SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 05/12/2022 TIME: 01:58:00 PM DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal
CLERK: Jessica Pascual
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00005335-CU-TT-CTL** CASE INIT.DATE: 02/08/2022
CASE TITLE: **Save the Field vs. City of San Diego [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

APPEARANCES

The Court, having taken the above-entitled matter under submission on 04/22/2022 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioner's motion for preliminary injunction is **GRANTED**, conditioned on petitioner posting a bond in the amount of $60,000**.**

Preliminary Matters

Petitioner Save the Field's request for judicial notice of exhibits A through E is granted. Real Party in Interest Del Mar Union School District's ("District") request for judicial notice of exhibits A through G is granted. Opp., citing ROA # 28. Although the Court may take judicial notice of the existence of documents, it cannot accept the truth of any matters subject to reasonable dispute. *Herrera v. Deutsche Bank Nat. Trust Co*. (2011) 196 Cal.App.4th 1366, 1375.

When a party believes that an action is related to another action that is pending in a California court, the party is required to serve a notice of related case. Cal. R. Ct., rule 3.300(b). This is an on-going requirement. Here, the parties' briefing indicates this case appears related to *Save the Field v. Del Mar Union School District*, Case No. 37-2020-00020207-CU-TT-CTL. None of the parties filed a notice of related case, nor took the action required by the San Diego Superior Court Local Rules (see Rule 2.1.3.1). However, given the procedural posture of the cases, the Court deems no further action necessary.

Background

Petitioner's verified petition for writ of mandate challenges the respondent City of San Diego's approval of a coastal development permit, conditional use permit, site development permit and planned development permit that were issued to the District. Pet., ¶ 12. The petition: (1) seeks a writ of mandate setting aside the City's approvals under CCP sections 1085 and 1094.5; (2) asserts a violation of the California Environmental Quality Act ("CEQA"); (3) and requests injunctive and declaratory relief.

Discussion

Petitioner seeks a preliminary injunction to enjoin the District from engaging in construction activities at the Del Mar Rebuild Project, which was authorized by the City's coastal development permit at issue in this case. ROA # 22 at 2, citing CCP §§ 526, 526(a), 527 and Educ. Code § 15284. Petitioner also asks that the City and anyone acting on their behalf/under their control be restrained from construction activities. *Id.* The District opposes the motion, and the City filed a joinder to the opposition.

Stay on Perfection of Appeal (CCP § 916)

The District argues the Court may not issue an injunction because this matter is automatically stayed under CCP section 916. The District asserts the matters in this case are "embraced" or "affected" by a pending appeal. Dist. Supp. Br. at 1. Subject to certain exceptions, "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced *in the action* and not affected by the judgment or order." CCP § 916(a), emphasis added.

As petitioner points out, by the statute's own terms, the automatic stay can only apply to the action from which the appeal was taken. Neither the District nor the City cite any case law holding that an automatic stay under CCP section 916 applies to proceedings in a case other than the one from which the appeal was taken.

At the hearing, the District cited to three cases to support its argument that an automatic stay under CCP section 916 should apply here based on the pending appeal in another case. *Southern California Gas Co. v. Flannery* involved an interpleader action in which the defendants had a separate palimony case against each other concerning their respective rights to the property that was the subject of the interpleader action. *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476. After one party obtained a judgment in the palimony case, they filed a motion in the interpleader case to collect the palimony judgment. *Id* at 488. The Court expressly rejected the argument that the palimony judgment was a mandatory injunction subject to an automatic stay on appeal and found that a bond would have been required to stay a judgment for identified funds already in the court's possession. *Id* at 490-491. Nothing in the *Flannery* case could be read to impose a mandatory stay here.

Faught v. Faught is similarly unhelpful. *Faught v. Faught* (1973) 30 Cal.App.3d 875. In *Faught*, parties had two actions between them: an earlier case for spousal maintenance and a separate case for dissolution. *Id.* at 877. The court held that a spouse's appeal in the maintenance proceeding did *not* automatically stay the dissolution action. *Id.* at 878.

Finally, in *Central Delta Water Agency v. Department of Water Resources*, the court concluded that the issue of whether one CEQA case should have been automatically stayed because a prior CEQA case, seeking some of the same remedies, was on appeal was moot because the cases had been consolidated. *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 215.

As none of the cases cited by the District holds that, under CCP section 916, an appeal in one case automatically stays a different case, involving different parties, the Court must conclude there is no automatic stay.

Likelihood of Success and Balance of Harms

The court must balance two interrelated factors when ruling on a request for a preliminary injunction: "(1) the likelihood that the plaintiff will prevail on the merits at trial and (2) the interim harm that the plaintiff would be likely to sustain if the injunction were denied as compared to the harm the defendant would be likely to suffer if the preliminary injunction were issued." *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749. Where the interim harm is great, plaintiff need only show some possibility that she will ultimately prevail. *Butt v. State of California* (1992) 4 Cal.4th 668, 678.

Of note, "[a] trial court's decision on a motion for a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or that he should not be restrained from exercising the right claimed by him [or her]. The general purpose of such an injunction is the preservation of the status quo until a final determination of the merits of the action." *Take Me Home Rescue v. Luri* (2012) 208 Cal.App.4th 1342, 1352, internal marks and citations omitted.

Here, petitioner asserts the City did not comply with CEQA when it issued the coastal development permit because it relied on a court-ordered vacated mitigated negative declaration ("MND") and a "focused" environmental impact report ("EIR"). 14 CCR §§ 15050(b); 15096(a) (responsible agency is to comply with CEQA and consider legally adequate CEQA documents). Environmental review may not be split between two documents. *Farmland Protection Alliance v. County of Yolo* (2021) 71 Cal.App.5th 300, 308-310 (agency is to prepare "*either* a negative declaration/mitigated negative declaration *or* prepare an environmental impact report *for the project;*" cannot split a project's "impact analysis across two types of environmental review documents). And a focused EIR may be used only if the lead agency finds the analysis in the master EIR is adequate for the project. Pub. Res. Code § 21158 ("A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the *master environmental impact* report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project," emphasis added).

Petitioner has presented evidence to support its assertion that the City improperly split environment review between two documents (the Focused EIR and the MND), and improperly relied on the focused EIR. Pet. NOL Ex. 15; see also Ex. 14 (Board Resolution). Accordingly, for purposes of assessing whether a preliminary injunction should issue, petitioner has shown a likelihood that it will prevail on the merits.

The District nonetheless argues petitioner cannot show a likelihood of prevailing on the merits because res judicata or collateral estoppel applies. But these doctrines apply where a decision is final. *Cent. Delta Water Agency v. Dep't of Water Res*. (2021) 69 Cal. App. 5th 170, 206, 208. The judgment in the underlying action is currently on appeal and thus is not final. *Riverside County Transportation Com. v. Southern California Gas Co*. (2020) 54 Cal.App.5th 823, 838 (an adjudication is not final "if an appeal is pending"); Dist. RJN No. 6, Ex. F (opening brief on appeal).

At the hearing, the District argued that petitioner also cannot show likelihood of success on the merits because the focused EIR was final and conclusive as a matter of law, and thus any challenge to it is time-barred. See also Opp. at 8-9. However, this lawsuit was not brought against the District for its focused EIR. Rather, petitioner here has named the *City of San Diego* as the respondent, and challenges the *City's* actions as a responsible agency under CEQA. ROA # 1. Petitioner met its burden

of proof and persuasion on the likelihood of success on the merits and the balance of harms also weighs in favor of imposing the injunction. The District claims petitioner did not provide any evidence of harm. The record indicates otherwise. Petitioner provided a declaration from Shana Khoury. Khoury attests she observed two permanent buildings being fully demolished, two other permanent buildings being stripped of their elements with only frames left standing, all portable buildings demolished, and all playground and baseball backstops demolished. Shana Khoury Decl. ¶¶ 3-9. The construction activities are at the same location for which the City issued the coastal development permit at issue in this suit, thus evidencing interim harm likely to be sustained to this coastal environment. NOL, Ex. 5, p. 1(project includes demolishing a total square footage of 52,406 square feet). In light of this, the District's arguments that it will suffer greater injury because families would need to commute further than normal to other schools for a longer period of time does not tip the balance in the District's favor.

For these reasons, petitioner has met its burden to show a preliminary injunction should issue. The Court notes, however, that if there were new facts or law, a motion for reconsideration might be appropriate. A ruling by the Court of Appeal in *Save the Field v. Del Mar Union School District*, Case No. 37-2020-20207-CU-TT-CTL, could certainly provide those grounds.

Bond

On granting an injunction, the Court generally "must require an undertaking on the part of the applicant to the effect that the applicant will pay to the party enjoined any damages, not exceeding an amount to be specified, the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction." CCP § 529(a).

Petitioner requests the bond be set at a nominal amount of $1,000, citing federal cases related to "impecunious, non profit interest groups." In contrast, the District requests the bond be set at a minimum of $100,000, based on estimates of potential future damages for an estimated 5-month delay. Although the District's supporting declaration of Chris Delehanty, refers to a construction contract with monthly "General Conditions" costs and a liquidated damages provision, the District did not attach a copy of the contract. Given that it is unable to review the contract, the Court gives these statements only minimal weight. On the other hand, Delehanty also declared that the District and the contractor agreed that delay damages would be $2,000 per day. There appears to be no reason to discount this statement. Given this, the Court sets the bond at $60,000, based on a 30-day delay. This allows the District to seek further orders from the Court of Appeal, to the extent it believes such orders are necessary.

Conclusion

For the above stated reasons, petitioner's motion for a preliminary injunction is **GRANTED**, conditioned on petitioner posting a bond in the amount of $60,000.

Within five court days of this ruling, petitioner is directed to prepare a proposed order in compliance with CRC, Rule 3.1150(f). Until such time, the District and the City, and its officers, agents, employees, representatives, and all persons acting in concert or participating with it, are restrained and enjoined from engaging in any construction activities authorized by the Coastal Development Permit issued by the City of San Diego in connection with the Del Mar Heights School Rebuild until further notice and order by the Court.

The Court had noted at the hearing that an order under CCP section 166.1 might be appropriate. However, given this order, including the bond provision, the Court takes no further action.

The Clerk to give notice.

IT IS SO ORDERED.

Judge Katherine Bacal