SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 12/23/2015 TIME: 02:16:00 PM DEPT: C-66

JUDICIAL OFFICER PRESIDING: Joel M. Pressman
CLERK: Richard Cersosimo
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2014-00034850-CU-MC-CTL** CASE INIT.DATE: 10/14/2014
CASE TITLE: **Alpine Union School District vs. Grossmont Union High School District [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 12/17/2015 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Alpine Union School District's Motion for Reconsideration is GRANTED.

While this Court granted Grossmont Union High School District's Motion for Summary Judgment, the Court of Appeal's subsequent decision upholding this Court's issuance of a preliminary injunction constitutes "new law" the requires a reconsideration of the Court's ruling under CCP 1008(a). This Court also ruled that Alpine Union School District and Alpine Taxpayers For Bond Accountability Motions for Summary Adjudication were moot in light of the ruling on Grossmont's Motion for Summary Judgment. The Court of Appeal's decision also requires a reconsideration of that decision.

Reconsideration of Grossmont's Motion for Summary Judgment/Adjudication

The Court rules on Grossmont's Objections to Plaintiff's Evidence in Support of their Oppositions as follows:

1 – OVERRULED
2-9 SUSTAINED
10 – OVERRULED
11-14, 16 – SUSTAINED
15, 17 OVERRULED

20-21 - OVERRULED
22-27 – OVERRULED
28-35 – OVERRULED
36 – SUSTAINED
37 – OVERRULED

The Court rules on Alpine Taxpayers Association's Objections to Evidence as follows:

Objections to Katy Wright Declaration OVERRULED

Objections to Robert Shield Declaration Paragraph 11, lines 22-25: SUSTAINED; Paragraph 12: SUSTAINED; Remainder OVERRULED

The Court GRANTS all requests for judicial notice.

After reconsideration, Grossmont's Motion for Summary Judgment is DENIED.

Promise to Build High School [Notice of Motion Issues for Adjudication Nos. 2,5,8,10,13,15]

In affirming this Court's order for a Preliminary Injunction, the Court of Appeal stated:

> *Independently construing the language of Prop. H and Prop. U*, we conclude those propositions contain a promise by Grossmont to construct a new high school in the Alpine area. Contrary to Grossmont's argument, those propositions did not leave the decision as to which projects would be funded (e.g., a new high school in the Alpine area) solely to the discretion of Grossmont's board. Disregarding the extrinsic evidence submitted by Alpine (e.g., declarations of voters regarding their subjective belief, statements by Grossmont officials, ballot measure arguments, and a grand jury report), which Grossmont argues is not relevant to the interpretation of Prop. H and Prop. U, the unambiguous language of those propositions nevertheless does not support its proffered interpretation of Prop. H and Prop. U. Although Prop. H's language arguably is insufficiently specific regarding the construction of a new high school in the Alpine area (i.e., "construct a new school"), the language of Prop. U, as quoted above, is very specific regarding the location of, and the actions to be taken to construct, a new high school.

COA Opinion at pp. 11-12 emphasis added.

The Court of Appeal made an independent *de novo* interpretation of the propositions and found they contained a promise to build a high school in Alpine (even if some prerequisites remained to be tried). The Court found that whether the trial court decided the underlying issue as a matter of law or whether the trial court determined it as a mixed question of law or fact, the analysis leads to the same conclusion: the relevant propositions promised a high school.

Where an appellate court affirms or overrules a trial court's decision granting or denying a preliminary injunction based on the interpretation of a statute or regulation, that interpretation becomes law of the case. North Coast Coalition v. Woods (1980) 110 Cal.App.3d 800; City of Los Angeles v. Los Angeles Bldg. and Const. Trades Council (1952) 109 Cal.App.2d 81. The Court has no choice but to follow this law of case. When an appellate court states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout subsequent progress, both in the lower court and upon subsequent appeal. Kowis v. Howard (1992) 3 Cal.4th 888, 892-893.

The intervening law of the case necessitates that the Court deny Grossmont's Motion for Summary Judgment. Grossmont moved for summary judgment on the basis that the bond language did not obligate the construction of a high school. The Court of Appeal disagreed as stated above.

The Court does not view the language "independently construing" the propositions to be dicta to the ultimate decision. Grossmont relies on language in the Court of Appeal Opinion that indicates that the trial court did not decide the issue on the merits. The full quote is:

For purposes of deciding Alpine's motion, the court found that under Prop. H and Prop. U, Grossmont promised to construct a new high school in the Alpine area *if certain prerequisites were satisfied*. Nevertheless, we believe the court's determination did not decide that issue on the merits. Therefore, that issue will be subject to the presentation of additional evidence and argument at trial, after which the court may make a definitive determination of all legal and factual issues in this action.

COA Opinion at p.10, emphasis added.

On the issue of whether there was a promise at all in the bond propositions, the Court of Appeal ruled *de novo* that such a promise exists. On whether or not the prerequisites were satisfied that triggered that promise, the Court of Appeal did not decide that issue. The "issue" that remains to be tried is whether the prerequisites were satisfied.

Grossmont appealed this Court's preliminary injunction requesting that the Court of Appeal interpret Propositions H and U de novo to find, as a matter of law, that Grossmont was not obligated to construct a new high school in Alpine. Grossmont summarized its position in the appellate briefing: "The trial court's decision to grant a preliminary injunction turned on the interpretation and construction of Propositions H and U...On appeal that interpretation and construction presents a question of law reviewed de novo by this Court." (Grossmont Appellant's Opening Brief at pp. 20-22) Grossmont requested a *de novo* review on the issue of whether the propositions obligated construction and that is what happened.

As a pragmatic matter, even if the language of the Court of Appeal Opinion after page 10 is dicta to its ultimate decision, the opinion's language indicates the Court of Appeal's view on the crucial issue of whether there was a promise in the propositions to construct a high school. That alone would require this Court on its own to reconsider the summary judgment ruling. As a matter of economy, both sides, and the communities they serve, are better served by proceeding to trial on these issues in light of direction given by the Court of Appeal. ("Therefore, that issue will be subject to the presentation of additional evidence and argument *at trial*... COA Opinion, p. 10)

Statute of Limitations [Notice of Motion for Summary Adjudication Issue Nos. 1,4,8,9,14]

Grossmont also moved for summary judgment/adjudication on the basis that Alpine's claim were time-barred under the 60-day rule for so-called "reverse-validation" actions. Civ. Proc. §860, 863.

A validation action is an action to determine the validity of any local government's decision or action. Code Civ. Proc. §860. A reverse validation action is an action by an individual challenging a public agency's action. CCP 863. Validation actions and reverse validation actions must be filed within 60 days of an agency's action or decision. Code Civ. Proc. §860, 863. If a validation or reverse validation action is not filed within 60 days of a public agency's action or decision, the action or decision is considered to

be validated as a matter of law. Id.

Grossmont relies on a November 8, 2012 Resolution to Modify Bond Program, where the Governing Board ratified "the withdrawal of building design plans from DSA and placed the school construction (including grading) on hold until enrollment thresholds and per pupil funding levels are met." Grossmont argues that as a result of this resolution, Grossmont's bond program and budget were significantly altered and placed the new school in the last phase/priority of the Proposition U bond projects. (UF Nos. 49-50) Grossmont argues that this resolution triggered the 60-day statute of limitations for a "reverse validation" action.

Given the Court of Appeal's ruling that Propositions H and U contained a promise to build a high school, in order to grant summary judgment, it would need to be clear that Grossmont was breaching its promise to build a high school to commence the running of the statute of limitations. The November 2012 Resolution was a decision to delay and prioritize other projects. With respect to the high school, Grossmont has consistently taken the position that it is committed to eventually completing construction. Grossmont argued as much at the Court of Appeal: "[Grossmont] did not break that promise and therefore no preliminary injunction should have been issued. Grossmont argues that because neither Prop. H nor Prop. U contained any time frame for construction of the new high school, it could not have broken any propose to construct the school..." The Court cannot determine that the statute of limitations for a "reverse validation" has run.

Requiring Set-Aside of Funds until State Board of Education Decides Unification [Notice of Motion for Summary Adjudication Issue Nos. 3,6,12,16]

Grossmont moves for summary adjudication that to require Defendants to set aside funds to build a new high school in Alpine until the State Board of Education decides the pending petition "would be inconsistent with and frustrate the statutory
scheme for determining whether and how bond funds should be allocated upon unification."

This issue does not dispose of a cause of action and is therefore improper for summary adjudication under CCP 437c(f). Even so, the Court does not find that there is a frustration of the statutory scheme under the Education Code authorizing the State Board of Education to allocate assets. The bond monies are a potential asset to be divided. Any ruling regarding the duties, obligations, and spending restriction under Proposition U funds must be decided regardless of what the State Board of Education (SBE) does. This Court's determination of existing bond obligations will not impact the SBE's determination but will aid in determining what the assets are.

ATBA's Third Cause of Action for Waste [Issue Nos. 7, 8]

Grossmont also moved for summary adjudication of the Third Cause of Action based upon waste. The Reply brief focuses on two projects: "neither Alpine nor ATBA disputes the facts establishing that the Grossmont arts and administration buildings ("Grossmont Project") and the Valhalla High School modernization project ("Valhalla Project") are authorized by Proposition U, entitling Grossmont to summary judgment on ATBA's waste claim challenging those projects."

Given the Court of Appeal's ruling regarding the promise to construct a high school, there is a triable issue as to whether the failure to construct constitutes "waste." Whether or not the Grossmont Project or the Valhalla Project constitutes "waste" does not dispose of the cause of action and thus not appropriate for summary adjudication.

Fourth Cause of Action for Writ of Mandate to "Reconsider July 14, 2011" Resolution [Issue No. 11]

Grossmont argues that the ATBA's Fourth Cause of Action fails as a matter of law to the extent it seeks to compel Defendants to "review and reconsider resumption of the construction process" of a new high school in Alpine pursuant to the July 14, 2011 resolution, because the July 14, 2011 resolution was superseded by the November 8, 2012 resolution."

Resolving this factual issue, which appears to be pled in paragraph 83, would not dispose of the Fourth Cause of Action. Thus, summary adjudication is not appropriate under CCP 437c(f). The gravamen of the Fourth Cause of Action is that Grossmont has a mandatory, non-discretionary duty to build a high school in Alpine. (Paragraph 92) The duty alleged goes beyond the July 2011 and November 2012 resolutions.

Reconsideration of Alpine Union High School District's Motion for Summary Adjudication

This Court never ruled on Alpine's Motion for Summary Adjudication, finding that it was moot given the Court's ruling on Grossmont's Summary Judgment Motion. Given that the Court has reconsidered and denied Grossmont's Motion for Summary Judgment, the Court must also reconsider Alpine's Motion for Summary Adjudication.

The Court rules as to Alpine Union School District's Objections to Evidence Submitted in Support to Defendants' Opposition to Motion for Summary Adjudication as follows: OVERRULED, except No. 10, which is SUSTAINED.

The Court rules on Defendants' Objections to Plaintiffs' Evidence in Support of their Motions for Summary Adjudication as follows:

DECLARATION OF ALAN K. BRUBAKER: OVERRULED, except for No. 4 which is SUSTAINED

DECLARATION OF DARIEN SHANSKE: OVERRULED

The Court GRANTS all requests for judicial notice.

After reconsideration, Alpine Union School District's Motion for Summary Adjudication is DENIED.

Plaintiff Alpine Union School District requested this Court adjudicate that defendant Grossmont Union High School District owed Plaintiff the duties to: (1) construct a high school in Alpine based on the agreement evidence by GUHSD Board resolution No. 2004-28; and (2) complete construction of a high school in Alpine using Proposition U bond funds. The motion was limited to determination of whether a duty existed under Resolution 2004-28 (which included a recital regarding passage of Proposition H) and then whether bond funds under the subsequently passed Proposition U funds should be used (as opposed to limiting the funds to Proposition H funds). The motion was not based directly on language from the propositions, but was limited to an analysis of Resolution 2004-28.

The Court finds that Alpine Union School District has not met its burden for summary adjudication under CCP 437c(f) that Board Resolution No. 2004-28 alone created a duty to construct a high school. The basis of the alleged duty was a contractual theory. While Board Resolution No. 2004-28 may be

evidence supporting a larger duty, the Board Resolution alone does not appear to be a contract between Alpine and Grossmont. The issue must be subject to further evidence presented at a trial on the merits.

Reconsideration of Alpine Taxpayers for Bond Accountability's Motion for Summary Adjudication

The Court never ruled on Alpine Taxpayers for Bond Accountability's Motion for Summary Adjudication, finding that it was moot given the Court's ruling on Grossmont's Summary Judgment Motion. Given that the Court has reconsidered and denied Grossmont's Motion for Summary Judgment, the Court must also reconsider the Taxpayers' Motion.

The Court rules on Alpine Taxpayers for Bond Accountability's Evidentiary Objections to Grossmont Union High School District's Opposition to ATBA's and AUSD's Motions for Summary Adjudication as follows:

OVERRULED exception No. 8, which is SUSTAINED

The Court GRANTS all requests for judicial notice.

After reconsideration, Alpine Taxpayer's Motion for Summary Adjudication is DENIED.

The Taxpayers argued that language in the Proposition U bond measure and ballot materials unambiguously set forth a commitment to build a high school for Alpine/Blossom Valley. (UMF 22, Ex. 16 to NOL at p. 1; UMF 28, Ex. 16 to NOL at p. 11; Shanske Decl. ¶¶ 5.i and 5.j) "The Proposition U bond measure amounts to a contract entered into between defendant school district and ATBA when said voters and ratepayers decided to subject themselves to pay ad valorem property taxes for the foreseeable future until the bonds are paid off."

On this point, the Court of Appeal has expressly ruled that under both Propositions H and U, Grossmont promised to construct a new high school. (Decision at pp.13-14) However, it is conceded that Court of Appeal recognized that Proposition U described an enrollment level required to be met before construction would proceed. (p.11) The Court of Appeal did not resolve the issue of whether the enrollment trigger had been met.

Proposition U provides that construction would begin and be completed, "after district-wide enrollment at the existing comprehensive high school sites....equals or exceeds 23,245...at the time of release of request for construction bids." Alpine relies on a July 14, 2011 resolution wherein Grossmont made a finding that the enrollment trigger had been met. Alpine also argues that Grossmont released "construction" bids by inviting "qualified and experienced contractors to submit sealed bids for the construction project described" as "Removal Action Workplan at 12th High School Site." (UMF 37.) Alpine further argues that Grossmont's use of the request for qualifications/ proposals ("RFQ") and lease-leaseback method (LLB) that sidesteps and renders illusory the "completed bid" prerequisite.

The Court finds that Alpine Taxpayers have not met the burden on summary adjudication to show that the enrollment trigger has indeed been met. The resolution of July 14, 2011 is not necessarily dispositive of the issue. Factual questions remain as to the proper interpretation of the Proposition U language, including whether the trigger is intended to be once and for all time, or is an on-going requirement as well as the proper understanding of the language "release of request for construction bids", particularly in light of the lease-lease back structure.

The Court sets a Status Conference for January 8, 2015 at 10:00 a.m. in order to set dates for trial.

Judge Joel M. Pressman