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FALSE CLAIMS ACT - CALIFORNIA

Cordoba Corporation v. City of Industry

Court of Appeal, Second District, Division 8, California - January 3, 2023 - Cal.Rptr.3d - 2023 WL 21762 - 2023 Daily Journal D.A.R. 98

City brought action against civil engineering consultant and solar energy developer alleging fraud under False Claims Act, along with other claims, after uncovering allegedly fraudulent billings, and consultant filed cross-complaint for breach of contract, breach of implied covenant of good faith and fair dealing, and declaratory relief.

The Superior Court granted city's motion to strike cross-complaint under anti-SLAPP statute. Consultant appealed.

The Court of Appeal held that:

- Consultant's cross-claims arose from city's protected petitioning activity;
- 30-day notice provision about fee disputes in consulting contract did not preclude city from asserting fraud claims;
- Consultant failed to state a claim for breach of implied covenant of good faith and fair dealing; and
- An actual present controversy did not exist for declaratory relief about requirements of previously-terminated contracts.

Civil engineering consultant's cross-claim against city for breach of contract, alleging that city's years-delayed allegations of fraudulent billings relating to solar development project violated consulting contract, arose from city's protected petitioning activity of lawsuit suit against consultant and developer, for purposes of city's anti-SLAPP motion; consultant's breach of contract claim plainly arose from city's lawsuit.

City's investigations of suspicious claims on public funds, as a precursor to filing fraud and contract-based suit against solar energy developer and civil engineering consultant, were protected by anti-SLAPP statute as communications in preparation of litigation, for purposes of city's anti-SLAPP motion concerning consultant's cross-claim against city for breach of implied covenant of good faith and fair dealing, in which consultant alleged that city created an unsustainable contractual relationship forcing consultant to resign and thereby be deprived of the benefits of its consulting contracts with city.

City council's considering firing its city manager, which allegedly contributed to volatile situation with city's civil engineering consultant, was protected by anti-SLAPP statute as communications undertaken in connection with a legislative proceeding, for purposes of city's anti-SLAPP motion that it filed in response to consultant's cross-claim against city for breach of implied covenant of good faith and fair dealing, in city's action asserting fraud and contract-based claims against consultant and solar energy developer arising from city's discovery of allegedly fraudulent billings for solar energy project.

Civil engineering consultant's cross-claim against city for declaratory relief, asking court to declare

that consultant was not responsible for approving developer's allegedly fraudulent invoices for solar energy development on city land, arose from city's protected petitioning activity of its lawsuit against consultant and developer for fraud and contract-based claims, for purposes of city's anti-SLAPP motion, where consultant had no present or future duties under its consulting contracts, which it chose to terminate, and the only use of a declaration would have been to undermine city's legal claims.

The 30-day notice provision in civil engineering consultant's contract with city, providing that city was to give written notice to consultant of dispute with fees within 30 days of receipt of invoice, did not preclude city from asserting fraud claims under False Claims Act more than 30 days after receipt of invoices, after uncovering allegedly fraudulent billing; on its face, the provision addressed payment of invoices, not legal action, interpreting provision to require city to discover and to file a lawsuit for fraud under Act within 30 days would have been unreasonable, and the intentional fraud that city alleged under Act was not an error contemplated by the notice provision and likely to have been discovered by routine perusal of invoices.

Civil engineering consultant failed to state a claim against city for breach of implied covenant of good faith and fair dealing arising from consultant's terminating its consulting contracts with city in midst of city's disputes with solar energy developer and city's investigations of suspicious billings relating to solar energy project, where consultant complained that city deprived it of the benefits of its contracts with city, but consultant did not say what benefit it unfairly lost.

No actual controversy existed concerning present rights and duties under civil engineering consulting contracts with city, and therefore consultant could not obtain a declaratory relief that the contracts did not require it to approve solar energy developer's invoices to city, which asserted fraud and contract-based claims against consultant and developer arising from city's uncovering allegedly fraudulent billing for the solar energy project; the only immediate controversy in city's action concerned past acts or duties under contracts that consultant previously terminated, and consultant merely sought a declaration that it was innocent of the alleged fraud.

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