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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CITY OF OXNARD,

Plaintiff and Respondent,

v.

HOWARD JARVIS
TAXPAYERS ASSOCIATION,
et al.,

Defendants and Appellants.

2d Civ. No. B328083
(Super. Ct. No. 56-2022-
00563903-CU-MC-VTA)
(Ventura County)

Howard Jarvis Taxpayers Association (Jarvis), Ventura County Taxpayers Association, and Aaron Starr appeal from the judgment entered after the trial court granted the City of Oxnard’s motion for summary judgment. Appellants contend the Oxnard City Council violated the state constitutional debt limitation by adopting a resolution authorizing the issuance and sale of pension obligation bonds (POBs) without voter approval. The constitutional provision at issue is article XVI, section 18, subdivision (a) (section 18(a)), which provides, “No . . . city . . .

shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose”

We conclude City of Oxnard (Oxnard) did not “incur any indebtedness or liability” within the meaning of section 18(a) because the POBs will merely convert existing, unfunded pension liability into debt in the form of bonds. No new debt will be created. We also conclude Oxnard has the authority to issue the POBs. Accordingly, we affirm.

Factual and Procedural Background

Oxnard participates in the California Public Employees’ Retirement System (CalPERS). On March 1, 2022, the City Council unanimously passed a resolution authorizing Oxnard to issue and sell up to \$330 million in POBs. The purpose of the bonds is to “refund” Oxnard’s outstanding pension obligations to CalPERS. In other words, the purpose is “to pay off [Oxnard’s] unfunded actuarial accrued liabilities to [CalPERS].” (*In re Retirement Cases. Eight Coordinated Cases* (2003) 110 Cal.App.4th 426, 460.)

“The Unfunded Liability . . . represents the difference between (i) the value of the retirement plan’s assets (i.e., investments) and (ii) the total dollars needed as of the valuation date to fund all benefits earned in the past for current members” CalPERS calculated that, as of June 30, 2021, Oxnard’s retirement plan had a total unfunded liability of \$219,593,414.

In March 2022 Oxnard filed a complaint for validation of the proposed issuance of POBs. The filing was pursuant to Code

of Civil Procedure section 860 et seq. and Government Code sections 53511 and 53589.5.¹ Appellants filed an answer to the complaint. They claimed the issuance of POBs would violate section 18(a). “This [constitutional provision] ‘establish[ed] the “pay as you go” principle as a cardinal rule of municipal finance.’ [Citation.] ‘Each year’s income and revenue must pay each year’s indebtedness and liability, and [without voter approval] no indebtedness or liability incurred in one year shall be paid out of the income or revenue of any future year. . . .’” (*County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 33 (*County of Orange*).

Oxnard moved for summary judgment. It argued: “[T]he City Council . . . authorized the issuance of pension obligation bonds to refund all or a portion of its unfunded liability on more favorable financial terms for [Oxnard] and its taxpayers, replacing existing unfunded liability to the State retirement system with refunding pension obligation bonds (similar to refinancing a home with a better mortgage with a lower interest rate).” The goal is “to convert higher interest rate payments to the Retirement System to lower interest rate payments to bondholders.” “[T]he proposed [POBs] are exempt from voter approval requirements because they merely replace with bonded indebtedness an existing liability that is a compulsory obligation imposed by State law.”

The trial court granted the motion for summary judgment and entered judgment in favor of Oxnard. The court concluded that Oxnard’s issuance of the POBs falls within an exception to section 18(a) for indebtedness incurred to satisfy an obligation

¹ All further statutory references are to the Government Code.

imposed by law. (See *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694, 698 [“An obligation imposed by law upon a city or county is not an indebtedness or liability within the meaning of the debt limitation provision” of section 18(a)].)

Summary Judgment Principles and Standard of Review

“The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citation.] [¶] . . . The court must ‘grant[]’ the ‘motion’ ‘if all the papers submitted show’ that ‘there is no triable issue as to any material fact’ [citation] . . . and that the ‘moving party is entitled to a judgment as a matter of law’ [citation].” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) “The standard of review for an order granting a motion for summary judgment is de novo.” (*Ryan v. Real Estate of the Pacific, Inc.* (2019) 32 Cal.App.5th 637, 642.)

No Violation of Constitutional Debt Limitation

City of San José v. Howard Jarvis Taxpayers Association (2024) 101 Cal.App.5th 777 (*San José*), involves the same issues as the present appeal. On August 14, 2024, our Supreme Court granted review in *San José* (S285426). According to the Supreme Court, “[t]he issue to be briefed and argued is limited to the following: Is the issuance of pension obligation bonds to finance unfunded pension liability subject to the voter-approval requirement of article XVI, section 18, subdivision (a) of the California Constitution?” (*City of San José v. Howard Jarvis Taxpayers Association* (Aug. 14, 2024, No. S285426) 2024 WL 3819092, at *1.) The Supreme Court ordered that, pending review, *San José* “may be cited . . . for its persuasive value . . .” (*Ibid.*)

San José was filed after appellants had filed their reply brief. At our request, the parties submitted supplemental letter briefs discussing *San José*. We find its reasoning persuasive and applicable here.

The San José City Council passed a resolution authorizing the issuance and sale of POBs to refund San José's unfunded liability to CalPERS. The city filed a complaint for validation of the issuance of POBs. Jarvis filed an answer to the complaint. As in the present case, Jarvis claimed "the city's actions violate[d] the constitutional debt limitation provision" because without voter approval the city "proposes to incur a debt exceeding the current year's income." (*San José, supra*, 101 Cal.App.5th at p. 791.)

The trial court in *San José* "upheld the city's actions . . . , deciding that the bond issuance falls under the obligation imposed by law exception to the debt limitation." (*San José, supra*, 101 Cal.App.5th at p. 787.) The Court of Appeal did not consider the applicability of this exception because it concluded "the city's actions [did] not trigger the constitutional debt limitation" of section 18(a). (*San José, at p. 788.*)

The Court of Appeal reasoned: "The unfunded liability in this case consists of pension obligations the city has already incurred, the payment of which is constitutionally protected by the contract clause. The city has elected to fulfill its contractual commitment to its employees to fund those payments in an actuarially sound manner through the issuance of bonds on the condition that they result in a savings to the city." (*San José, supra*, 101 Cal.App.5th at p. 800.) Thus, the issuance of the POBs will not "incur any indebtedness or liability" within the meaning of section 18(a), but instead will "convert[] the debt

represented by the unfunded liability into debt in the form of bonds. Such refunding does not create new debt.” (*San José*, at p. 806, fn. omitted.) “[T]he debt the city seeks to refund already exists, in the form of the unfunded liability.” (*Ibid.*) “Therefore, the city is not required to seek voter approval before issuing the bonds.” (*Id.* at p. 801.)

Appellants argue that *San José* is distinguishable because, unlike the present case, in *San José* “[t]he resolution authorizing the issuance of the bonds [expressly] states that the bonds can be issued only if they result in savings to the city.” (*San José*, *supra*, 101 Cal.App.5th at p. 791.) *San José* is not distinguishable on this ground. An implied term of the Oxnard City Council’s resolution is that the POBs can be issued only if they will result in savings to the city. The purpose of issuing the POBs is to save money. In a March 1, 2022 report to the City Council recommending adoption of the resolution, Oxnard’s Chief Financial Officer explained: CalPERS “charges its members (like Oxnard) [interest] on [the] UAL [unfunded accrued liability] debt.” “[Oxnard] can borrow at [interest] rates much lower . . . than the current CalPERS rate Similar to refinancing a higher interest rate mortgage, a POB would allow [Oxnard] to convert higher interest rate debt to lower interest rate debt and create a significant amount of savings on its debt payments.” “Based on the preliminary bond sizing shown in the good faith estimates (\$200M), estimated savings to [Oxnard] is projected at over \$35 million for the next 12 years, or about \$3 million annually on average.”

Appellants claim *San José* is contrary to *County of Orange*, *supra*, 192 Cal.App.4th 21. But *San José* distinguished *County of Orange*: “We decide that *County of Orange* does not control here.

In that case, the Court of Appeal was asked whether the retirement board's estimate of the cost of *increasing* pension benefits triggered the constitutional debt limitation. [An actuarial report estimated that the enhanced benefit formula would increase the county's unfunded actuarial accrued liability by approximately \$100 million.] . . . [¶] The facts here are materially different. With the challenged resolution, the city does not seek to increase pension benefits but instead to issue bonds to provide an income stream for a liability it has already incurred. As the California Supreme Court said in 1896, 'merely to fund or refund an existing debt is not to "incur an indebtedness or liability"' within the meaning of the constitutional debt limitation. [Citation.]" (*San José, supra*, 101 Cal.App.5th at p. 798.)

Oxnard Has Authority to Issue the POBs

In *San José* Jarvis argued that the city "does not have statutory authority to issue the bonds in question as refunding bonds because there are no bonds to refund." (*San José, supra*, 101 Cal.App.5th at p. 801.) Appellants make a similar argument here: "Government Code section 53580(c) states: 'The term "refunding bonds" means bonds issued to refund *bonds*.'" (Emphasis added.) . . . [T]here is no original *bond* being refunded here. Therefore, a POB cannot be a '*refunding bond*.' It is a brand-new bond." "As there are no 'original bonds' here, 'refunding' them is impossible."

San José "conclude[d] the city has [the] authority [to issue the POBs] under section 53583, subdivision (a)," which "permits the city to 'issue bonds for the purpose of refunding any [of the city's] revenue bonds.'" (*San José, supra*, 101 Cal.App.5th at pp. 806, 801.) The Court of Appeal observed that "[r]evenue bonds

are defined in section 53570, subdivision (b)(1) as ‘[b]onds, warrants, notes, or *other evidence of indebtedness*’ of the city. (Italics added.)” (*Id.* at p. 801.) Thus, “[w]hether the city has the authority to issue the [POBs] turns on whether the unfunded liability is ‘evidence of indebtedness’ as used in section[] . . . 53570, subdivision (b)(1).” (*Ibid.*)

San José decided: “[T]he phrase ‘other evidence of indebtedness’ may include unfunded liability as it is understood here, a representation of a city’s deferred obligation to pay its employees.” (*San José, supra*, 101 Cal.App.5th at p. 805.) “As our Supreme Court has consistently held, ‘merely to fund or refund an existing debt is not to “incur an indebtedness or liability.” A bond is not an indebtedness or liability—it is only the evidence or representative of an indebtedness; and a mere change in the form of the *evidence* of indebtedness is not the creation of a new indebtedness within the meaning of the constitution.’ [Citations.]” (*Id.* at p. 806.)

Disposition

The judgment is affirmed. Oxnard shall recover its costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

CODY, J.

Benjamin F. Coats, Judge
Superior Court County of Ventura

Jonathan M. Coupal, Timothy A. Bittle and Laura E.
Dougherty, for Defendants and Appellants.
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