Filed 11/23/11

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CITY OF SCOTTS VALLEY,

Plaintiff and Respondent,

v.

COUNTY OF SANTA CRUZ,

Defendants and Appellants.

A126357

(San Mateo County
Super. Ct. No. 467230)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

By the Court:[*]

The opinion filed on October 26, 2011, is hereby modified as follows:

1. On 43, the first sentence of the second full paragraph is modified to read as follows:

   Further, as the County points out, the statutory formula implementing the sum certain ERAF II shift takes into account a city's receipt of the post-Proposition 13 bailout provided by A.B. 8.

2. On page 49, the second sentence of the third paragraph shall be modified as follows and a new sentence shall be added immediately following:

   Such a decision, according to the County, "divert[s] . . . property tax revenues that would have been paid to" the city. (As the County points out, at the time the SVRA was formed, cities could not enter into "pass-through" agreements to recoup for themselves any of the redevelopment tax increment.)

[*] Before Marchiano, P. J., Dondero, J., and Banke, J.

3. On page 49, footnote 31 should be entered after the newly added third sentence, which is a parenthetical sentence, of the third paragraph. All subsequent footnotes should be renumbered accordingly. Footnote 31 should read as follows:

    The redevelopment statutes in effect at the time the SVRA was formed allowed some pass-through agreements, but prohibited them with creating entities. (See former Health & Saf. Code, § 33401, subd. (b), repealed by Stats. 1993, ch. 942, § 23 (A.B. 1290).) Since 1994, the law applicable to redevelopment projects has lacked this component and, instead, provides a formula that spells out how redevelopment tax increment is to be passed through to taxing entities within a redevelopment area. (Health & Saf. Code, § 33607.5, subd. (a).)

4. On page 50, the first full paragraph shall be modified to read as follows:

    The City maintains the Legislature has already addressed the issue of redevelopment by amending the TEA formula set forth in section 98 specifically to account for it. It further contends there is no legal basis for the County's assertion that a city, and specifically a city precluded by prior law from entering into a pass-through agreement with a community redevelopment agency, owes an annual "redevelopment contribution" to such an agency which must be added into a comparative A.B.8 allocation figure.

5. On page 50, the last sentence of the second full paragraph shall be modified as follows:

    Reducing a qualifying city's tax base effectively reduces its TEA, but not to the extent that results from the County's additional augmentation of the comparative A.B. 8 allocation figure at issue here.

6. On page 52, the last sentence of the first full paragraph shall be modified to read as follows:

    Pointing to the purpose of the amended TEA formula—to "neutralize" the effect of redevelopment—the County contends that to fully achieve that goal, it not only must take the steps set out in the TEA formula, but must also adjust the comparative A.B. 8 allocation figure to include the tax increment the City would receive had it not created the SVRA.

7. On page 52, the first sentence of the second paragraph shall be modified to read as follows:
    We initially observe the legislative history does not reflect an intent to wholly neutralize the effect of redevelopment.

8. On page 52, the second sentence of the second paragraph shall be modified to read as follows:
   Rather, the Legislature was concerned with eliminating a "double" blow to counties, indicating the counties could still be impacted to some degree.

9. On page 52, the fourth sentence or citation, which is in parentheses, of the second paragraph shall be modified to read as follows:

   (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1197 (1987-1988 Reg. Sess.) as amended Aug. 31, 1988, p. 3 ["Assembly bill 1197 requires county auditors to adjust the property tax shifts to neutralize redevelopment agencies' fiscal effects, *following three main steps*" set forth in the expanded § 98 formula], italics added; see also *Hunt, supra*, 21 Cal.4th at p. 1000.)

10. On page 52, the seventh sentence of the second paragraph shall be modified to read as follows:

    Thus, even if the expanded TEA formula does not wholly neutralize the effect of redevelopment, it is not our role to rectify any such shortcoming in these complex real property tax allocation statutes.

11. On page 53, the first sentence of the first full paragraph shall be modified to read as follows:

    We discern no legal basis for the County's "redevelopment contribution" theory. As we have discussed, this construct by the County is predicated on the facts the City "voluntarily" created the SVRA and at that time, the City could not enter into a pass-through agreement with the agency.

12. On page 53, subsequently renumbered footnote 33 (in 10/26/11 filed opinion as fn. 32) shall be deleted in its entirety. Footnote 32 began as follows: "As the County points out, the redevelopment statutes in effect at the time . . . ." All subsequent footnotes shall be renumbered accordingly.

13. On page 53, the original third sentence of the first full paragraph shall be modified to read as follows:

    However, no statute, redevelopment or otherwise, speaks of a "redevelopment contribution" by any city or county creating a redevelopment agency, let alone a city precluded from entering into a pass-through agreement.

14. On page 54, the first full paragraph shall be modified to read as follows:

Coming at its "redevelopment contribution" argument from another angle, the County also contends what must be compared is "apportionment" under the A.B. 8 statutes (assertedly a "gross up" concept which embraces redevelopment increment), and "allocation" under the TEA statute. In support of this assertion, the County points out section 96.1 (the principal A.B. 8 statute) begins, in part: "Except as otherwise provided in Article 3 (commencing with Section 97), and Article 4 (commencing with Section 98) . . . property tax revenues shall be *apportioned* to each jurisdiction pursuant to this section . . . , *subject to allocation* and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, . . . to each jurisdiction in the following manner . . . . " (§ 96.1, subd. (a), italics added.) As best as we can understand the County's argument, it views the first phrase of the above quoted language as establishing an "original" A.B. 8 number and posits this is the number that must be compared with the allocation figure derived under the TEA formula. This "original" A.B. 8 number, as the County sees it, omits the subsequently referenced Health and Safety Code section 33670, subdivision (b), allocation. Health and Safety Code section 33670 provides the allocation directive and linkage to community redevelopment agencies. (See § 96.1, subd. (a); Health & Saf. Code, § 33670.) Accordingly, this "original" A.B. 8 number is a "gross" number in the sense that it subsumes what section 96.1 otherwise requires be allocated to a community redevelopment agency under Health and Safety Code section 33670.

15. On page 54, the second full paragraph that begins "We first observe . . . ." shall be deleted and replaced with the following three paragraphs:

The County, in other words, urges a view of section 96.1—solely in the context of reaching a comparative A.B. 8 allocation for TEA purposes—that heeds only the first phrase of the first sentence of the statute, and disregards the remaining language. The County cites no authority for such a construction, and we are aware of none. Indeed, the first phrase of the first sentence of section 96.1 also makes specific reference to both the ERAF statutes and the TEA statute, and does so with equal dignity and with deference. Moreover, the remainder of the statutory language provides that the required "apportionment" shall occur by making specified "allocations." (§ 96.1, subd. (a)(1)-(2).) Adopting the County's inventive "original" A.B. 8 comparison figure argument would also create a seeming anomaly—a TEA formula that expressly accounts for redevelopment, but a comparative A.B. 8 analysis that does not (and, in fact, reads out of section 96.1 the language that expressly does address redevelopment). Nothing in the statutory language or the legislative history supports such a result.

Finally, the language of the TEA statute guarantees the amount of tax revenues to be "distributed" to a city. (§ 98, subd. (k).) The legislative history similarly speaks in terms of comparing the tax revenues a qualifying city would *receive*—not revenues that are only theoretically "apportioned" to a city based on a myopic partial reading of one sentence of section 96.1 that disregards the remainder of the statute. (See Off. of Local Government Affairs, Enrolled Bill Rep. on Assem. Bill No.1197 (1987-1988 Reg. Sess.) Sept. 9, 1988, p. 2 [receipt of TEA will "only occur if it is no less than what the qualifying cities would have received without the TEA formula"]; cf. Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 617 (1991-1992 Reg. Sess.) as amended Aug. 22, 1992, pp. 7-8 [referring to A.B. 8 as establishing an "allocation" system].)

We therefore conclude that, unless the Legislature has otherwise clearly provided, it intends that no- and low-property tax cities *actually receive* 7 percent of local property tax revenues as guaranteed by section 98.

There is no change in judgment.

Appellants' petition for rehearing is hereby denied.

Date:

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Marchiano, P. J.