Filed 12/12/18 United Walnut Taxpayers v. Mt. San Antonio Community etc. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

UNITED WALNUT TAXPAYERS, Plaintiff and Appellant, v. MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.	B289890 (Los Angeles County Super. Ct. No. BC639908)

APPEAL from an order of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Craig A. Sherman and Craig A. Sherman for Plaintiff and Appellant.

Stradling Yocca Carlson & Rauth, Sean B. Absher and Shana Inspektor, for Defendants and Respondents.

I. INTRODUCTION

Plaintiff United Walnut Taxpayers, a non-profit public benefit corporation, appeals from an order denying its motion for preliminary injunction. Plaintiff sued defendants, Mt. San Antonio Community College District (Mt. SAC) and William Scroggins, in his official capacity as president and chief executive officer of Mt. SAC, for declaratory and injunctive relief for misuse of bond funds authorized by measure pursuant to Code of Civil Procedure section 526a and Education Code section 15284.

Plaintiff moved for preliminary injunction, asserting that a project to build a new athletic stadium was not identified as a project in the measure, as required by the California Constitution and the Education Code. (Cal. Const., art. XIII A, § 1, subd. (b)(3)(B); Ed. Code, § 15284.) The trial court denied the motion, finding plaintiff had not shown a reasonable likelihood of success and had failed to demonstrate that interim harm balanced in its favor. On appeal, plaintiff contends the trial court abused its discretion. We affirm.

II. BACKGROUND

A. *Proposition 39*

Generally, a local public entity issuing a bond to be repaid by real property taxes must obtain a two-thirds approval from its voters. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 16 (*Foothill*); Cal. Const. art. XIII A, § 1, subd. (b)(2).) A measure for bonds issued pursuant to

Proposition 39, however, requires only a 55 percent approval when the indebtedness is incurred by a school district, community college, or county office of education for the "'construction, reconstruction, rehabilitation, or replacement of school facilities.'" (*Foothill, supra*, 158 Cal.App.4th at p. 19; Cal. Const., arts. XIII A, § 1, subd. (b)(3) & XVI, § 18, subd. (b) [55 percent approval required for general obligation bonds for "the construction, reconstruction, rehabilitation, or replacement of school facilities," with accountability requirements of Cal. Const., art. XIII A, § 1, subd. (b)(3)].) A 55 percent approval is sufficient only if the following accountability requirements are met: "(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses. [¶] (B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list. [¶] (C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed. [¶] (D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects." (Cal. Const., art. XIII A, § 1, subd. (b)(3).)

B. *Measure RR*

Mt. SAC is a community college district in Walnut, California. In 2008, Mt. SAC presented Measure RR to voters, requesting issuance of bonds pursuant to Proposition 39. Measure RR stated that Mt. SAC's Board of Trustees had "evaluated [Mt. SAC's] urgent and critical facility needs, including: providing sufficient general and vocational education classrooms and laboratories to offer more courses and programs, facility infrastructure maintenance, safety issues, class offerings and class size, information and computer technology, public safety, job training facilities, in developing the scope of projects to be funded, as outlined in the [Mt. SAC] 2008 Master Plan, incorporated herein, and as shall be amended from time to time. . . . The Board conducted facilities evaluations and received public input and review in developing the scope of college facility projects to be funded, as listed in the 2008 Master Plan."

Measure RR further stated that "[t]he 2008 Master Plan is on file and available for review at the District President's Office and includes the following types of projects[.]" The four types of projects were enumerated as bullet points and in bold type. Type 1 was "COMPLETE ESSENTIAL REPAIR AND UPGRADE PROJECTS: Upgrade, Repair, Equip and/or Replace Obsolete Infrastructure Classrooms, Science and Computer Laboratories, Library, Instructional Facilities, and Utilities; Improve Disabled Access; [and] Upgrade to Seismic Safety Standards[.]" Type 1 projects included those to "[r]emove asbestos and lead paint from classrooms; make all buildings and classrooms accessible as required by law; [and] retrofit all buildings and classrooms for

earthquake safety." Type 2 was "PROMOTE HEALTH AND SAFETY PROJECTS: Construct Fire Academy Training Facility, Meet Demands of Changing Workforce; Expand Classrooms and College Classrooms, Training and Site Capacity for Nurses, Paramedics, and Police Officers[.]" Projects included those to upgrade physical health and education facilities. Type 3 was "SERVE A GROWING STUDENT ENROLLMENT PROJECTS: Construct, Upgrade and Expand Classrooms, Teaching and Classroom Laboratories, and Buildings for Education and Vocational Job Training[.]" Type 3 projects included those to increase permanent classrooms and facility capacity for classes and upgrade or replace facilities for physical and health education. Type 4 was "CAREER PREPARATION AND JOB TRAINING PROJECTS: Upgrade Technology; Construct a Business and Computer Technology Center[.]" Type 4 projects included those to upgrade campus-wide technology and Internet and wireless and cable technology access, and build smart classrooms.

On November 4, 2008, 69.9 percent of voters approved of Measure RR. Although Measure RR passed by more than two-thirds of the vote, it is still subject to Proposition 39 and the applicable statutes because Mt. SAC sought issuance of bonds pursuant to Proposition 39. (Ed. Code, § 15266.)

C. *The Stadium Project*

The 2008 Master Plan identified Projects A through L.[1] Although the 2008 Master Plan identified an athletic complex

---

[1] Both parties requested judicial notice of exhibits. The trial court took judicial notice that the exhibits, including the 2008

and new classrooms, it did not specifically identify any project that involved constructing, renovating, or upgrading the stadium. In the 2012 Facility Master Plan update (which was approved in February 2013), Project D was expanded to encompass renovation of the stadium. Mt. SAC later referred to the expanded project as Athletics Complex East (ACE).

On January 15, 2016, Mt. SAC published a notice of preparation for new buildings entitled the Physical Education Projects (PEP). The PEP was composed of two prior projects, the ACE project and the Physical Education Complex project.[2] The PEP consisted in part of demolishing the school stadium and building a new one (stadium project). The new stadium would have 10,912 seats and a nine-lane, Class 1 rated track. Mt. SAC intended to use Measure RR bond funds to design and construct the PEP.

On October 12, 2016, Mt. SAC's Board of Trustees certified the PEP and the 2015 Facilities Master Building Plan. On that same date, the Board of Trustees authorized the use of Measure RR bond funds for the PEP. Finally, the Board of Trustees approved contracts for construction management services, preconstruction services, and design and consulting services for the ACE project.

Master Plan, existed, but did not take judicial notice of the truth of the facts in the exhibits. Plaintiff contends the trial court erred by not admitting as evidence all of the exhibits submitted in support of its motion. As explained below, even assuming the trial court erred in not admitting the exhibits, plaintiff was not prejudiced by such error.

[2] It appears that although the Mt. SAC Board of Trustees approved the ACE project, Mt. SAC did not complete that project before merging it with the PEP.

D. *Lawsuit on Appeal*

On November 7, 2016, plaintiff filed a complaint for, among other things, declaratory and injunctive relief against defendants, alleging eight causes of action. By December 1, 2017, plaintiff dismissed all but the third and fourth causes of action. Plaintiff's third cause of action was for declaratory and injunctive relief for misuse of public money for the PEP. Its fourth cause of action was for misuse of public money for the ACE project. Plaintiff filed both causes of action pursuant to Code of Civil Procedure section 526a and Education Code section 15284.

E. *Preliminary Injunction Motion*

On March 19, 2018 (16 months after filing its complaint), plaintiff moved for a preliminary injunction.[3] Plaintiff argued that use of Measure RR funds for construction of the stadium project violated article XIII A, section 1, subdivision (b)(3) of the California Constitution. Plaintiff further argued that the stadium project was not specifically listed in the bond proposition, citing *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013 (see Cal. Const., art. XIII A, § 1, subd. (b)(3)(B) [requiring that proposition include "[a] list of the specific school

---

[3] Earlier, on January 12, 2018, plaintiff filed an ex parte application for a temporary restraining order to show cause why a preliminary injunction should not issue. The trial court denied the application on January 18, 2018.

facilities projects to be funded"]), and thus violated Proposition 39.

Plaintiff also argued that it was entitled to a presumption of harm, citing *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63 (*IT Corp.*). Alternatively, plaintiff argued the balance of harms favored the interests of the taxpayers it represented. It contended that construction of the stadium project was proceeding on an accelerated schedule; and if it were completed, other projects, such as those to build the gym and classrooms, would not be completed. Plaintiff conceded, however, that as part of its lawsuit, it sought restitution of Measure RR funds, that is, it sought to replenish any Measure RR funds that the trial court ultimately concluded defendants had misspent.

Plaintiff further argued that, by contrast, Mt. SAC, as a public institution, was unlikely to suffer harm because it could use alternative funds for the stadium project. Plaintiff attached the deposition transcript of the vice president of administrative services, who testified that if Measure RR funds were not available to complete the stadium project, general unrestricted funds of the college, totaling between $25 and $30 million, could be used to complete the stadium.

Defendants opposed a preliminary injunction, arguing that plaintiff could not establish a likelihood of prevailing on the merits because: (1) the stadium project had been identified in Measure RR and thus approved by voters; and (2) the complaint was time-barred by the 60-day statute of limitations set forth in Code of Civil Procedure section 860. Defendants also argued that even if plaintiff could demonstrate a likelihood of prevailing on the merits, it could not demonstrate any irreparable harm because a taxpayer's general interest in avoiding public waste is

not the type of irreparable injury that supports the issuance of a preliminary injunction.

F. *Ruling*

After hearing argument on the preliminary injunction motion, the trial court issued its ruling denying it. The trial court found that plaintiff had failed to demonstrate a likelihood of prevailing on its claims. Citing *Foothill*, the trial court determined that the stadium project was within the types of projects listed in Measure RR, specifically Types 1, 3, and 4. Thus, the trial court concluded that use of Measure RR funds for the stadium project was lawful. It also found plaintiff's complaint was untimely under Code of Civil Procedure sections 860 to 870.

Because plaintiff could not demonstrate that its claims had merit, the trial court concluded that a denial of the motion was appropriate regardless of the balance of harms. Nonetheless, the trial court also undertook to balance the harms and found that plaintiff's 431-day delay in seeking a preliminary injunction constituted an admission of a lack of interim harm. It also found that plaintiff had failed to provide evidence of the specific harm it would suffer absent the granting of a preliminary injunction and thus the balance of harms did not favor granting plaintiff's motion.

III. DISCUSSION

A. *Standard of Review*

A trial court ruling on a preliminary injunction motion weighs the likelihood that plaintiff will prevail on the merits at trial, and the interim harm that plaintiff is likely to sustain absent an injunction against the harm defendant is likely to sustain if the injunction were granted. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109; *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1047.) An appellate court will reverse a denial of a preliminary injunction only upon finding an abuse of discretion as to both the likelihood of success on the merits *and* the balance of hardships. (*Yu v. University of La Verne* (2011) 196 Cal.App.4th 779, 787; *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1145.) We review the trial court's findings of fact under the substantial evidence standard. (*Urgent Care Medical Services v. City of Pasadena* (2018) 21 Cal.App.5th 1086, 1092, citing *People ex rel. Gallo v. Acuna, supra*, 14 Cal.4th at pp. 1136-1137.)

We will assume, without deciding, that plaintiff demonstrated a likelihood of prevailing on the merits because the 60-day limitations period in Code of Civil Procedure section 860 did not apply (or even if it did apply, plaintiff timely filed its complaint), and the stadium project was neither expressly nor implicitly included in the 2008 Master Plan or the types of projects listed in the measure. We nonetheless conclude the trial court did not err in denying the preliminary injunction because the balance of harms did not support plaintiff's motion.

B. *Balance of Harms*

"As its name suggests, a *preliminary* injunction is an order that is sought by a plaintiff *prior to a full adjudication of the*

merits of its claim. . . . To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis* (2003) 30 Cal.4th 528, 554.)

Plaintiff contends that once it demonstrated it was likely to prevail on the merits, it was entitled to a presumption of harm under *IT Corp., supra,* 35 Cal.3d 63. We disagree. "[W]here a legislative body has specifically provided injunctive relief for a violation of a statute or ordinance, a showing by a *governmental entity* that it is likely to prevail on the merits should give rise to a presumption of public harm." (*Id.* at p. 71, italics added.) Plaintiff, however, is not a governmental entity. Although plaintiff contends it should be treated as such for purposes of this rebuttable presumption because as a representative bringing a taxpayer action, it is acting in a governmental capacity, plaintiff does not cite to a single case in support of its proposition, and we have found none. To the contrary, case authority suggests that taxpayers who seek to enjoin the allegedly improper expenditure of public funds ordinarily cannot demonstrate irreparable harm. (*White v. Davis, supra*, 30 Cal.4th at pp. 554-556.) Thus, plaintiff would not be entitled to a rebuttable presumption of irreparable harm, even if it had demonstrated a likelihood of success on the merits.

Absent such a rebuttable presumption, we review the trial court's finding concerning the balance of harms and conclude the trial court did not abuse its discretion when it concluded that plaintiff, by waiting well over a year from filing its complaint before moving for preliminary injunction, conceded that it did not face either irreparable or interim harm. (See *O'Connell v.*

Superior Court (2006) 141 Cal.App.4th 1452, 1481 [finding claimed injury was not irreparable because plaintiff, who was aware at the beginning of school year that thousands of students were at risk of being denied diplomas, delayed in bringing preliminary injunction until school year was almost over]; Cf. *Nutro Products, Inc. v. Cole Grain Co.* (1992) 3 Cal.App.4th 860, 866 ["trial court was entitled to consider delay [in seeking injunctive relief] as merely one of many factors bearing on irreparable injury"].)

Even if we did not construe plaintiff's delay in moving for preliminary injunction as a concession it would not suffer irreparable harm, we would still find no error in the trial court's balance of harms. Although plaintiff complains about Mt. SAC's accelerated construction and the unavailability of Measure RR funds for other projects, at bottom, plaintiff's potential harm relates to the loss of money, "which to our knowledge has never been held to substitute for the high degree of existing or threatened injury required for the *prejudgment* injunctive relief sought here." (*Cohen v. Board of Supervisors* (1986) 178 Cal.App.3d 447, 454.) Moreover, plaintiff did not submit evidence that any loss of taxpayer funds was irreparable.[4] To the

---

[4] On appeal, plaintiff contends that it faces irreparable harm because of "the inability of plaintiff to receive its requested relief in the form of restitution." In support of this proposition, plaintiff cites to its counsel's declaration that: "A final trial on the merits and successful judgment does not guarantee that illegally spent bond funds will be returned to the taxpayers. I have personally been involved in at least one case where the Superior Court did not order the repayment of unlawfully spent Proposition 39 school bond funds, despite a taxpayer plaintiff obtaining a favorable final judgment *after the project was built*."

contrary, plaintiff, by arguing that defendants would not suffer irreparable harm because they had alternative funds available to build the stadium, effectively conceded that funds were available for restitution. Thus, the trial court did not err in concluding that plaintiff faced no irreparable harm. We find no abuse of discretion.

C. *Any Error in Excluding Certain Exhibits Was Harmless*

Plaintiff contends the trial court abused its discretion by not admitting as evidence all of the exhibits submitted in support of its motion. Even assuming that plaintiff can demonstrate the trial court abused its discretion in not admitting certain exhibits, plaintiff has the additional burden of demonstrating the error resulted in prejudice, i.e., showing a reasonable probability that it would have obtained a more favorable result absent the error. (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1161; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800.) Plaintiff has failed to articulate clearly how it would have obtained a more favorable result absent the court's error. (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 615; *Douglas v. Ostermeier* (1991) 1 Cal.App.4th 729, 739-740.) To the extent plaintiff contends that it was prejudiced by the trial court's failure to consider the 2008 Master Plan, which did not include the stadium project, as discussed above, we assume this fact for purposes of this decision and further assume that plaintiff could establish a likelihood of

---

But it is a reality of litigation that outcomes are never "guaranteed." Plaintiff's speculation falls far short of demonstrating a likelihood of irreparable or interim harm.

prevailing on the merits. Nonetheless, we affirm. Thus, even assuming the trial court erred in excluding plaintiff's evidence, we see no prejudice. (*Adams v. MHC Colony Park, L.P., supra*, 224 Cal.App.4th at p. 615; *Douglas v. Ostermeier, supra*, 1 Cal.App.4th at pp. 739-740.)

IV. DISPOSITION

The order denying the preliminary injunction motion is affirmed. Defendants are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

MOOR, Acting P. J.

SEIGLE, J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.