

Bond Case Briefs

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CalPERS Loses San Bernardino Appeal.

The California Public Employees' Retirement System filed an amicus brief last week in support of the state government in a case involving the successor agency to San Bernardino's former redevelopment agency.

The filing came the same day that U.S. Bankruptcy Judge Meredith Jury ruled against CalPERS' appeal of the city's eligibility to be in bankruptcy.

The pension fund's attorneys argued in the appeal that the judge granted eligibility on Aug. 28 despite shortcomings in the city's case.

CalPERS filed the amicus brief on Thursday in support of two other state agencies – the Department of Finance and the Office of the State Controller – in their ongoing dispute with the San Bernardino over tax revenues relating to the dissolution of the city's redevelopment agency and the operations of the successor agency.

The state government shut down redevelopment agencies in 2012, and says San Bernardino inappropriately held on to \$15 million that belonged to the former city redevelopment agency.

San Bernardino City Attorney James Penman argued in his filing against the state agencies that the city could not afford the \$15 million and would be forced to shut down. Bankruptcy protection prevents creditors from seizing assets or from suing entities under that protection. Penman is trying to make the DOF order part of the bankruptcy case.

The city lost the first round on that issue when Jury ruled on Sept. 11 that the city and the successor agency to its redevelopment agency are separate entities, making it a non-bankruptcy court issue.

In that ruling, Jury said in court documents that if the successor agency had a dispute with the state's Department of Finance, it should take the issue to state court. Jury also left the door open for the city to file before her a second time, which the city did.

She has yet to rule on the second filing.

The Department of Finance filed an appeal Oct. 1 with the U.S. Ninth District Court of Appeals arguing that Judge Jury doesn't have jurisdiction on the redevelopment issues.

In its "friend of the court" brief in support of the state agencies, CalPERS argues that the 11th Amendment to the U.S. Constitution protects state agencies from being "hailed into federal court against their will" by a municipality, which is a creation of the state. The brief also describes CalPERS as a state agency in an attempt to point out similarities between the pension fund and the state agencies.

CalPERS has been attempting to get relief from the automatic stay protecting entities in bankruptcy from being sued in state court, in order to file suit in district court against the city for the \$17 million in missed fees, payments and interest currently owed by the city.

CalPERS brief argues in support of the DOF's appeal to district court on the grounds that bankruptcy is not an exception to state sovereignty.

"By characterizing [the city's] proceeding as merely one to prevent an action to collect on a debt, the bankruptcy court gave short shrift to the serious federalism concerns that this proceeding raises," according to CalPERS brief.

In CalPERS appeal of the city's eligibility to be in bankruptcy, the pension fund's attorneys used some of the same arguments related to state sovereignty.

Jury said in denying without prejudice CalPERS appeal of the city's eligibility to be in bankruptcy that "the eligibility orders do not finally resolve or seriously affect any substantive rights of CalPERS."

The judge cited as precedent the case of Silver Sage Partners, Ltd. v. City of Desert Hot Springs, Calif. where the appeals court ruled that, "We are not convinced that Congress's whole municipal bankruptcy statutory scheme is so skewed in favor of the municipality that the commencement of proceedings itself causes irreparable injury."

BY KEELEY WEBSTER