

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 01/22/2015

TIME: 09:00:00 AM

DEPT: C-66

JUDICIAL OFFICER PRESIDING: Joel M. Pressman

CLERK: Lori Urie

REPORTER/ERM: Stephanie Bryant CSR# 13160

BAILIFF/COURT ATTENDANT: A. Quidilla

CASE NO: **37-2014-00034850-CU-MC-CTL** CASE INIT.DATE: 10/14/2014

CASE TITLE: **Alpine Union School District vs. Grossmont Union High School District [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Alpine Union School District, Alpine Taxpayers for Bond Accountability

CAUSAL DOCUMENT/DATE FILED: Motion for Preliminary Injunction and Supporting Documents,
11/10/2014

APPEARANCES

JOHN C LEMMO, counsel, present for Plaintiff(s).

WARRINGTON S PARKER, III, counsel, present for Defendant(s).

9:10 am A non reported chambers conference is held to settle the issue until 10:40 am.

The Court hears oral argument and confirms as modified the tentative ruling as follows:

Preliminary Injunction

Plaintiff Alpine Union School District filed a Motion for Preliminary Injunction, which the Court initially heard on December 5, 2014. The Court continued the hearing to December 22, 2014 in order for Alpine Union School District and Grossmont Union High School District to discuss alternatives to the imposition of a preliminary injunction. After considering the briefing filed by the parties and arguments on December 5, 2014, the Court issues the following tentative order:

The Verified Complaint filed on or about October 14, 2014, alleges two causes of action for (1) Permanent Injunction and (2) Taxpayer and School Bond Waste Prevention. (Code of Civil Procedure § 526a & Ed. Code, § 15284). The Second Cause of Action alleges that Grossmont Union High School District have expended funds received through the sale of bonds authorized by the Education Code (specifically Propositions H and U) for purposes other than those specified. The First Cause of Action seeks an Injunction preventing further spending of bond and state matching funds on any new projects or project approvals until after the California Department of Education makes a final determination on funding allocation regarding Alpine's Second Petition related to Alpine's petition for unification.

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The Court DENIES the relief requested in the preliminary injunction to prevent further spending of bond and state matching funds on new projects, etc. However, the Court GRANTS alternative preliminary relief to order Grossmont to allocate a certain portion of bond and state matching funds received toward the construction of a high school.

Reasonable Probability that Plaintiff will Prevail

The ultimate questions on a motion for a preliminary injunction are (1) whether there is "a reasonable probability that the plaintiffs will prevail on the merits" and (2) whether the plaintiff is "likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from its grant See *Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400.

In two separate bond measures passed by the voters in East County, Grossmont promised to construct a new high school in Alpine. First, in March 2004, voters passed Proposition H, a \$274 million bond measure to renovate and expand existing facilities and to construct "a new high school." (Prop H Ballot language, pp.1 & 7, attached as Exh. A to Decl. of S.Casamassima.) It is undisputed that all Prop H bond funds have been spent or allocated to date and that no high school was built in Alpine. (August 31, 2013 Prop H Financial Status Summary, attached as Exh. C to Decl. of S. Casamassima; Decl. of S. Casamassimal 15.)

In 2008, the voters approved Proposition U, wherein Grossmont again promised the voters a high school in even more specific language: "A new school in Alpine/Blossom Valley." (Prop U Ballot language, pp. 1 & 11, attached as Exh. B to Decl. of S. Casamassima.) Proposition U contained an enrollment trigger: district enrollment needed to reach a threshold of 23,245 students for construction. (The Court recognizes a dispute as to whether this trigger has been satisfied.) While Grossmont has purchased the land for the school at no small cost, the high school remains unbuilt. (See Feasibility Study, p.16, and August 31, 2014 Prop U Financial Status Summary attached as Exhs. F & D to Decl. of S. Casamassima.)

Grossmont has purchased the land for the building of the high school, which belies allegations that Grossmont never intended to construct the school. Further, Grossmont has set forth reasons for delaying the construction of the Alpine school. Further, there may be valid enrollment concerns and other economic reasons to justify delaying construction from the perspective Grossmont.

However, a high school has been promised to voters *at some point* and there is an expectation that funds from Proposition U would be used to finance construction. This would be true regardless of what entity – Alpine or Grossmont – ultimately is responsible for the completion of the high school. Contrary to Grossmont's argument on December 5th, voters did not appear to vote for "board discretion". Voters voted for a bond (twice) that would include a new high school.

Alpine High School Citizens Committee ("AHSCC") has begun a school district unification process in order to enable Alpine School District to build and operate the high school. (Decl. of S. Casamassima, ¶ 16.) The motives for this action, the wisdom or the viability of it are not issues the Court needs to address in this motion. Suffice to say, the process is set forth in the Education Code and has passed the hurdle of San Diego County Office of Education approval. (SDCOE August 13, 2014 Meeting Minutes Excerpt, attached as Exh. .1 to Dec. of S. Casamassima.) As a result, this matter is now before the State Board of Education for approval. Ultimately, voters will have to approve.

As a part of that approval process, the State Board of Education, an asset allocation will occur. This

allocation will include apportionment of bond proceeds. SDCOE recommended that the State award Alpine its fair share of Grossmont's total assets to be substantially paid from remaining Prop H and Prop U bond funds. (SDCOE Plans and Recommendations, p. 2, attached as Exh. K to Decl. of S. Casamassima.) The precise amount of allocation is still unclear.

What is clear to the Court is that Grossmont represented to voters that a high school would be constructed at some point from proceeds from Proposition U. Further, it appears that Grossmont explicitly informed investors that bond revenues would be spent on the high school. (Declaration of John Lemmo submitted on December 18, 2014 and exhibits attached.) The voters approved the bond with this understanding. There is a dispute as to the language in the bond measure of what triggers the actual obligation to construct the high school. As stated above, the Court respects that from Grossmont's perspective, a delay may be appropriate. However, regardless, there was an expectation and understanding that a portion of the bond funds would be used for the purpose of high school construction. Thus, whether or not unification is successful, funds from this bond are supposed to be used in part to build a high school. If unification occurs, funds from this bond are to be allocated for purposes of construction. The Court understands the actual allocation will be resolved at or around the time the State Board of Education resolves unification. Nonetheless, the community expected, based upon the representations of Grossmont District, that bond funds would be used for construction. Funds should be preserved for this purpose.

Whether the plaintiff is "likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from its grant"

An evaluation of the relative harm to the parties upon the granting or denial of a preliminary injunction requires consideration of: "(1) the inadequacy of any other remedy; (2) the degree of irreparable injury the denial of the injunction will cause; (3) the necessity to preserve the status quo; [and] (4) the degree of adverse effect on the public interest or interests of third parties the granting of the injunction will cause." *Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 435.

There is no other remedy than injunction in this case given the limited nature of the bond funding. Alpine has provided evidence that there is at least a danger that bond funds will be inadequate to support the building of a high school based on Grossmont's planning. The Court accepts the declaration of Sal Casamassima submitted on December 18, 2014 for evidence that a high school will cost \$70 million (less the cost already expended on the land).

As of June 30, 2014, Grossmont's school construction program had approximately \$104 million in assets, including over \$85 million in cash assets derived from Prop H, Prop U, and state matching funds. (September 3, 2014 Quarterly Report, attached as Exh. A to Decl. of C. Loarie.) Based on the Declaration of Chris Loarie, Grossmont is spending these funds at the rate of \$2-11 million per month - or roughly \$90,000 to \$500,000 per day, which threatens to exhaust the funds by 2017 (Decl. C. Loarie, 8.) In 2012, Grossmont "deprioritized" the high school, moving it to the final phase of bond spending, commencing in 2024. (See Declaration of Sal Casamassima at paragraph 15) On September 11, 2014, Grossmont's Board passed Resolution No. 2015-02 entitled "Resolution to Reaffirm Opposition for the Unification of the Alpine Union School District" (the "Resolution"). (Resolution, attached as Exh. D to Decl. of T. Stender.) Based on this evidence, there appears to be legitimate concerns that Grossmont may be equivocating on its commitment to build a high school or that funding for the high school will ultimately not be available.

While the Court does not believe that curtailing future bond spending on the district is supported,

particularly on a preliminary basis, the Court does believe that evidence supports an injunction to set aside some funding for the eventual construction of the high school.

The Court has balanced this harm with the concern of Grossmont's need to continue expending bond proceeds on other projects. As the Court understands it, Alpine does not intend to interfere with on-going projects with the District. Hindering future development in the Grossmont District until the unification process is complete could take years and could be detrimental to Grossmont and the community it serves. The Court has carefully considered the Declaration of Scott Patterson in this regard. However, given the promises made by Grossmont for the construction of a high school, the Court has determined that setting aside some of the proceeds for the development of the high school is appropriate.

The Court issues a preliminary injunction ordering Grossmont to set aside 14 million immediately and the set aside 28 million by January 15, 2016.

No Bond is required.

Mr. Parkers oral request to stay the order pending appeal is denied. The Court sets a noticed motion on 1/28/15 t 9:00 am.

The Motion Hearing (Civil) is scheduled for 01/28/2015 at 09:00AM before Judge Joel M. Pressman.



Judge Joel M. Pressman