

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - July 23, 2020

EVENT DATE: 07/24/2020

EVENT TIME: 09:00:00 AM

DEPT.: C-75

JUDICIAL OFFICER: Richard E. L. Strauss

CASE NO.: 37-2019-00056150-CU-MC-CTL

CASE TITLE: ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC
VS. THE STATE OF CALIFORNIA [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 05/26/2020

Defendant State of California's Demurrer to the First Amended Complaint is sustained without leave to amend

First Cause of Action – Violation of Article XI, Section 5(a)

The demurrer to the first cause of action is sustained without leave to amend. As a preliminary matter, this cause of action was improperly included in the amended complaint as it was not pled in the original complaint and leave of court to add claims was not obtained.

Regardless, the demurrer is sustained on the merits. The first cause of action alleges that AB 1290 is a "special statute" which violates the California Constitution. Under article XI, section 5(a), charter cities "may make and enforce all ordinances and regulations in respect to municipal affairs . . . and in respect to other matters they shall be subject to general laws." Plaintiffs contend that AB 1290 interferes with the City's independence.

It is undisputed that the City of San Diego is a charter city and that AB 1290 is a special statute. However, these two facts alone do not create a violation of the California Constitution. AB 1290 places restrictions on funding but includes no language which mandates the City use the funding for the project. Further, the state may impose conditions upon its funding of local project. (Govt. Code § 54237.7(a); See also *City of El Centro v. Lanier* (2016) 245 Cal.App4th 1494, 1505.) Thus, the first cause of action fails.

Second Cause of Action – Violation of Article XI, Section 5

Plaintiffs contend AB 1290 violates the "home rule" doctrine applicable to charter cities because it conflicts with San Diego Administrative Code § 22.4402. This section prevents the City from requiring a contractor to enter into a PLA. Plaintiffs assert there is a conflict between AB 1290 and Administrative Code § 22.4402 which creates a violation pursuant to article XI, section 5 of the California Constitution.

In order to determine whether a "home rule" violation exists, a three-prong analysis applies. First, there is a determination as to whether the city ordinance at issue regulates an activity that can be characterized as a municipal affair. (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.45th 547, 556 ("*City of Vista*").) Next, there must be a determination that the case presents an actual conflict between local and state law. (*Id.*) Third, there must be a determination that the state law addresses a matter of statewide concern and that the law is reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interferences in local governance. (*Id.*)

In this case, there is no conflict between AB 1290 and Administrative Code § 22.4402. The Administrative Code precludes the City from requiring a contractor to enter into a PLA as part of a construction project. However, the statute contains an exception to the preclusion when there is an applicable federal or state law regarding a procurement obligation upon which receipt of state or federal funds are conditioned. AB 1290 conditions the receipt of the state funds for the project on requiring a contractor enter into a PLA which falls within the exception to the Administrative Code. It is undisputed the State is providing funds for this project. Thus, there is no conflict with the local provision and the demurrer is sustained without leave to amend.

Third Cause of Action – Violation of Article IV, Section 16

Article IV, Section 16 of the California Constitution provides that "[a] local or special statute is invalid in any case if a general statute can be made applicable." (Art. IV, § 16, subd. (b).) This provision does not prohibit the Legislature from enacting statutes that are applicable solely to a particular county or local entity. (*White v. State of California* (2001) 88 Cal.App.4th 298, 305.) However, special statutes are permissible as long as there is a rational relationship between the purpose of the statute and the narrow application of the statute. (*Id.*) "The Legislature's determination that this rational relationship exists is entitled to great weight and will not be reversed unless the determination is arbitrary and without any conceivable factual or legal basis." (*Id.*)

With respect to AB 1290, the Legislature found a relationship between the importance of requiring PLAs on this project with the need for expediency in the project's completion, which is critical to the water supply of San Diego. (RJN, Ex. 1.) These are legitimate and reasonable determinations. While the timing of the statute's enactment should be viewed with skepticism, that by itself does not undermine the bases set forth by the Legislature passing the bill. In addition, Plaintiffs cite to no authority in which similar reasoning was not determined to support a rational relationship between the purpose and the narrow application of the statute. Therefore, the demurrer is sustained without leave to amend.

Fourth Cause of Action - Violation of Equal Protection

The demurrer to the fourth cause of action for violation of equal protection is sustained without leave to amend. In order to allege an equal protection violation, the plaintiffs must allege facts which support a threshold showing that "the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*People v. Guzman* (2005) 35 Cal.4th 577, 592-593 [citation omitted].) Plaintiffs assert that AB 1290 violates the California Constitution because it favors union over non-union contractors with respect to the construction of the Pure Water San Diego Program. (FAC ¶50.) There are no facts alleged which support the contention that AB 1290, on its face, discriminates against non-union contractors. The plain language of the bill permits any contractor, whether union or non-union, to sign a PLA and submit a bid. Thus, the demurrer is sustained.

All requests for judicial notice are granted.

Defendant's motion to strike is moot based upon the tentative ruling.

Defendant shall prepare and submit a judgment.