

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CITY OF KING CITY,  
  
Plaintiff and Respondent,

v.

COMMUNITY BANK OF CENTRAL  
CALIFORNIA,  
  
Defendant and Appellant.

H026888, H27166  
(Monterey County  
Super. Ct. No. M64343)

**ORDER MODIFYING OPINION  
AND DENYING REHEARING**

**NO CHANGE IN THE JUDGMENT**

THE COURT:

It is ordered that the opinion filed herein on August 2, 2005, be modified as follows:

1. On page 9, footnote 6, the last two sentences are deleted and the following sentence is inserted in their place:

In any event, the trial court denied the request for oral testimony on the merits and on the merits that ruling must stand or fall.

2. Starting on page 22 and ending at the top of page 23, under subheading "D. Absence of Formal Discovery" the text is deleted and replaced with the following:

City contends that a continuance for discovery was properly denied because Bank "never propounded formal discovery to City." This assertion is closely accompanied by a citation to City's own "Objection to [Bank's] Notices of Depositions and Requests to Produce Documents." The objection lists nine depositions then scheduled for a four-day period commencing April 28, 2003. In its petition for rehearing, City explains that while Bank propounded discovery to

“current or former City officials,” it did not serve formal discovery directed to City as such or to its custodian of records, so designated. This distinction presumably provided City with a justification for failing to provide documents sought by Bank in response to these requests, but it hardly effected a forfeiture of Bank’s right to obtain such documents before an adjudication on the merits.

In any event, the trial court found no procedural forfeiture, but denied Bank’s request on the ground that Bank did not need discovery and, later, that discovery would have not have helped it. Nor do we think a denial of discovery on a purely formal ground would have been a sound exercise of discretion under the circumstances then prevailing. City’s unsound invocation of a right to mandate must have kept Bank and its attorneys under intense time pressure for the entire period from filing to judgment. The claims they were required to meet included not only those the court ultimately sustained, but others it did not reach, including that a member of the Council/Board had acted in violation of conflict-of-interest laws. In addition Bank had to meet City’s motion—ultimately denied—to disqualify Bank’s chosen attorneys on the ground that they were themselves burdened with a conflict of interest. By combining these concerted attacks with the successful invocation of a remedy to which it was not entitled, City managed to force a large and complex case to a precipitous resolution using law and motion procedures, even while it successfully resisted discovery and harried its opponent’s flanks with unmeritorious procedural challenges. Under these circumstances, Bank must be allowed a certain lack of punctilio, at least for purposes of preserving core procedural challenges for appeal.

The respondent’s petition for rehearing is denied.

There is no change in the judgment.

Dated:

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.