

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 01/29/2014

TIME: 10:55:00 AM

DEPT: 43

Judicial Officer Presiding: Mark Borrell
CLERK: Hellmi McIntyre
REPORTER/ERM:

CASE NO: **56-2013-00433986-CU-WM-VTA**

CASE TITLE: **Golden State Water Co vs Casitas Municipal Water District**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion to Certify Class (01/24/2014) under submission, now rules as follows:

The matter comes before the court on defendants' motion to certify a class.

Procedural Background

Petitioner, Golden State Water Company (Golden State), commenced this action in March 2013 against Casitas Municipal Water District (Water District) and Casitas Municipal Water Community Facilities District No. 2013-1 (CFD). Golden State is a private water company operating in, and providing water to, the City of Ojai. The Water District is a municipal water district. The Water District has proposed acquiring Golden State's assets by eminent domain. Golden State opposes the Water District's plan.

The principal issue raised by Golden State's petition is the validity of resolutions of the Water District establishing the CFD as a community facilities district under the Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act or Act) for the purpose of financing the acquisition costs through the issuance of bonds to be repaid by a special tax. Golden State asks for a judicial declaration that the implementing resolutions are invalid and for injunctions preventing the Water District and CFD from issuing the related bonds.

This court initially determined that the issues raised by Golden State's petition could not be resolved until the special election had taken place and the measure authorizing the issuance of the bonds and the levy of the special tax was approved by the voters. The court stayed this action so that the election could go forward.

In August 2013, the voters of Ojai approved the measure by well over the two-thirds majority required by the Act. After public notice of the action was published, additional parties joined the litigation as defendants. These new parties include six individual defendants (Hajas, Hanson, McPherson, Daddi, Torres, and Greene) and a registered political committee, Ojai Friends of Locally Owned Water (OJAI FLOW). Each of the individual defendants is a resident of Ojai and a present customer of Golden State. The interests of these newly added defendants align with those of the Water District in opposing Golden State's petition.

In addition, these new defendants seek "a determination that Code of Civil Procedure § 526b applies to this Action . . . or an award of 'all costs, damages and necessary expenses resulting [to Defendants individually and on behalf of the residents of the Community Facilities District] by reason of [Golden State's] filing of [this suit],' pursuant to Code of Civil Procedure § 526b." (Bracketed language in original.) Specifically, the new defendants, if successful in opposing Golden State in this action, hope to rely on Section 526b as a way of obtaining reimbursement from Golden State of (1) the difference between what each pays Golden State for water after the commencement of this action and what each would have theoretically paid to the Water District for the same services had the Water District's take-over of Golden State's assets not been delayed by this suit; and (2) the legal fees and expenses incurred in opposing Golden State in this action. Section 526b damages, however, may only be claimed by the defendants if they prevail in this action (i.e., Golden State's challenge to the resolutions is defeated).

Before the scheduled date for the hearing on Golden State's petition, the new defendants moved the court to certify a class. The class proposed by defendants would consist of Golden State account holders in the affected area of Ojai. The Water District and the CFD support the motion. Golden State opposes it. The parties presented their oral arguments on January 24, 2014, and thereafter the court took the matter under submission. Because this motion must be decided before the issues raised by Golden State's petition may be resolved, the hearing to decide the fate of the challenged resolutions was continued to February 24, 2014.

Brief Statement of Salient Facts

In early 2011, some residents of Ojai expressed the view that Golden State's rates were too high. In response to these concerns, the Water District developed a plan to acquire the assets of Golden State by eminent domain and to fund the acquisition costs through the issuance of bonds. This plan contemplated the creation of a community facilities district to issue the bonds, in an amount not to exceed \$60 million, pursuant to the Mello-Roos Act. (Gov. Code, § 53311, *et seq.*) To repay these obligations, the community facilities district would levy a special tax to be secured by a lien against all non-exempt property within its territory. (See Gov. Code, § 53320.) The board of the Water District adopted a resolution (No. 13-08) on January 29, 2013, stating an intention to form CFD as a community facilities district.

On March 13, 2013, the board of the Water District, after conducting a public hearing, adopted the three resolutions at issue here. Resolution No. 13-12 generally authorized the establishment of CFD as a community facilities district. (See § Gov. Code, § 53325.1.) Resolution No. 13-13 authorized CFD to issue bonds and levy a special tax, subject to voter approval. The final resolution, No. 13-14, called for a special election. (See Gov. Code, § 53326.) (Resolution No. 13-14 was subsequently amended by Resolution No. 13-16.)

In August 2013, voters in Ojai approved Measure V, which authorized and directed the CFD to issue

bonds of up to \$60 million to finance the acquisition of Golden State's assets and to impose special taxes on properties to be serviced by those assets to retire the debt. The measure passed with 87% of the ballots in favor.

Analysis of Class Issues

The moving defendants seek certification of a class. Class action litigation is frequently used to resolve questions common to many persons and of general interest, when doing so in a single action can be accomplished effectively and efficiently. (See Code Civ. Proc., § 382.) "Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.)

Central to the decision whether to certify a class is the nature of this case and the issues raised by it. This is not a typical lawsuit. It is a "reverse validation action," and the sole issue is the validity of the contested resolutions. A reverse validation action is recognized as a proceeding "in rem." (*Community Youth Athletic Center v. City of Nat. City* (2009) 170 Cal.App.4th 416, 427.) "Strictly speaking, an action 'in rem' is an action 'against a thing.'" (*Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1031; citation omitted.) "In a validation action the thing that is the subject of the action is the matter to be validated, i.e., the ordinance, resolution, or other action taken by the public agency. The only way for the court to acquire jurisdiction over the matter is to ensure that notice is given to all interested persons so that the resulting judgment can be conclusive as against them." (*Id.*, 144 Cal.App.4th at p. 1032.)

In a reverse validation action, notice is given to "all interested persons" by publishing the summons in a newspaper of general circulation. (Code Civ. Proc., § 861.) The summons must contain certain information specific to these types of actions, including the last day an interest person may appear in the action. (See Code Civ. Proc., § 861.1.) Jurisdiction is "complete after the date specified in the summons." (Code Civ. Proc., § 862.)

To this end, the court directed Golden State to publish notice of the action after the election. In response, affected account holders had the opportunity to join this action as defendants. The individual defendants and OJAI FLOW availed themselves of that opportunity. The date by which others could join the action has now passed. Consequently, by operation of law, the court has acquired jurisdiction over all of the account holders which defendants would join as members of the proposed class.

It follows that whatever determination the court may make on the validity of these resolutions will bind all of the account holders to the same extent it binds the participating parties. Thus, the primary attribute of class action litigation – the final resolution of multiple similar claims in a single case – will be served even without resort to the class action mechanism.

The moving defendants do not contest this conclusion but, instead, offer a different reason for class certification. These defendants ask to have a class certified so that the class members will not be disadvantaged in a yet-to-be-filed lawsuit against Golden State. At the core of the moving defendants' argument is Code of Civil Procedure section 526b (hereafter Section 526b). The court's analysis, therefore, turns to that statute.

Section 526b provides in part as follows:

"Every person or corporation bringing . . . any suit to obtain an injunction, restraining or enjoining the

issuance, sale, offering for sale, or delivery, of bonds . . . of any [political body], proposed to be issued . . . for the purpose of acquiring . . . water works . . . , shall, if the injunction sought is finally denied, and if such person or corporation owns . . . a public utility business of the same nature as that for which such bonds or other securities are proposed to be issued, sold, offered for sale, or delivered, be *liable to the defendant* for all costs, damages and necessary expenses resulting to such defendant by reason of the filing of such suit." (Emphasis added.)

If successful in opposing Golden State in this action, the defendants hope to recover costs, damages and attorneys' fees from Golden State pursuant to Section 526b. No party has suggested they could not make that request, and the instant motion for class certification is unrelated to their individual ability to do so.

Under the statute, Section 526b damages may only be recovered after the challenge to the enactment in issue "is finally denied." Counsel for the moving defendants confirmed at oral argument that if they prevail in this case, they will file a separate action to recover Section 526b damages. (Also see Reply to Opp. to Motion to Certify Class, 1/16/14, p. 2; emphasis in original ["the damage remedy available to the defendants will be pursued in a *subsequent* action"].)

Why, then, is the motion for class certification made in *this* case? The moving defendants say they fear that Section 526b damages may only be recovered by a "defendant," citing the words of the statute making the unsuccessful challenger (here, potentially Golden State) "liable to the defendant." Although such a construction of the statute would not stop these defendants from pursuing Section 526b damages, it might impact the other account holders, the defendants say. The defendants' concern is that if the account holders who did not join this action during the notice period are not added *to this case* as class members (i.e., become "defendants"), they may not be able to avail themselves of Section 526b in the next lawsuit which the moving defendants hope to bring.

None of the parties have cited legal authority addressing the moving defendants' underlying premise: that class certification is necessary to place the non-participating account holders on equal footing with the moving defendants in seeking Section 526b damages in some later case. It is not appropriate for the court to determine that issue in the context of this motion. It is sufficient for the instant purpose to note that the point is unsettled in the law.

The class action is a product of equity, and courts are vested with great discretion to implement class procedures to promote the interest of justice. (*Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at p. 435; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 458.) In exercising that discretion, the court must weigh the benefits and burdens of class wide litigation.

The court has the authority to certify a class as to a specific issue. (See Calif. Rules of Ct., rule 3.765, subd. (b) ["When appropriate, an action may be maintained as a class action limited to particular issues"].) Thus, the court may certify a class on the issue of liability, leaving issues of damages to be resolved in separate proceedings. (See *Hicks v. Kaufman and Broad Home Corp.* (2001) 89 Cal.App.4th 908, 925-926 ["the trial court could limit the class issues to liability for breach of warranty *vel non* and allow each class member to use that judgment as the basis for an individual action to recover damages for the breach."].) This appears to be what the moving defendants contemplate by their motion. That is, the class would be certified only as to the issue of the validity of the resolutions.

Two common problems with class action litigation are delay and expense. Delay is of particular concern given the nature of this action. The statutes applicable to reverse validation actions contemplate a need

for prompt resolution. The public is not well served by prolonged uncertainty over the viability of legislative enactments. (See *Community Youth Athletic Center v. City of Nat. City* (2009) 170 Cal.App.4th 416, 427, [there is an "important public policy of securing a speedy determination of the validity of certain actions taken by a public agency"].) In addition, there is the added expense of class litigation. Unique to class actions are the costs of notifying and administering the class. The court has considered these factors, but for the reasons stated below, it concludes that each can be overcome.

Ordinarily, once a class is certified, the class members must receive notice. The fundamental purpose of certification notice is to inform class members of their ability to "opt-out" of the class. (Generally, see 3 Newberg on Class Actions, 5th ed., §§ 8.2-8.3.) A class member who chooses to "opt-out" is removed from the litigation and not bound by the outcome of the class action. (See generally *Hypertouch, Inc. v. Superior Court* (2005) 128 Cal.App.4th 1527.) A person "opting-out" of a class action is free to pursue his or her own case on the same grounds.

But certification notice is not always required. In some instances, class members are not free to "opt-out." These are sometimes called "mandatory class actions." (See *Ortiz v. Lyon Management Group, Inc.* (2007) 157 Cal.App.4th 604, 621.) A body of law centering on Federal Rules of Civil Procedure, rule 23 has developed identifying certain categories of class actions which are "mandatory" in nature – i.e., where there is no ability for class members to "opt-out." Certification notice is not required in "mandatory" class actions. (See *Wal-Mart v. Dukes* (2011) — U.S. —, 131 S.Ct. 2541, 2559, 180 L.Ed.2d 374.)

To the extent that the only issue certified for class litigation is that of the validity of the challenged resolutions, the matter takes on the nature of a "mandatory" class action. As discussed above, the court presently has jurisdiction over each of the proposed class members. Further, because of the *in rem* nature of this case, none of those individuals have the ability to "opt-out" of this reverse validation action and none can bring a separate case challenging the resolutions. Thus, the judgment in this case will be binding on all affected individuals, whether the court certifies a class or not. Because class litigation in this case would be in the nature of "mandatory" class action, the court may in its discretion dispense with certification notice.

The court finds that certification notice is not necessary here. As discussed above, none of the class members may "opt-out." All were given notice of the action when Golden State published the summons.

Dispensing with certification notice eliminates the two major drawbacks to class litigation: delay and expense. Indeed, without certification notice, the action will proceed from all practical purposes in the same manner as it otherwise would have.

Although it may be true that class certification is unnecessary to conclusively determine the validity of the resolutions as to the class members, without it, they arguably stand to lose a valuable right. The resolution of that issue – that is, whether class certification really is necessary for the non-participating account holders to pursue Section 526b damages in another action -- is not something the court may properly decide in this case. Therefore, to preserve the rights of the class members, and because a class may be certified without delay or expense and will effectively have no practical impact on the litigation of the threshold issues, the court concludes that the potential benefits of certification outweigh any possible justification for not doing so.

For these reasons, the court makes these findings and orders:

1. Defendants have established the existence of a well-defined class, substantial in number, of individuals who are equally affected by the matters at issue here and sharing the same interest as the proposed class representatives. Class litigation of a limited issue is neither impractical nor infeasible.

2. A class is certified consisting of all account holders in Golden State Water Corporation's Ojai Service Area, also known as the Casitas Municipal Water District Community Facilities District No. 2013-1 (Ojai) from August 29, 2013 through the date of entry of judgment.

3. Certification is limited to the determination of following issue and no other: Is Golden State Water Corporation entitled to a writ of mandate and/or injunctive relief as sought in its petition herein? The entitlement of defendants and the class members to recovery under Code of Civil Procedure section 526b is reserved to a separate action.

4. Class member shall not have the opportunity to "opt-out" of the class, and certification notice shall not be given.

The six individual defendants shall act as class representatives, and their counsel shall serve as class counsel.

The hearing on the merits has been fully briefed and will proceed on February 24, 2014.

The clerk is directed to give notice.