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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JOHN TOS *et al*.,
Petitioners and Plaintiffs
vs.
STATE OF CALIFORNIA *et al*.,
Respondents and Defendants

No. 34-2016-00204740
Assigned for all purposes to Hon. Shelleyanne W.L. Chang, Dept. 24

PETITIONERS' OPPOSITION TO RESPONDENT AND DEFENDANT CALIFORNIA HIGH-SPEED RAIL AUTHORITY'S MOTION TO STRIKE ALLEGATIONS

Date: August 18, 2017
Time: 10:30 AM
Department: 24
Action filed: December 13, 2016
Trial Date: Not Yet Set

INTRODUCTION

Respondent and Defendant California High-Speed Rail Authority ("Authority") begins its second successive (and almost identical) Motion to Strike Allegations ("Authority's Motion to Strike") by stating, "This action challenges administrative decisions of the California High-Speed Rail Authority (the "Authority") committing proceeds of state general obligation bonds … ." While one of the four causes of action (the third) in Petitioners and Plaintiffs' ("Petitioners") Verified Second Amended Petition and Complaint ("SAP") raises that claim, there are three other

governmental entities, and/or taxpayers. Contrary to the Authority's assertions, each of the causes of action is properly pled and could adequately supports injunctive relief as a remedy. For this reason, the motion to strike should be denied.

BACKGROUND

For general background, Petitioners refer the Court to the summary provided in Petitioners' Opposition to the Authority's Demurrer, submitted herewith. That information will not, therefore, be repeated here, but is incorporated herein by this reference.

The Authority attacks three paragraphs in the Prayer for Relief, Paragraphs 2, 3, and 4, which seek injunctive relief against Respondents and Defendants. The Authority also attacks four paragraphs in the SAP's allegations: the second sentence of Paragraph 7, which identifies the injunctive relief sought, Paragraph 27, which explains why, in the absence of a remedy, Petitioners will suffer irreparable harm, Paragraph 105, which explains in more detail the nature of the injunctive relief being sought, and Paragraph 106, which seeks recovery of illegally or wastefully expended public funds.[1]

In short, the Authority's Motion to Strike, as with its prior Motion to Strike, is aimed at eliminating injunctive relief (including the essential charging allegations of the Second Cause of Action) from the scope of relief to which Petitioners might, if successful, be entitled.

LEGAL STANDARD

A motion to strike "can be used to reach defects or objections to pleadings that are *not* challengeable by demurrer." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2006) ¶7:156, p. 7-59 [emphasis in original].) Thus, it is typically used to

[1] Paragraph 106 and a portion of Paragraph 7 of the SAP, as well as Paragraph 4 of the Prayer for Relief, were voluntarily dismissed (without prejudice) by Petitioners on June 21, 2017, thus mooting those portions of the motion.

attack individual or groups of allegations, rather than an entire cause of action.[2] (*See, e.g., Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 385.) However, because it does not attack an entire cause of action, "[M]atter that is essential to a cause of action should not be struck and it is error to do so." (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.)

ARGUMENT

I. THE AUTHORITY' ATTEMPT TO STRIKE INJUNCTIVE RELIEF FROM THE SECOND CAUSE OF ACTION SHOULD BE DENIED.

The Authority makes multiple arguments about why all allegations pertaining to injunctive relief, as well as all requests for injunctive relief, should be stricken. It claims the allegations and requests are improper because, "… an administrative decision by a public agency may only be challenged by petition for writ of mandate compelling the Authority to set aside its determination." Authority's Motion to Strike at p. 14:14-16.) It also claims that the allegations and requests are either superfluous or too vague to be enforceable. (Authority's Motion to Strike at p. 15:22-25.) The Authority's arguments are based on its misunderstandings of the differences between causes of action and forms of relief

The Authority also seeks to strike the portions of the SAP that seek to have funds that may have been illegally spent restored by payment from the individual members of the Authority's Board of Directors. (Authority P&As at pp. 17-19.) However, as already noted, Petitioners have voluntarily dismissed those allegations and the associated portion of the prayer for relief.[3] That portion of the motion is therefore moot.

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[2] A generic motion to strike is to be distinguished from a special motion to strike under Code of Civil Procedure § 425.16.

[3] The Authority questions whether Petitioners requests for dismissal are valid, but each request dismissed a cause of action – i.e., a claim for relief based on a violation of Petitioners' rights. The dismissals are therefore proper.

A. **The motion to strike injunctive relief from the Second Cause of Action should be denied as procedurally improper.**

As The Authority notes, a motion to strike is proper to seek to eliminate a substantive defect in the complaint that is clear on the face of the complaint. Such a defect can be irrelevant, false, or improper matter or any part of a pleading not drawn or filed in conformity with the laws of California. (See, Authority's Motion to Strike at pp. 13-14.) However, The Authority' motion seeking to strike the charging allegations of the Second Cause of Action is procedurally improper. It is improper for a motion to strike to attempt to strike " …matter that is essential to a cause of action … ." (*Ferraro, supra*, 161 Cal.App.4th at p. 528.) That is the role of a demurrer, not a motion to strike. (*Id.*) The Authority has simultaneously filed a demurrer to the Second Cause of Action. Having challenged the cause of action by demurrer, The Authority may not also seek a "second bite at the apple" by asking its dismissal through a motion to strike.

B. **Petitioners' claim for injunctive relief under C.C.P. Section 526a is properly brought separately and independent of any claim relating to the approval of Funding Plans.**

As in their demurrer, The Authority argues here that the claim for injunctive relief under Code of Civil Procedure Section 526a is improper because the Second Cause of Action Is, in reality, a challenge to the Authority' approval of two Final Funding Plans, and such a challenge can only be brought through mandamus. (Authority's Motion to Strike at pp. 14-15.)

As stated earlier, The Authority has grossly mischaracterized the Second Cause of Action. The Second Cause of Action is not a challenge to the Authority's approval of Funding Plans, or to any other formal administrative action the Authority may have taken. That claim is stated in the SAP's Third Cause of Action.

Rather, the Second Cause of Action challenges the Authority' illegal and/or wasteful expenditures of public funds. Those attempts include using Prop. 1A bond funds to build "usable segments" that, even when fully constructed, will not be "suitable and ready for high-speed train operation" – as both § 2704.08(c) and (d) require. They also include useless and patently wasteful

expenditures on preparing Funding Plans that, by their very nature, would violate Prop. 1A in the same manner, and therefore could not properly be approved.

In particular, the Funding Plan that The Authority has relied on and is relying on to justify its expenditure of bond funds on the Central Valley Segment explicitly states that the project, when fully constructed in accordance with the Funding Plan, will not be "suitable and ready for high-speed train operation." Instead, all it will be ready for, once some high-speed rail cars have been bought, paid for, and delivered (something not included in the Funding Plan)[4], is to test those cars, and the track, signaling, electrification, etc., to see if they are, in fact, usable to provide the high-speed rail service that might eventually (at some unspecified future time) be instituted, once additional improvements have been planned, funded, and implemented. (SAP ¶¶ 41-43, 67-69.)

As laid out in the Second Cause of Action, unless AB 1889 is a valid statute, the expenditure of Prop. 1A funds towards construction of the Central Valley Section violates the requirements of Prop. 1A and is therefore an illegal expenditure of public funds. (SAP ¶¶ 97-98.) Under C.C.P. § 526a, such expenditures may be permanently enjoined in a lawsuit by any person who has paid taxes within the past year. (*White v. Davis* (2003) 30 Cal.4th 528, 555.)

In addition to the Central Valley Segment, the Authority had, at the time the lawsuit was filed, also approved a second Final Funding Plan, for the San Francisco – San Jose Corridor Segment. (SAP ¶72.) Like the Central Valley Segment, the Funding Plan for the SF – SJ Corridor Segment also relies on AB 1889 to satisfy the requirements of Prop. 1A. (SAP ¶¶ 70-71.)[5] If AB 1889 is unconstitutional, expenditure of Prop. 1A bond funds on that segment is also illegal for the same reason, and subject to injunction under C.C.P. § 526a.

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[4] SAP ¶41.

[5] Subsequent to the filing of this lawsuit, Respondent Director of Finance also gave final approval to the Final Funding Plan for the SF – SJ Corridor Segment. (See Exhibit A to Petitioners' Request for Judicial Notice in Opposition to Motion to Strike [Copy of letter from Director of Finance to the Authority approving SF – SJ Corridor Segment Funding Plan].)

Further, as alleged in the SAP ¶¶ 77-80, The Authority is either intending to or actually in the process of preparing at least two other Final Funding Plans. Those plans are limited to building grade separations at current grade crossings on conventional commuter rail lines.[6] Unless AB 1889 is a valid statute, these additional Final Funding Plans will also violate the requirements of Prop. 1A, making their approvals improper and expenditure of public funds on their preparation wasteful. (*See, City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545 [city's expenditures on infrastructure in an area it could not properly annex would be wasteful].)

The Authority argues that seeking injunctive relief against either of these two projects (or any other substantially similar grade separation project) would be "entirely speculative and vague." (Authority's Motion to Strike at p. 15:24.) Petitioners must beg to differ. The two project are well defined (see, Petitioners' RJN, Exhibits B [Funding Plan for Rosecrans/Marquardt Grade Separation Project] and C [Authority Resolution authorizing MOU for funding 25th Avenue Grade Separation Project]), and while the Authority's proposed funding may not not yet have received all necessary approvals, as in *HAPA, supra*, it is definite enough to make a claim for injunctive relief ripe.

C. Under the circumstances of the case, Petitioners claims for both preliminary and permanent injunctive relief are appropriate.

Based on *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 749, The Authority argues that the SAP's allegations cannot support a claim for permanent injunctive relief. The situation in *Connerly* is easily distinguished and, under the circumstances of this case, both preliminary and permanent injunctive relief are appropriately requested.

[6] In fact, after the lawsuit was filed, one of those Funding Plans was finalized and approved by the Authority, and is now pending before the Director of Finance for final approval. (Exhibit B to Petitioners' Request for Judicial Notice in Opposition to Motion to Strike.) The Authority has also entered into a Memorandum of Understanding with the City of San Mateo to provide funding for the second grade separation project. (Exhibit C to Petitioners' Request for Judicial Notice in Opposition to Motion to Strike.)

In *Connerly, supra*, the plaintiff had sought both declaratory relief that a statute passed by the Legislature was facially unconstitutional and injunctive relief to prevent state officials (the governor and attorney general) from attempting to implement or enforce the legislation. (*Id.* at p. 742.) While the lawsuit was pending, another lawsuit determined that the statute was indeed facially unconstitutional. That decision was affirmed on appeal, and the Supreme Court denied review, making the decision final. (*Id.*) Despite this, the trial court granted judgment on the pleadings to the plaintiff. (*Id.*) The court of appeal reversed, finding that because the other lawsuit had finally and conclusively found the statute unconstitutional and unenforceable, there was no longer a justiciable controversy, nor any reason to expect a state agency to continue to attempt to enforce a statute that had been conclusively found unconstitutional.

Here, by contrast, there is no other case before the courts challenging the constitutionality of AB 1889. Thus, until a final judgment has been entered, there may well be a need for a preliminary injunction to prevent The Authority from proceeding with illegal expenditure of Prop. 1A bond funds. Further, even if this Court were to declare the statute unconstitutional and therefore void, The Authority could appeal that decision in both the court of appeal and the Supreme Court. In the interim, in the absence of a permanent injunction or a (highly unusual) writ of supersedeas issued by the court of appeal, expenditures could continue until there was a conclusive final appellate decision. Thus, unlike the situation in *Connerly, supra*, both preliminary and permanent injunctive relief are proper here.

D. EVEN ASIDE FROM THE SECOND CAUSE OF ACTION, BOTH PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF ARE APPROPRIATE REMEDIES IN A MANDAMUS OR DECLARATORY RELIEF ACTION.

Astoundingly, the Authority asserts that, even beyond the Second Cause of Action, neither preliminary nor permanent injunctive relief are available because "Plaintiffs' only remedy is a writ." (Authority's Motion to Strike, p. 14:7-8.) Even if the Court were to find Petitioners' Second Cause of Action failed to state facts sufficient to constitute a cause of action, the remaining three

causes of action could still encompass both preliminary and permanent injunctive relief as an available remedy to be sought and prayed for.

In *Styrene Information & Research Ctr. v. Office of Environmental Health Hazard Assessment* (2012) 210 Cal.App.4th 1082, 1092, the plaintiffs filed an action for declaratory and injunctive relief, seeking this Court's declaration that two specific sets of compounds had been improperly proposed for listing as being chemicals "known to the State of California to be carcinogenic" under Proposition 65, and seeking a preliminary and permanent injunction against the defendant moving forward with their listing. This Court (the Hon. Judge Chang presiding) granted injunctive relief, and the court of appeal affirmed in full. (*See also, City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280 [court granted declaratory relief finding that time allotted for Caltrans to build 710 freeway had expired, and a permanent injunction blocking Caltrans from moving forward with building the freeway unless/until it obtained a valid freeway agreement from the city].) Likewise here, if the Court were to find that AB 1889 was unconstitutional as violating Article XVI Section 1 of the California Constitution, it would be justified in issuing both preliminary and permanent injunctions against the respondents and defendants herein expending public funds in reliance on that statute. As explained above, such relief would be appropriate to prevent continued expenditures both during the pendency of trial court proceeding and while the case was pending on appeal.

In regard to the mandamus causes of action,

> A permanent injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356 [176 Cal.Rptr. 620].) The remedy is available in a mandamus proceeding and is appropriate to restrain action which, if carried out, would be unlawful. (*County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.)

A prominent example of a mandamus case involving a permanent injunction is *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376. That case was a challenge under the California Environmental Quality Act ("CEQA") to the University of California's approval of an expansion of its San Francisco medical school campus to Laurel

Heights. The challenge was made under Public Resources Code § 21168.5 [traditional mandamus]. In affirming the court of appeal's conclusion that the Environmental Impact Report ("EIR") for the expansion was inadequate, the California Supreme Court directed the court of appeal to prohibit the University from expanding its operations at Laurel Heights campus beyond those already begun (presumably by ordering the trial court to issue a permanent injunction) until such time as a proper EIR was certified. (*Id.* at p. 428.)

Preliminary injunctions are also often sought under mandamus claims, and another CEQA case, *Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, provides a good example. In that case, the city had issued a building permit for a large hotel project in an environmentally sensitive area without any CEQA review, asserting that issuance of a building permit was a ministerial act exempt from CEQA review. (*Id.* at p. 1126.) The plaintiff challenged that determination. In the trial court, the plaintiff sought a preliminary injunction, which was denied. (*Id.* at p. 1128-1129.) The trial court then ruled in the city's favor and both that decision and the denial of the injunction were appealed. (*Id.* at p. 1129.) The court of appeal held that, because under the specific circumstances issuing the building permit was a discretionary act, the decision was subject to CEQA review. (*Id.* at p. 1142.) The court of appeal also held that, under the circumstances of the case, the trial court erred in denying a preliminary injunction and ordered the trial court, on remand, to issue the injunction. (*Id.* at p. 1143.)

Lest the Authority argue that injunctive relief in mandamus claims is limited to CEQA, one need only point to *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, one of the first actions challenging the adequacy of a general plan after its adequacy became a requirement under Government Code § 65302. That case was brought in traditional and administrative mandamus, and sought preliminary and permanent injunctive relief along with declaratory relief. There were actually three separate actions in the trial court: two by private parties and one by the California Attorney General on behalf of the State of California. In the latter action, the Petition and Complaint included the allegation that, "[i]t is the concern of the People of the State of California

that the laws and legislative policies of this State be enforced." (*Id.* at p. 343.) In two of the actions, relief was granted, including a preliminary injunction; (*Id.* at p. 345) while in the third it was denied. The cases were consolidated on appeal. (*Id.* at p. 341.)

In addition to granting relief in all three actions, the court of appeal also directed the trial court to issue permanent injunctive relief. The court explained in considerable detail why both preliminary and permanent injunctive relief were appropriate, in spite of the action being framed in mandamus. (*Id.* at pp. 355-362.) It noted that mandamus is a "special proceeding" falling within Part III of the Code of Civil Procedure, while the code sections on injunctive relief fall within Part II – of Civil Actions – in that code. However, the court then pointed out that one statutory section within Part III (C.C.P. § 1109) provides that the provisions of Part II, including the provisions allowing injunctive relief, are applicable to and constitute the rules of practice for special proceedings. (*Id.* at p. 356.) By the same token, injunctive relief, both preliminary and permanent, is available as a remedy in this mandamus proceeding.

CONCLUSION

As explained above, injunctive relief, both temporary and permanent, is properly included as a potential remedy under each of the causes of action in this proceeding. Whether it should actually be applied is a matter to be determined based on the court's ruling on the merits on each of those causes of action, but it would be improper to remove injunctive relief as a potential remedy. The Authority's motion to strike injunctive relief as a remedy must therefore be denied.

Dated: July 27, 2017

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