

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 25, 2019

EVENT DATE: 04/26/2019

EVENT TIME: 11:00:00 AM

DEPT.: C-70

JUDICIAL OFFICER: Randa Trapp

CASE NO.: 37-2018-00020015-CU-MC-CTL

CASE TITLE: JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION VS JULIAN CUYAMACA FIRE PROTECTION DISTRICT [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other and Supporting Documents, 04/15/2019

APPLICATION FOR LEAVE TO INTERVENE AS REAL PARTIES IN INTEREST by San Diego Local Agency Formation Commission and County of San Diego is GRANTED. (CCP § 389(b))

Request for Judicial Notice is granted.

The request to intervene is timely. The timeliness of a motion to intervene under section 387 is determined based on the date the proposed interveners knew or should have known their interests in the litigation were not being adequately represented. (*Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 282) Section 387 of the Code of Civil Procedure formerly limited intervention to a time before trial, but this limitation was removed by the 1977 amendment to the section, which now reads "Upon timely application" rather than "At any time before trial." (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 437) The fact that section 387 allows for a "timely" application means that intervention after a judgment is possible. (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267) Defendant/respondent Julian-Cuyamaca Fire Protection District's [JCFPD] citation to case law prior to the 1977 amendment is not persuasive.

Previously, JCFPD was represented by counsel and opposed the writ of mandate, however new counsel substituted in and the court was informed JCFPD would not oppose the writ of mandate filed by Julian Volunteer Fire Company Association, claiming inter alia, that there were violations of the Brown Act by three members affecting the decision by JCFPD to dissolve. Therefore, the writ of mandate was unopposed and the court found that JCFPD violated the Brown Act. However, proposed intervenors San Diego Local Agency Formation Commission [LAFCO] and County of San Diego [County], did not learn of the court's ruling until April 8, 2019 when it met to receive the results of a special election and set an effective date for JCFPD's dissolution and was informed of this court's ruling. While they may have been aware of the various lawsuits that have been filed, there is no evidence they had knowledge that their interests were not being represented until April 8, 2019.

Proposed Intervenors have shown that mandatory intervention is proper. (CCP § 389(b)) A person is an indispensable party if his or her rights must necessarily be affected by the judgment. (*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686, 692) Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party. (*Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 501)

Here, unbeknownst to this court at the time, its ruling did affect both LAFCO and the County. LAFCO was in the process of waiting for certification of an election it requested to determine whether LAFCO should proceed with the dissolution of JCFPD and transition services to the County when the writ of mandate was heard. Afterwards, LAFCO received the results of the election and learned for the first time that JCFPD was using this court's order to declare the resolution dissolving it to be null and void, the Registrar could not conduct the election and the County could not succeed by operation of law to JCFPD's property and assets. Thus, the County, the Registrar's and LAFCO's rights were all affected by the judgment entered by this court on April 4, 2019 without representation.

Further, JCFPD recently filed a lawsuit to set aside LAFCO's certification of JCFPD's dissolution based on the judgment in this case. JCFPD contends that the judgment in this action voided the application to dissolve and thus the Registrar could not have conducted the special election on March 19th, could not have taken action on April 8th and the County could not succeed by operation of law to JCFPD's property and assets. Unless it intervenes, LAFCO will not be able to defend the dissolution proceedings.

The County also has a direct interest as the successor agency to JCFPD following the dissolution and therefore legally responsible for any liabilities imposed on JCFPD. And until JCFPD's related lawsuit challenging the validity of the dissolution is concluded, the County is responsible for providing fire protection and emergency medical services within JCFPD's former boundaries. JCFPD's position in the related case is that the County's assumption of services and ownership of those former JCFPD assets and facilities is void. There is also the issue of who would be responsible for attorney fees for any Brown Act violation.

Previously, JCFPD and LAFCO's positions were not adversarial as both were defending Resolution No. 2018-03 to dissolve JCFPD. JCFPD's change in position created a situation where the proposed intervenors now have a direct interest in the litigation but they were not represented in the writ of mandate proceedings.

LAFCO and the County shall file their Proposed Answer in Intervention by May 3, 2019.