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CONTRACTS - CALIFORNIA

Davis v. Fresno Unified School District

Court of Appeal, Fifth District, California - June 1, 2015 - Cal.Rptr.3d - 2015 WL 3454720

Taxpayer filed suit against school district and contractor, challenging noncompetitive bid contract between district and contractor for construction of middle school, which contained lease-leaseback arrangement, and alleging that district's board breached its fiduciary duties and that contractor had impermissible conflict of interest. The Superior Court sustained demurrers filed by district and contractor. Taxpayer appealed.

The Court of Appeal held that:

- Exception to competitive bidding in statute permitting school boards to construct schools under lease-leaseback contracts was applicable to entire lease-leaseback arrangement;
- As a matter of first impression, true lease was required to satisfy competitive bidding exception for lease-leaseback agreements;
- As a matter of first impression, terms of lease supported taxpayer's allegation that lease-leaseback agreement was not a true lease;
- As a matter of first impression, district was required to use school for period of time during lease term to qualify for competitive bidding exception;
- As a matter of first impression, taxpayer alleged facts sufficient to support theory that lease was subject to competitive bidding due to failure to satisfy statutory criteria for use of school; but
- Taxpayer failed to allege facts sufficient to state claim for breach of fiduciary duty; and
- Taxpayer alleged sufficient facts to state cause of action for violation of conflict of interest under statute barring public officials from being interested in contracts formed in their official capacities.

Exception to competitive bidding in statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site, was not limited to site leases, but rather was applicable to entire lease-leaseback arrangement. Bidding procedures set forth in statute providing that leases entered into by school district were subject to competitive bidding did not apply to lease-leaseback agreements.

True lease, rather than traditional construction contract designated a lease by parties, was required to satisfy criteria for exception to competitive bidding under statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site. Generally, words in statute were used to indicate substance, not merely as labels, exceptions to competitive bidding requirements were to be strictly construed and restricted to circumstances that truly satisfied statutory criteria, and there was no legislative history stating or implying that criteria for exception was satisfied by any document labeled as a lease.

Terms of lease between school district and contractor under contract to build school regarding construction, payment, use, possession, and ownership of new facilities adequately supported taxpayer's allegation that arrangement was not a true lease that provided financing for project, as

required to satisfy criteria for exception to competitive bidding under statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site, such that allegations were sufficient to state cause of action for violation of competitive bidding requirements. Substance of payment terms in facilities lease was that of compensation for construction, not payment for period of use for facilities, and district never occupied or used facilities before making its final payment.

School district was required to use newly constructed school buildings during period of time during lease term in order for district's lease-leaseback arrangement with contractor for construction of school to qualify for exception to competitive bidding created by statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site. Lease-leaseback arrangement qualified for exception only if instrument containing leaseback required contractor to construct building or buildings on demised premises for use of district during term of lease, and reference to term of lease in statute supported inference that language pertaining to school's use of building during lease was intended to have substance, rather than merely specifying de minimis requirement.

Taxpayer alleged facts sufficient to support his legal theory that facilities lease under contract between school district and contractor to build middle school was subject to competitive bidding because district failed to satisfy statutory criteria for use of buildings by district during term of lease, as required for exception to competitive bidding to apply under statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site. Taxpayer alleged that district did not have right or practical ability to have beneficial occupancy of demised premises during term of lease, which directly addressed whether lease provided for construction of buildings for use by district during term of lease.

Statutory scheme authorizing lease-leaseback arrangements for school construction projects did not restrict use of arrangements to situations in which school district did not have sufficient available funds to cover costs of building new facilities. There was no express provision in statutes limiting district's use of lease-leaseback arrangements to such situations, there was no ambiguous provision in statutes that could have been construed in manner to include such limitation, and report of executive officer to Allocation Board, which administered and implemented school facilities construction program, did not state that legislation restricted availability of lease-leaseback method to situations in which other funding was not available.

Taxpayer failed to allege facts sufficient to state claim for breach of fiduciary duty against school district and contractor related to school board's approval of expenditures for multi-million dollar project to construct middle school pursuant to lease-leaseback agreement. Taxpayer's complaint requested that contractor return money paid to it under lease-leaseback agreement, but did not allege that contractor was subject to fiduciary duty, complaint did not allege that school board profited from transactions and did not request restitution or disgorgement of profits, and relief sought for alleged breach of fiduciary duty was against contractor, a party that did not have a fiduciary duty.

Contractor, as corporate consultant in charge of constructing middle school pursuant to noncompetitive bid contract with school district containing lease-leaseback agreement, was not a public official subject to conflict of interest provision in Political Reform Act, such that taxpayer failed to state cause of action against contractor for violating conflict of interest prohibition in Act, despite contention that contractor had prior contract with district that created conflict of interest precluding contractor from being awarded lease-leaseback contracts. Although taxpayer's allegation

that contractor provided services to district as a consultant was sufficient to raise possibility that contractor was a public official under Act, taxpayer also alleged that contractor was at all times a corporation, and as a corporation, contractor fell outside regulatory definition of consultant.

Taxpayer alleged sufficient facts to state cause of action against contractor, as corporate consultant, for violation of conflict of interest provision in statute barring public officials or employees from being personally financially interested in contracts they formed in their official capacities, stemming from contractor's lease-leaseback contracts with school district to construct middle school. Taxpayer alleged that contractor served as a professional consultant to district and had a hand in designing and developing plan and specifications for middle school, which was sufficient to state that contractor was an employee for purposes of statute and participated in making contracts, and taxpayer's allegations sufficiently stated that contractor was financially interested in contracts for purposes of statute.