

Bond Case Briefs

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REDEVELOPMENT AGENCIES - CALIFORNIA

City of Chula Vista v. Stephenshaw

Court of Appeal, Third District, California - April 14, 2023 - Cal.Rptr.3d - 2023 WL 3336400

City and successor redevelopment agency filed petition for writ of mandate and complaint for declaratory and injunctive relief seeking a writ to compel Department of Finance to recognize reimbursement agreements as enforceable obligations and approve use of property tax revenues for such items on all current and futures recognized obligation payment schedules (ROPS).

The Superior Court denied petition. Plaintiffs appealed.

The Court of Appeal held that:

- Reimbursement agreements qualified as enforceable obligations;
- Department did not abuse its discretion in denying reimbursement of lease payments made in connection with debt instruments that were unenforceable obligations; and
- Department was not estopped from denying ROPS.

Under “tax increment financing method,” tax revenues available for local redevelopment agencies from land within a redevelopment area are frozen as of the date a redevelopment plan is adopted, and any tax revenues generated by an increase in property values after adoption of the plan, the tax increment, are paid to the redevelopment agency for use in financing the redevelopment project.

A primary purpose of legislation to dissolve redevelopment agencies and create a process for wind down of their affairs was to eliminate tax increment financing, and redirect, to the maximum extent possible, the revenues and assets of the former redevelopment agencies to local governments to help fund core governmental services; as part of the wind down process, the law established successor agencies and empowered them to continue to make payments due for enforceable obligations.

To obtain funds to make payments required by enforceable obligations, a successor redevelopment agency must periodically prepare recognized obligation payment schedules (ROPS) setting forth the minimum payment amounts for each enforceable obligation and identify one or more sources of payment, and submit the ROPS to the oversight board for approval; the Department of Finance makes its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations.

Reimbursement agreements between city and former redevelopment agency qualified as enforceable obligations under statutory exception for contemporaneous written agreements between city or county and former redevelopment agency at time of issuance of indebtedness obligations solely for purpose of securing or repaying those indebtedness obligations for purposes of recognized obligation payment schedules (ROPS), and thus Department abused its discretion in determining that agreements were not enforceable obligations; agreements were written agreements entered into at time indebtedness was incurred for purpose of securing or repaying that debt, parties expressly agreed that city would be entitled to exercise any and all remedies available pursuant to law if tax increment revenues were available but unpaid to city, and implied covenant of good faith

and fair dealing required tax increment revenues be pledged to repayment of indebtedness honestly and in good faith.

There was no reimbursement agreement or amendment to an existing reimbursement agreement executed contemporaneously with debt instruments, and thus Department of Finance did not abuse its discretion in denying reimbursement of lease payments made in connection with those debt instruments as unenforceable obligations that were not required to be reimbursed to successor redevelopment agency or city for purposes of recognized obligation payment schedules (ROPS), although timing of reimbursement obligation was contingent on unpledged tax increment revenues being available; legislature did not make explicit any attempt to exclude agreements containing contingent repayment obligations, and Department failed to explain why contingency rendered repayment obligation illusory.

Department of Finance was not estopped from denying recognized obligation payment schedules (ROPS) for former redevelopment agency due to its approval of those items in prior ROPS; city and successor redevelopment agency could not show that they reasonably relied on Department's past ROPS approvals because the relevant transactions occurred years before Department's ROPS determinations, Department's ROPS determination letters expressly warned that past approval of an item would not prevent Department from revisiting that item on future ROPS, and estoppel would have nullified a strong rule of public policy.