

SUPERIOR COURT - STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

CANYON LAKE PROPERTY OWNERS)
ASSOCIATION, a California)
non-profit mutual benefit)
corporation,)
)
Plaintiff,)
)
vs.)
)
ELSINORE VALLEY MUNICIPAL WATER,)
et al.,)
)
Defendant.)
)

Case No. RIC1504034

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN D. MOLLOY

February 1, 2016

APPEARANCES:

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1 RIVERSIDE, CALIFORNIA; FEBRUARY 1, 2016

2 BEFORE THE HONORABLE JOHN D. MOLLOY

3 THE COURT: Canyon Lake Property versus Elsinore
4 Valley Water District.

5 MR. LEVINE: Good morning, Your Honor. Scott Levine
6 for Canyon Lake Property Owners Association.

7 MR. BYER: Good morning, Your Honor. Jeff Byer for
8 the defendant and moving party Elsinore Valley Municipal Water
9 District.

10 MR. SANDLER: James Sandler also for Elsinore Valley
11 Water District.

12 THE COURT: Mr. Sandler, it's been awhile.

13 MR. SANDLER: It has, Your Honor. It's good to be
14 back in your court.

15 THE COURT: Thank you.

16 Mr. Sandler tried an eminent domain action when I
17 was up in Dept. 10 -- oh, man -- two years ago.

18 MR. SANDLER: Yeah.

19 THE COURT: It's almost exactly two years ago.

20 It was a fascinating case. Happens to be in my
21 backyard as well. I've been watching that -- the Foothill
22 extension project.

23 MR. SANDLER: Have they built it out?

24 THE COURT: No. You can now see from either end.
25 You can see the grade. You can see the roadway has actually
26 been dozed, but there's no cement and they're -- you know,
27 they're doing all the improvements on the grades that are
28 coming down.

1 MR. SANDLER: So it is coming.

2 THE COURT: It is coming.

3 It was an interesting case. I get accused of
4 finding what my staff finds to be some of the most boring
5 cases interesting.

6 MR. SANDLER: Not sure the jury shared --

7 THE COURT: Pardon?

8 MR. SANDLER: I'm not sure the jury shared that the
9 case was as interesting as we thought it was.

10 THE COURT: You know, I think they did. When folks
11 hear about eminent domain, they kind of go, oh, my goodness.
12 But then when real homeowners or property owners sit in the
13 jury box and think about, wait a second, someone can come
14 along and take a piece of your property, they get a little bit
15 more interested. They probably do what they're not supposed
16 to do, which is what would I do if they did this to me.

17 MR. SANDLER: Of course.

18 THE COURT: But it was a very interesting case.

19 With that great aside, we are here on demurrer. The
20 Court is inclined to sustain the demurrer and to sustain it
21 without leave to amend. This Court finds that the particular
22 lease is an exception. It is -- it is an exception. In fact,
23 it is --

24 Hold on a sec. Let me get the exact provision.

25 When we look at Article 13C, section (1) -- yes,
26 specifically it looks like sub (4). I think it's -- yes,
27 subdivision (e), subsection (4). A charge imposed for
28 entrance to or use of local government property, or the

1 purchase, rental, or lease of local government property.

2 The Court is mindful that the homeowners
3 association, in their attachments to the Complaint, have
4 attached the lease agreement, and the Court agrees with
5 Elsinore Valley Water that the provisions of Prop 26 are not
6 retroactive.

7 I don't see how we get past this at all. I think on
8 the face of the Complaint, this one dies in the water, but
9 I'll hear from you at this time.

10 MR. LEVINE: Thank you, Your Honor.

11 In order for the Court to make that decision, you
12 have to ignore what I'm calling the hanging paragraph and
13 agree that that hanging paragraph with three requirements does
14 not apply to all seven exceptions. And there's no way I see
15 that you could read Article 13C, section (1)(e) to say that
16 that last paragraph -- that the local government bears the
17 burden of proving, by a preponderance of the evidence, that a
18 levy, charge, or other exaction is not a tax, number one;
19 number two, that the amount is no more necessary to cover the
20 reasonable costs of the governmental activity; and that the
21 matter -- the manner in which those costs are allocated to the
22 payor bear fair or reasonable relationship to the payor's
23 burdens on or benefits received from the governmental
24 activity.

25 Now, the cases that have come down from the Court of
26 Appeal have essentially interpreted that hanging paragraph to
27 apply to all seven exceptions. Now, we don't have a decision
28 that we can rely upon after *San Buenaventura* went up to the

1 Supreme Court, but that case very clearly did say that the
2 pump fee was like an entrance fee to a park which would be
3 Exception No. 4, and it must be a reasonable charge allocated
4 reasonably.

5 Those three prongs of the constitution applied all
6 seven exceptions, and I don't think there's any way to read
7 that article to exclude it.

8 I mean, clearly the burden of proof is on EVMWD to
9 say it's an exception; one of those exceptions applies. So if
10 that's the case, how did the other two not apply to all seven
11 exceptions, the other two prongs, number one.

12 Number two, if you look at *California Farm Bureau*
13 *Federation v. State Water Resources Control Board*, it's a 2011
14 California Supreme Court case, 51 Cal.4th 421 at 438. And it
15 says that an excessive fee that is used to generate general
16 revenue becomes a tax. That predates Prop 26, and I'm going
17 to get to the retroactivity issue of Prop 26 here shortly.

18 But Canyon Lake has alleged in the Complaint that
19 they're being charged about a million-and-a-half dollars for
20 governmental activity that costs approximately \$20,000 a year.
21 That's excessive. That's money going into the general fund.
22 That's general revenue. That's a tax, whether it's under
23 Prop 13 or it's under the California Supreme Court case that I
24 just cited.

25 Secondly, if we look at the California Supreme Court
26 decision in 2001, *Howard Jarvis Taxpayers Association v. City*
27 *of La Habra*, 24 Cal.4th 809 at 812, if it's a tax, its
28 continued imposition and collection is an ongoing violation

1 upon which the limitations period begins anew with each
2 collection. Therefore each time Elsinore sends out a bill,
3 that's the imposition of a tax.

4 So while it may not allow us to recover pre-Prop-26
5 dollars, we're not alleging to recover those. It's the
6 ongoing and into the future that this case is about. It's
7 also going backwards three years, which is what the statute
8 allows, and what the same case, the *Howard Jarvis Taxpayers*
9 *Association v. City of La Habra*, provides for. So three years
10 back and then going forward, you can't charge more than what
11 is reasonable per the constitution.

12 Now, if we look at *Brooktrails*, which is the case
13 that they're relying upon for the retroactive issue, that
14 dealt with a very distinct issue, Measure D. Measure D was
15 passed by a simple majority. And Prop 26 said that going
16 forward, taxes need to be approved by the electorate with a
17 two-thirds vote. That is what was determined to be not
18 retroactive.

19 If we're going to suggest that the word "tax," that
20 one word, has a definition pre 2010 and if it was imposed pre
21 2010 it's not a tax under case law, we're suggesting that the
22 constitution can't change what's happened in the past, and
23 that's just simply not accurate.

24 In fact, what the constitution did with Prop 26 and
25 Prop 218, Prop 26 just inserted a definition, this is what we
26 meant to say is a tax or is not a tax, and we codified -- or
27 not codified, but we constitutionalized what the burden of
28 proof is and what the burdens are upon government to prove

1 that they can impose that fee or exaction. I'm sure you would
2 agree with me --

3 And again, let's look at number (4), a charge to
4 enter a park. If government was going to charge \$10,000 for
5 you to enter a local park, that would be an excessive fee.
6 That's what this article says they can't do. And that's the
7 same as what's going on here with Canyon Lake. That's what's
8 been alleged in the Complaint. And if you don't think that
9 I've alleged it well enough, I can certainly add those facts.

10 But another example, if you wanted to rent a school
11 out, an auditorium for the evening to put on some type of
12 presentation or play, government can't charge \$50,000 for
13 four hours' use of an auditorium. And the simple explanation
14 to it is or the reason for it is citizens of the state of
15 California own the property. That's why government doesn't
16 get to make a profit unless the people say it's okay.
17 Otherwise, it's a tax.

18 And that's exactly what the Propositions 13, 218,
19 and 26 have all done is to close the door on government trying
20 to pass taxes off without the citizens saying it's okay.

21 So just like an entrance fee to a park, the use of a
22 school, a lease is in number (4), and it would have the
23 same -- the same type of requirement on government. One, it's
24 their burden to prove which exception applies.

25 And what if multiple exemptions apply? Do some of
26 the exceptions require reasonableness and some don't? Do some
27 require an allocation and some don't? Do some require that
28 the electorate approve by a two-thirds vote the tax or not?

1 Do some require that the tax be approved only for some of the
2 requirements or not all of the requirements? That's what
3 doesn't make any sense.

4 Measure D -- again, *Brooktrails* deals with Measure D
5 which was a simple majority passage on the same day as
6 Prop 26.

7 Now let's look at *Burns* which they also cited, and
8 they suggest that, hey, 56 years ago government -- or the
9 court said government can charge whatever they want to.

10 Well, just like *Burns*, let's look at a case called
11 *Brydon* -- *Brydon v. East Bay Municipal Utility District*, 24
12 Cal.4th 178. It's a 1994 case. And in that case, the court
13 found, yes, the utility can charge what they're charging in
14 these water tier rates.

15 Now let's fast forward to 2015, post Prop 26. And
16 *Capistrano Taxpayers Association versus City of San Juan*
17 *Capistrano*, 235 Cal.App.4th 1493 at 1530 said, and I quote,
18 "It seems safe to say that *Brydon* itself was part of the
19 general case law which the enactors of Prop 218 wanted
20 replaced with stricter controls on local government
21 discretion." So similar to our case, Prop 218, Prop 26 closed
22 the door on cases like *Burns*.

23 It's now time to look at each of the charges and ask
24 the question, is it a tax. Is it a tax is a more complicated
25 question than just looking at even Article 13C and the
26 definition.

27 If we look at the California Supreme Court decisions
28 that I cited, the *California Farm Bureau* decision as an

1 example, when government charges so much that it puts money
2 not to cover the cost of the governmental activity but into
3 the general fund, that's the definition of a tax. That's the
4 very definition of a tax that the California Supreme Court has
5 defined, and it's codified or constitutionalized in Article
6 13C.

7 Now, today the California Supreme Court is reviewing
8 two cases. *City of San Buenaventura* and *Jacks v. The City of*
9 *Santa Barbara*. And in the Court of Appeal -- both of those
10 cases the Court of Appeal held that it was a tax and that
11 these three requirements have to be met. And in the *City of*
12 *San Buenaventura* case, it was Exception No. 4 that was
13 discussed, and the court said a pump fee is like an entrance
14 fee to a park and it has to be a reasonable cost, and if it's
15 in excess of that reasonable cost, it's a tax.

16 Now, *Jacks* is of interest because *Jacks* dealt with
17 government imposing a franchise fee, and they added -- they
18 had a one percent franchise fee and they added another
19 one percent to the franchise fee and the court said no. The
20 franchise fee that you call this extra one percent, it's a
21 tax. You can't just call something something to get away with
22 slipping a tax to the citizens of the state of California, not
23 after Prop 26, not after Prop 218. In *Jacks v. City of Santa*
24 *Barbara*, the court found that the one percent that existed
25 before was. The one percent that existed after, that's a tax.

26 Well, similar here. We could have a situation in
27 this case where the charge up to November 2010 is not a tax,
28 but any additional money is a tax.

1 And so just like the franchise fee in *Jacks v. The*
2 *City of Santa Barbara*, this too could be a split type of a tax
3 where part of it's not a tax and part of it is a tax. I still
4 believe that even if we go with Exception 4, it's Elsinore's
5 burden to prove that it's a reasonable charge. And I don't
6 know how they approve that one-and-a-half million dollars
7 escalating at eight percent compounded a year is a reasonable
8 charge when their cost is about \$20,000 a year.

9 All that extra money is not going into the service
10 that's being provided. It's all going back into the general
11 fund for Elsinore to use how they please. That's a tax by
12 definition.

13 What the Supreme Court does may or may not have an
14 effect on this very case. And so to shut the door on the
15 legal arguments that are advanced in our complaint now, we
16 could find out in three or four months that the California
17 Supreme Court has affirmed *San Buenaventura* and has affirmed
18 *Jacks v. City of Santa Barbara* or come up with something
19 entirely different that we don't know.

20 I think that this case is more properly decided on
21 a -- if it's going to be a legal issue, decided on a motion
22 for summary adjudication. I think that if we look at a
23 document and you're making this decision that it's a lease,
24 when you get to the facts behind how this all occurred, it's
25 not really a lease. It's an imposition.

26 This was not something that was negotiated. This is
27 not something that the association asked to be a part of.
28 This is not something that the association had a choice to

1 accept or not accept. This is something that if we go back in
2 time, the facts will show this is an imposition. The
3 difference is it's now a government imposition and not a
4 private imposition so the rules are different. The
5 constitution applies. The California Supreme Court decisions
6 that I've cited apply.

7 THE COURT: Counsel.

8 MR. BYER: Thank you, Your Honor.

9 Starting with the last argument first, the argument
10 that the -- that somehow this document is not a lease because
11 it was imposed upon -- imposed upon the property owners
12 association. It bears noting in Exhibit E to the First
13 Amended Complaint is the second amended to the lease in which
14 the property owners association expressly assumed all of the
15 obligations of the lease and negotiated an option to extend
16 the lease for 44 years.

17 There were four amendments after that amendment, all
18 of which are attached to the First Amended Complaint, so it
19 was a freely negotiated contractual agreement that the -- that
20 the property owners association accepted, so there's no
21 question it's a lease and it's a binding agreement between the
22 parties.

23 I think I view retroactivity as -- and I'll get to
24 some of the other comments about interpreting the
25 constitution, but retroactivity is really the silver bullet
26 here.

27 What they're arguing, which I disagree with, but
28 what they're arguing is under Proposition 26 that a government

1 agency like the water district does not have the right to
2 freely negotiate lease agreements or sell property for market
3 rates without coming to the voters and getting their
4 permission to do so, and that they're bound by reasonableness,
5 that they can only lease the property for what it would
6 reasonably cost to maintain it. So if we were to lease this
7 courtroom, we could only lease it for what it cost to clean
8 the hallways and get it ready for the next day. That's not
9 the law.

10 But retroactivity under the *Brooktrails* case which
11 we cited, the *Brooktrails* was interpreting Proposition 26, not
12 Proposition D. Proposition D was a local initiative in the
13 municipality at issue which was adopted the day before
14 Proposition 26 went into effect. So the court had to deal
15 with the specific question, is Proposition 26 retroactive to
16 something that happened before it.

17 In that case, it was the effect of Proposition D,
18 but what the court said at page 205 is that, "Just as with
19 newly enacted statutes, constitutional amendments are presumed
20 to have a purely prospective application." And the court said
21 that in order for a constitutional amendment to be
22 retrospective, there must either be an expressed retroactivity
23 provision in the actual language of the amendment, or
24 intrinsic sources leave no doubt that such was the voters'
25 manifest intent.

26 And in looking at those two questions, the court
27 answered here there is neither. And that's at page 205.

28 So the court made it very clear that Proposition 26

1 is not retroactive. We can't apply it to a -- an ordinance
2 that was passed the day before, let alone a lease that was
3 entered into 47 years earlier. So as I say, Proposition 26
4 is, in effect, a silver bullet here.

5 In terms of if we put the retroactivity issue aside,
6 as Your Honor noted, the constitutional provision is clear on
7 its face. It says, consistent with common sense, that a lease
8 of government property is not a tax. That is very specific in
9 the exception.

10 The hanging paragraph, as counsel called it, that
11 appears at the end of the article, which provides that there
12 are -- which imposes a reasonable analysis on --
13 reasonableness analysis on certain charges, that refers
14 specifically --

15 There are only three exceptions that have a
16 reasonableness requirement in them, Exceptions 1, 2, and 3.
17 Ours is in 4. The lease is in 4. I won't read them all to
18 you verbatim, but the first exception says that if there's a
19 charge imposed by a local government for a specific benefit to
20 confer or grant directly to the payor that's being charged,
21 that can't exceed the reasonable costs to the local government
22 to provide that.

23 The second exception is similar. It says that a
24 charge imposed for a specific government service or product
25 charged directly to this particular payor, that too may not
26 exceed the reasonable costs of providing it to that payor.

27 The third one also includes reasonableness, a charge
28 imposed for the reasonable regulatory cost to a local

1 government for issuing licenses and permits and taking other
2 administrative actions. That too has to be a reasonable cost.

3 There is no case that holds that that reasonableness
4 requirement that appears at the end of the article is --
5 applies to all seven exceptions, let alone the lease
6 exception.

7 The *City of Buenaventura* case did not provide that,
8 the case that's up on review with the Supreme Court. That
9 dealt with the first exception.

10 The *Newhall County* case, which is attached to the
11 supplemental brief that was filed by the plaintiff, that
12 involved the second exception. And *Griffith v. City of Santa*
13 *Cruz*, which we cited in our reply paper, applied the third
14 exception, reasonable regulatory costs. That was a fee
15 charged by a municipality to do inspections of rental --
16 apartment rental units. And the Court said, if you're going
17 to charge landowners to inspect their property to make sure
18 they're habitable, that was the purpose of making that -- of
19 charging that, so they could do inspections of these units,
20 then it has to be reasonable. That's what the constitution
21 requires.

22 And that's -- again, those reasonableness
23 requirements appear in the first, second, and third exception.
24 They don't appear in the lease exception. And frankly, it
25 defies logic that again a governmental -- local governmental
26 agency has to seek the approval of the voters if it wants to
27 sell a parcel of property for market rate or rent a parcel for
28 market rate.

1 This is a 47-year-old lease, Your Honor, and under
2 Proposition 26, Proposition 26, rather, did nothing to
3 invalidate it.

4 MR. LEVINE: If I could, Your Honor, respond. He's
5 suggested -- Counsel has suggested that it was freely
6 negotiated. There's nothing in the Complaint that suggests
7 that this was freely negotiated. The argument that he's made
8 simply suggests that this is not a demurrable issue. What
9 it's called, whether this is a lease, or an entrance fee, or
10 it's a use of government property, what it is and how it came
11 to be are facts that need to be -- need to be vetted. There's
12 no agreement that it is what the document says it is, just
13 like the franchise fee in *Jacks v. The City of Santa Barbara*.

14 The other item is if we're looking at this hanging
15 paragraph, there's no dispute -- at least I've not heard any
16 dispute that the burden of proof, whether it is or is not a
17 tax, is on government.

18 THE COURT: Actually, there is a dispute. The
19 dispute that I just heard and what they suggested was if you
20 look at the first three exceptions, each one of them has a
21 reasonableness written right into it. Once you get past 3,
22 they no longer have that.

23 When you look at what you were terming the hanging
24 paragraph, it talks about reasonableness and specifically
25 lists, as a laundry list, "The local government bears the
26 burden of proving by a preponderance of the evidence that a
27 levy, charge, or other exaction is not a tax, that the amount
28 is no more than necessary to cover the reasonable cost of

1 government activity, and that the manner in which those costs
2 are allocated to a payor bear a fair or reasonable
3 relationship to the payor's burdens on, or benefits received
4 from, the governmental activity.

5 And what counsel's argument was that hanging
6 paragraph applies to the word "reasonable" in Exceptions 1, 2,
7 and 3, and it ends there, that the only reason -- that when I
8 read that in context, it tells me how to figure out what
9 reasonable means as it is expressed in Exception 1, 2, and 3.
10 That's what counsel just argued.

11 Go ahead.

12 MR. LEVINE: Well, the first -- the first part of
13 that sentence is that the local government bears the burden of
14 proof, and that's a codification or constitutionalization of
15 the *Sinclair Pink* (phonetic) case.

16 THE COURT: What he's saying is that all that is is
17 a definitional term that tells me how I'm to resolve the issue
18 of reasonableness as it is expressed in Exceptions 1, 2 and 3.

19 MR. LEVINE: I understand that's what he's saying.
20 However, I don't know how you can read it to not apply to all
21 of the exceptions.

22 THE COURT: How -- there are -- if we went through
23 the Penal Code, if we went through any code section, there are
24 numerous code sections throughout our law -- it doesn't matter
25 whether we're dealing with the civil code -- that will then
26 have, as a portion of the codified law, definitional sections
27 that tell us how to -- how to deal with terms like
28 reasonableness.

1 Go ahead.

2 MR. LEVINE: But this is not separated as a
3 definition. I would agree with you that if there was a
4 separate section that said definitions, reasonableness,
5 reasonableness means X, Y, Z. But we don't have that here.
6 We have subsection (e) with seven exceptions and a paragraph
7 that applies to all seven exceptions the way it's read.

8 That's how it's written. I didn't write it. I'm
9 sure there are better ways people could write things.
10 However, we're stuck with what the constitution says. And if
11 it was separated into a whole separate section and we had
12 definitions, and we had reasonableness, and it had another
13 section that said allocation, this is what we do if it's
14 reasonable or in determining reasonableness, sure, maybe you
15 could break it off. But it's not broken off.

16 THE COURT: Okay. Go ahead.

17 MR. LEVINE: Plus when you add in the other
18 California Supreme Court decisions that talk about the
19 exaction or imposition of fees when they become so excessive
20 that the money goes into the general fund, that too is a tax.

21 THE COURT: If I took your strict construction
22 analysis, then reasonableness only has to be -- only has to be
23 dealt with if there is specifically a levy, a charge, or other
24 exaction. If I did that --

25 Because that's the way it's written. Right? And if
26 it doesn't have the word levy --

27 MR. LEVINE: Well, but --

28 THE COURT: If it doesn't have the word levy, charge

1 or other exaction written into it, then --

2 If I was using the type of, in this case,
3 constitutional interpretation that you want me to use, I would
4 only use it in one of those three instances.

5 MR. LEVINE: No. Because that's a broad, expansive
6 statement.

7 THE COURT: So you're telling me that I need to read
8 this in context of the entire statute or the entire
9 constitutional provision and make sense of it. Is that what
10 you're saying?

11 MR. LEVINE: Well, that's what I'm trying to do with
12 it.

13 THE COURT: Sure. And when I do that, when I look
14 at the whole thing, I think I agree with counsel, it does not
15 apply after 3.

16 But go ahead.

17 MR. LEVINE: Again, back to your comment that tax is
18 a levy, charge, or exaction, it's any type of fee that
19 government gets. That's the intent.

20 THE COURT: Deal with counsel's argument. If I
21 agree with you -- if I agree with you, then the government
22 could never sell, for example, a piece of real property for
23 less than its tax base because it's not reasonable. Right?
24 It's not reasonably related to its tax base. Its tax base is
25 whatever it got that piece of property for.

26 So if it acquired the piece of property in 1869 for
27 \$50, and the property now has a fair market value of
28 \$15 million, we would be able to deal with any maintenance

1 fees that it had used over the course of the last couple
2 hundred years, or not quite couple hundred years, but hundred
3 plus years, and they could only sell it for just slightly more
4 than their tax base. Deal with that analysis.

5 MR. LEVINE: I don't know that that's -- I don't
6 know that that's a fair analogy.

7 THE COURT: We're talking about a conveyance of real
8 property, either an easement or some use of real property, or
9 the sale of real property. Why does the government -- why
10 does the government not, consistent with Subsection 4, get to
11 rent, sell, or otherwise dispose of real property for fair
12 market values?

13 MR. LEVINE: Okay. I guess it's the reverse of
14 eminent domain. You can't make someone buy a piece of
15 property adjacent to their house. Right?

16 That's what's happened here. The government is
17 making the association lease or spend money for the access
18 rights to this reservoir. There's not been an arm's length
19 negotiation.

20 In the example you're giving me, someone is actually
21 saying, hey, I want to buy it.

22 THE COURT: Okay. What about your exhibits showing
23 signed documents with multiple modifications?

24 MR. LEVINE: There's an assumption under those -- in
25 your reading, apparently, that there was negotiation. There
26 is no negotiation when you've got the same party making the
27 agreement on both sides.

28 If you look at the original lease and the formulas

1 that are in there and the terms, it's signed by the same two
2 people. The lessor and lessee are the same people.

3 I entered into a lease myself with myself, and I
4 assigned it to an association that I created to sell homes so
5 that I could continue to get a stream of revenue into
6 perpetuity. That's what this document is. That's an
7 exaction.

8 The fact that there have been modifications have
9 been essentially, if you will, under duress because there's
10 been no way to negotiate. There's been no way for anybody to
11 get out from under this document. There's been no way to
12 change it. The only reason there's a way to change it now is
13 because the constitution has opened that door, and there's a
14 government now that owns that, that surface right.

15 THE COURT: I'm still listening to you, Counsel.
16 Continue.

17 MR. LEVINE: I mean, to say that there are no cases
18 that interpret the hanging paragraph as applying to all the
19 exceptions I don't think is really fair. If you look at *San*
20 *Buenaventura*, it definitely did use (e)(4). It's not law that
21 we can cite anymore, but to suggest that no court has ever
22 held that is wrong. Obviously, trial courts have held that.
23 The same is true with the *City of Santa Barbara* case.

24 I think we're going to get some guidance here from
25 California Supreme Court. We just don't have it here today.
26 I think that if we're able to put the facts forward and put
27 some meat on this, you'll see that this actually is an
28 unreasonable charge, and it's not being allocated correctly,

1 and it is a tax because it's money going into the general fund
2 whether we use Prop 26, or we use *California Farm Bureau*, or
3 *Howard Jarvis v. City of La Habra*. California Supreme Court
4 cases all call it a tax.

5 THE COURT: All right.

6 The Court is going to adopt its tentative as its
7 ultimate ruling. The demurrer is sustained without leave to
8 amend for all the reasons stated in the demurrer.

9 So I think you have teed this up as well as you can
10 to go up behind -- it's not *Jacks*. It's the other one.

11 MR. LEVINE: *City of San Buenaventura*.

12 THE COURT: I don't think you could tee it up any
13 better than how you have.

14 And I know that's a horrible consolation prize.
15 You've teed this up for appeal, but I am essentially adopting
16 the reasoning of the demurrer. I am for all of the reasons
17 stated in the demurrer.

18 Prevailing party to provide notice.

19 MR. BYER: I will, Your Honor. Thank you.

20 MR. LEVINE: Thank you.

21 THE COURT: You're welcome.

22 (Proceedings concluded.)
23
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28

REPORTER'S CERTIFICATE

CANYON LAKE PROPERTY OWNERS)
ASSOCIATION, a California)
non-profit mutual benefit)
corporation,)
)
Plaintiff,)
)
vs.) Case No. RIC1504034
)
ELSINORE VALLEY MUNICIPAL WATER,)
et al.,)
)
Defendant.)
)

I, OLIVIA JILL HUTCHESON, Certified Shorthand Reporter,
No. 12967, do hereby certify:

That on February 1, 2016, in the County of Riverside,
State of California, I took in stenotype a true and correct
report of the testimony given and proceedings had in the
above-entitled case, Pages 1 through 20, and that the
foregoing is a true and accurate transcription of my stenotype
notes, taken as aforesaid, and is the whole thereof.

DATED: Riverside, California, February 8, 2016

OLIVIA JILL HUTCHESON, CSR NO. 12967