

Conflict of Interest Action Cannot be Maintained by Taxpayer and after Validation Action

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1. ***San Bernardino County v. Superior Court* (2015) ____ Cal.Rptr.3d ____ [2015 WL 4882569]**
2. ***Colonies Partners, L.P. v. Superior Court* (2015) ____ Cal.Rptr.3d ____ [2015 WL 4882566]**

In two separate decisions, based on the same facts, the appellate court held that:

1. A taxpayer could not bring an action challenging validity of an agreement because (a) taxpayer was not a party to the agreement and (b) county was not required to have the agreement declared void (*San Bernardino County v. Superior Court* (2015) ____ Cal.Rptr.3d ____ [2015 WL 4882569]); and
2. A prior final validation judgment approving an agreement barred a subsequent taxpayer challenge to the validity of the agreement under conflict of interest statutes and common law. (*Colonies Partners, L.P. v. Superior Court* (2015) ____ Cal.Rptr.3d ____ [2015 WL 4882566].)

Background

After a validation action, an inverse condemnation settlement agreement between County of San Bernardino and San Bernardino County Flood Control District (County) and Colonies Partners, L.P. (landowner) was found to be a “valid, legal and binding obligation.” Over five years later, a former county supervisor pled guilty to various bribery-related charges. Subsequently, two taxpayer organizations brought an action against the County and the landowner to challenge the settlement agreement under statutes governing conflict of interest of government officials.

Decision

In *San Bernardino County*, the Court of Appeal affirmed the trial court’s finding that the taxpayer organizations lacked the standing to maintain a lawsuit against the County and landowner for the following reasons. First, in what appears to be a deviation from prior cases, the Court held that nonparties to the agreement at issue do not have the right to sue under



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Government Code section 1090. Moreover, under either Code of Civil Procedure section 526a or the common law, taxpayer suits are only authorized if the County has a duty to act and has refused to do so; courts may not interfere with a government body's discretionary decision. In the present case, there was no evidence presented that the County was required to pursue a claim.

In *Colonies Partners*, the Court of Appeal held that a validation action pursuant to Code of Civil Procedure section 860 binds the agency and all other persons. As a result, the taxpayer organizations' subsequent challenge to the validity of the agreement was barred as a matter of law, even where new facts are later discovered that, if known at the time of the validation action, could have resulted in a different outcome.

Impact

After *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261 [187 Cal.Rptr.3d 798], there has been increased scrutiny on the prohibition on public officials or employees, or private consultants, making contracts in which they are financially interested. As a result of the *San Bernardino County* case, the ability of taxpayers to bring suits based on conflict of interest statutes may be substantially limited. The *Colonies Partners* ruling clarifies that validation judgments would bar any subsequent challenges to the validity of the agreements, including an alleged conflict of interest.

If you have any further questions, please contact a DWK attorney.

For more information regarding conflict of interest, please see "Court Affirms School District Consultants Are Subject To Conflict Prohibitions."

For more information regarding lease-leaseback, please see "Financing Now Required for Lease-Leaseback Agreements."

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