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FILED / ENDORSED
AUG 23 2013
By  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

PITTSBURG UNIFIED SCHOOL
DISTRICT,

Petitioner and Plaintiff,

v.

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF PITTSBURG, et al.,

Respondents and Defendants.

Case No.: 34-2013-00142758

**ORDER AFTER HEARING GRANTING
MOTION FOR PRELIMINARY
INJUNCTION**

On August 8, 2013, the court issued a tentative ruling granting Respondents' motion for preliminary injunction and denying Petitioner's competing motion for preliminary injunction. At Petitioner's request hearing was held August 9, 2013. Petitioner was represented by Roy A. Combs and James Taber. Respondent Successor Agency was represented by Deborah Fox and Stephanie Downs. Respondent auditor-controller was represented by Eric Gelston.

Based on the pleadings and arguments submitted, the court grants Respondents' motion and denies Petitioner's motion.

INTRODUCTION

This lawsuit arises out of the Legislature's dissolution of redevelopment agencies, and direction how property tax revenues formerly allocated to redevelopment agencies are now to be allocated to other local entities, including school districts.

1 (2011) 53 Cal.4th 231. In June 2012, the Legislature enacted AB 1484 modifying the provisions
2 in AB 26. The court refers to AB 26 and AB 1484 collectively as the “Dissolution Law.”

3 While the Dissolution Law eliminated redevelopment agencies, it did not eliminate their
4 enforceable obligations. As part of the winding down process, the Dissolution Law established
5 “successor agencies” to continue making payments and performing the former redevelopment
6 agencies’ enforceable obligations. The Successor Agency must prepare a Recognized Obligation
7 Payment Schedule (“ROPS”) listing the enforceable obligations of the former redevelopment
8 agency due over the next six months. (See generally Health & Saf. Code § 34177.)³

9 The Dissolution Law requires each county auditor-controller to determine the amount of
10 property tax revenue that would have been allocated to the former RDA. The auditor-controller
11 places this into the Redevelopment Property Tax Trust Fund (“RPTTF”). (§ 34182(c)(1).) The
12 auditor-controller then distributes the monies in the RPTTF to the Successor Agency and various
13 other local entities, such as the District. The funds are distributed pursuant to two formulas,
14 depending on whether the Successor Agency has sufficient funds to pay all its obligations. (§
15 34183(b).)

16 **The Order of Distribution -- Waterfall and Reverse Waterfall**

17 If there are sufficient funds, the monies in the RPTTF are allocated pursuant to what is
18 known as the “waterfall” formula:

- 19 1. To local entities entitled to passthrough payments.
- 20 2. To the Successor Agency to pay enforceable obligations listed on the ROPS, in the
21 following order:
 - 22 a. Debt service payments.
 - 23 b. Payments on revenue bonds.
 - 24 c. Other debts and obligations listed on the ROPS.
- 25 3. To the Successor Agency to pay administrative costs.
- 26 4. Any monies left over are then distributed to local agencies, including schools.

27 (§ 34183(a).)

28 If there are insufficient funds to meet the RDA’s obligations, distribution follows the
“reverse waterfall” formula. The deficiency is deducted in the following order:

³ All statutory references are to the Health and Safety Code unless otherwise specified.

1. From the residual monies to be distributed to local entities.
2. From the Successor Agency's administrative costs.
3. From any passthrough payments, subject to two caveats:
 - a. The deficiency shall only be deducted if the passthrough agreement made payments subordinate to paying the RDA's debt service.
 - b. If the passthrough agreement was subordinated to paying the RDA's debt, then funds for *servicing bond debt* may be deducted from the passthrough payment.

(§ 34183(b) [emphasis added].)

Finding of Insufficient Funds

In late 2012, the Successor Agency informed the county auditor-controller it had insufficient funds to make passthrough payments and pay all enforceable obligations listed on ROPS III, covering the period January 1 to June 30, 2013. (§ 34183(b); Olson Decl., Ex. H.) The State Controller concurred there are insufficient funds available. (§ 34183(b); Olson Decl., Ex. I.) The auditor-controller was thus required to distribute monies from the RTPPF pursuant to the reverse waterfall.

The Lawsuit

Despite the insufficiency of funds, on January 2, 2013, the county auditor-controller distributed a \$1.2 million passthrough payment to the District. The Successor Agency challenged the distribution, claiming the passthrough payment was subordinate to paying its bond debt. The auditor-controller agreed and informed the District he intended to recover the money. (Olson Decl., Ex. K.)

The District filed suit in the Contra Costa County Superior Court to stop the auditor-controller from recovering the money.⁴ The District also sought a temporary restraining order prohibiting the auditor-controller from recovering the passthrough payment. The Contra Costa Superior Court did not rule on the TRO. (Traber Decl., ¶¶ 2, 3.) Instead, the parties stipulated

⁴ Additional passthrough payments may ultimately be at issue. In its amended petition, the District alleges the auditor-controller is seeking return of a \$2.4 million passthrough payment disbursed in June 2012. (First Amend. Pet., ¶ 9.) The District also alleges Respondents were not planning to disburse a passthrough payment due in June 2013. (Id., ¶ 41.) Neither of these are at issue now. The motions for preliminary injunction address only the passthrough payment held in trust pursuant to the parties' February 11, 2013, stipulation.

1 the auditor-controller would hold the disputed passthrough payment in trust until the issue is
2 resolved or until further order of the court. This stipulation was memorialized in a minute order
3 issued by the court February 11, 2013. (Traber Decl., ¶ 3, Ex. A.)

4 In early March 2013, the parties stipulated to transfer this case to the Sacramento County
5 Superior Court.⁵ They agreed the February 11, 2013, minute order freezing the funds would
6 remain in effect.

7 **Motions for Preliminary Injunction**

8 The Successor Agency and District now both seek preliminary injunctions to obtain the
9 disputed funds. The Successor Agency seeks a preliminary injunction directing the auditor-
10 controller to give it the \$1.2 million, necessary for the Successor Agency to make a September 1,
11 2013, bond payment without drawing on bond reserves. Alternatively, the Successor Agency
12 requests the February 11, 2013, minute order simply be dissolved, freeing the auditor-controller
13 to release the funds.⁶ The District seeks a competing preliminary injunction directing the auditor-
14 controller to give it the \$1.2 million or, alternatively, just maintain the current order pending
15 hearing on the merits.

16 **ANALYSIS**

17 In deciding whether to issue a preliminary injunction, the court considers two factors: (1)
18 the likelihood of success on the merits; and (2) the interim harm the parties will suffer if an
19 injunction is not issued compared to the interim harm if it is. (*White v. Davis* (2003) 30 Cal. 4th
20 528, 554; *Butt v. State of California* (1992) 4 Cal.4th 668, 667-678.)

21 **1. Likelihood of success on the merits**

22 Both sides argue they are likely to prevail. However, the issues are not as simple as the
23 parties allege. Nevertheless, for purposes of these preliminary motions, the court concludes the
24 Successor Agency is more likely to prevail than the District.

25 The Successor Agency argues the parties' agreement subordinates the District's right to
26 passthrough payments to payment of the RDA's bond debt. This is consistent with the reverse

27 ⁵ Section 34189.3 requires all challenges to actions taken pursuant to the Dissolution Law be filed in Sacramento
County.

28 ⁶ The county auditor-controller filed a statement of non-opposition to the Successor Agency's motion.

1 waterfall provisions of the Dissolution Law. Since the county auditor-controller and the State
2 Controller agree the Successor Agency has insufficient funds to service its bond debt,
3 distributions from the RTPPF are governed by the reverse waterfall, which provides funds for
4 servicing bond debt may deducted from amounts owed for passthrough payments. (§ 34183,
5 subd. (b).)

6 The District does not dispute this. Instead, it argues its passthrough payment is not
7 subordinated to the *extent* claimed by the Successor Agency.

8 **A) Items claimed as “debt service”**

9 The Successor Agency’s ROPS III lists 27 items described as “debt service” which the
10 Successor Agency asserts the District’s passthrough payments are subordinated to. At the
11 hearing, the District requested further briefing and explanation by the Successor Agency
12 justifying why each of the 27 items is “debt service.”

13 As discussed below, the Successor Agency must make its next debt service payment by
14 September 1, 2013, or it will be in default. For purposes of the preliminary injunction, the court
15 finds the Successor Agency has presented sufficient evidence to conclude the 27 items identified
16 as “debt service” are required debt service payments the Successor Agency is required to make
17 and to which the District’s right to a passthrough payment is subordinated.

18 First, the 27 items are individually listed on the ROPS III and described as either “debt
19 service” or related to debt service.⁷ The declaration of Tina Olson, the City of Pittsburg’s
20 Director of Finance and Administration, filed July 29, 2013, explains all 27 items are integral to,
21 and thus part of, servicing bond debt. (Olson Decl., ¶¶ 9-14.) Second, at the hearing the Contra
22 Costa County Auditor-Controller represented he reviewed these items and confirmed each is an
23 appropriate charge for the RDA’s “debt service” within the meaning of § 34183(b). The
24 Legislature has given the county auditor-controller responsibility for making these
25 determinations. (§ 34183, subd. (b).)

26 **B) Scope of District’s subordination**

27 More fundamentally, the District argues its passthrough payment is only subordinated as
28 specified in the parties’ original 1993 agreement. Again, the parties’ 1993 passthrough agreement

⁷ For example, “debt service fiscal agent,” “debt service SWAP transaction,” “debt service liquidity market,” and “debt service LOC fee.” ROPS III is attached as Exhibit D to the declaration of James Traber filed July 18, 2013.

1 envisioned the RDA would issue further bonds in the future, to which the District's right to
2 passthrough payments would also be subordinated. (See § 2.6(b)(ii) of 1993 agreement ["The
3 Agency may request the District to subordinate its right to [passthrough] payments . . . in order to
4 secure the repayment of any Long-Term Indebtedness issued after the date of this Agreement
5 The District agrees that its approval of such request will not be unreasonably withheld."].)

6 The District argues the parties' 1993 agreement and subsequent amendments limits both
7 the types and amount of bond debt the District's right to payment is subordinated to. Both
8 arguments fail.

9 **i) Post-1993 amendments to the parties agreement**

10 The District notes in 1993 the Legislature revoked the authority for redevelopment
11 agencies to enter into passthrough agreements. (Stats. 1993, c. 942 [AB 1290 (Isenberg)
12 "Community Redevelopment Law Reform Act of 1993"].) The District argues this rendered
13 invalid all the parties' subsequent amendments to their 1993 agreement. Thus, in allocating the
14 Successor Agency's deficiency under the "reverse waterfall" formula, section 34183, subdivision
15 (b), looks only to passthrough agreements entered into pursuant to section 33401. Although the
16 District concedes the original 1993 passthrough agreement is valid, it argues the post-1993
17 *amendments* to that agreement are invalid, and not subject to the deficiency offset procedures of
18 section 34183, subdivision (b). The court is not persuaded.

19 The Dissolution Law subordinates passthrough payments as needed to pay bond debt, with
20 no limit as to the date of the passthrough agreement or when the debt was incurred. Subdivision
21 (b) clearly instructs "funds for servicing bond debt may be deducted from the amounts for
22 passthrough payments." Subdivision (b) contains no requirement the bonds must have been
23 issued prior to a certain date. Although this determination is necessarily preliminary given the
24 posture of the case, the court finds that under the plain language of section 34183 the Successor
25 Agency is likely to establish the District's passthrough payment is subordinate to all of the former
26 RDA's bond debt.⁸

27 **ii) \$43.6 million cap**

28 ⁸ At the hearing, the District confirmed it never withheld approval for any subsequent request.

1 The District additionally argues the parties’ agreement limited the District’s subrogation
2 to \$43.6 million; any shortfall in the RDA’s ability to pay its bond debt exceeding \$43.6 million
3 was not to come from the District’s right to receive passthrough payments. The parties spend
4 considerable time discussing whether the Successor Agency’s current shortfall exceeds \$43.6
5 million. The court finds this irrelevant too.

6 The court finds section 34183, subdivision (b), does not limit the *amount* of the District’s
7 passthrough payment that is subordinated to pay the Successor Agency’s debt service to the terms
8 of the parties’ agreement. The statute looks to the parties’ passthrough agreement to determine if
9 it “expressly provided” the District’s right to receive passthrough payments is subordinate to the
10 RDA’s need to make debt service payments. If so, then “funds for servicing bond debt” may be
11 deducted from the District’s passthrough payment. In short, whether the District’s passthrough
12 payment is subordinated to pay bond debt is determined by the parties’ agreement. However, if
13 the parties agreed the District’s right to passthrough payments would be subordinated to the
14 RDA’s debt service, then the amount of funds deducted from the District’s passthrough is now set
15 by section 34183, subdivision (b) – not by the terms of the parties’ agreement.

16 The District argues the Legislature could not constitutionally impair its contract with the
17 former RDA to expand the scope of the subordination. It can. The City and the RDA are
18 political subdivisions of the state and “exist only at the state’s sufferance.” (*Matosantos, supra*,
19 53 Cal.4th at 255-56.) The State has plenary power to grant its political subdivisions whatever
20 rights it deems appropriate, including the right to enter into contracts. (*Id.*)

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

27 As our Supreme Court explained nearly 100 years ago, the Constitution’s prohibition
28 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

1 for governmental purposes cannot be questioned.”].)

2
3 **2. Interim Harm**

4 The court must also balance the interim harm the parties will suffer if an injunction is not
5 issued, against the interim harm they will suffer if it is. On balance, the court concludes the
6 Successor Agency has established it will suffer greater and more concrete harm than the District
7 if it does not receive the disputed money.

8 **A. Successor Agency’s Interim Harm**

9 The Successor Agency’s motion was precipitated by a debt service payment due
10 September 1, 2013. The Successor Agency states if it does not receive the \$1.2 million, it will be
11 unable to make this payment without drawing on bond reserves. Drawing on bond reserves in
12 turn will result in a “technical default,” which could trigger a cascade of adverse consequences.⁹
(Olson Decl., ¶¶ 26, 27.)

13 According to the Successor Agency, a technical default will likely result in a downgrading
14 of its bonds rating. If the bonds are downgraded, its “swap agreement” will be terminated. If the
15 swap agreement is terminated, the Successor Agency will be liable for an additional \$20 million
16 payment it cannot pay. Termination of the swap agreement would also cause the interest rate on
17 certain bonds to increase from their current maximum rate 0.20 percent to 12 percent. If the
18 interest rate on these bonds increases to 12 percent, the Successor Agency would likely further
19 default on its bond payments, triggering another cascade of adverse consequences. (Olson Decl.,
20 ¶¶ 29-34.)

21 The District does not dispute any of this. Instead, it dismisses the Successor Agency’s
22 harm as only monetary. Perhaps. But the District cites no authority precluding injunctive relief
23 to prevent grave monetary harm.¹⁰

24 The District also argues the Successor Agency’s feared default is only a “technical”
25 default caused by failing to maintain adequate bond reserves. This may be true. However, as the

26 ⁹ An *actual default* would occur if the Successor Agency could not make the September 2013 payment. In its reply,
27 the Successor Agency confirms it will be able to make the payment, but only by drawing on reserves, triggering a
28 *technical default*.

¹⁰ The District cites *Loder v. City of Glendale* (1990) 16 Cal.App.3d 777. (Opp. at 5:13.) However, *Loder v. City of Glendale* (1989) 216 Cal.App.3d 777, it stands only for the proposition that a taxpayer cannot obtain a preliminary injunction to prevent the improper expenditure of tax funds. (*Id.* at 785.)

1 Successor Agency alleges, the consequences of a technical default could be drastic.

2 The court notes the Dissolution Law itself requires the Successor Agency to maintain
3 required reserves. (§ 34177(b).) It thus appears the Legislature intended reserves be maintained
4 to prevent precisely the type of technical default threatening the Successor Agency. (See also,
5 *Pasadena Redevelopment Agency v. Pooled Money Investment Board* (1982) 136 Cal.App.3d 290
6 [it is in the public interest of the state to protect the credit of the state and local agencies by
7 assuring no bond of a local agency goes into technical default].)

8 Finally, the harm the Successor Agency would suffer if it goes into technical default could
9 not be cured by later receipt of the funds should it ultimately prevail on the merits. If the
10 Successor Agency does not receive the money by September 1, it states it will then be liable for
11 the additional amounts incurred by its technical default even if it eventually prevails on the
12 merits.

13 The court finds the Successor Agency faces substantial harm if the injunction is not
14 issued.

15 **B. District's Interim Harm**

16 The District argues it too will be gravely harmed if it does not receive the money.
17 However, the District's alleged harm is much less specific. This is understandable: reduction of
18 the Districts passthrough payment will reduce its general fund. The specific consequences are not
19 identified at this time. According to the District, it may suffer the following if it does not receive
20 the \$1.2 million:

- 21 ■ Loss of the passthrough payment has already forced the District to “slow and reduce”
22 repairs to its high school. But no examples are given of what repairs have been either
23 slowed or reduced.
- 24 ■ The District has had to use \$2.5 million of its general funds to pay debt service,
25 preventing it from using those general funds on salaries, books, or supplies.¹¹
26 However, the District does not suggest salaries are not being paid, or books and
27 supplies are not being ordered.
- 28 ■ The District's ability to negotiate teacher compensation may be impacted if it must use
its general fund for obligations that could be paid with the passthrough payment. No

¹¹ The court notes the disputed passthrough payment is only \$1.2 million, less than half of the District's claimed shortfall.

1 explanation is given of how loss of the passthrough payment could impact teacher
2 negotiations.

- 3 ■ The District will face an unspecified credit risk and damage to its ability to obtain
4 credit.
- 5 ■ The District's cash flow position will be seriously compromised in some unspecified
6 way.

7 (Palacios Decl., ¶ 26; Palacios Supp. Decl., ¶¶ 6-9.) While there is no gainsaying the fiscal
8 difficulties the District and all California schools face, the general harm alleged here is
9 insufficient to justify a preliminary injunction. (Compare *Butt, supra*, 4 Cal.4th at 673 [injunction
10 issued to prevent school district from *closing schools* for final six weeks of school year due to
11 lack of funds].)

12 **C. Recouping funds paid**

13 In its reply brief, the District argues if the Successor Agency's motion is granted and it
14 receives the \$1.2 million, should the District thereafter prevail on the merits the Successor
15 Agency will be unable to pay it back.¹² The District's one-sentence argument does not persuade.
16 Former tax increment will continue to flow into the RPTT, and the auditor-controller is directed
17 to allocate passthrough payments therefrom. (§ 34183.) If the court ultimately determines the
18 passthrough payment was *not* subordinate to the RDA's bond debt, there is no suggestion the
19 auditor-controller would be unable to true up the error and reallocate the \$1.2 to the District.

20 On balance, the court finds the Successor Agency will suffer substantially more harm if
21 the \$1.2 million is not disbursed to it than the District will suffer.

22 **CONCLUSION**

23 Although this decision is necessarily preliminary, on the papers submitted to date the
24 court finds the Successor Agency likely to prevail on its core claim that the District's right to
25 passthrough payment is subordinated as needed to pay the RDA's bond debt. The court also finds
26 the Successor Agency will suffer more direct, specific harm if the injunction does not issue than
27 the District will suffer if it does. The court thus grants the Successor Agency's motion for a

28 ¹² Because this argument was raised for the first time in the District's reply, the Successor Agency was unable to respond.

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preliminary injunction, and denies the District's motion.

Dated: 8/23/2013, 2013



Allen Sumner
Judge of the Superior Court of California,
County of Sacramento