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Lexin v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - December 23, 2013 - Cal.Rptr.3d - 13 Cal. Daily Op. Serv. 13, 824

“This is the latest appeal arising from the City of San Diego’s (the City) infamous underfunding of its employment retirement system.” In 2002 the Board of Directors (board) of the San Diego City Employees’ Retirement System (SDCERS) approved the City’s proposal to modify the funding plan to delete the potential of a balloon payment if the underfunded ratio fell to a certain level, in exchange for the City’s resolution to indemnify the board members from liability for “any claim or lawsuit” arising from the approval. In *Torres*, supra, 154 Cal.App.4th at pp. 224-226, 64 Cal.Rptr.3d 495, this court held the resolution required the City to pay attorney fees the board members incurred in enforcing their right to costs of defense in two civil actions brought against them by the then city attorney arising from their approval of the modification.

In this appeal, the issue is whether the City’s resolution also requires it to pay the board members’ criminal defense costs in *Lexin*, supra, 47 Cal.4th 1050, 103 Cal.Rptr.3d 767, 222 P.3d 214, an action the San Diego County District Attorney brought against them for felony violation of the states’ conflict of interest statute, Government Code section 1090.2 The City appeals a summary judgment for the board members in their declaratory relief action, contending (1) the resolution does not apply to criminal proceedings and (2) section 995.8 precludes an award of defense costs because, after commencement of the criminal action, the city council did not hold a formal hearing to determine the provision of a defense would be in the City’s best interests and the board members “acted ... in good faith, without actual malice and in the apparent interests of the public entity” when it approved the modification. (§ 995.8, subd. (b).) The City asserts that despite its indemnity agreement, it had the right to arbitrarily deny a defense.

The Court of Appeal affirmed the judgment. “The plain language of the City’s resolution requires it to pay criminal defense costs and there is no statutory impediment.”