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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE INLAND OVERSIGHT
COMMITTEE,

Plaintiff and Appellant,

v.

SQUIRE, SANDERS & DEMPSEY
(US) LLP, et al.,

Defendants and Respondents.

B281928

(Los Angeles County
Super. Ct. No. BC637093)

APPEAL from a judgment of the Superior Court of
Los Angeles County, David Sotelo, Judge. Affirmed.

Briggs Law Corporation, Cory J. Briggs and Anthony N.
Kim for Plaintiff and Appellant.

Gibson, Dunn & Crutcher, James P. Fogelman, Shannon
Mader, and Sheldon A. Evans for Defendants and Respondents.

Plaintiff and appellant The Inland Oversight Committee (Inland), a nongovernmental organization, filed a taxpayer suit on behalf of the City of West Covina (the City) against defendants and respondents Squire Patton Boggs (US) LLP (Squire).¹ The complaint alleged that Squire's contracts for legal work on behalf of the City were void because they were signed by the City Manager of West Covina, who was not authorized to sign contracts for the City under Government Code section 40602.

Squire demurred, contending that Inland lacked standing to sue under section 526a of the Code of Civil Procedure² because the question of whether to sue to recover funds from Squire was a matter of discretion for the City. The trial court sustained the demurrer, and Inland now challenges the court's judgment dismissing the case with prejudice. We affirm.

FACTS AND PROCEEDINGS BELOW

Because this is an appeal from a judgment sustaining a demurrer, "we assume the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts." (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.)

On separate occasions in 2006, 2011, and 2013, Squire contracted to provide legal services to the City. The City Manager of West Covina signed the first two contracts on behalf of the City, and the third agreement was either unsigned or signed by an official other than the Mayor of West Covina. Pursuant to Government Code section 40602, the legislative body of a city may provide by ordinance that an official other than the

¹ Inland's complaint also names as defendants Squire Sanders (US) LLP and Squire, Sanders & Dempsey (US) LLP. These are the names by which Squire was known at the time of some of the events in this case and are not separate entities.

² Unless otherwise specified, subsequent statutory references are to the Code of Civil Procedure.

mayor may sign written contracts for that city; otherwise, only the mayor may sign such contracts. At the time the contracts were signed, the West Covina Municipal Code did not grant the city manager the power to sign contracts in place of the mayor.

In July 2016, Inland wrote a letter informing West Covina officials that the City's contracts with Squire were illegal because they were not signed by the mayor or an authorized official. Inland invited the City to file suit against Squire to recover the funds paid under the contracts, and indicated that if the City did not sue, Inland intended to file its own suit on behalf of the City. The City Attorney of West Covina responded that the City did not intend to sue Squire, but had no objection if Inland filed a suit on its own.

Inland filed its complaint, and Squire demurred. Squire contended that Inland lacked standing to sue because the question of whether to sue Squire was a matter of discretion for the City, and the City had affirmatively refused to bring an action. The trial court sustained the demurrer without leave to amend and dismissed the case.

DISCUSSION

Section 526a allows any citizen who is a resident of a city, or a corporation that pays taxes to the city, to sue "to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of [the] city." An organization may file a suit under section 526a as long as it represents members who are residents or taxpayers of that city. (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1031-1032.) The scope of a taxpayer suit is not limitless, however. "A taxpayer may not bring an action on behalf of a public agency unless the governing body has a duty to act, and has refused to do so. If the governing body has discretion in the

matter, the taxpayer may not interfere.” (*Silver v. Watson* (1972) 26 Cal.App.3d 905, 909.)

In this case, Inland contends that the City had a duty to act to recover funds paid illegally to Squire. Squire answers that the City had discretion to sue and elected not to, and Inland may not interfere with that decision. We find Squire’s argument persuasive.

In reaching this conclusion, we follow the reasoning of the court in *San Bernardino County v. Superior Court* (2015) 239 Cal.App.4th 679 (*San Bernardino*). In that case, a company called Colonies Partners, L.P. sued San Bernardino County, alleging that the county had taken Colonies’ land for use in a regional flood control facility. (*Id.* at p. 682.) The parties reached a settlement pursuant to which the county agreed to pay Colonies \$102 million. (*Ibid.*) A few years later, the district attorney charged that a county supervisor took bribes disguised as campaign contributions in exchange for voting to approve the settlement, and the county supervisor eventually pleaded guilty. (*Id.* at p. 683.) Inland and another organization filed a taxpayer suit alleging that the settlement violated Government Code section 1090, which forbids government officials from making contracts in which they have a financial interest. (*Ibid.*)

The court in *San Bernardino* held that the plaintiffs lacked standing to sue. As the court noted, “ ‘[i]t has long been held that a government entity’s decision whether to pursue a legal claim involves the sort of discretion that falls outside the parameters of waste under section 526a and cannot be enjoined by mandate.’ ” (*San Bernardino, supra*, 239 Cal.App.4th at p. 686, quoting *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1558.) In the absence of a specific statute requiring the local government to pursue legal action, then, the matter is left to the discretion of the government and is not the proper subject of a taxpayer suit. (See *San Bernardino, supra*, 239 Cal.App.4th at p. 687.) There is no specific statute

requiring the City to file suit to recover funds from Squire; therefore, Inland lacks standing to sue on the City's behalf.

Inland disagrees with the reasoning in *San Bernardino*, noting that numerous courts have allowed taxpayer suits seeking to void contracts, and arguing that to disallow taxpayer suits in cases like this would rob section 526a of its power and allow government officials to use their discretion to bless their own misconduct. But this argument overlooks an important distinction and protection: Under *San Bernardino*, taxpayers may still “step in and assert claims that otherwise would be within a government entity’s discretion where there are allegations of fraud or collusion on the part of the decision makers.” (*San Bernardino, supra*, 239 Cal.App.4th at pp. 687-688.) In *San Bernardino*, the allegedly corrupt officials had been removed from power, and there was no allegation that the officials in power at the time of the suit were tainted by their predecessors’ alleged misconduct. (See *id.* at p. 688.)

Inland cites no case in which a taxpayer was allowed to bring a suit under section 526a in which the alleged wrongdoers had been removed from power. Indeed, in some cases, the court explicitly stated that the accused officials remained in power at the time of the suit. Thus, in *Gilbane Building Co. v. Superior Court* (2014) 223 Cal.App.4th 1527, the court noted that the school district’s current officials, “including [the] board members, were involved in the wrongdoing subject to its lawsuit. It is unlikely that the [school d]istrict’s officials would have initiated a lawsuit to correct its own wrongs.” (*Id.* at p. 1533.) Likewise, in *McGee v. Balfour Beatty Construction, LLC* (2016) 247 Cal.App.4th 235, 248, the court stated that the taxpayer suit “was brought shortly after the District approved the contracts,” while the alleged wrongdoers were still in power. In other cases, the court did not address this issue explicitly, but the short lapse of time between the alleged wrongdoing and the taxpayer suit

suggests that there had been no change in power. (See, e.g., *Davis v. Fresno Unified School Dist.* (2015) 237 Cal.App.4th 261, 273 [two-month lapse between signing of challenged contract and taxpayer suit].)

The *San Bernardino* court's limitation on taxpayer standing is consistent with the purpose of section 526a: "to permit a large body of persons to challenge wasteful government action *that otherwise would go unchallenged.*" (*Humane Society of the United States v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 355, italics added.) When the government officials deciding whether to bring an action are themselves untainted by fraud or corruption, there is no reason to worry that they will fail to challenge the actions of their predecessors. In addition, by its own terms, section 526a is concerned with "restraining and preventing any illegal expenditure of, waste of, or injury to" public assets. Inland's complaint is primarily directed at recovering funds already spent under the contracts with Squire. Although courts have allowed awards of damages for prior waste in cases brought under section 526a, the decision whether to seek such damages is discretionary. (See *San Bernardino, supra*, 239 Cal.App.4th at pp. 686-687.) Inland attempts to distinguish *San Bernardino* by noting that in that case, the county brought an action to validate the tainted settlement. (See *id.* at pp. 682-683.) But the *San Bernardino* court did not rely on the existence of the validation action in its reasoning regarding the current officials' discretion over their predecessors' actions. (See *id.* at pp. 685-688.)

In this case, there is no ground for worry that corrupt officials will misuse their discretion because Inland has not alleged that any government officials were guilty of anything more than a failure to fulfill technical requirements in signing contracts. The cases Inland relies on involved alleged self-dealing, bribery, or corruption in violation of Government Code section 1090 or a similar statute. In this case,

by contrast, the only basis for Inland's claim that the contracts with Squire were improper is that they were signed by the West Covina City Manager, rather than the mayor. There is no allegation that the contracts' existence was kept secret from the mayor or city council, nor that the mayor or city council objected to them, nor that the city manager had any improper motive in signing them, nor even that Squire's billing rates under the contracts were excessive. Indeed, Inland's complaint notes that, far from reining in the city manager, the West Covina City Council amended the municipal code in 2014 to grant the city manager authority to sign contracts for the City.

Section 526a does not give Inland standing to sue in this case, and the protection of the public does not require that taxpayer standing be extended this far.

DISPOSITION

The judgment of the trial court is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.