Honorable Richard Rico
Department 17

Friday – October 31, 2014
Calendar No. 15

PROCEEDINGS

San Diego County Water Authority v. Metropolitan Water District of Southern California, et al.
BC547139
(1) Metropolitan's motion to stay
(2) SDCWA's motion to transfer venue

TENTATIVE RULING

This action was initiated by petitioner/plaintiff San Diego County Water Authority ("SDCWA") against respondents/defendants Metropolitan Water District of Southern California ("Metropolitan") and all persons interested in the validity of the rates adopted by the MWD on April 8, 2014 to be effective January 1, 2015 and January 1, 2016 for (1) writ of mandate re: allocation of costs in 2015/2016 rates; (2) declaratory relief re: allocation of costs in 2015/2016 rates; (3) determination of invalidity of rates adopted by Metropolitan on or about April 8, 2014; and (4) breach of contract.

On 7/18/14, Metropolitan filed a motion to stay. On 8/29/14, SDCWA filed a motion to change venue.

Relevant to these motions, it is alleged in the complaint that:

2. This complaint is a continuation of pending litigation between the Water Authority and Metropolitan, which includes two previously-filed (and now partially-decided) cases, *San Diego County Water Authority v Metropolitan Water District of Southern California et al.*, Case No. CPF-l0-510830 (the "2010 case") and *San Diego County Water Authority v Metropolitan Water District of Southern California et al.*, Case No. CPF- 12-512466 (the "2012 case") (collectively, the "2010 and 2012 Cases"), both pending in San Francisco Superior Court. In both those earlier cases and this case, the same plaintiff (the Water Authority) is challenging the same unlawful water rates set by the same defendant (Metropolitan) using the same cost-allocation methodology and purportedly justified by the same, or very similar, facts and documentary administrative record. The 2010 case challenged Metropolitan's rates for calendar years 2011 and 2012, while the 2012 case challenged Metropolitan's rates for calendar years 2013 and 2014. On April 24, 2014, the Honorable Curtis E.A. Karnow entered a final Statement of Decision in the 2010 and 2012 Cases invalidating four of Metropolitan's rates—the System Access Rate, System Power Rate, Water Stewardship Rate, and wheeling rate—for each of calendar years 2011-2014, because they violate cost-of-service requirements imposed by the California Constitution, California statutory law and .the common law. (A copy of the Statement of Decision is attached as Exhibit A).

3. This case challenges the same four rates, which Metropolitan has again imposed for calendar years 2015 and 2016, using the same cost-allocation methodology the San Francisco Superior Court has held was unlawful in the 2010 and 2012 Cases. The Water Authority will seek to transfer this new case to San Francisco, pursuant to Code of Civil Procedure § 394, and to have the case coordinated, for case management purposes, with the 2010 and 2012 Cases, which, as discussed above, are factually and legally nearly identical to this case. (Complaint ¶¶2-3.)

In Metropolitan's motion to stay (joined by the City of Los Angeles Department of Water and Power, Three Valley Municipal Water District, Eastern Municipal Water District, Western Municipal Water District, Foothill Municipal Water District, and West Basin Municipal Water District), Metropolitan argues that this action should be stayed in light of the 2010 and 2012 actions currently pending in San Francisco Superior Court. These cases are nearly resolved at the trial court level and to date, there have been claims and issues decided for and against both Metropolitan and SDCWA. Upon final judgment, Metropolitan will appeal the trial court's rulings against it and understands that SDCWA will do the same. The legal issues in this action will be resolved by the Court of Appeal and/or the California Supreme Court. Pending resolution of the appeal, this action (the 2014 action) should be stayed.

There is no dispute that the issues in this action is "nearly identical" to the 2010 and 2014 actions pending in the San Francisco Superior Court, given the allegations in the complaint. Instead of staying this action, however, SDCWA has filed a motion to transfer, arguing that there is no logical reason or legal justification for this case to remain in this court. All three actions began in this Court because SDCWA is required to file here under the venue statute. SDCWA argues that it is legally required that once filed, the court must transfer the case to a neutral venue under CCP § 394(a) because the dispute involves two "local agencies." This is the reason Metropolitan stipulated to transfer the two prior cases from this court to the San Francisco Superior Court. Instead of agreeing to transfer this action, however, Metropolitan asks the court indefinitely stay this case pending appellate resolution of the prior cases. Since SDCWA has timely moved for a change of venue under CCP § 394(a), Metropolitan's motion must be denied or deferred pending transfer. SDCWA argues that transfer is mandatory under the circumstances.

In opposition to the motion to transfer venue, Metropolitan argues that the Court has the power to decide the motion to stay and CCP § 394 does not remove the court's jurisdiction to act as to procedural motions. Since CCP § 394 only applies to a venue where a case will be tried, transferring this action prior to the parties' appeal of the 2010 and 2012 actions would be premature.

CCP § 394(a) provides, in relevant part:

An action or proceeding against a county, or city and county, a city, or local agency, may be tried in the county, or city and county, or the county in which the city or local agency is situated, **unless the action or proceeding is brought by a county, or city and county, a city, or local agency, in which case it may be**

> **tried in any county, or city and county, not a party thereto and in which the city or local agency is not situated...**any action or proceeding brought by a county, city and county, city, or local agency within a certain county, or city and county, against a resident of another county, city and county, or city, or a corporation doing business in the latter, shall be, on motion of either party, transferred for trial to a county, or city and county, other than the plaintiff, if the plaintiff is a county, or city and county, and other than that in which the plaintiff is situated, if the plaintiff is a city, or a local agency, and other than that in which the defendant resides, or is doing business, or is situated...
> (Emphasis added.)

"The statute is couched in mandatory language, requiring the trial court to transfer an action to a neutral county upon timely application. [Citation.]" (*Arntz Builders v. Superior Court* (2004) 122 Cal.App.4th 1195, 1203.) Section 394 has been described as an exception to the general venue rules of section 395. [Citation.] Section 394 also has been characterized as a "removal statute" rather than a "venue statute" because it does not control *original* venue. [Citation.] A county or other local agency must file an action against a nonresident defendant in a venue that is otherwise proper under the general venue rules. If that venue is in the county suing the nonresident defendant (or within which the local agency is located), upon timely application of the nonresident defendant the court must designate a neutral county to which the action will be transferred. [Citation.] This statutory framework prevents a county or local agency that files suit against a nonresident defendant from unilaterally selecting the neutral county that is most satisfactory to it. [Citation.]" (*Id.*)

The court finds that the parties are in agreement that this action concerns issues identical to the issues in the prior actions. The court also finds that Metropolitan's argument that the motion is premature lacks support. Metropolitan only cites the language of section 394 referring to "trial." By Metropolitan's argument, a party should wait until right before trial before moving for relief pursuant to section 394, at which point the other party would likely be able to argue waiver by delay. (*See Arntz Builders, supra*, 122 Cal.App.4th at 1204 ("The fact that the removal provisions of section 394 similarly may be waived by delay...")

Metropolitan also acknowledges that no appeals have been filed in the 2010 and 2012 actions (since they have yet to reach final judgment). It makes little sense to have this action stayed in this court indefinitely until the other actions are finally resolved particularly since a transfer out of this jurisdiction is mandatory under section 394(a). Accordingly, the court GRANTS the motion to change venue and defers ruling on the motion to stay to the San Francisco Superior Court.