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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CA AUTO MART GROUP, INC.,	B284137
Plaintiff and Appellant,	(Los Angeles County
v.	Super. Ct. No. BC624426)
CITY OF LOS ANGELES,	
Defendant and Respondent.	

APPEAL from a judgment and order of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Tucker Ellis, Bart L. Kessel, Matthew Kaplan, and Ndubisi Ezeolu for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Michael M. Walsh, Deputy City Attorney for Defendant and Respondent.

Plaintiff and appellant CA Auto Mart Group, Inc. (Auto Mart) appeals from the order sustaining, without leave to amend, a demurrer by defendant and respondent the City of Los Angeles (City) to Auto Mart's causes of action for breach of contract, specific performance, and injunctive and declaratory relief in this action seeking to compel the sale of certain City-owned real property. All of those causes of action were premised on the theory that the City's adoption of Ordinance No. 182620¹ created a binding and enforceable agreement by the City to sell the property to Auto Mart.

The trial court overruled the demurrer as to Auto Mart's cause of action for a writ of mandate under Code of Civil Procedure section 1085 to compel the City to comply with Ordinance No. 182620. The mandamus action proceeded to trial, and judgment was subsequently entered in the City's favor. Auto Mart also appeals from that judgment.

We affirm the judgment and the order sustaining the demurrer without leave to amend.

BACKGROUND

Auto Mart operated a car dealership on property located at 2110-2214 N. San Fernando Road (the property) that it leased from the City. In February 2012, Auto Mart began discussions with the City about the possibility of purchasing the property in order to expand its business. The City's Bureau of Sanitation determined that it no longer needed the property and that it could be sold as surplus property. In October 2012, both the Bureau of Sanitation and the Board of Public Works approved the sale of property, and the General Services Department thereafter determined the market value of the property to be \$427,000.

¹ Ordinance No. 182620 is sometimes referred to herein as the Ordinance.

Although surplus property is generally sold by auction, the City may approve a direct sale if it is in the public interest. (L.A. Admin. Code, § 7.27.) The City Council determined that Auto Mart's plans to develop the property by expanding its dealership would benefit the community by increasing jobs, enhancing the aesthetics and economic vitality of the area, and improving pedestrian safety along San Fernando Road.

On June 28, 2013, the City Council approved Ordinance No. 182620, finding that the property was no longer required for City use and that the public interest required the sale of the property to Auto Mart without notice of sale or advertisement for bids. Ordinance No. 182620 authorized and directed the mayor to execute a grant deed conveying the property to Auto Mart and authorized the Department of General Services to open escrow, deliver deeds, and process and execute all necessary documents to effect the sale.² The Department of General Services manages

² Ordinance No. 182620 states that it is “[a]n Ordinance authorizing and providing for the sale of certain City-owned real property which is no longer required for use by the City, and the public interest or necessity requires the sale thereof without the necessity of calling to bids, to CA Auto Mart Group, Inc., dba Glendale Kia, for the sum of FOUR HUNDRED, TWENTY-SEVEN THOUSAND DOLLARS (\$427,000).”

Section 1 of the Ordinance states in pertinent part: “The Council of the City of Los Angeles hereby finds and determines that certain real property owned by the City of Los Angeles, and located at [2210-2214 San Fernando Road, Los Angeles], is no longer required for the use of the City and that the public interest and necessity require the sale. It is hereby ordered that such real property be sold, pursuant to certain conditions hereinafter set forth and without notice of sale or advertisement for bids to CA Auto Mart Group, Inc., dba Glendale Kia, for the sum of FOUR HUNDRED, TWENTY-SEVEN THOUSAND DOLLARS (\$427,000) in accordance with the provisions of Section 385 of the

properties owned by the City and facilitates the sale of City-owned property when authorized to do so by the City Council.

Although not required by the Ordinance, the City required Auto Mart to pay a 10 percent deposit (\$42,700) before it would begin drafting the necessary documents. Auto Mart paid the deposit.

Five months later, the City's Department of General Services had not opened an escrow account or sent any draft documents to Auto Mart. After repeated inquiries by Auto Mart the Department of General Services sent Auto Mart a letter confirming the City's intent to sell the property to Auto Mart and promising to provide a draft purchase agreement by the end of January 2014.

In December 2013, Auto Mart's counsel and the City Attorney's office discussed the terms that would be included in the purchase agreement. The City required Auto Mart to pay back rent owed to the City under the lease. Auto Mart requested written assurance of a right of first refusal or a long-term lease for the balance of the property and in exchange agreed to widen a sidewalk on San Fernando Road.

City Charter and Division 7, Chapter 1, Article 4 of the Los Angeles Administrative Code.”

Sections 2 and 3 of the Ordinance provide in pertinent part: “Sec. 2. The Mayor of the City of Los Angeles in the name of and on behalf of said City is hereby authorized and directed to execute a Grant Deed to the said real property described in Section 1 of this Ordinance to CA Auto Mart Group, Inc., dba Glendale Kia, the City Clerk of said City is hereby authorized and directed to attest thereto and to affix the City Seal.”

“Sec. 3. The Department of General Services, Real Estate Services Division, is authorized to open escrow, deliver deeds, and process and execute all necessary documents to effectuate this sale.”

On July 1, 2014, the City sent Auto Mart a draft purchase agreement, a draft covenant for the sidewalk widening, and a draft grant deed. Auto Mart's counsel responded to the draft documents by email on July 24, 2014, stating that Auto Mart's business was expected to undergo a significant decline in revenue, that Auto Mart no longer intended to expand its dealership, and that there had been a "massive misunderstanding" regarding the widening of the sidewalk. Auto Mart requested that the City either offset the cost of widening the sidewalk or remove the requirement that the widening occur immediately.

Auto Mart never signed the draft purchase agreement. Instead, Auto Mart filed a claim with the City on December 10, 2015. That claim was denied on December 31, 2015.

Auto Mart commenced this action on June 17, 2016, asserting five causes of action: (1) damages for breach of contract, (2) specific performance of contract, (3) injunctive relief against non-enforcement of municipal ordinance, (4) declaratory relief regarding obligations under municipal ordinance, and (5) traditional mandamus relief. The City demurred to the complaint, and the trial court sustained the demurer, without leave to amend, as to all causes of action except the one for mandamus relief.

Auto Mart's petition for writ of mandate was heard on May 16, 2017. At the conclusion of the hearing, the trial court denied the petition. A judgment denying the petition for writ of mandate and dismissing the action in its entirety was entered in the City's favor on June 6, 2017. This appeal followed.

DISCUSSION

I. Demurrer

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of

review is well settled. We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) “When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse. [Citation.]” (*Ibid.*) The legal sufficiency of the complaint is reviewed de novo. (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.)

A. Contract causes of action

Auto Mart’s first, second, third, and fourth causes of action are predicated on the existence of an enforceable contract with the City. Auto Mart contends the complaint adequately alleges that Ordinance No. 182620, together with the \$47,200 deposit it paid to the City, created a binding and enforceable contract. Auto Mart further contends the issue of whether a valid and enforceable contract exists is a factual question that cannot be determined on demurrer.

1. The City’s authority to contract

The City is a charter city, and as such, has “maximum allowable control over municipal affairs. [Citations.]” (*First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650, 661 (*First Street*).)³ The manner in which a charter city is

³ California law distinguishes between charter cities and general law cities. (Cal.Const., art. XI, § 3, subd. (a); Gov. Code, §§ 34101, 34102.) General law cities are those that have not adopted a charter and as a consequence remain subject to state statutes. (*First Street, supra*, 65 Cal.App.4th at pp. 659-660.) Charter cities are also subject to state statutes, “except with

empowered to form a contract is a “municipal affair” controlled by the terms of its charter. Those terms control over otherwise applicable state law. (*Ibid.*)

A city’s charter “represents the supreme law of the municipality.” (*Michael Leslie Productions, Inc. v. City of Angeles* (2012) 207 Cal.App.4th 1011, 1021 (*Michael Leslie*).) “[A] charter city may not act in conflict with its charter. [Citations.] Any act that is violative of or not in compliance with the charter is void. [Citation.]” (*Domar, supra*, 9 Cal.4th at p. 171.)

The Los Angeles City Charter (City Charter) and the Los Angeles Administrative Code (LAAC) specify the procedures that must be followed before the City can be bound by a contract. City Charter section 370 states in relevant part:

“Every contract involving consideration reasonably valued at more than an amount specified by ordinance shall . . . be made in writing, or other manner as provided by ordinance. The draft of the contract shall be approved by the board, officer or employee authorized to make the contract. Every contract must be approved by the City Attorney as to form, except for contracts or classes of contracts involving consideration reasonably valued at less than an amount set by ordinance.

“The contract shall be signed on behalf of the City by [¶] (a) the Mayor; or [¶] (b) the board, officer or employee authorized to enter into the contract; or

regard to ‘municipal affairs’ governed by the charter. [Citation.]” (*Id.* at p. 660.) By adopting a charter and “accepting the privilege of autonomous rule [a charter] city has all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter.” [Citations.]” (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171 (*Domar*).)

[¶] (c) in the case of a contract authorized by Council, the person authorized by the Council.

“The City shall not be, and is not, bound by any contract unless it complies with the requirements of this section and all other applicable requirements of the Charter.”

(City Charter, § 370.)

Section 10.2 of the LAAC in effect at all times relevant to this action similarly provides that a contract authorized by the City Council that is reasonably valued at more than \$1,000 is only binding on the City if it is signed by the persons or entities authorized to enter into the agreement.⁴

Because this case involves the sale of real property, City Charter section 385 also applies. That section states in pertinent part:

“Any real or personal property owned by the City that is no longer needed may, subject to the limitations elsewhere prescribed in the Charter, be

⁴ Section 10.2 stated at the time relevant to the action: “Except as otherwise provided by ordinance, every contract involving consideration reasonably valued at more than One Thousand Dollars (\$1,000) . . . shall be made in writing or other manner as provided by ordinance. . . .

“The contract shall be signed on behalf of the City by: [¶] (a) the Mayor; [¶] (b) the board, officer or employee authorized to enter into the contract; or [¶] (c) in the case of a contract authorized by Council, the person authorized by the Council.

“[¶] . . . [¶]

“The City shall not be, and is not, bound by any contract unless it complies with the requirements of this section and all other applicable requirements of the Charter.” (LAAC, § 10.2.) Section 10.2 was amended effective 1/10/18 to increase the dollar amount of contracts subject to the section from \$1,000 to \$5,000.

sold under terms and conditions prescribed by ordinance. However, any real or personal property under the control of any board authorized by the Charter or by law to acquire, hold or control the property shall not be sold without the approval of the board or officer having the management of the department.”

(City Charter, § 385.)

2. No enforceable contract

Auto Mart failed to allege the existence of a binding and enforceable contract with the City. The allegations in the complaint that Ordinance No. 182620 “authorized and directed the Mayor of the City of Los Angeles . . . to execute a Grant Deed in favor of [Auto Mart]” and “authorized and directed the Department of General Services, Real Estate Services Division . . . to open escrow, deliver deeds and process and execute all necessary documents to effectuate the sale” are insufficient to state the existence of an enforceable contract with the City in conformance with the requirements of the City Charter. (*First Street, supra*, 65 Cal.App.4th at p. 667 [city’s specific contract formation rules must be followed for an enforceable municipal contract].)

Nowhere in the complaint does Auto Mart allege that the Mayor or the Department of General Services signed any contract effectuating the sale of the property to Auto Mart, as required by City Charter section 370 and section 10.2 of the City’s Administrative Code. Rather, the complaint itself alleges that the parties never finalized the draft purchase and sale agreement that was negotiated between July and December of 2014.

Moreover, Auto Mart’s allegation that the Ordinance “authorized and directed” the Department of General Services to

open escrow, deliver deeds, and process and execute the necessary documents to effect the sale is contradicted by the plain language of the Ordinance itself. Section 3 of the Ordinance authorizes, but does not direct, the Department of General Services to undertake those tasks.

We reject Auto Mart's contention that the existence of a contract is a question of fact and not appropriate for demurrer. When a municipal charter contains an express limitation on the manner in which a city may contract, the city is bound only by contracts executed in conformance with the charter provisions. (*San Francisco Internat. Yachting etc. v. City and County of San Francisco* (1992) 9 Cal.App.4th 672, 683 [demurrer properly sustained as to breach of contract and quasi-contract claims against city based on alleged contract not made in compliance with relevant city charter provision]; *Dynamic Industries Co. v. City of Long Beach* (1958) 159 Cal.App.2d 294, 298-299 [demurrer properly sustained as to declaratory relief claim based on alleged contract not made in conformance with city charter requirements].)

The complaint fails to allege the existence of a valid and enforceable contract. The trial court accordingly did not err by sustaining the demurrer to Auto Mart's first, second, third, and fourth causes of action, all of which are premised on the existence of an enforceable contract with the City.

Auto Mart fails to specify how it would amend its complaint to correct the defects discussed above. The burden of proving a reasonable possibility of amending the complaint to state a cause of action "is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The trial court therefore did not abuse its discretion by sustaining the demurrer without leave to amend.

II. Mandamus relief

A writ of mandate under Code of Civil Procedure section 1085 compels the “performance of a legal duty imposed on a government official. [Citation.]” (*Environmental Protection Information Center, Inc. v. Maxxam Corp.* (1992) 4 Cal.App.4th 1373, 1380.) “Generally, Code of Civil Procedure section 1085 may only be employed to compel the performance of a duty which is purely ministerial in character. [Citation.] [¶] A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts exists. Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment.’ [Citation.] ‘Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner.’ [Citations.]” (*Michael Leslie, supra*, 207 Cal.App.4th at p. 1020.)

When reviewing a judgment granting or denying a writ of mandate, an appellate court applies the substantial evidence standard to the trial court’s factual findings, but independently reviews findings on legal issues. (*City of San Diego v. San Diego City Employees’ Retirement System* (2010) 186 Cal.App.4th 69, 78.) The interpretation of local ordinances and municipal codes is subject to de novo review. (*Ibid.*)

The plain language of Ordinance No. 182620 does not support Auto Mart’s contention that the Ordinance imposed a mandatory or ministerial duty on the City to sell the property to Auto Mart. While it is true that section 2 of the Ordinance directs the Mayor to execute a grant deed conveying the property to Auto Mart and directs the City Clerk to attest to the grant

deed and to affix the City Seal thereto,⁵ no similar directive is given to the Department of General Services. Rather, as discussed, section 3 of the Ordinance authorizes, but does not direct, the Department of General Services to open escrow and to process and execute the documents required to effect the sale: “The Department of General Services, Real Estate Services Division, is authorized to open escrow, deliver deeds, and process and execute all necessary documents to effectuate this sale” The plain language of the Ordinance imposes no mandatory duty on the Department of General Services.

The Ordinance does not direct the Department of General Services to process or execute any specific documents, thereby giving the Department discretion to determine what documents it deems necessary to effectuate the sale. Mandamus relief is not available to compel a public agency to exercise discretion in a particular manner. (*US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 138.) The Department of General Services determined that a purchase agreement was a necessary document to effectuate the sale of the property, but Auto Mart refused to sign the agreement the parties had negotiated. Substantial evidence supports the trial court’s findings that Auto Mart willingly participated in the negotiation of the purchase agreement, that a subsequent change in Auto Mart’s financial circumstances made certain terms less attractive, and that Auto

⁵ Section 2 of the Ordinance states: “The Mayor of the City of Los Angeles in the name of and on behalf of said City is hereby authorized and directed to execute a Grant Deed to the said real property described in Section 1 of this Ordinance to CA Auto Mart Group, Inc., dba Glendale Kia, the City Clerk of said City is hereby authorized and directed to attest thereto and to affix the City Seal.”

Mart sought to renegotiate those terms and refused to sign the purchase agreement.

Substantial evidence also supports the trial court's finding that Auto Mart's abandonment of its plans to develop the property eliminated the public benefit that would have resulted from the sale of the property to Auto Mart. Section 7.27 of the Los Angeles Administrative Code states that property may be sold without public bidding only when the sale is determined to be in the public interest. (LAAC, § 7.27.) The legislative history of the Ordinance shows that the public interest requirement was satisfied because the sale would permit Auto Mart to expand its showroom and the community would benefit from the expansion of the Auto Mart dealership and the improvement of the pedestrian walkway adjacent to the dealership. That requirement was no longer satisfied when Auto Mart's counsel notified the City in July 2014 that Auto Mart would not be expanding its business and was not willing to widen the entire sidewalk area immediately. The City was not obligated to complete the sale when the public interest condition was no longer satisfied.

Auto Mart has shown no mandatory or ministerial duty on the part of the City. The trial court accordingly did not err by denying Auto Mart's petition for mandamus relief.

DISPOSITION

The order sustaining, without leave to amend, the demurrer to Auto Mart's complaint, and the judgment denying Auto Mart's petition for writ of mandate and dismissing the action in its entirety are affirmed. The City shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT