

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

HRG DATE / TIME	February 17, 2023 / 2:00 P.M.	DEPT. NO.	32
JUDGE	James P. Arguelles	CLERK	Ward
City of Huntington Beach, a California charter city, et al., Petitioners/Plaintiffs, v. Edmund G. Brown, Jr., individually and in his official capacity as Governor of the State of California, et al., Respondents/Defendants.		Case No.: 34-2018-80002876	
Nature of Proceedings:		Amended Petition for Writ of Mandamus; Motion to Strike – Combined Final Ruling	

The petition after remand is GRANTED, and a writ of mandate shall issue directing Respondent Department of Finance (DOF) to treat the Waterfront Loan on Petitioner City of Huntington Beach as Successor Agency's (Successor Agency) Recognized Obligation Payment Schedule (ROPS) for the period July 2017 through July 2018 as an enforceable obligation.

The motion to strike is GRANTED.

Petitioners' request for judicial notice is unopposed and GRANTED.

The documentation attached by exhibit to Petitioners' reply brief is stricken as Respondent has not had the opportunity to respond.

Introduction

On May 25, 2022, the Court entered a judgment in this case granting in part and denying in part the First Amended Petition and Complaint (Petition) of petitioners City of Huntington Beach (City), the Successor Agency to the Dissolved Huntington Beach Redevelopment Agency (Former RDA), and the City of Huntington Beach Housing Authority (collectively "Petitioners"). Pursuant to the judgment, the Court issued a writ of mandate commanding DOF, among other

things, to reconsider whether the so-called Waterfront Loan Agreement (“Waterfront Loan” or “Agreement”) between the City and the Former RDA constituted an “enforceable obligation” pursuant to the Dissolution Law in the Health and Safety Code.¹ DOF had determined that the Waterfront Loan was not an enforceable obligation, but the Court rejected DOF’s rationale. The Court remanded for DOF to decide whether the Waterfront Loan contained a genuine obligation “to pay,” which is required for it to qualify as an enforceable loan agreement.

On remand, Petitioners tendered new documentation in an attempt demonstrate that the Waterfront Loan was an enforceable loan agreement. DOF once again determined that the Waterfront Loan was not enforceable.

Petitioners now ask the Court to issue a further writ of mandate directing DOF to treat the Waterfront Loan as an enforceable obligation supporting the allocation of tax revenues. DOF opposes. In addition, DOF moves for an order striking from the administrative record on remand certain financial records that Petitioners have provided to the Court but failed to provide to DOF below.

Factual and Procedural Background

As previously detailed in the Court’s April 21, 2022 final merits ruling, the Waterfront Loan is memorialized in a written agreement between the City and the Former RDA. This document, executed in 1988, describes the City’s sale of real property to the Former RDA for a price of \$22.4 million. The property is located within the “Main-Pier Project Area,” and the transfer was made to facilitate development within this area. The City deeded the property to the Former RDA in 1989. Subject to the City granting an extension, the Former RDA was required to repay the loan in 1988. The written agreement provides:

This Agreement constitutes an indebtedness of the [Former RDA] incurred in carrying out the Project and a pledging of the tax allocations from the project to repay such indebtedness ... provided, however, that such pledge of tax allocations shall always be subordinate and subject to the right of the [Former RDA] to pledge or commit tax allocations from the Project to repay bonds or other indebtedness incurred by the [Former RDA] in carrying out the Project.

In 1988, the City granted the Former RDA an extension of undefined duration, and the extension triggered a 10-percent interest rate.

Under the Dissolution Law, the Successor Agency received a finding of completion in May 2014. In 2017, the Successor Agency’s oversight board issued resolutions finding that the Waterfront

¹ In its final merits ruling dated April 21, 2022, the Court examined the Dissolution Law in some detail. For the sake of brevity, the Court does not reprint that examination here and instead incorporates its April 21, 2022 final merits ruling by reference.

Loan had been made for legitimate redevelopment purposes, and that the loan was an enforceable obligation. The Successor Agency then tendered its ROPS 17-18. The Successor Agency provided DOF with financial records showing that between 1989 and 2011, the Former RDA made payments on various City loans, and that \$14.78 million of these payments were the Waterfront Loan's pro rata share. DOF objected to the Waterfront Loan. After meeting and conferring with the City, DOF formally disapproved the Waterfront Loan.

Petitioners then filed this action and sought, among other things, a writ of mandate directing DOF to treat the Waterfront Loan as an enforceable obligation. As noted above, the Court remanded for DOF to decide whether the Waterfront Loan contained a genuine obligation to pay. (See Health & Safety Code § 34191.4, subd. (b)(2)(B) [enforceable loan agreements include transfers of real property interests from a sponsor entity to a redevelopment agency provided that redevelopment agency was "obligated to pay ... for the real property interest"].)²

On May 25, 2022, the City provided DOF with additional documentation in an attempt to demonstrate that the Waterfront Loan had to be repaid by a date certain. On August 24, 2022, DOF determined once again that the Waterfront Loan was not an enforceable obligation. DOF proffered three grounds for the determination: 1) the Agreement is unenforceable because it allows the Former RDA to make payments in perpetuity, if at all, and thus does not create an actual obligation to pay; 2) the City's additional documentation does not contain the sort of evidence that the Court indicated was relevant; and 3) although legislation post-dating the Waterfront Loan imposed deadlines for redevelopment agencies to pay on debt and make final payments, the legislation does not affect the Former RDA's contractual right to limit or avoid repayment. (See Exh. A to DOF's Return to Writ of Mandate, p. 2.)

This proceeding for a further writ of mandate followed.

Standards of Review

The Court reviews DOF's treatment of items on a ROPS pursuant to Code of Civil Procedure Section 1085. "A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty." (*Vallejo Police Officers Assn. v. City of Vallejo* (2017) 15 Cal.App.5th 601, 611.)

Ordinary mandate is used to review an adjudicatory decision when an agency is not required to hold an evidentiary hearing. [Citation.] The scope of review is limited, out of deference to the agency's authority and presumed expertise: "The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.] . . . 'A court will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support.'"

² Undesignated statutory references shall be to the Health and Safety Code.

(*Stone v. Regents of Univ. of Calif.* (1999) 77 Cal.App.4th 736, 745.) While the court accords “weak deference” to an agency’s statutory interpretation of its governing statutes “where its expertise gives it superior qualifications to do so,” the issue is ultimately subject to de novo review. (*City of Brentwood v. Campbell* (2015) 237 Cal.App.4th 488, 500.)

Discussion

The Motion to Strike

The supplemental administrative record that Petitioner lodged in this proceeding after remand includes the Former RDA’s financial statements for 1988 and 1989. (Supp. AR 62-84; 89-116.) Petitioners did not tender these documents for DOF’s consideration before DOF issued its August 24, 2022 decision. (See Exh. B to Ferrari Decl., ¶ 4.) Accordingly, DOF moves the Court to strike these statements from the supplemental administrative record.

In their reply brief on the merits, Petitioners argue, not that they provided DOF with the disputed documents, but that the documents simply convey information that Petitioners had previously submitted to DOF, i.e., before the Court remanded for further proceedings on the Waterfront Loan. The administrative record before the Court when it issued its April 21, 2022 merits ruling, which presumably includes the documents that Petitioners submitted to DOF originally, is no longer in the Court’s possession.

The Court declines to consider extra-record evidence that was not presented to DOF. (See *Golden Drugs Co., Inc. v. Maxwell-Jolly* (2009) 179 Cal.4th 1455, 1468-70.) DOF’s motion to strike Exhibits 3 and 5 from the supplemental administrative record is granted.

In any event, and consistent with the analysis below, even if the Court were to consider the financial statements in question, it would not alter the outcome. Petitioners tender the financial statements to establish that the Former RDA lacked sufficient tax revenue to pay the \$22.4 million debt in 1988, and that the City effectively granted the Former RDA an extension to repay the loan. The Court, however, determined in its April 21, 2022 ruling that the Former RDA had received an extension. Therefore, neither the extension nor the need for it are currently at issue.

The Enforceability of Waterfront Loan

The principal question before the Court is whether, notwithstanding that the Agreement contains no repayment deadline and subordinates the Former RDA’s pledge of Main-Pier Project tax revenues to repayment of other debts supporting the Main-Pier Project, the Agreement nonetheless obligated the Former RDA “to pay” pursuant to Section 34191.4, subdivision (b)(2)(B). In its April 21, 2022 merits ruling, the Court expressed the view that the existence of a genuine obligation to pay turned in part on whether the Agreement allowed for payments into perpetuity. In turn, the Court indicated that whether the Agreement allowed for perpetual payments depended on the ratio between Main-Pier Project tax allocations and other

Main-Pier Project indebtedness. The Court tendered this ratio on the theory that, even though the Agreement does not express a repayment deadline, perhaps if the parties understood how much tax increment revenue would remain available to the Former RDA periodically after it paid its other project debts, they could have reached a tacit understanding about the likely deadline on repayment. The Court agrees with DOF that the documents submitted for DOF's consideration on remand do not provide any insight into this ratio. Nor do the documents establish that the Agreement requires the Former RDA to repay the loan in any amount at any time.

Based on its further review of the express terms of the Dissolution Law, however, the Court concludes that the Legislature intended for the Agreement to qualify as an enforceable loan for the transfer of real property.

“The fundamental objective of statutory interpretation is to determine the Legislature's intent.” (*City of Oakland v. Department of Finance* (2022) Cal.App.5th 79 431, 443-444.) The Court begins with the statutory text, which is the best indicator of legislative intent. (See *San Diegans for Open Gov't v. Public Facilities Financing Auth. of City of San Diego* (2019) 8 Cal.5th 733, 740.) The Court considers a provision of a statute within the context of the statute and the statutory scheme of which it is a part. (See *City of Petaluma v. Cohen* (2015) 238 Cal.App.4th 1430, 1440.) If the text is clear, then there is nothing to construe, and the Court's inquiry ends. (See *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634.) If the text is ambiguous, then the Court consults a variety of extrinsic aids, including “the ostensible objects to be achieved, the evils to be remedied, the legislative history, [and] public policy[.]” (*Bitner v. Department of Corrections & Rehab.* (2023) 87 Cal.App.5th 1048, 1058.)

Section 34191.4, subdivision (b)(2)(B) predicates an enforceable loan for real property upon the redevelopment agency's obligation to pay. Because the Dissolution Law does not define the terms “obligate” or “to pay,” the Court applies commonly understood meanings. The word “obligate” means “[t]o bind by legal or moral duty.” (See *Black's Law Dict.* (7th ed. 1999) p. 1101, col. 2.) The verb “to pay” means to give in return for goods or services, or to discharge a debt. (See *Webster's 3d New Internat. Dict.* (1986) p. 1659.)

The Agreement contains terms consistent with these definitions. It identifies \$22.4 million as the price for the real property, as well as a 10-percent annual interest rate if not paid in 1988. In addition, the Agreement contains the Former RDA's pledge of project tax allocations to repay the loan. The Redevelopment Law contemplated pledges of this kind. (See § 33671 [authorizing redevelopment agencies to pledge of tax increment funds to repay loans]; see also § 33671.5 [“Whenever any redevelopment agency is authorized to, and does, expressly pledge taxes allocated ... to secure, directly or indirectly, the obligations of the agency ... then that pledge ... shall have priority over any other claim to those taxes not secured by a prior express pledge of those taxes”].)

Both DOF and the Court have expressed concern about the subordination provisions attached to the Former RDA's pledge in the Agreement. The pledge was made “always ... subordinate

and subject to the right of the [Former RDA] to pledge or commit tax allocations from the Project to repay bonds or other indebtedness incurred by the [Former RDA] in carrying out the Project.” Coupled with the lack of any schedule requiring payment of specific sums at specific points in time, this qualifying language raises the prospect that the Former RDA could simply pay *de minimis* amounts, or pay nothing at all, into perpetuity. Several things temper concerns that the Agreement contains an insufficient payment obligation.

First, as the Court pointed out in its April 21, 2022 merits ruling, the implied covenant of good faith and fair dealing prevented the Former RDA from incurring additional debt on the Main-Pier Project solely to avoid paying down the Waterfront Loan. Hence, the Former RDA did not have unbridled discretion to ignore its payment obligation and associated pledge of tax increment under the Agreement.

Second, section 34191.4, subdivision (b) accounts for loans with large amounts of accumulated interest as well as loans lacking reasonable repayment deadlines. Subdivision (b)(3) reads, in relevant part:

If the oversight board finds that the loan is an enforceable obligation, any interest on the remaining principal amount of the loan that was previously unpaid after the original effective date of the loan shall be recalculated from the date of origination of the loan as approved by the redevelopment agency on a quarterly basis, at a simple interest rate of 3 percent. The recalculated loan shall be repaid to the city ... in accordance with a defined schedule over a reasonable term of years. Moneys repaid shall be applied first to the principal, and second to the interest.

If the Legislature had meant to exclude as unenforceable loans lopsided by unpaid interest, or loans without reasonable payment deadlines, then it would not have provided for the recalculation of interest or the imposition of a reasonable deadline.

Third, the obligation to pay in section 34191.4, subdivision (b)(2)(B) stands in contrast with requirements for other enforceable obligations under the Dissolution Law. Subdivision (b)(2)(A) of the same section defines loan agreements not involving transfers of interests in real property. These loans must include an obligation to pay “pursuant to a required repayment schedule.” Although the statute does not define the term “repayment schedule” as used in this subdivision, it clearly denotes specified sums owed at specified points in time. (Cf. § 34171, subd. (h) [“Recognized Obligation Payment Schedule” means a documents setting forth minimum payments and corresponding due dates].) The omission of the term “repayment schedule” in subdivision (b)(2)(B) reflects a legislative decision to treat loans for interests in real property differently than other loans. And it specifically reflects an intent not to require payments of particular amounts at particular times as necessary to establish an enforceable loan for real property.

The definition of enforceable “loans for money” under section 34171, subdivision (d)(1)(B) also sheds some light. This subdivision is part of the definition of “enforceable obligation” whether

or not the successor agency has obtained a finding of completion. Subdivision (d)(1)(B) extends enforceable obligations to “[l]oans for money borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule *or other mandatory loan terms*.” (Emphasis added.)³ The Legislature was aware of this language when it subsequently enacted section 34191.4. (See *Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 720.) Mandatory loan terms include the terms of repayment. (See *City of Grass Valley v. Cohen* (2017) 17 Cal.App.5th 567, 583.) Yet, when the Legislature enacted section 34191.4, subdivision (b)(2)(B), it did not require a repayment deadline. “Ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.” (*Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497.)

Instead, section 34191.4, subdivision (b)(2)(B) requires the former redevelopment agency to possess an obligation “to pay.” The Agreement contains the Former RDA’s pledge of project tax increment to pay the \$22.4 million purchase price. Although this pledge was made subject to other project indebtedness, it secured the Former RDA’s obligation “to pay.” The Court does not believe that more was required to establish an obligation within the purview of section 34191.4, subdivision (b)(2)(B). As a result, the Agreement contains an obligation to pay, and DOF should have treated it as an enforceable obligation when the Successor Agency submitted its ROPS 17-18.

Disposition

The petition after remand is granted, and a writ of mandate shall issue directing DOF to treat the Waterfront Loan on the Successor Agency’s ROPS 17-18 as an enforceable obligation. DOF shall file a return no later than 60 days after the writ issues.

The motion to strike is granted.

Pursuant to C.R.C. 3.1312, counsel for Petitioners shall **serve and then lodge** (1) for the Court’s signature an amended judgment to which this ruling is attached as Exhibit A and the April 21,

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³ These provisions do not apply to loans that a sponsor entity made to its redevelopment agency. (See § 34171, subd. (d)(2).)

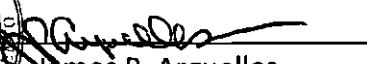
2022 ruling is attached as Exhibit B, and (2) for the clerk's signature a writ of mandate.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: February 27, 2023




Hon. James P. Arguelles
California Superior Court Judge
County of Sacramento