SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME	**August 9, 1:30 p.m.**	**DEPT. NO**	**42**
JUDGE	**HON. ALLEN SUMNER**	**CLERK**	**M. GARCIA**
CITY OF LA QUINTA, et al., **Petitioners and Plaintiffs,** **v.** **ANA J. MATOSANTOS, et al.,** **Respondents and Defendants,**		**Case No.: 34-2013-80001485**	
Nature of Proceedings:	**PETITION FOR WRIT OF MANDATE**		

Following is the court's tentative ruling denying the petition for writ of mandate scheduled for August 9, 2013, at 1:30 p.m. in Department 42.

INTRODUCTION

For over 20 years the City of La Quinta ("City") made a series of loans to its Redevelopment Agency ("RDA"). Although some loans had been repaid, as of early 2011 the RDA still owed the City approximately $41 million.

In June 2011, the Legislature dissolved redevelopment agencies. Property tax revenues that had gone to the redevelopment agencies were reallocated to other local entities. Several months prior to its dissolution, the RDA repaid the City the entire $41 million outstanding on the City's loans.

As part of the dissolution of redevelopment agencies, the Legislature sought to "claw back" any assets a former redevelopment agency transferred after January 2011 to the agency's sponsoring city. Here, the Department of Finance ("DOF) determined the RDA's payment of the $41 million to the City was not made pursuant to an "enforceable obligation," and thus the $41 million is available for distribution to other local entities.

By this petition, the City challenges that determination. For the reasons discussed below, the court finds DOF's determination was correct and denies the petition.

FACTUAL BACKGROUND

The Community Redevelopment Law and Tax Increment Financing

In 1945, the Legislature enacted the Community Redevelopment Law authorizing cities and counties to establish redevelopment agencies to remediate urban decay. (Health & Saf. Code § 3300 et seq.; see also *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 245-46.)[1] Redevelopment agencies funded their activities primarily through tax increment financing: the redevelopment agency received property tax revenue in excess of the property tax revenue allocated to other local entities prior to the redevelopment plan. (*Id.* at 246-47.) However, redevelopment agencies were not limited to tax increment financing. They were also permitted to borrow money to fund their activities. (§ 33601 [redevelopment agency may borrow money from any public agency]; § 33610 [city or county may loan funds to agency].)

Formation of the RDA and the City's Loans

In July 1983, the City established the RDA pursuant to the Community Redevelopment Law. (Spevacek Decl., Ex. B.) In August 1983, the City and the RDA entered into a Cooperation Agreement providing the City may, but was not required to, advance funds to the RDA. Although the RDA agreed to repay the City with interest at 10 percent, there was no repayment schedule. Instead, repayment was to be made "consistent with the RDA's financial ability, in order to make the City whole as soon as practically possible." (Spevacek Decl., Ex. C, pp. 24-23.)

By 2006, the City had made eleven loans to the RDA. (Spevacek Decl., ¶ 20.) In March 2006, the City and RDA entered into a Loan Restructuring Agreement restructuring $22 million in outstanding loans. Under the restructuring, the City would receive ***only*** interest payments until 2030. (Spevacek Decl., ¶¶ 21-22, 23, Ex. G, pp. 278, 281-293.) In 2030, annual balloon payments of principal would begin, with the loans fully repaid by 2039. (*Id.*)

Following the 2006 Loan Restructuring Agreement, the City made two additional loans to the RDA: $9 million in 2007, and $10 million in 2009. (Spevacek Decl. ¶¶ 25, 26.) The 2007 loan agreement contained a separate repayment schedule by which the loan would not be repaid until 2019, at the earliest. (Spevacek Decl., Ex. H, p. 299.)[2]

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[1] Unless otherwise specified, all further references are to the Health and Safety Code.

[2] The 2007 loan agreement provided:

> The Loan Principal and the accrued interest shall be repaid by Agency over an 11-year period in annual installments from a combination of land sale proceeds and Project No. 2 non-housing tax increment revenue. The first annual installment shall be prorated for the period from the date of this Agreement to June 30, 2008, and shall be paid to City not later than July 31, 2008. The amount of the annual installment shall be identified in the annual adoption of the budget or through a subsequent appropriation of the Agency Board of Directors. Subsequent annual installments shall cover succeeding fiscal year periods and shall be payable by the July 31st following the end of a fiscal year (i.e., second annual

According to the City, the RDA made only interest payments on this loan until it made the challenged repayment in 2011. (Spevacek Decl., ¶ 26b, Ex. I, p. 329.) The 2009 loan agreement did not contain any repayment schedule. (Spevacek Decl., Ex. H, p. 311.)[3]

As of early 2011, the outstanding principal owed the City on all loans was $41 million.

The Dissolution Law

In early 2011, the Legislature began considering eliminating redevelopment agencies. In June 2011, it enacted AB1X 26 doing just that. In December 2011, the California Supreme Court upheld the constitutionality of ABIX 26 in *Matosantos*, *supra*, 53 Cal.4th 231. In June 2012, the Legislature adopted AB 1484 modifying the provisions of AB1X 26. The court refers to AB1X 26 and AB 1484 collectively as the "Dissolution Law."

One of the primary goals of the Dissolution Law was to increase the share of property taxes going to cities, counties, schools and other local entities by reallocating the tax increment formerly going to redevelopment agencies. This reallocation, however, would not happen immediately. The Legislature established "successor agencies" responsible for winding up the affairs of the former redevelopment agencies, including making payments and otherwise performing the former redevelopment agencies' "enforceable obligations." (§ 34177.)

The county auditor-controller now determines the amount of property tax revenue that would have been allocated to the former redevelopment agency. This is allocated to the successor agency to pay the redevelopment agency's enforceable obligations. Any remaining funds are allocated to other local entities within the county. (§§ 34182, 34183.) Thus, the tax increment revenue is not reallocated to other local entities until the redevelopment agency's enforceable obligations are paid.

The Contested Repayment

Anticipating the dissolution of redevelopment agencies, in February and March of 2011 the RDA repaid the entire $41 million loaned by the City. It is clear from the City Council's minutes the decision to repay the $41 million was motivated by the Legislature's proposal to eliminate redevelopment agencies. (Spevacek Decl., Ex. J, pp. 376-378.) At the time the loan was repaid, the Dissolution Law had not been enacted.

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installment shall be for the period July 1, 2008 through June 30, 2009, and shall be payable by July 31, 2009).

(*Ibid.*)

[3] The agreement provided: "Loan Principal and the accrued interest shall be repaid by Agency. Repayments should be applied first to interest and second to principal." (*Ibid.*)

The Due Diligence Review Process

As part of the process of dissolving redevelopment agencies, the successor agency conducts a due diligence review to determine the "unobligated balances" of the former redevelopment agency now available for allocation to other local entities. (See generally § 34179.5.) The review determines the value of any assets transferred by the former redevelopment agency to its sponsor city between January 1, 2011 and June 30, 2012. (§ 34179.5(c)(2).) For any such transfer not required by an "enforceable obligation," the amount transferred is added to the unobligated balance available for allocation to other local entities. (§ 34179.5(c)(6).)

The successor agency's oversight board submits its due diligence review to the DOF for final determination of the amount available for disbursement to other local entities. (§ 34179.6(c).) Upon DOF's determination, the successor agency is required to transmit this amount to the county auditor-controller to be disbursed. (§ 34179.6(f).)

The Contested Determination

Here, the successor agency's due diligence review concluded the $41 million loan repayment transferred from the RDA to the City was made pursuant to an enforceable obligations, and thus none of this money was available for disbursement to other local entities. (Spevacek Decl., Ex. K, pp. 394, 405 and L.)

DOF disagreed, finding:

> HSC section 34171(d) states agreements, contracts, or arrangements between the City and the Agency are not enforceable obligations. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

(Spevacek Decl., Ex. Q, p. 463-64.) DOF determined the entire $41 million was available for disbursement to local entities. The successor agency was directed to transmit $41 million to the county auditor-controller.[4]

The City challenges DOF's determination. It seeks mandate and declaratory relief finding payment of the $41 million was an "enforceable obligation" by the RDA owed to the City, and an order preventing DOF and the county auditor-controller, or any of the other respondent local agencies, from seeking to recoup the $41 million.

The court finds the City had no "enforceable obligation" entitling it to repayment of the entire $41 million in 2011. Accordingly, the petition is denied.

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[4] DOF ordered the successor agency to transmit $41 million to the county-auditor controller within five days. (*Id.*, p. 464.) It appears the City has not done so and that both sides have agreed to maintain the status quo pending the outcome of this petition.

ANALYSIS

1. The loans are not enforceable obligations

DOF determined the RDA's repayment of the loans in early 2011 was not made pursuant to an enforceable obligation. Therefore, the entire $41 million is available for distribution to other local entities. DOF was correct.

A. The repayment was not an enforceable obligation under section 34171

DOF's determination was part of the due diligence review process. For purposes of that process, the term "enforceable obligation" is defined by section 34171, subdivision (d). Controlling here, agreements between the City and its RDA are expressly excluded from the definition of enforceable obligation:

> For purposes of this part, enforceable obligation does not include any agreements, contracts, or arrangements between the city . . . that created the redevelopment agency and the former redevelopment agency. . . .

(§ 34171(d)(2).)

The City acknowledges its loan agreements would be excluded from this definition of enforceable obligations. (Opening at 25:8-9.) However, there is an exception recognizing loan agreements "entered into between the redevelopment agency and the city . . . that created it, ***within two years of the date of creation of the redevelopment agency***, may be deemed to be enforceable obligations." (§ 34171(d)(2) [emphasis added].)

The City argues its loans to the RDA are saved by this prevision: the 2006 restructuring agreement and the 2007 and 2009 loan agreements merely implemented the 1983 Cooperation Agreement, which was entered into within two years of the RDA's creation. (Opening at 25:8-13.) The City argues the Cooperation Agreement established a "line of credit." Each subsequent loan merely memorialized the amount and terms of repayment pursuant to that initial line of credit. (Opening at 25:13-17.)

DOF maintains the Cooperation Agreement did not establish a "line of credit" as defined by Black's Law Dictionary. (Opp. at 22:3-25.) The City chides DOF for using the 5th edition of Black's, rather than the 8th edition. (Reply at 22:6-12.) The court finds this battle of the dictionaries unhelpful.[5]

First, regardless which definition is used, the Cooperation Agreement was not a line of credit. Under either definition, a line of credit is a fixed limit or maximum

[5] As Judge Learned Hand counsels, "It is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary." (*Cabell v. Markham* (1945) 148 F.2d 737, 739.)

amount of credit granted by a lender to a borrower. As DOF argues the Cooperation Agreement did not obligate the City to loan any money to the RDA, much less a fixed or maximum amount of money. Instead, it merely provides "The City ***may, but is not required to***, advance necessary funds to the Agency...." (Spevacek Decl., Ex. C, p. 23 [emphasis added].) The Cooperation Agreement was not a loan agreement between the City and the RDA; the City did not agree to loan any money to the RDA.

Second, the subsequent agreements, where the City actually loaned money to the RDA, do not refer to the 1983 Cooperation Agreement. This supports the conclusion the 2006, 2007, and 2009 agreements are separate, stand-alone agreements. Since none of these agreements were entered into within two years of the RDA's creation, none are saved by the exception in section 34171 subdivision (d)(2).

B. The repayment was not an enforceable obligation under section 34167

As the City notes, the analysis is complicated by the Legislature's use of two different definitions of "enforceable obligation" – one in section 34167 and one in section 34171.[6] The due diligence review process incorporates the definition found in section 34171 discussed above, which DOF correctly applied in this case.

However, even if the definition in section 34167 were applied, the RDA's repayment to the City would still not have been pursuant to an "enforceable obligation."

In its definition of "enforceable obligation," section 34167 makes no mention of agreements between a city and its redevelopment agency. Instead, section 34167, subdivision (d), simply defines "enforceable obligations" as:

> For purposes of this part, enforceable obligation means any of the following:
>
> . . . .
>
> (2) Loans of moneys borrowed by the redevelopment agency for a lawful purpose...to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.
>
> . . . .
>
> (5) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.

Section 34167, subdivision (f), additionally provides:

> Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable

[6] Section 34167 is found in the "suspension" part of the Dissolution Law, enacted by AB1X 26, which took effect July 28, 2011. Section 34171 is found in the "dissolution" part of the Dissolution Law, later enacted by AB 1484, taking effect February 1, 2012.

> obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations.

The City argues its loan agreements meet this definition, and the RDA was permitted to repay the loans pursuant to subdivision (f). This argument fails because no matter how phrased, the RDA was not ***required*** to repay the ***entire*** principal in 2011.

Subdivision (d)(2) states enforceable obligations include loan repayments, but only "to the extent they are ***legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.***" Similarly, subdivision (f) provides the RDA may "make payments ***due.***" DOF argues the $41 million repayment was not made pursuant to an enforceable obligation because the loan agreements did not require a scheduled payment of $41 million in late February or early March 2011. (Opp 21:11-13.) The court agrees.

The $41 million repayment was solely of principal. However, no principal payments were required on any of the loans in 2011. The 2006 loan restructuring agreement's repayment schedule did not require the RDA to begin repaying the principal until 2030. The 2007 loan agreement's repayment schedule spread payments over 11 years, beginning in 2008. The 2009 loan agreement contains no repayment schedule.

Although the loan agreements require the RDA to repay the City, they did not require repayment of any principal in 2011, and certainly did not require repayment of the entire loan amount. The only payments arguably due in 2011 were interest payments.[7]

The City notes all three loan agreements allowed the RDA to repay the principal at any time without penalty. This may be true, but is not dispositive. That early repayment was ***permitted*** does not turn the $41 million repayment into one ***required*** by a repayment schedule or other mandatory obligation within the meaning of subdivision (d)(2).

Alternatively, the City argues the loan agreements meet the definition of "enforceable obligation" contained in subdivision (d)(5): "Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." This argument also fails.

First, the court finds the specific definition in subdivision (d)(2) prevails over the general definition in subdivision (d)(5). (See, e.g., *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal. 4th 1232, 1246; Code Civ. Proc., § 1859.) Second, even under the catchall definition of subdivision (2)(5), the RDA was not required to repay the full $41 million in 2011.

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[7] Neither party discusses this possibility.

C. The Dissolution Law did not invalidate the loans

The parties spend much effort briefing whether the Legislature impermissibly rendered the City's loans to the RDA unenforceable. However, the Legislature appears to have contemplated a middle course – effectively modifying the terms of the loans, while still providing for their ultimate repayment.

As DOF notes, the fact that the $41 million repaid to City in early 2011 is currently available to allocate to other local entities does not mean the City will never be repaid. (Opp. at 4:24 to 5:6.) Once DOF completes the due diligence review, section 34191.4 provides:

> [U]pon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city . . . that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.

Once designated as enforceable obligations under section 34191.4, the City's loans may then be placed on the successor agency's recognized obligation payment schedule ("ROPS") for payment beginning in fiscal year 2013-14. (§ 34191.4(b)(2)(A).)

The Dissolution Law does modify the loans by recalculating and limiting interest, establishing a maximum annual repayment amount, and requiring 20 percent of any loan repayment be transferred to the Low and Moderate Income Housing Asset Fund. (§ 34191.4(b)(2).) Although the City complains this modification denies it the full benefit of its bargain (see Reply at 24, fn. 17), it does challenge the Legislature's power to modify the loan agreements.[8]

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[8] Nor would such an argument be successful. The City and the RDA are political subdivisions of the state and "exist only at the state's sufferance." (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255-56.) The State has plenary power to grant its political subdivisions whatever rights it deems appropriate, including the right to enter into contracts. (*Id.*)

The State also has the power to narrow, expand, alter, or abolish those rights. (*City of Trenton v. State of New Jersey* (1923) 262 U.S. 182, 186 [State at its pleasure may modify or withdraw any powers it grants municipal corporation]; *La Mesa, Lemon Grove and Spring Valley Irritation Dist. v. Halley* (1925) 197 Cal. 50, 61 ["So far as a municipality is an agency of government, it has no rights or powers, as between it and the state, the legislature may not modify or abrogate at pleasure."].)

As our Supreme Court explained nearly 100 years ago, the Constitution's prohibition against impairing contracts "does not extend to the waiver or modification of any rights accruing to the agencies of the state in their governmental capacity by action of the people through constitutional amendments or by legislative enactment." (*County of Tulare v. City of Dinuba* (1922) 188 Cal. 664, 669; see also *City of Trenton, supra*, 262 U.S. at 186 ["The power of the State, unrestrained by the contract clause..., over the rights and property of cities held and used for governmental purposes cannot be questioned."].)

D. The Dissolution Law applies retroactively

The City makes several arguments challenging the retroactive effect of the Dissolution Law. The City notes the Community Redevelopment Law allowed the City's loans to the RDA at the time they were made, and the loans were repaid before the Dissolution Law was enacted. This is not disputed. The City then argues the Dissolution Law should not be construed to ***retroactively*** invalidate early repayment of the loans. This argument fails.

The City argues the "first rule" of statutory construction is that statutes are construed to operate prospectively absent clear indication the Legislature intended them to operate retroactively. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1193-94, 1207-09.) Not so. The most fundamental rule of construction is to interpret the statute to effectuate the Legislature's intent. (*Mannheim v. Superior Court* (1970) 3 Cal.3d 678, 686.) The presumption against retroactivity is "not a straightjacket," and evidence the Legislation intended a statute to operate retroactively may be found in the wording of the statute itself. (*Id.* at 687; *Russell v. Superior Court* (1986) 185 Cal.App.3d 810, 818.)

The City argues there is no clear indication the Legislature intended the Dissolution Law to retroactively invalidate the RDA's $41 million repayment made in early 2011. However, the Dissolution Law clearly does evidence the Legislature's intent to retroactively invalidate some transfers between redevelopment agencies and their sponsor cities.

Again, under the due diligence review, section 34171(d)(2) provides that an agreement between a city and its redevelopment agency is not an enforceable obligation unless entered into within two years of creation of the redevelopment agency. Section 34178(b)(2) contains similar language. The only reasonable interpretation of this language is that the Legislature intended agreements between a city and a redevelopment agency entered into within two years of the agency's creation would remain enforceable. Agreements entered into after that would not be.

This construction is supported by several other provisions in the Dissolution Law. For example, section 34179.5(c)(2) requires the due diligence review to identify any monies transferred by a redevelopment agency to its sponsor city ***after January 1, 2011,*** and document whether the transfer was required by an enforceable obligation. If not, the amount transferred is added back to the RDA's unencumbered balance available for allocation to other local entities.

The Dissolution Law did not take effect until June 28, 2011. By its plain language, section 34179.5 evidences the Legislature's intent that some transfers made ***before*** the Dissolution Law took effect are subject to reallocation to the local entities (transfers between January 1, 2011 and the law's June 28, 2011 effective date).

Section 34167.5 also evidences the Legislature's intent to retroactively invalidate certain transfers occurring within six months before enactment of Dissolution Law:

> Commencing on the effective date of the act adding this part [i.e., June 28, 2011], the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred ***after January 1, 2011***, between the city . . . that created a redevelopment agency . . . , and the redevelopment agency. If such an asset transfer did occur during that period . . . the Controller shall order the available assets to be returned to the . . . the successor agency . . . . The Legislature hereby finds that a transfer of assets by a redevelopment agency ***during the period covered in this section*** is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized.

(§ 34167.5 [emphasis added].) Again, the Dissolution Law took effect June 28, 2011. Section 34167.5 thus evidences a clear intent to retroactively invalidate certain transactions that occurred before the law's effective date.

2. Repayment of the loans was a "transfer"

The City argues the loan repayments were not "transferred" to it within the meaning of the Dissolution Law, and thus not subject to the due diligence review. This argument also fails.

The due diligence review identifies any assets "transferred" by the RDA to the City. (§ 34169.5(c).) For purposes of the due diligence review, "transferred" is defined as "the transmission of money to another party that is not in payment for goods or services or an investment or where the payment is de minimus." (§ 34179.5(b)(3).) The City argues the loans were an "investment" it made in the RDA and its various project. As such, repayment does not constitute a "transfer" of money. The argument does not persuade.

The due diligence review only looks at transfers ***from*** the RDA ***to*** the City. The City's initial transfer of funds to the RDA might arguably be seen as an investment. However, the question is the RDA's payment of the $41 million to the City. The RDA's payment of those funds back to the City cannot be deemed an "investment." The court thus finds the transfer of funds from the RDA to the City was a transfer within the meaning of section 34179.5.

3. Validity of the redevelopment plan and loan agreements are not at issue

The City argues the repayment cannot be challenged because the RDA's initial redevelopment plans are deemed valid. The RDA approved its redevelopment plans in 1983 and 1989. According to the City, the time to challenge the validity of those plans is

long past; both plans are "final and conclusive" and not subject to judicial undoing. (See MPA at 16-18.) The City cites the validation procedures of sections 33501 and 33368.[9]

Neither section is applicable. This case does not challenge the validity of the redevelopment plans or the bonds issued to finance the plans. (Compare, e.g., *Hesperia Citizens for Responsible Development v. City of Hesperia* (2007) 151 Cal. App. 4th 653, 665 [holding city council's prior determination of blight in adopting redevelopment plan are conclusive in absence of validation action].)

The City similarly argues the various loan agreements are no longer subject to challenge. (MPA at 17:8-15.) Here the City cites Government Code section 53511, which authorizes an action to determine the validity of a local agency's contracts. Such a challenge must be brought within 60 days or is barred. (*City of Ontario v. Superior Court* (1970) 2 Cal.3d 335.)

Again, this case does not involve the validity of the City's loan agreements. DOF concedes the agreements were valid when made. Instead, the issue is whether the Legislature, in enacting the Dissolution Law, precluded voluntarily early repayment of the loans to avoid reallocation of the former RDA's assets. As discussed above, the Legislature did.

4. **DOF's approval of other loan repayments is irrelevant**

The City argues DOF approved a similar loan repayment involving the City of Santa Clarita, and therefore DOF thus must approve repayment of the City's loan here. The City cites no authority for the proposition DOF is required to treat all loan repayments the same.

Moreover, the City asks the court to judicially notice the City of Santa Clarita's due diligence review and DOF's letter approving that review, but does not provide the loan agreements between the City of Santa Clarita and its redevelopment agency. (Req. for Jud. Not., Ex. W.) Without these loan agreements, the court cannot determine whether they are similar to the loan agreements at issue here. The court thus declines the City's request for judicial notice. (See *Matosantos, supra*, 212 Cal.App.4th at 1490 fn. 2.)

5. Disallowing accelerated repayment is not unconstitutional.

The City argues the Dissolution Law is unconstitutional if interpreted to disallow early repayment of the loans. The City's arguments fail.

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[9] Section 33501 authorized an action to determine the validity of a redevelopment plan and bonds issued to finance the plan. Such an action must be brought shortly after the plan's approval. (§ 33500.) Section 33368 provides unless such a validation action is timely brought, "it shall thereafter be conclusively presumed that the project area is a blighted area . . . and that all prior proceedings have been duly and regularly taken." (§ 33368.)

A. The Dissolution Law does not unconstitutionally reallocate local taxes

The City notes it used its general fund monies to make the loans to the RDA, using the City's sales, use and property tax revenues. The City notes the RDA repaid only principal – returning money to the City's general fund. The City argues reallocating these monies to other local entities will be allocating the City's sales, use and property tax revenues in violation of article XIII, sections 24(b), 25.5(a)(2), and 25.5(a)(3) of the California Constitution. (Opening at 28:23 to 29:14.)

Section 24(b) prohibits the Legislature from reallocating the proceeds of any locally imposed tax; section 25.5(a)(2) prohibits the Legislature from changing the distribution of local sales and use taxes; and section 25.5(a)(3) prohibits the Legislature from changing the allocation of property tax revenues among local agencies unless approved by a two-thirds vote.[10]

The Dissolution Law does not violate any of these previsions, because it did not reallocate the ***City's*** sales, use or property tax revenues. As DOF argues, the City itself allocated the proceeds of its local taxes when it loaned these funds to the RDA. (Opp. at 26:5-7.) The Dissolution Law merely provides how the ***RDA's*** asserts are to be allocated in winding up the RDA's affairs. Early repayment of the City's loans is not considered an enforceable obligation against the RDA, so these funds are available to other local entities. The fact the City loaned money to the RDA does not mean that in unwinding the RDA the Legislature is "allocating" ***City*** revenues.[11]

B. The Dissolution Law does not violate Home Rule

The City also argues the Dissolution Law violates article XI, section 5, of the California Constitution, commonly referred to as the "Home Rule Doctrine." The City is a charter city. (Spevacek Decl., ¶ 4.) Article XI, section 5, grants charter cities the right to govern themselves free of State intrusion in purely municipal affairs. (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555.) Our Supreme Court has held that how a city spends its tax dollars is a quintessentially municipal affair. (*Id.* 562.) The City argues by disallowing early repayment of the loan, the State is unconstitutionally dictating how the City's tax dollars are to be spent and allocating the City's revenues to other local entities.

This argument fails for the same reason discussed above. By enacting the Dissolution Law, the Legislature has not dictated how the City must spend its tax dollars. Instead, the Dissolution Law merely provides that in winding up the former RDA, these loans between the City and the RDA are not yet enforceable obligations, and thus the accelerated repayment was invalid. Again, the fact that the loans involved the City's

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[10] The Dissolution Law was passed by a simple majority.

[11] That the City would argue distribution of the RDA's assets is an allocation of the City's revenues underscores the "conjoined" nature of the City and the RDA, and the Legislature's concern such loans were not arm's-length transactions. (See *Matosantos, supra,* 53 Cal.4th at 258, fn. 12.)

local tax revenues does not transform the Dissolution Law into a requirement that the City spend its local taxes in any particular way.

C. The constitutionality of the Dissolution Law's "offset" is not before the court

In its reply brief, the City raises a ***new*** constitutional challenge to the "offset" provisions of the Dissolution Law.

If the successor agency does not remit the $41 million to the county auditor-controller as directed by DOF, the Dissolution Law provides the funds may be recovered through an offset against the City's sales, use or property tax revenues. (§ 34179.6 (h)(1)(A).) DOF may order the State Board of Equalization to offset the City's sales and use tax revenues. (*Id.*) Alternatively, the county auditor-controller may offset the City's property tax revenues. (*Id.*)

In its reply, the City argues for the first time these offset provisions are unconstitutional. (Reply at 25-29.) As a general rule, arguments raised for the first time in a reply brief will not be considered. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764; *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.) As the Third District Court of Appeal explained in the appellate context:

> Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission.[12] Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.

(*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal. App. 3d 325, 335, fn. 8.)

The same considerations of fairness apply here. The court considers only those arguments the City raised in its opening brief.[13] This is particularly true where the new

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[12] Because the City did not raise this argument in its opening brief, DOF does not address it in its opposition.

[13] There is another reason the court need not consider the constitutional challenge raised in the reply. The parties stipulated to page limits on all briefs. The City's reply brief was to be no longer than 20 pages. However, if more than one opposition brief was filed, the City could file a single reply with an additional ten pages for each additional opposition brief. The court entered an order based on this stipulation.

Only one respondent filed an opposition brief – the Department of Finance. Respondent Riverside County Office of Education filed a one page "response" stating simply that it defers to the arguments made by the City and the Department of Finance. This one-page response is not an opposition "brief" allowing the City to exceed the 20-page limit to which it stipulated. The City nonetheless filed a 30-page reply brief. The court had discretion to refuse to consider the entire reply. (Rule of Court, rule 3.113(g) [briefs that exceed page limits shall be considered in same manner as late-filed papers]; Rule of Court 3.1300(d) [court

argument asks the court to declare a statute unconstitutional. As Chief Justice John Marshall cautioned long ago:

> The question, whether a law be void for its repugnancy to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

(*Peck v. Fletcher* (1810) 10 US 87, 128.) The court will not entertain such an argument without the benefit of full briefing from all parties.

Moreover, even if the City had raised this issue in its opening brief, it is not ***ripe*** for review. Neither DOF nor the county auditor-controller has taken any step to offset the City's tax revenues. By this ruling, the court finds DOF correctly determined the $41 million repayment was not made pursuant to an enforceable obligation. If the successor agency fails to remit the $41 million to the county-auditor controller, and if DOF or the county auditor-controller then invoke the offset provisions, the constitutionality of those provisions would be ripe for review.

CONCLUSION

For the foregoing reasons the petition for writ of mandate is denied.

The tentative ruling shall become the court's final ruling unless a party wishing to be heard so advises the clerk of this department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than thirty (30) minutes per side.

If a hearing is requested, any party desiring an official record of the proceeding shall make arrangement for reporting services with the clerk of the department not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day of proceedings lasting more than one

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has discretion to refuse to consider late-filed paper].) The court did not reject the City's reply, but is not entertaining new constitutional arguments briefed for the first time in that reply.

hour. (Local Rule 9.06(B) and Gov't. Code § 68086.) Payment is due at the time of the hearing.