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Aileen T. Nguyen

San Francisco
415 788-6336
Los Angeles
213 627-6336
San Diego
619 239-6336
Goldfarb & Lipman LLP

SCORE ONE FOR CITIES: COURT HOLDS REDEVELOPMENT DISSOLUTION NO EXCUSE FOR UNCONSTITUTIONALLY IMPAIRING CONTRACTS

The litigation fallout from redevelopment dissolution continues, with dozens of cases pending at the trial and appellate levels. In a big win for the City of Anaheim, the Third District has held that enforcing a statute in the Dissolution Law that invalidates agreements between former redevelopment agencies and the cities and counties that created them would unconstitutionally impair a developer's contract rights. (*City of Anaheim v. Cohen* (2017) 18 Cal.App.5th 758.) The Court held that shifting redevelopment money from one public purpose to another was not a sufficient reason to impair a private party's contract. The Court decided that the fact that the redevelopment agency's Successor Agency did not receive prior Oversight Board approval of a loan from the City did not give the Department of Finance (Finance) a valid reason to deny the loan. Finally, the Court addressed a recurring issue—whether prejudgment interest is recoverable in dissolution cases—and decided it was not.

1. THE AVON/DAKOTA NEIGHBORHOOD PROJECT

In June 2010, a year before the first redevelopment dissolution bill, the Anaheim Housing Authority entered into a revitalization agreement with Related, a developer, under which the parties were to jointly prepare a revitalization plan designed to fight blight in the Avon/Dakota neighborhood, and the Housing Authority would provide an initial \$4.8 million to fund the plan. Shortly before dissolution, the City, the redevelopment agency, and the Housing Authority entered into two Cooperation Agreements for additional funding of the project, whereby

the City, the redevelopment agency and the Housing Authority together committed \$19.8 million in funding the revitalization agreement with Related.

After dissolution, Finance originally approved the payments on the Recognized Obligation Payment Schedule (ROPS), but later changed its mind on the ground that the revitalization agreement was between the Housing Authority and Related, and the former agency was not a party. Finance argued that because the funding agreements were between the City and former agency, they were not enforceable under the dissolution scheme. The trial court agreed, and held that it need not address Related's impairment of contracts argument because Related was not a party to the funding agreement.

The Court of Appeal reversed. It held that invalidating the agreement would impair the contract rights of Related, a private developer and a party to the lawsuit. Relying upon *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 22, the Court held that it was not enough that the State wanted to spend the funds for another public purpose besides redevelopment. Invalidating a private party's contract right merely to shift public money from one public purpose to another is unconstitutional, the Court reasoned. On rehearing, Justice Duarte dissented on this point, but the majority found an unconstitutional impairment of a private party's contract.

The Court also denied the City's request for prejudgment interest, reasoning that writ actions under the dissolution scheme are not

actions for money within the meaning of California's prejudgment interest statute.

2. THE PACKING DISTRICT PROJECT

Shortly before it dissolved, Anaheim's Redevelopment Agency entered into an agreement with LAB Holding LLC for the redevelopment of parcels in the city's Packing District. The agreement also required that the Agency construct a parking lot and improve an alley adjacent to the parcels. In August 2012, after dissolution, the project was nearing completion but the parking lot and alleyway were not done. Finance denied the request to fund those improvements, so in February 2013, the City and Successor Agency signed a Cooperation Agreement whereby the City lent the successor agency \$1.1 million to fund them. The City and Successor Agency agreed that the City would contract directly with the builder, but that the Successor Agency was obliged to repay to the City directly the \$1.1 million loan proceeds that funded the improvements.

The Successor Agency listed the \$1.1 million owed to the City on the ROPS, but Finance contested it on the ground that the Successor Agency was not a party to the underlying construction contract. Later, Finance denied the obligation on the additional ground that there was no prior Oversight Board resolution approving the City-Successor Agency Cooperation Agreement.

The trial court agreed with Finance that the loan was not an enforceable obligation because the City, not the Successor Agency, was obliged to pay the contractor, therefore the debt was not an obligation of the Successor Agency. The Court of Appeal reversed. It held that it did not matter that the former agency was not a party to the construction contract; rather, the loan agreement between the City and the Successor Agency was an enforceable obligation under former Health & Safety Code section 34173(h), which

authorized successor agencies to loan funds for enforceable obligations of the former agencies. Reasoning that "the law respects form less than substance," the Court held that it did not matter that the Successor Agency never received any of the loan proceeds from the City—instead, they went directly to the construction contractor, but the Court held that the arrangement still qualified as an enforceable obligation. The Court also rejected Finance's backup assertion that the loan was unenforceable because the Successor Agency did not obtain prior Oversight Board approval before signing the agreement. The Court reasoned that the Oversight Board was still able to exercise its supervisory approval because the loan agreement was listed on an approved ROPS.

3. IMPLICATIONS FOR CITIES AND COUNTIES

The Anaheim Court's strong endorsement of the principle that vested contract rights of private parties cannot be impaired in order to allow the State to shift funds from one public purpose to another is significant. Notably, in this case, Related, the private party whose contract rights were at stake, was a party to the litigation.

Further, the Court's conclusion that a City-Successor Agency transaction was an enforceable loan agreement, even though the proceeds of the loan went directly to a builder and not to the Successor Agency, is important. As with the Court's decision that the lack of prior Oversight Board approval was not a valid reason to disapprove a loan, the Third District has signaled a willingness to elevate substance over form in deciding whether agreements between successor agencies and the cities and counties that created the former redevelopment agencies are enforceable.

For more information, please contact Dolores Bastian Dalton, Karen Tiedemann, or any other attorney at Goldfarb & Lipman at (510) 836-6336.

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