Filed 10/1/18 Azusa Unified School Dist. v. City of Azusa CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

AZUSA UNIFIED SCHOOL DISTRICT, Plaintiff and Appellant, v. CITY OF AZUSA, Defendant and Respondent.	B285184 (Los Angeles County Super. Ct. No. BS157058)

APPEAL from an order of the Superior Court of Los Angeles County. Amy D. Hogue, Judge. Affirmed.

Atkinson, Andelson, Loya, Ruud & Romo, Terry T. Tao, David D. Boyer and Jennifer D. Cantrell for Plaintiff and Appellant.

Best Best & Krieger, Marco A. Martinez, Danielle G. Sakai, Jennifer J. Lynch and Scott W. Ditfurth for Defendant and Respondent.

At issue in this appeal is whether defendant and respondent City of Azusa (City) can issue building permits for a new residential development project known as Rosedale (Rosedale Project). The answer to that question is dependent on whether plaintiff and appellant Azusa Unified School District (District) certified that the developer of the Rosedale Project complied with District's demands to mitigate the impact of the new construction on its school facilities under Education Code section 17620, subdivision (b).[1]

In the underlying proceedings, District filed a petition for writ of mandate and a complaint for declaratory relief to stop City from issuing permits for the Rosedale Project based on the absence of certification under section 17620, subdivision (b). The trial court denied both the writ petition and declaratory relief. It concluded District issued certification when it entered into a memorandum of understanding (MOU) with the developer for, among other things, the construction of a kindergarten through 8th grade (K-8) school when the Rosedale Project generated 300 or more students.

We find no error and affirm.

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[1] All further statutory references are to the Education Code unless otherwise indicated.

Under section 17620, subdivision (a)(1), a school district can levy a fee or other requirement against certain new construction located within its school attendance boundaries. Under section 17620, subdivision (b), a city is prohibited from issuing building permits for the construction until a school district certifies that a developer has complied with the school district's imposition of a fee or other requirement.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Rosedale Project and the Execution of the MOU

In 2002, landowner Monrovia Nursery Company, Inc. (Monrovia)[2] sought to build the Rosedale Project, a 500-acre residential development located within City's boundaries, consisting of 1,250 residential units, commercial uses, parks and open spaces.

On March 2, 2004, District and Monrovia entered into the MOU to mitigate the impact of the Rosedale Project on District's school facilities. Under the terms of the MOU, if the Rosedale Project generated one high school student, Monrovia agreed to pay District $210,651 in fees, or, at the developer's option, provide five portable classrooms; and, if the Rosedale Project generated, at a minimum, 300 students, Monrovia agreed to dedicate land and construct a K-8 school for District. The MOU further stated, "District acknowledges that, pursuant to the terms herein, [Monrovia] is satisfying payment of all Statutory Fees and is fully mitigating all potential impacts of the [Rosedale] Project on District."[3]

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[2] "Monrovia" refers to Monrovia Nursery Company, Inc. and its successors in interest in the Rosedale Project.

[3] The term "Statutory Fees" in the MOU was defined as the "statutory school fee requirements pursuant to SB 50." We presume "SB 50" referred to the "Leroy F. Greene School Facilities Act of 1998 (Stats. 1998, ch. 407, . . .), Senate Bill No. 50 (1997–1998 Reg. Sess.), which sometimes is referred to as [SB] 50." (*Chawanakee Unified School Dist. v. County of Madera* (2011) 196 Cal.App.4th 1016, 1020–1021 (*Chawanakee*).) Under SB 50, section 17620 (and certain provisions for interim urgency measures) are "'the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur

B. City Issues Permits

In 2006, City began issuing building permits and certificates of occupancy for the Rosedale Project.

C. The Dispute Over Construction of the K-8 School

In 2011, Monrovia performed a geotechnical investigation of the K-8 school site identified in the MOU and determined the location was impacted by an earthquake fault. In light of the information, District demanded Monrovia pay school facilities fees to mitigate potential enrollment impacts on District's K-8 schools.[4] Monrovia refused. It argued the terms of the MOU did not require it to pay any monies to District for K-8 facilities. It also contended it had no obligation to construct a K-8 school for District until the Rosedale Project generated 300 or more students, which requirement had yet to be met.[5]

D. District Demands City to Stop Issuing Permits

On November 12, 2014, after construction for the Rosedale Project was nearly complete, District made a written demand on

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as a result of any legislative or adjudicative act . . . involving [the approval of the] development of real property. . . .'" (*Chawanakee, supra,* at p. 1024.)

[4] The high school fees are not at issue on appeal. In October 2010, after receiving notice from District that a high school student from the Rosedale Project was in attendance at a District school, Monrovia paid the fees.

[5] In 2012, District informed Monrovia that nine students from the Rosedale Project were in attendance at a District K-8 school. As of 2017, District had not provided any further notice to Monrovia as to whether the 300th student threshold has been met.

City to cease issuing building permits. District advised City that it was prohibited from issuing the permits under section 17620, subdivision (b), until District certified Monrovia paid school facilities fees for future K-8 students. City declined, arguing among other things, the MOU acted as District's certification under section 17620, subdivision (b), so that no further certification was required for City to continue to issue building permits.

E. The Litigation

District initiated this action on August 3, 2015, against Monrovia, City, and others. District's second amended complaint alleged causes of action for breach of contract, declaratory relief, rescission, money had and received, constructive trust and accounting against Monrovia, and alleged causes of action for declaratory relief and violations of the California Environmental Quality Act (CEQA) against City. District also sought a writ of mandate ordering City to stop issuing the permits. With respect to Monrovia, the trial court severed the causes of action and stayed the case pending resolution of the action against City. Meanwhile, City filed a demurrer, which the trial court sustained without leave to amend as to the CEQA claims only. The writ of mandate and declaratory relief cause of action thus proceeded on the merits.

Following a hearing, the trial court ruled in favor of City, concluding the MOU satisfied District's certification requirement under section 17620, subdivision (b), thereby allowing City to issue building permits for the Rosedale Project. Although the term "certification" was not defined by the statute, the trial court interpreted it in accordance with its ordinary meaning, and concluded "certification" meant a school district need only provide

"formal confirmation" of a developer's compliance under section 17620, subdivision (b). It also ruled the term "SB 50" in the MOU was a reference to section 17620. Thus, because the MOU explicitly stated Monrovia is "*satisfy[ing] the payment of [all] Statutory Fees*,"—i.e., the requirements of section 17620, the trial court concluded District complied with section 17620, subdivision (b), when it executed the MOU.

District filed a timely notice of appeal.[6]

DISCUSSION

District contends the trial court's ruling was in error because the MOU was not intended to serve as a "blanket certification" of Monrovia's compliance under section 17620, subdivision (b). While District acknowledges a certification "may take many forms," it contends "at the very least the document must state that it is a certification of compliance under Section 17620," which the MOU does not. It also argues the MOU cannot be construed as an "implied certification" because the agreement uses the present tense, which "connotes an ongoing, continuing obligation for the parties to perform" that is not perfected until

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[6] "Petitions for extraordinary writs, such as petitions for writs of mandate, are special proceedings. [Citation.] Accordingly, an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment," which is the case here. (*Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409.)

the conditions imposed by the MOU—i.e., the construction of the K-8 school, are satisfied.[7] We disagree.

I. Standards of Review

"In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence. This limitation, however, does not apply to resolution of questions of law where the facts are undisputed. In such cases, as in other instances involving matters of law, the appellate court is not bound by the trial court's decision, but may make its own determination." (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 502.)

The interpretation of a statute is a question of law that we review de novo. (*Fry v. City of Los Angeles* (2016) 245 Cal.App.4th 539, 549.)

II. Relevant Excerpts of Section 17620

"[F]or the purpose of funding construction or reconstruction of school facilities," a school district is authorized to levy a fee or "other requirement" against new residential construction within

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[7] District also contends to the extent the MOU acted as its certification, it expressly revoked its certification and/or its certification was withdrawn as a matter of law when Monrovia revealed the K-8 school site was impacted by an earthquake fault. District fails to present cogent legal authority concerning these contentions and therefore we consider them forfeited. (*Nelson v. Avondale Homeowners Assn. (*2009) 172 Cal.App.4th 857, 862 ["'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]'")

its boundaries. (§ 17620, subd. (a)(1); see also Gov. Code, § 65995, et seq.) To that end, under section 17620, subdivision (b), a city is precluded from issuing building permits for new construction until the school district certifies the developer has complied with the fee or other requirement levied: "A city or county . . . shall not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement." (§ 17620, subd. (b).)

III. The MOU Satisfied the Certification Requirement Under Section 17620

Our analysis here is two-fold: we must first determine what the term "certification" means under the statute and then, we must determine whether the MOU satisfied the certification requirement.

A. Statutory Interpretation of Term "Certification"

In interpreting a statute, our primary duty "is to give effect to the intent of the Legislature, so as to effectuate the purpose of the law. [Citation.] To determine intent, courts turn first to the words themselves, giving them their ordinary and generally accepted meaning. [Citation.] If the language permits more than one reasonable interpretation, the court then looks to extrinsic aids, such as the object to be achieved and the evil to be remedied by the statute, the legislative history, public policy, and the statutory scheme of which the statute is a part. [Citation.] . . .

Ultimately, the court must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and it must avoid an interpretation leading to absurd consequences. [Citation.]" (*In re Luke W.* (2001) 88 Cal.App.4th 650, 655 (*Luke W.*).)

We reject District's contention that a document signifying certification must actually use the term "certification" in order to satisfy the requirement of section 17620, subdivision (b). We presume the Legislature intended everything in a statutory scheme, and here, the text of the statute does not require use of the term "certification" to signify compliance, and therefore neither do we. (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 850 ["we do not read statutes to omit expressed language or to include omitted language"].) However, because the term "certification" is not defined by the statute, we must determine its "ordinary and generally accepted" meaning. (*Luke W.*, *supra*, 88 Cal.App.4th at p. 655.) The dictionary definition of the verb "certify," which is the root word of "certification," means "to confirm formally as true, accurate, or genuine, esp. in writing."[8] (Webster's II New College Dict. (2001) p. 183.)

Thus, by its plain language, we agree with the trial court that the term "certification" under section 17620, subdivision (b), means that a school district need only provide written "confirmation" signifying a developer has satisfied the fee or

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[8] "A dictionary is a proper source to determine the usual and ordinary meaning of a word or phrase in a statute." (*E. W. Bliss Co. v. Superior Court* (1989) 210 Cal.App.3d 1254, 1258, fn. 2.)

other requirement levied, thereby allowing a city to issue permits. Given that certification must be from the school district, written confirmation can be demonstrated in one of two forms, either an agreement with the school district mitigating the impact of the construction on its school facilities, or the school district itself can prepare a document confirming compliance.

B. Contractual Interpretation of MOU

"'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the "mutual intention" of the parties. "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.*, § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (*id.*, § 1644), controls judicial interpretation. (*Id.*, § 1638.)" [Citations.]'" (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 647–648.)

Here, the language in the MOU makes clear that its purpose was to satisfy the certification requirement under section 17620, subdivision (b). In particular, the MOU explicitly states the agreement "is satisfying payment of all Statutory Fees and is fully mitigating all potential impacts of the [Rosedale] Project on District." And the term "Statutory Fees" in the MOU refers to "SB 50," which in turn, refers to section 17620.

The terms of the MOU also evidence the parties' mutual intention to address the impact the Rosedale Project would have on District's school facilities. For example, in lieu of paying

statutory fees, District required, and Monrovia agreed to, construction of a K-8 school when 300 or more students from the Rosedale Project were in attendance at a District school. Moreover, the inclusion of the enrollment criteria can only be interpreted to indicate District's intent that the MOU act as its certification because there can be no students unless the City issued building permits for the construction of the residential units.

Accordingly, we conclude, by executing the MOU, District issued certification under section 17620, subdivision (b), thereby allowing City to issue building permits for the Rosedale Project.[9]

DISPOSITION

The order is affirmed. City shall recover its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ

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[9] We also conclude the trial court did not err in denying District's declaratory relief claim, which sought the same relief as its writ petition. "The fundamental basis of declaratory relief is an actual, present controversy." (*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 831.) As discussed in this opinion, District provides no basis to prohibit City from issuing building permits for the Rosedale Project.