

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA**

**MINUTE ORDER**

DATE: 06/14/2021

TIME: 04:00:00 PM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Denise Arreola

REPORTER/ERM:

CASE NO: **56-2017-00494475-CU-WM-VTA**

CASE TITLE: **Starr vs. CITY OF OXNARD**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Writ of Mandate

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**EVENT TYPE:** Ruling on Submitted Matter

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**APPEARANCES**

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The Court, having previously taken the Motion to Amend and Motion to Implement Judgment under submission, now rules as follows:

On May 13, 2021, at 8:20 a.m., in Courtroom 20, the matter came before the Court for a hearing on the motion of respondent, City of Oxnard ("City"), to amend the Amended Final Judgment, and regarding implementation of said judgment, in favor of petitioner, Aaron Starr ("Starr"), entered by this Court on March 23, 2021. The parties appeared as set forth in the Clerk's Minutes. The Court received and considered the pleadings, declarations, exhibits, and arguments of counsel submitted by each of the parties. At the conclusion of the arguments, the Court took the matter under submission. The following is the Court's ruling on that submitted matter.

**1. Procedural Background and Context of Pending Proceeding**

On March 23, 2021, the Court entered its Amended Final Judgment granting in part Starr's petition for writ of mandamus and prohibition in this Proposition 218 taxpayer action (See Cal. Const., Art. XIID). The judgment is in the form of the Court's writs of mandamus and prohibition, with a concomitant and coextensive permanent prohibitory and mandatory injunction, directing City to (a) cease charging an Infrastructure Use Fee ("IUF") which is added to rates paid by City residents for water, sewer, and solid waste disposal utility services; and (b) transfer back to the respective utility budgets ("Enterprise Funds") the IUF fees which had been transferred to City's General Fund, Public Safety Fund, and Streets Maintenance Fund for the period March 27, 2014, through and including the date of entry of the Amended Final Judgment, a sum which the parties agree now totals approximately \$36.5 million.

During the proceedings attending finalization of the Statement of Decision and the Judgment, the issue of determining the date of return of the writs of mandate and prohibition arose. City raised the concern that it is not in the financial position to make the required fund transfers (which are between funds controlled by City in different agency and enterprise budgetary units) all at once or within a period of 90 days. The Court invited City to bring this present motion, which seeks to amend the Amended Final Judgment to permit City's compliance with and the filing of the return on the writs over a longer period of time. Starr and City each have submitted briefing and evidence, including requests for judicial notice, to the Court. The Amended Final Judgment expressly reserves the Court's jurisdiction to hear and

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determine this motion.

City takes the position that, pursuant to provisions of the Government Claims Act (Govt. Code, § 900, et seq.) ("GCA"), the writ of mandate and mandatory injunction compelling City to transfer the \$36.5 million in IUF fees back to the Enterprise Fund is a "money judgment," thus entitling City to pay it in installments over a period not exceeding 10 years. (See Govt. Code, § 970.6.) Starr disagrees, arguing the fund transfer directive is not a money judgment, thus negating any requirement of compliance with the installment judgment provisions of the GCA. The parties, however, agree the Court's equitable powers in fashioning writ relief are more than broad enough to permit City the opportunity to complete the fund transfers over time to avoid undue hardship. The parties disagree about whether City has, in fact, demonstrated undue hardship justifying a seven-year period in which to complete the fund transfers.

## 2. Requests for Judicial Notice

The Court GRANTS each party's request for judicial notice. The Court has considered the ballot measure materials produced by City. The Court has considered the legislative history materials produced by Starr.

## 3. The Writ of Mandate and Mandatory Injunction Directing the Fund Transfers Do Not Create a "Money Judgment" Subject to the Provisions of Government Code, § 970, et seq.

The parties are unable to point to any published judicial authorities addressing the question of whether, in a Proposition 218 mandamus proceeding, a trial court order essentially undoing and reversing unconstitutional transfers of user fees to a municipality's general fund constitutes a "money judgment" for purposes of the installment provisions of Government Code section 970, et seq. The Court has carefully reviewed the published decisions concerning Proposition 218 mandamus proceedings for guidance on this question without success.

It turns out that the answer to this question lies in the published decisions which discuss whether a mandamus proceeding against a municipality is a claim for money or damages subject to the GCA. "In determining whether the [GCA] applies, the critical question is whether the recovery of money or damages was the primary purpose of [the plaintiff's] claims." (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4<sup>th</sup> 1487, 1493, 59 Cal.Rptr.3d 587 ("*Canova*").) "Where the primary purpose of a mandamus action is monetary relief, the mandatory requirements of the [GCA] apply." (*Ibid.*) "In contrast, mandamus actions seeking to compel performance of a mandatory duty, statutory duty or ministerial act may not be subject to the [GCA] if they do not seek money or damages." (*Ibid.*)

While a writ of mandamus, ". . . if granted, may ultimately result in money being transferred . . . , such relief does not render the request a claim for money or damages that requires the filing of a government claim." (*Id.*, 150 Cal.App.4<sup>th</sup> at p. 1498, 59 Cal.Rptr.3d 587.) In *Canova*, the appellate court held that a trial court mandamus writ compelling a municipality to cease a pension rollover practice and transfer funds from one pension-related account to another was not a claim or judgment subject to the GCA. (150 Cal.App.4<sup>th</sup> at p. 1493, 59 Cal.Rptr.3d 587.) Instead, the fund transfer compelled by the writ of mandamus directed the municipality to perform a mandatory duty, statutory duty, and/or a ministerial act. (*Ibid.*) The *Canova* court pointed to other cases reaching the same conclusion concerning writs of mandamus compelling municipalities and other governmental agencies to make certain fund transfers in compliance with mandatory duties, statutory duties, and/or ministerial acts. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4<sup>th</sup> 1109, 1125-26, 61 Cal.Rptr.2d 207 [mandatory duty regarding future funding of retirement system]; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 587-88, 159 Cal.Rptr. 1 [disbursement of funds in manner required by Medi-Cal statutes]; *Forde v. Cory* (1977) 66 Cal.App.3d 434, 436-38, 135 Cal.Rptr. 903 [disbursement of lump sum death benefit pursuant to express statutory duty].)

Here, Starr's writ petition sought to compel City to comply with its mandatory constitutional duty to not use IUFs "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners" without first obtaining voter approval. (Art. XIII D, sect. 6, subd. (b)(5).) The Court's Final Statement of Decision contains the Court's findings of fact and conclusions of law to the effect that City's IUF transfers violated Art. XIII D, section 6, subdivision (b)(5). The Amended Final Judgment, therefore, includes this Court's declaratory judgment to the same effect, as well as the Court's writ of mandamus directing City to correct this unconstitutional misuse of IUFs by transferring the \$36.5 million in IUFs from the Public Safety Fund, General Fund, and Streets Maintenance Fund, back into the Enterprise Funds. City is not being directed to pay \$36.5 million to petitioner or the taxpayers or the property owners who pay utilities use fees. This Court's writ of mandamus simply directs City to redistribute these monies among funds it wholly controls.

Thus, this mandamus action compels City to perform a mandatory, constitutional duty; it cannot reasonably or accurately be described as asserting a claim for money or damages subject to the GCA. The statutes relied upon by City in support of its argument that it is entitled to accomplish these fund transfers in installments over a course of years – Government Code sections 970.1, 970.4, 970.5, and 970.6 – apply to money judgments arising from claims governed by the GCA. These statutes are set forth in Chapter 2 of the GCA, entitled, "Payments of Judgments Against Local Entities." None of these statutes purport to overrule or affect the line of judicial authority typified by *Canova* differentiating between mandamus actions compelling the performance by a municipality of mandatory or statutory duties, as opposed to mandamus proceedings which are effectively claims for money or damages against governmental entities. Government Code sections 970.1-970.6, therefore, do not apply to the fund transfers at issue in this case. This conclusion is consistent with the legislative history produced by the parties in this proceeding.

Accordingly, City's motion to amend the judgment to permit installments pursuant to Government Code sections 970.1-970.6 is DENIED.

**4. Even if Government Code sections 970.1-970.6 Apply Here, City Has Failed to Meet Its Burden of Proving That the Fund Transfers Create an Undue Hardship**

Assuming for the sake of argument that the GCA's installment judgment provisions apply to this Court's writ of mandamus directing City to transfer back to the Enterprise Funds the IUFs which had been improperly transferred to the Public Safety, General and Streets Maintenance Funds, City has failed to meet its burden of producing evidence and persuading the Court that City is entitled to such statutory relief.

Government Code section 970.6 provides the following in pertinent part:

"(a) The court which enters the judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship."

Government Code section 970.6 has been described by at least one appellate court in the following terms:

"In sum, the Government Code expressly and specifically requires a local public entity to pay the full

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amount of any judgment, with interest. The entity is required to pay the judgment out of any unrestricted funds it has for the fiscal year in which the judgment was entered, and if any amount remains unpaid, is required to obtain funds and pay that amount the following fiscal year. The only exception is that the entity can in some cases obtain a court order allowing it to pay the judgment, with interest, in annual installments for a period up to 10 years. (§ 970.6.)" (*Joseph v. San Francisco Housing Authority* (2005) 127 Cal.App.4th 78, 82, 25 Cal.Rptr.3d 179.)

It is undisputed that City has complied with subdivision (a)(1): the City Council adopted a resolution finding that an unreasonable hardship will result unless the judgment is paid in installments. There are several reasons why the evidentiary record presented to the Court, however, does not support a finding that the requested installment payment plan is necessary to avoid an unreasonable hardship to City.

First, City's systematic disregard of Proposition 218's unambiguous prohibition against using IUFs "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners" without first obtaining voter approval (Art. XIII D, sect. 6, subd. (b)(5)) over the course of multiple fiscal years was illegal and unreasonable. Unduly delaying the fund transfers compelled by this Court's writ of mandamus and mandatory injunction which simply restores the status quo ante as if City had not violated its mandatory constitutional duty would be no less unreasonable.

Second, the Amended Final Judgment does not direct the payment of monies from City's funds to a non-City recipient (e.g., a tort claimant). Instead, the Amended Final Judgment directs City to redistribute monies as between funds it wholly controls and manages for the benefit of its taxpayers, property owners and residents. The revenue and cash side of City's overall budget will not be substantially affected whatsoever. The monies tasked to each of City's budgetary units will change in the amount of the reallocation required by the fund transfers. That circumstance is not an unreasonable hardship.

Third, City effectively seeks to continue to benefit from its unlawful diversion of IUFs for general governmental purposes by unreasonably delaying restoration of the IUF transfers to the Enterprise Funds. City created this "hardship" for several fiscal years after being notified by Starr of the unconstitutional nature of the IUF transfers. Essentially, City claims it spent the monies it should not have transferred from the Enterprise Funds into the Public Safety, General, and Streets Maintenance Funds. City's request to delay the IUF transfers for seven years would be an unreasonable judicial response to address the hardship City itself created.

Fourth, as pointed out by Starr and supported by the Law Revision Commission Report concerning Government Code section 970.6, City's evidentiary showing falls short of demonstrating that City will incur an unreasonable hardship based upon all sources of available funding. (See 15 Cal. Law Rev. Com. Rpt. (1980), p. 1264.) City has produced partial and conclusory evidence about the financial logistics and effects of transferring back to the Enterprise Funds the \$36.5 million in IUF transfers City made from the Enterprise Funds to the Public Safety, General and Streets Maintenance Funds. City admits that it has available funds in the form of its cash reserves as well as revenues from two recently-passed local measures, all of which exceeds the \$36.5 million in IUF transfers to the Enterprise Funds which must be made to comply with Proposition 218 and the Amended Final Judgment. City has priorities for the expenditure of these funds which differ from and would delay compliance with this Court's Amended Final Judgment correcting City's violation of Proposition 218. The Court finds that City's declaration of competing priorities for these monies does not demonstrate an unreasonable hardship within the meaning of Government Code section 970.6.

Additionally, City admits that borrowing in the form of the issuance of bonds is another available source of money to accomplish the IUF transfers to the Enterprise Funds. Again, City's chief financial officer has declared a preference to avoid the interest expense and credit effects of doing this, but that expression of City's priorities does not amount to an unreasonable hardship within the meaning of

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Government Code section 970.6.

Finally, there is no hint in City's evidentiary showing that the IUF transfers to the Enterprise Funds will force City to file for bankruptcy protection. (See *Sutter Health v. Eden Township Healthcare Dist.* (2016) 6 Cal.App.5th 60, 66, 25 Cal.Rptr.3d 179.) City's showing presents a financial picture very different than the type of distress which would make bankruptcy likely in the event that City transfers \$36.5 million from its Public Safety, General, and Streets Maintenance Funds to the Enterprise Funds. City's net financial position remains the same; the \$36.5 million simply is being reallocated among City's budgetary units. In fact, City's evidentiary showing demonstrates that it has the present financial ability to complete the IUF transfers ordered by the Amended Final Judgment from unrestricted revenue and existing funds from a variety of available sources.

The Court, therefore, DENIES City's motion to amend the judgment to permit installment payments under Government Code sections 970.1-970.6 for this reason as well.

##### **5. The Court's Exercise of Its Equitable Powers**

For the following reasons, the Court GRANTS City's motion to amend the Amended Final Judgment to delay the return on the writ of mandamus and permit completion of the IUF transfers over time IN PART.

The parties agree the Court has the broad equitable authority to permit City's requested relief. The writs of mandamus and prohibition, as well as the injunctive relief, contained in the Amended Final Judgment invoke the equitable authority of the Court. The following succinctly summarizes the breadth of the Court's equitable powers concerning City's motion:

"Trial courts have broad equitable power to fashion any appropriate remedies. (*Zarrahay v. Zarrahay* (1988) 205 Cal.App.3d 1, 4, 252 Cal.Rptr. 20.) In doing so, they may consider any unjust or harsh results, and adopt means to avoid them. (See, e.g., *Casas v. Thompson* (1986) 42 Cal.3d 131, 141, 228 Cal.Rptr. 33, 720 P.2d 921.) 'Equitable relief is by its nature flexible, and the maxim allowing a remedy for every wrong (Civ.Code, § 3523) has been invoked to justify the invention of new methods of relief for new types of wrongs. (11 Witkin, Summary of Cal. Law (9th ed. 1990) Equity, § 3, p. 681.) In actions founded on contract, courts have available for use in appropriate cases, in addition to specific performance, equitable remedies based on reformation, excuse of conditions and rescission (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, §§ 382, 772, 883–885, pp. 347–348, 697, 791–794), as well as quasi-specific performance by constructive trust (11 Witkin, Summary of Cal. Law, supra, Equity, § 28, pp. 706–707), and indirect enforcement of a covenant by negative decree (id., § 61, pp. 737–38).' (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 390, 36 Cal.Rptr.2d 581, 885 P.2d 994.)" (*Shapiro v. Sutherland* (1998) 64 Cal.App.4th 1534, 1552, 76 Cal.Rptr.2d 101.)

The Court has considered the totality of the evidence and arguments presented for and against granting City's request for relief concerning the \$36.5 million in IUF transfers required by the Court's Final Amended Judgment. While, in the preceding section of this ruling, the Court finds City has failed to demonstrate unreasonable hardship within the meaning of Government Code section 970.6, subdivision (a), there are equities favoring City's request to restore the \$36.5 million in IUF transfers back to the Enterprise Funds over a course of more than one fiscal year. Although City's revenues and reserves make a lump sum transfer feasible, the budgetary impact of requiring a \$36.5 million transfer in that fashion would create potentially severe, short-term negative effects on the services City provides to its residents and taxpayers. In balancing the evidence, equities and circumstances presented in support of and opposition to the motion, the Court finds that City's request to complete the transfer of \$36.5 million back to the Enterprise Funds over a course of time exceeding one fiscal year is fair, reasonable and just.

The Court, therefore, enters its ORDER that the \$36.5 million in IUF transfers back to the Enterprise Funds required by the Amended Final Judgment shall occur according to the following transfer completion schedule:

(a) Fiscal Year 2021-2022: Complete transfer of \$12 million, plus statutory attorney's fees and costs per stipulation of the parties. The transfer shall be completed in four equal quarterly installments to be made on the first date of the beginning of each quarter, with the stipulated attorney's fees and costs to be added to the First Quarter installment.

(b) Fiscal Year 2022-2023: Complete transfer of \$12 million. The transfer shall be completed in four equal quarterly installments to be made on the first date of the beginning of each quarter.

(c) Fiscal Year 2023-2024: Complete transfer of balance of the IUF transfers ordered by the Amended Final Judgment. The transfer shall be completed in four equal quarterly installments to be made on the first date of the beginning of each quarter.

The Court hereby enters its ORDER amending the Amended Final Judgment to the extent of the above ruling. The Court further enters its ORDER that Starr promptly shall file a partial return of the writ of mandamus upon receiving written verification by City of each quarterly transfer having been made. Upon receiving written verification by City that the last and final transfer installment has been made, Starr promptly shall file a final return on the writ of mandamus.

In light of the Court's findings and conclusions set forth above, the Court finds the IUF transfers required by the Amended Final Judgment do not constitute a money judgment within the meaning of the Code of Civil Procedure or the GCA. Accordingly, the IUF transfers are not subject to the accrual of interest under either the Code of Civil Procedure or the GCA pending full compliance with the Amended Final Judgment. The Court makes no express or implied finding or order about whether the IUF transfers required by the Amended Final Judgment, as amended by the above ruling, are subject to the accrual of interest under some other provision of law.

The Clerk shall give notice of this ruling. Counsel for Starr shall serve and file a proposed order and a proposed Second-Amended Final Judgment consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court. A copy of this ruling may be attached and incorporated by reference in any such proposed order or judgment in lieu of quoting same verbatim in the body of the proposed order or judgment.