Filed 8/24/07

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE FONTANA REDEVELOPMENT AGENCY,

Plaintiff and Respondent,

v.

JEANETTE TORRES et al.,

Defendants and Appellants;

TEN-NINETY, LTD.,

Defendant and Respondent.

E038366

(Super.Ct.No. SCV 100688)

ORDER MODIFYING OPINION AND DENIAL OF PETITIONS FOR REHEARING
[NO CHANGE IN JUDGMENT]

Respondents' petitions for rehearing are denied. The opinion filed in this matter on July 26, 2007, is modified as follows:

1. Page 5 will now read as follows:

"units and related commercial and other-use facilities. Fontana RDA obtained a validation judgment for the OPA.

"The OPA was first amended in 1984, raising the interest rate from 10 percent to 15.5 percent. In 1987, the OPA was amended again, with Fontana RDA pledging to pay

Ten-Ninety all its tax increment revenues**,** with no provision for a 20 percent set-aside to benefit affordable housing. The 1987 amendment included the statement that the Ten-Ninety debt 'is and shall be treated in all respects and at all times as a bonded or other indebtedness of the Agency.' Again, Fontana RDA obtained a validation judgment. A third amendment was executed in 1992 and was validated. The third amendment of the OPA established four categories of debt, including "reserve debt" for any amount over the secured bonded debt limitation of $135 million. All debt 'shall be treated in all respects and at all times as a bonded or other indebtedness.' The specifics of the third amendment are discussed later in this opinion.

"In 1993, section 33334.2 was amended to limit the use of housing fund money to pay for infrastructure improvements that are incorporated into affordable housing projects. In its present version, section 33334.2 states: '(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income persons or families, including the following: [¶] . . . [¶] (2)(A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, . . .'

"In May 2001, the State Department of Housing and Community Development

(Department) audited Fontana RDA's programs, including its administration of the tax"

2. On page 6, the last full paragraph, omit the words "in secured debt".

3. On page 11, line 16 should read "section 53511's", not section 53551's.

4. On page 13, the last partial paragraph will now read as follows:

"The only distinction between non-reserve debt and reserve debt is that non-reserve debt is debt under $135 million and reserve debt is debt over $135 million. But both kinds of debt are expressly 'payable solely from tax increment revenues' and will be paid from the proceeds of tax allocation bonds. In fact, as previously stated, both the 1987 and 1992 OPA amendments deem that OPA debt is 'bonded indebtedness.' For that reason, we do not find any support for the trial court's finding that the 'proposed Bond Issue will not exceed the $135 million plan limit on the principal amount of bonded indebtedness payable from tax . . . .'"'"

Except for these modifications, the opinion remains unchanged. This modification does not effect a change in the judgment.

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s/Gaut
J.

We concur:

s/Ramirez
P.J.

s/Hollenhorst
J.