Funding Agreement."[2] (JAR 11-22.) The Predevelopment Funding Agreement acknowledges the Forty Niners have incurred, and will continue to incur, various stadium-related predevelopment costs. The Agreement provides the Stadium Authority will reimburse the Forty Niners for certain of those costs as follows:

> [Forty Niners'] payment of Predevelopment Costs, up to [$40 million], shall be considered a loan by [Forty Niners] to the Stadium Authority (the "Stadco Advance") . . . . Stadium Authority is incurring the Stadco Advance in reliance on the Agency's agreement to repay the Stadium Authority Advance pursuant to Section 3.2 of the Cooperation Agreement. With each such payment of

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[1] The Cooperation Agreement identifies "Forty Niners Stadium LLC" as the third party beneficiary. This petition is brought by "Forty Niners SC Stadium Company LLC." The Forty Niners have submitted a declaration from Larry MacNeil, Vice President of both entities, stating the Forty Niners SC Stadium LLC is the successor entity to Forty Niners Stadium LLC. (MacNeil Decl. ¶ 2.) The court will use the term Forty Niners to refer to either entity, although it notes at least one Respondent claims this discrepancy might affect the outcome of this case.

[2] The court notes the Cooperation Agreement and Predevelopment Funding Agreement were both executed before June 28, 2011, which is the date redevelopment agencies were prohibited from entering into new contracts or incurring new monetary or legal obligations. (Health & Safety §§ 34161, 34162, 34163, 34177.3.)

> Predevelopment Costs, the Stadium Authority, for purposes of the Cooperation Agreement, shall be considered to have made a corresponding Stadium Authority Advance to the Agency.

(JAR 13, § 2.1; and 15, § 4.1.)

When read together, these two Agreements provide that, whenever the Forty Niners pay predevelopment costs, those costs are treated like a loan by the Forty Niners to the Stadium Authority -- and a simultaneous loan by the Stadium Authority to the Agency. The Stadium Authority must eventually repay the Forty Niners from the monies the Agency repays to it.

The Forty Niners claim they have advanced well over $40 million to the Stadium Authority to pay predevelopment costs. (1st Amend. Pet. ¶ 29; MacNeil Decl. ¶ 11.) It appears the Agency has contributed approximately $10 million of the $40 million it agreed to contribute, leaving a balance of approximately $30 million owed to the Forty Niners. (1st Amend. Pet. ¶ 28; MacNeil Decl. ¶¶ 9, 10.) The Forty Niners' ability to recoup that balance is the heart of this case.

The Dissolution Law

At the time the Stadium Authority, the Agency, and the Forty Niners entered into the Cooperation and Predevelopment Funding Agreements (collectively "Stadium Agreements"), the Legislature was considering eliminating redevelopment agencies. In June of 2011, AB 1X26 ("AB 26") was enacted doing just that.

In December 2011, the California Supreme Court upheld the constitutionality of AB 26 in *California Development Association v. Matosantos* (2011) 53 Cal.4th 231 ("Matosantos"). In June of 2012, the Legislature adopted AB1484 to modify the provisions in AB 26. The court refers to AB 26 and AB 1484 collectively as the "Dissolution Law."

While the Dissolution Law eliminated redevelopment agencies, it did not eliminate their enforceable obligations. As part of the process for winding down the redevelopment agencies, the Dissolution Law establishes "successor agencies" responsible for making payments and otherwise performing the former redevelopment agencies' "enforceable obligations." In general, each successor agency must prepare a Recognized Obligation Payment Schedule ("ROPS") listing the former redevelopment agency's enforceable obligations coming due for the next six months. The first ROPS covered the six-month period ending June 30, 2012. The successor agency prepares a new ROPS for each six months thereafter until the redevelopment agency's enforceable obligations are retired. (See generally Health & Saf. Code § 34177.)[3]

[3] All statutory citations are to the Health and Safety Code, unless otherwise indicated.

When a ROPS is complete, the successor agency submits it to the successor agency's oversight board for approval. Once an oversight board approves or disapproves a ROPS, it then goes to the Department of Finance for review. (§§ 34177, 34179(h).)

Petition for Writ of Mandate

The principal question presented by the Forty Niners' petition is whether the Stadium Agreements are still "enforceable obligations" of the former Agency that must be recognized by respondent Oversight Board. The Forty Niners argue they are, and thus the Oversight Board improperly failed to list them on ROPS II (covering the period of July-December 2012) and ROPS III (covering the period of January-June 2013).[4]

The Forty Niners seek a writ of mandate directing the Oversight Board to withdraw its determination not to list the Stadium Agreements on the ROPS, and to approve an amended ROPS II and ROPS III listing the Stadium Agreements as enforceable obligations. The Forty Niners also seek an order preventing Santa Clara County Auditor-Controller Vinod K. Sharma from distributing funds to any other agencies in Santa Clara County from any ROPS until the Oversight Board has satisfied its obligations under the Stadium Agreements.[5]

DISCUSSION

I.

The Dissolution Law Did Not Invalidate The Stadium Agreements

Despite over 160 pages of briefing from four separate parties, the basic issue presented by this petition is fairly simple: Are the Stadium Agreements "enforceable obligations" as that term is defined by section 34171? If they are, the Dissolution Law contemplates they will be paid.[6]

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[4] It is unclear whether the Stadium Agreements were listed on ROPS I, or whether the Forty Niners claim they should have been.

[5] The First Amended Petition contains five causes of action. In its opening brief, the Forty Niners state the need for a writ of administrative mandamus (i.e., the fourth and fifth causes of action) has been eliminated. (Pet. Opening at 24:18-20.) Thus, only the first, second, and third causes of action remain at issue.

[6] See § 34167(a) (law "intended to preserve…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 government services"); § 34169(a)(1) (until successor agencies are authorized, redevelopment agency may continue to make payments on enforceable obligations); § 34177(a)(1) (on and after February 1, 2012, only payments required pursuant to enforceable obligation shall be made); § 34177(l) (for each six month fiscal period, successor agency required to prepare ROPS "for the enforceable obligations of the former development agency"); § 34177.3(a) (successor agency shall not begin new

Respondents argue the Stadium Agreements are excluded from the definition of "enforceable obligations" by section 34171, subdivision (d)(2), which provides, "'. . . enforceable obligation' ***does not include*** any agreements, contracts, or arrangements between the city … that created the redevelopment agency and the former redevelopment agency." (Emphasis added.) Respondents also cite section 34178, subdivision (a), which similarly states "agreements, contracts, or arrangements between the city … that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency."

There is no dispute the Stadium Agreements were a contract between the City of Santa Clara and its former redevelopment agency. The term "city" includes any entity controlled by the city, and the Stadium Authority is controlled by the City. (§ 34167.10.) The Forty Niners do dispute not this. (See, e.g., Petitioner's Reply at 7:25-27.) Respondents essentially end their analysis here, arguing the Stadium Agreements were rendered invalid by section 34178, subdivision (a), and excluded from the term "enforceable obligations" by section 34171, subdivision (d)(2).

The court is not persuaded. Section 34171, subdivision (d)(2), only applies to contracts between a city ***and*** its redevelopment agency. Here, however, the Forty Niners are an express third party beneficiary of the Cooperation Agreement, and an actual party to the Predevelopment Funding Agreement. Since the Predevelopment Funding Agreement explicitly references the Cooperation Agreement, the Forty Niners argue the two Agreements must be read together as a single contract between ***three parties***: the city, the redevelopment agency, and the Forty Niners. (See, e.g., Civ. Code § 1642 ["Several contracts relating to the same matters, between the same parties, and made as part of substantially one transaction, are to be taken together"].) Thus, because there is a third party to the Stadium Agreements, they do not fall within the scope of section 34171, subdivision (d)(2).

Respondents argue that although section 34171, subdivision (d)(2), does not state it applies to an agreement between a city, a redevelopment agency ***and a third party***, that is what the Legislature must have intended. Respondents note another provision of the Dissolution Law does explicitly protect third parties. (§ 34167.5 [unwinding asset transfers between a city and a redevelopment agency if the assets are not contractually committed to a third party].)

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redevelopment work "except in compliance with an enforceable obligation that existed prior to June 28, 2011".)

See also *California Redevelopment Association v. Matosantos, supra,* 53 Cal.4th at 250-51 (law leaves enforceable obligations unaffected, requires successor agencies to continue to make payments and perform enforceable obligations, and provides tax increment revenues will be allocated first to satisfy administrative costs, pass through payments and enforceable obligations, with balance deemed property taxes revenue and distributed accordingly).

Respondents conclude the Legislature's failure to expressly protect third parties in section 34171, subdivision (d)(2), evidences its intent ***not*** to do so.

It does not.

1. The language of section 34171 is clear

Section 34171, subdivision (d)(2), applies to agreements "between the city … that created the redevelopment agency and the former redevelopment agency." There is no ambiguity requiring interpretation.

In determining the Legislature's intent, the court begins with the words of the statute, giving them their usual and ordinary meaning. (*Ombudsman Services of Northern California v. Superior Court* (2007) 154 Cal.App.4th 1233, 1244.) If the language is clear, there is no need to look beyond the plain words of the statute to determine Legislative intent. (*People v. Benson* (1998) 18 Cal.4th 24, 30.)

Giving the words of section 34171 their usual and ordinary meaning, the court finds the Stadium Agreements are not agreements between a city ***and*** a redevelopment agency. They are instead agreements between a city, a redevelopment agency, ***and a third party.*** The Stadium Agreements are thus simply not within the class of agreements covered by section 34171, subdivision (d)(2).

2. The Legislature intended to honor enforceable obligations

Respondents argue the Legislature's intent in enacting the Dissolution Law was to redirect property tax dollars from redevelopment agencies to local governments to fund core government services like police and schools. (§ 34167(a).) This is true.

Respondents then argue the court should effectuate this intent by interpreting section 34171, subdivision (d)(2), to apply to ***any*** contract involving a city and a redevelopment agency regardless of how many other parties there are to the contract. This would redirect as much money as possible to local governments. This is also true.

However, the Legislature also clearly intended that the redevelopment agency's enforceable obligations be honored before redirecting property tax dollars to other local entities. (See, e.g., § 34167(a) ["This part is intended to preserve…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…."].)[7]

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[7] Of particular relevance here, the court notes in 2009 the Legislature expressly recognized the Stadium Authority had been formed to construct the stadium, and the Agency would likely

3. The Forty Niners are not merely a third party beneficiary

Respondents note a third party beneficiary cannot assert greater rights than those of the promisee under the contract, and must "take that contract as he finds it." (*Marina Tenants Assn. v. Deauville Marine Dev. Co.* (1986) 181 Cal.App.3d 122, 132.) True. Respondents then argue because the Agency has been dissolved, the Forty Niners are left with nothing but the right to enforce an unenforceable contract. (1 Witkin, Summary of Cal. Law (10th Ed.) Contracts, p. 782, § 695 ["The beneficiary can recover from the promisor only is there is a valid and existing obligation between the promisor and the promisee."].) Because the Stadium Authority can no longer enforce the Agency's promise to provide funds, neither can the Forty Niners. (See, e.g., *Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4th 879, 894 ["third party beneficiary may not obtain a greater recovery than that which would have been available to the promisee"].)

This argument fails because the Forty Niners are not just a third party beneficiary to the Stadium Authority's contract with the Agency. The Forty Niners are a direct party to the Stadium Agreements.[8]

4. The court must avoid a construction that would render the statute unconstitutional

The Forty Niners argue any interpretation of section 34171, subdivision (d)(2), that renders the Stadium Agreements unenforceable would violate the Contracts Clauses of the California and United States Constitutions: Both of which prohibit the Legislature from passing any law "impairing the obligation of contracts." (Cal. Const. art. I, sec. 9; U.S. Const., art. I, sec. 10.) As our Supreme Court recognized in *Matosantos*, completely eradicating a redevelopment agency's "current contractual and other obligations…would

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contribute funds to the project. (Gov. Code § 6532; enacted by SB 43; Stat. 2009, c. 330, § 1.) The Legislature's specific recognition of this stadium project and the Agency's contribution of its property tax revenues to finance construction of the stadium undercuts Respondents' argument the Legislature intended to redirect those monies just two years later with the enactment of AB 26.

[8] The parties spend considerable time debating whether the Forty Niners reasonably relied upon the Stadium Agreements.

Respondents argue the Forty Niners could not have reasonably relied on the Stadium Agreements, because the Stadium Agreements were entered into in anticipation of the Dissolution Law, knowing full well the Agency (and its property taxes) could disappear. The reasonableness of the Forty Niners' reliance could be relevant if they were claiming rights as a third party beneficiary to a contract between the Stadium Authority and the Agency. (See *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1025 [contracting parties may not rescind or revoke agreement where third party beneficiary has detrimentally relied on it].) However, since the Forty Niners were a direct party to the Stadium Agreements, the discussion of whether or not they reasonably relied upon those agreements is irrelevant.

inevitably raise serious impairment of contract issues." (*California Redevelopment Association v. Matosantos, supra,* 53 Cal.4th at 263.)

If a statute may be construed two ways, one rendering it constitutional and another raising serious constitutional questions, the court must adopt the construction that avoids the constitutional question. (*Miller v. Municipal Court* (1943) 22 Cal.2d 818, 828; *International Assn. of Plumbing and Mechanical Officials v. California Building Standards Assn* (1997) 55 Cal.App.4th 245, 256; *Rust v. Sullivan* (1991) 500 U.S. 173, 191 ["A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score."].) In order to avoid a serious constitutional question, the court interprets section 34171, subdivision (d)(2), to invalidate only contracts solely between a city and its redevelopment agency.[9] Because the Forty Niners are a party to the Stadium Agreements, the court finds the agreements are not rendered unenforceable by section 34171, subdivision (d)(2).

II

Remand Is The Appropriate Remedy

Having determined the Stadium Agreements are not rendered unenforceable by section 34171, subdivision (d)(2), the court must next determine whether the Forty Niners are entitled to the relief they have requested. Again, the Forty Niners request a writ of mandate ordering the Oversight Board to: (1) withdraw its determination not to list the Stadium Agreements as enforceable obligations on any ROPS; and (2) approve an amended ROPS II and ROPS III listing the Stadium Agreements as enforceable obligations.

The court, however, is persuaded by Respondents that such an order would be improper at this time for several reasons:

1. The Oversight Board must determine whether all preconditions set forth in the Stadium Agreements for payment have been met. (OB Opening at 25.) This includes whether the Forty Niners actually incurred qualifying predevelopment costs. (Sharma Opening at 21.)

2. Even if all preconditions have been met, the Stadium Agreements contemplate payment from funds other than the Agency's property tax revenue. The Oversight Board must thus determine if there are other funding sources available to pay the Forty Niners. (Matosantos Opening at 10.)

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[9] The court is not deciding that section 34171, subdivision (d)(2), would be unconstitutional if applied to the Stadium Agreements. The court is merely construing subdivision (d)(2) in a way "which will render it free from doubts as to its constitutionality." (*Miller*, *supra*, 22 Cal.2d at 828.)

3. Finally, the Oversight Board must determine what amounts are due to the Forty Niners for each ROPS period. Because the Stadium Agreements set no payment schedule, the Forty Niners may not have been entitled to any money until 2016. (OB Opening at 26-27.) Dissolution of the Agency should not give the Forty Niners a "windfall" by accelerating their right to any payments.

For these reasons, the court believes it appropriate to remand this case to Respondents to take further action consistent with this ruling. Specifically, the Forty Niners' right to payment under the Stadium Agreements was not rendered invalid or unenforceable by section 34171, subdivision (d)(2).

Pending Respondents' further action, the order issued by Judge Lloyd Connelly on December 27, 2012, staying disbursement of monies from ROPS II and ROPS III shall remain in effect.

It is the court's understanding there is currently approximately $15 million in the redevelopment property tax trust fund. (Sharma Decl. ¶ 3.) The only potential claimants to this money are the Forty Niners and local entities that will eventually succeed to the Agency's property tax revenues. If this is correct, disbursement of the funds should be stayed until the Forty Niners' claim is resolvd.

CONCLUSION

For the foregoing reasons, the petition for writ of mandate is granted in part: the court holds the Stadium Agreements are not agreements between the city and the redevelopment agency within the meaning of section 34171, subdivision (d)(2). The cases is remanded to the Oversight Board to take further action consistent with this holding.

If hearing is requested, any party desiring an official record of the proceeding shall make arrangements for reporting services with the clerk of the department not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day of proceedings lasting more than one hour. (Local Rule 9.06(B) and Gov't. Code § 68086.) Payment is due at the time of the hearing.