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15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES

18
19 SAN DIEGO COUNTY WATER AUTHORITY,

No. BC547139

20 Petitioner and Plaintiff,

**METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA'S OPPOSITION TO
SDCWA'S MOTION TO TRANSFER
VENUE**

21 v.

22 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL PERSONS
23 INTERESTED IN THE VALIDITY OF THE
RATES ADOPTED BY THE METROPOLITAN
24 WATER DISTRICT OF SOUTHERN
CALIFORNIA ON APRIL 8, 2014 TO BE
25 EFFECTIVE JANUARY 1, 2015 and JANUARY
1, 2016; and DOES 1-10,

Date: October 31, 2014
Time: 8:30 a.m.
Dept.: 17
Judge: Hon. Richard Rico
Date Filed: May 30, 2014
Trial Date: Not Yet Set

26 Respondents and Defendants.
27
28

1 **I. INTRODUCTION**

2 Though styled as a motion to transfer venue, the San Diego County Water Authority's
3 ("SDCWA") motion is, in reality, an opposition to the Metropolitan Water District of Southern
4 California's ("MWD") motion to stay this case (the "*2014 Action*"). SDCWA does not dispute
5 that a stay of this action is appropriate, instead it argues that the stay should only occur after this
6 Court has gone to the time and expense of transferring the case to San Francisco County Superior
7 Court.

8 SDCWA asserts that its motion renders this Court *powerless* to hear MWD's motion to
9 stay, and that, pursuant to Code of Civil Procedure Section 394, this Court must immediately
10 transfer this case to a neutral forum. SDCWA goes so far as to say that to disagree with its
11 position, as MWD does, is sanctionable. But SDCWA's position is simply unsupported by the
12 law. Section 394 does not strip this Court of its power to stay the *2014 Action*, and SDCWA
13 cites no authority stating that it does.

14 Contrary to SDCWA's assertion, MWD does not ask this Court to "indefinitely stay this
15 case." SDCWA's Motion to Transfer Venue ("Mot. to Transfer") at 1:19-20. MWD agrees that
16 if this case proceeds, it should be transferred to a neutral venue. However, because the outcome
17 of the *2014 Action* will largely be determined by resolution of two nearly identical cases nearing
18 conclusion in the San Francisco Superior Court (the "*2010 and 2012 Actions*"), transferring this
19 case *now* would accomplish nothing more than wasting judicial time and resources, and the
20 resources of the parties.

21 The Court can, and should, stay the *2014 Action* pending appellate resolution of the *2010*
22 and *2012 Actions*, and it should also deny SDCWA's motion.

23 **II. ARGUMENT**

24 **A. This Court Has The Power To Decide MWD's Pending Motion To Stay.**

25 According to SDCWA, because it has moved to transfer venue under Section 394, this
26 Court is *powerless* to order a stay. *See* Mot. to Transfer at 4:22-6:5 (SDCWA arguing that its
27 motion "suspends the Court's power to decide MWD's motion [to stay the *2014 Action*]" and
28 "the court *must* [immediately] transfer the action to a neutral forum.") (emphasis in original).

1 SDCWA is wrong for several reasons.

2 First, courts have rejected the argument that Section 394, by its terms, removes a court's
3 jurisdiction to act. *See Oakland v. Darbee*, 102 Cal. App. 2d 493, 502 (1951) (in response to
4 appellant's argument that "from and after respondents' filing of a motion for a change of venue
5 the [initial] court had no jurisdiction to perform any judicial act in the proceeding until it decided
6 that motion," appellate court responded, "[w]e find *no such provision in section 394*") (emphasis
7 added).

8 Courts have held that motions to transfer brought under other transfer statutes remove the
9 court's jurisdiction to act, but only as to *substantive* motions, not *procedural* ones. *Thompson v.*
10 *Thames*, 57 Cal. App. 4th 1296, 1303-04 (1997) (while a motion to transfer is pending, "the
11 court cannot rule on other *substantive* issues.") (emphasis added). Every authority SDCWA
12 relies on for its argument that this Court's ability to rule on MWD's motion to stay is suspended
13 as a result of its motion to transfer deals with *substantive* motions. *See* Mot. to Transfer at 5:12-
14 21 (citing *Thompson*, 57 Cal. App. 4th at 1308 (court appropriately ordered child support prior to
15 ruling on the motion to transfer venue); *South Sutter, LLC v. LJ Sutter Partners, L.P.*, 193 Cal.
16 App. 4th 634, 654-55 (2011) (court may not decide anti-SLAPP motion pending stipulated
17 transfer).¹ A motion to stay is a procedural motion, not a substantive one -- it asks this Court to
18 defer consideration of substantive issues.

19 Third, as SDCWA admits in a footnote (Mot. to Transfer at 5, n. 1), this general rule does
20 not apply to "matters which are incidental or ancillary to consideration of and action upon the
21 motion for transfer itself." *City of Oakland*, 102 Cal. App. 2d at 503. Matters are "incidental or
22 ancillary" to consideration of a motion for transfer where they "[bear] a very definite relation to
23

24 ¹ *See also McCarthy v. Super. Ct.*, 191 Cal. App. 3d 1023, 1034 (1987) (court may not issue
25 injunction pending a motion to transfer venue); *Riverside Cnty. v. Super. Ct.*, 69 Cal.2d 828,
26 831 (1968) (court may not issue temporary restraining order and order to show cause pending a
27 motion to transfer venue); *Walsh v. Super. Ct.*, 44 Cal. App. 31, 32 -33 (1919) (court may not
28 rule on motion for attorney's fees pending a motion to transfer venue); *see also* 3 Witkin Cal.
Proc. 5th Actions at § 914 (2008) (citing cases where courts abused their authority by issuing
substantive determinations on demurrers and motions such as temporary restraining orders prior
to deciding a motion to transfer venue)).

1 [the] motion for transfer.” *Id.* at 503-04. Here, it is clear that the motion to stay and motion to
2 transfer bear a very definite relation to one another. MWD’s motion to stay asserts that it is
3 premature to transfer the *2014 Action* at this time. SDCWA’s motion to transfer asserts that the
4 Court should transfer the *2014 Action* to San Francisco Superior Court immediately. SDCWA’s
5 motion regarding *where* to transfer the *2014 Action* is accordingly “intimately related” to
6 MWD’s motion regarding *when* the *2014 Action* should be transferred. *See id.* Therefore,
7 SDCWA’s motion to transfer does not “moot” MWD’s motion to stay, and this Court has full
8 authority to decide MWD’s motion.

9 This Court has the jurisdiction to hear MWD’s motion to stay.

10 **B. Transferring This Action Now Is Premature.**

11 Because Section 394 applies only to the venue where a case will be *tried*, transferring the
12 *2014 Action* prior to the parties’ appeal of the *2010* and *2012 Actions* would be premature. *See*
13 Cal. Code Civ. Proc. § 394. As SDCWA acknowledges, the *2014 Action* is “factually and
14 legally virtually identical” to the *2010* and *2012 Actions*, which are “approaching final
15 judgment.” Mot. to Transfer at 2:15-21. There is accordingly nothing to *try* in the *2014 Action*
16 until the *2010* and *2012 Actions* are fully resolved.

17 SDCWA’s claim that “granting a stay in this Court will only inflate the resources the
18 parties and the Court have to spend on transfer proceedings” is baseless. Mot. to Transfer at 6:7-
19 11 (citing *Freiberg v. City of Mission Viejo*, 33 Cal. App. 4th 1484, 1489 (1995)); *see also id.* at
20 7:6-7 (SDCWA asserting that “MWD’s proposal would multiply the resources spent adjudicating
21 transfer proceedings”). As an initial matter, SDCWA’s cited authority does not support its
22 argument – nowhere in the *Freiberg* opinion did the court address whether granting a stay would
23 cost the parties or the court any more than allowing the action to proceed.² Moreover,
24 SDCWA’s argument assumes that the parties will inevitably have to transfer the *2014 Action*.

25 _____
26 ² In any event, *Freiberg* is inapposite. There, an appellate court determined that a trial court had
27 no power to issue a stay because a motion for new trial had been denied, and the trial court
28 therefore had no proceedings before it *to* stay. 33 Cal. App. 4th at 1489. Here, the *2014 Action*
has not been dismissed, and, as explained, this Court has jurisdiction to decide MWD’s motion to
stay. *See supra* Section II.A.

1 Not so. Final resolution of the *2010* and *2012 Actions* may fully resolve the *2014 Action* as well,
2 in which case there would be no need to transfer the case *at all*.³ MWD agrees that if this case is
3 eventually litigated on the merits, which is unlikely given SDCWA's position that the legal and
4 factual issues are virtually identical to the *2010* and *2012 Actions*, it should eventually be
5 transferred to a neutral venue. However, to transfer the case before it is apparent that the *2014*
6 *Action* will go forward on the merits would only serve to waste judicial resources and those
7 resources of the public agency parties.

8 **C. SDCWA's Request For Sanctions Is Frivolous.**

9 SDCWA concludes its motion with an argument that MWD should be sanctioned for
10 seeking a stay that SDCWA acknowledges is appropriate. *See* Mot. to Transfer at 6:7-8. The
11 request is both substantively and procedurally unsupportable.

12 SDCWA relies primarily on its incorrect assertion that this Court lost jurisdiction to hear
13 the motion to stay after SDCWA filed its subsequent motion to transfer. *See* Mot. to Transfer at
14 8:2-13. As discussed above, SDCWA's argument as to the Court's jurisdiction is legally flawed.
15 *See supra*, Section II.A. In any event, it is certainly not frivolous to file a motion for a stay of
16 proceedings that both parties agree is appropriate, prior to other procedural motions in the case.

17 SDCWA asserts that MWD's refusal to stipulate to transferring the *2014 Action* to San
18 Francisco Superior Court, as it did with the *2010* and *2012 Actions*, shows that MWD's motion
19 to stay is "a transparent effort to delay these proceedings," and "frivolous". *See* Mot. to Transfer
20 at 8:2-5. SDCWA is wrong. To begin with, MWD is under no obligation to stipulate to transfer
21 this case just because it did so in the other cases. Also, the procedural posture of the *2010* and
22 *2012 Actions*, on the one hand, and the *2014 Action*, on the other, are vastly different. MWD
23 agreed to transfer the *2010* and *2012 Actions* for trial years ago, prior to discovery, motion
24

25 ³ SDCWA notes that it has "suggested" that MWD stipulate to judgment in this action so that it
26 can be appealed jointly with the pending *2010* and *2012 Actions*. *See* Mot. to Transfer 6:21-22.
27 It would, of course, be more efficient for SDCWA to stipulate that this Court grant MWD's
28 motion to stay this action so that no further proceedings are required prior to final resolution of
those cases. This case may well be dismissed by SDCWA without further proceedings following
a final disposition of those cases.

1 practice, and trial. Now, the 2010 and 2012 Actions are nearly resolved and the 2014 Action will
2 likely be decided based on the final judgment in those cases. As explained, it is reasonable to
3 await final judgment in the 2010 and 2012 Actions prior to proceeding in the 2014 Action.

4 SDCWA's request for sanctions is also procedurally flawed. Absent specific legislative
5 authorization, this Court has no inherent power to issue sanctions. *Bauguess v. Paine*, 22 Cal.3d
6 626, 637-38 (1978). SDCWA argues that both Code of Civil Procedure Section 128.5 and
7 Section 396b authorize this Court to sanction MWD. Mot. to Transfer at 8:6-13. Neither section
8 even arguably applies here.

9 Section 128.5 applies only to actions "initiated, on or before December 31, 1994." Cal.
10 Code Civ. Proc. § 128.5.⁴ This action was filed on May 30, 2014.

11 Similarly, Section 396b applies only where an action was brought in a court "other than
12 the court designated as the proper court," and the "defendant" moves to transfer the action. Cal
13 Code Civ. Proc § 396b(a) (emphasis added). Here, the case was brought in the proper court, and
14 it is the *plaintiff* who moved to transfer venue, not the defendant. *See Riverside*, 69 Cal.2d at 831
15 ("section 394 is a removal statute which applies only when an action has been brought and is
16 pending in a *proper court*") (emphasis added).

17 SDCWA's sanctions argument is meritless, and should be disregarded.

18 III. CONCLUSION

19 For the reasons stated above and in MWD's motion to stay, this Court should deny
20 SDCWA's motion to transfer, should stay the 2014 Action pending appellate resolution of the
21 2010 and 2012 Actions, and should deny SDCWA's sanctions request.

22 DATED: October 20, 2014

BINGHAM MCCUTCHEN LLP

23 By: 

24 Colin C. West

25 Attorneys for Respondent and Defendant
26 Metropolitan Water District of Southern California

27 ⁴ Even if SDCWA were to argue that Code of Civil Procedure Section 128.7 applies here, which
28 it does not, SDCWA was required to file a separate motion for sanctions under that section,
which it did not. *See* Cal. Code Civ. Proc. § 128.7(c)(1).

3 **PROOF OF SERVICE**

4 I am over eighteen years of age, not a party in this action, and employed in San
5 Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-
6 4067. I am readily familiar with the practice of this office for collection and processing of
7 correspondence for mail/fax/hand delivery/next business day delivery, and they are deposited
8 that same day in the ordinary course of business.

9 On October 20, 2014, I served the attached:

10 **METROPOLITAN WATER DISTRICT OF SOUTHERN**
11 **CALIFORNIA'S OPPOSITION TO SDCWA'S MOTION TO**
12 **TRANSFER VENUE**

- 13 (BY MAIL) by causing a true and correct copy of the above to be placed in the
14 United States Mail at San Francisco, California, in sealed envelope(s) with
15 postage prepaid, addressed as set forth below. I am readily familiar with this
16 law firm's practice for collection and processing of correspondence for mailing
17 with the United States Postal Service. Correspondence is deposited with the
18 United States Postal Service the same day it is left for collection and processing
19 in the ordinary course of business.
- 20 (VIA EMAIL) by transmitting a true and correct copy via email the
21 document(s) listed above on this date before 5:00 p.m. PST to the person(s) at
22 the email address(es) set forth below.

23
24
25
26
27
28 as indicated on the following **Service List**.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 20, 2014 at San Francisco, California.


Kelley A. Garcia