Case No. D079013 No Fee (Gov. Code § 6103)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION ONE

CITY OF CORONADO, CITY OF IMPERIAL BEACH, CITY OF LEMON GROVE, AND CITY OF SOLANA BEACH
Plaintiffs-Appellants,
v.
SAN DIEGO ASSOCIATION OF GOVERNMENTS, AND BOARD OF DIRECTORS OF THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
Defendants-Respondents.

Appeal from the trial court for the County of San Diego,
The Honorable Richard E. L. Strauss
Case No. 37-2020-00033974-CU-MC-CTL

ANSWER OF APPELLANT CITIES TO *AMICUS CURIE* BRIEF OF YIMBY LAW

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I. INTRODUCTION

Appellants City of Coronado, City of Imperial Beach, City of Lemon Grove, and City of Solana Beach (collectively, "Cities") file this Answer in response to the Amicus Curiae Brief ("ACB") filed by YIMBY Law ("YIMBY"). The Cities brought this appeal to challenge a narrow issue of first impression: whether the trial court erred when it sustained the demurrer of Respondents San Diego Association of Governments and its Board of Directors ("SANDAG") on the grounds that the court did not have jurisdiction to hear a claim brought pursuant to the fair hearing requirement in Code of Civil Procedure section 1094.5, subdivision (b). The opinions offered by YIMBY do nothing to assist the Court in resolving this question and make matters worse by injecting unnecessary confusion into the discussion.

First, YIMBY raises issues that are not properly before this Court because the trial court did not rule on them. The trial court did not consider or rule on any issue other than whether it had jurisdiction to hear the Petition. As a result, YIMBY's arguments are irrelevant and should be ignored.

Second, YIMBY offers only irrelevant arguments. The Cities brought a Petition for Writ of Mandate ("Petition") alleging that Respondents SANDAG violated the fair hearing requirement of Code of Civil Procedure section 1094.5 when they (1) utilized a weighted vote in the quasi-judicial hearing on the Cities' administrative appeals; and (2) allowed improperly biased decisionmakers to vote on the appeals.

The administrative appeals related to a Regional Housing Needs Assessment ("RHNA") allocation issued by SANDAG, but the Petition did not ask the Court to make any substantive changes to the Cities' RHNA allocations. Instead, the Petition requested a remand to SANDAG for a fair

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rehearing on their administrative appeals, without a weighted vote or improper bias. SANDAG filed a demurrer to the Petition, which the trial court granted, holding that it did not have jurisdiction to hear the Cities' challenge. In response, the Cities filed the instant appeal, asserting that the trial court erred in that ruling.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Cities incorporate by reference the facts and procedural history found at pages 9-15 of Appellants' Opening Brief.

III. ARGUMENT

A. YIMBY's Amicus Brief Is Premature Because the Trial Court Did Not Reach the Merits

The entirety of YIMBY's Amicus Brief is focused on the merits of the Petition instead of the issues on appeal. This tactic amounts to a request for this Court to act in a manner that is at odds with basic jurisdictional and appellate precepts. The trial court found that it had no jurisdiction and sustained the demurrer on those grounds, never reaching the merits, and that ruling prompted this appeal. (CT 2 at 491.) As the California Supreme Court has observed: "in the absence of subject matter jurisdiction, a trial court has no power 'to hear or determine [the] case'" and "any judgment or order rendered by a court lacking subject matter jurisdiction is 'void on its face....'" (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196.) Subject matter jurisdiction "may not be 'conferred by consent, waiver, agreement, acquiescence, or estoppel.'" (*Saffer v. JP Morgan Chase Bank, N.A.* (2014) 225 Cal.App.4th 1239, 1248.) Because the trial court had no power to rule on the case after it found a lack of jurisdiction, the merits are simply not before this court.

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Consistent with this rule, appellate courts routinely reject attempts to argue issues on appeal that were not decided by the trial court. (*Rivera v. Shivers* (2020) 54 Cal.App.5th 82, 95 ["We decline to review an issue the trial court did not decide."]; *Ass'n for Los Angeles Deputy Sheriffs v. Cty. of Los Angeles* (2015) 234 Cal.App.4th 459, 466–67.) When considering an appeal of a demurrer ruling, appellate courts will not step into the role of the trial court and decide issues that were not addressed by the trial court. (*Vallejos v. California Highway Patrol* (1979) 89 Cal.App.3d 781, 787–88 ["we do not perceive our function to include an *Ab initio* consideration of all of the grounds of the demurrer not heretofore considered below. It does not go so far as to render this court a law and motion department of the superior court."].)

While the Appellant Cities are eager to argue the merits of their Petition, they can only do so once a determination is made by this Court regarding whether the trial court's order on jurisdiction was proper. YIMBY's Amicus Brief does nothing to assist this court in its consideration of that question.

B. The Amicus Brief Offers Only Irrelevant Arguments

YIMBY fails to cite the statute most relevant to this appeal, Code of Civil Procedure section 1094.5, until the last sentence of the last page of its Amicus Brief. (ACB 16-20.) Rather than addressing the question of whether the trial court had jurisdiction, YIMBY focuses on the changes wrought under AB 805, which amended Public Utilities Code section 132351.2, subdivision (a), to authorize the use of population-weighted voting. (ACB 18.) YIMBY also mischaracterizes the gravamen of the Petition and the nature of the relief sought in this appeal. This Court should dismiss this tactic out of hand.

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Neither the instant appeal nor the underlying Petition alleged that SANDAG made any substantive error regarding the Cities' RHNA allocation or that any RHNA allocation should be recalculated, nor does it make any request that would change the total number of housing units allocated by SANDAG or the RHNA process. (CT 1 at 7-24, ¶¶ 12, 57-82.) The Petition focused only on the procedural errors that occurred when SANDAG failed to provide a fair hearing to the Cities in their quasi-judicial administrative appeals. (CT 1 at 7-24, ¶¶ 12, 57-82.) These allegations in the Petition are based on SANDAG's use of a weighted vote in the hearing on the administrative appeals and the improper bias of certain decisionmakers, which combined deny Petitioners a fair hearing under Code of Civil Procedure section 1094.5, subdivision (b). (CT 1 at 7-24, ¶¶ 12, 57-82.)

As to the details underlying each appeal, those allegations in the Petition are relevant to show (1) that the Cities filed their administrative appeals as part of the administrative process; (2) that the grounds for the administrative appeals were not merely technical or de minimis; and (3) that the administrative appeals possessed the adversarial nature required for a quasi-judicial proceeding that triggers the fair hearing requirement in Code of Civil Procedure section 1094.5. (CT 1 at 11-17.) Thus, these details are necessary to the Petition even though the Cities did not ask the trial court to determine if the administrative appeals were wrongly decided.[1] YIMBY's arguments are therefore fruitless.

[1] Consistent with section 1094.5, the proper remedy for an unfair hearing is to set aside the decision and order an agency to rehear the matter. (Code Civ. Proc., § 1094.5, subd. (f); *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1174.) On that basis, the Petition requested rescission of the Final Allocation only because that decision was preceded by and founded upon an unfair hearing on the administrative appeals. (CT 1 at 7-24, ¶¶ 14, 68, 75.)

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IV. CONCLUSION

There is nothing in AB 805 that has any bearing on this appeal, nor is there any argument before this Court regarding the substance of each City's RHNA Allocation or the incongruence of weighted voting in quasi-judicial proceedings. As a result, YIMBY's Amicus Brief is irrelevant and should be disregarded.

Respectfully submitted,

Dated: Mar. 18, 2022 SLOAN SAKAI YEUNG & WONG LLP

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CERTIFICATION OF WORD COUNT
(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 1,241 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

Dated: Mar. 18, 2022 SLOAN SAKAI YEUNG & WONG LLP

By: 
Madeline E. Miller

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CERTIFICATE OF SERVICE

I declare that I am over 18 years of age and not a party to the above-entitled action. My business address is 555 Capitol Mall, Suite 600, Sacramento, California 95814. On March 18, 2022, I served the following document(s):

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I declare, under penalty of perjury that the foregoing is true and correct. Executed on March 18, 2022, in Sacramento, California.

/s/ Rochelle Redmayne
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