

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

WESTERN HILLS WATER DISTRICT

VS.

DIABLO GRANDE RESIDENTIAL  
ASSOCIATION

PLAINTIFF

DEFENDANT

**MINUTE ORDER RE:** Decision on Plaintiff's Motion for Summary Judgment in Judicial Foreclosure or, in the Alternative, Summary Adjudication; Plaintiff's Request for Judicial Notice

**JUDGE: STACY SPEILLER**

**Bailiff: None**

**No. CV-21-003252**

**Clerk: C.Gonzalez**

**Reporter: NONE**

**Date: 11/22/2022**

**Modesto, California**

**APPEARANCES: NONE**

**IT IS SO ORDERED**

Court confirms its tentative ruling as follows:

Plaintiff's Motion for Summary Judgment in Judicial Foreclosure or, in the Alternative, Summary Adjudication - **GRANTED**. Plaintiff's Request for Judicial Notice is **GRANTED**.

The Court awards \$39,246.50 in attorney's fees and \$3,818.00 in paralegal fees, plus legal costs and expenses of \$1,005.79, to plaintiff Western Hills Water District and against defendant Angels Crossing, LLC.

On November 4, 2022, the Court granted Plaintiff's Motion to Deem Requests for Admission Admitted as to Angels Crossing. As a result of the Court's ruling Angels Crossing is deemed to have admitted that as the owner of the subject properties it is obligated to pay the special taxes, that it has not paid any of the special taxes, that the special taxes for tax years 2018/2019 and 2019/2020 have not been paid, and that the special taxes are delinquent.

**There are no Issues of Material Fact Concerning the Validity of the Special Taxes or the Delinquency in Payment**

Pursuant to the provisions of *Government Code Section 53356.4*, there are only three requirements that plaintiff must establish to make a prima facie case in judicial foreclosure under the Mello-Roos Act against a property owner for delinquent special taxes.

The foreclosure action shall be brought in the name of the local agency or trustee on behalf of the bondholders pursuant to Section 53356.1, and may be brought within the time specified in Section 53356.1. The complaint may be brief and need only include the following allegations:

(a) That on a stated date, a certain sum of special taxes, levied against the subject property (describing it) pursuant to this chapter, became delinquent.

**MINUTE ORDER**

(b) On that date, bonds issued pursuant to this chapter, payable in whole or in part by the subject special taxes, were outstanding.

(c) That the legislative body or trustee has ordered the foreclosure.

Plaintiff has satisfied all of the above requirements.

On September 24, 2000, plaintiff adopted Resolution No. 2000-06 to establish Community Facilities District No. 1 ("CFD No. 1") pursuant to the Mello-Roos Act, and to levy a special tax. *UMF No.'s 1 & 2.*

Angels Crossing argues that plaintiff has not shown that it obtained a 2/3 vote of the residents to enact the Mello-Roos taxes, as required by *California Constitutions, Article XIII D, Section 6(c).*

This argument has no merit. When there are less than 12 registered voters in the district, then pursuant to *Government Code Section 53326(b)* the vote shall be by the landowners, who shall have one vote for each acre of portion of an acre that he or she owns. At the time of the formation of the District all of the land was owned by a single developer. This is stated in the Official Statement for the Bonds. *Appendix of Evidence, Exhibit D, Exhibit J, Exhibit K, Exhibit N, and Exhibit P, Official Statements for the 2001, 2002, 2004, 2005, 2014, and 2015 Bonds.*

On December 12, 2000, pursuant to the Mello-Roos Act and the requirements of *Streets and Highways Code Section 3114.5*, plaintiff caused a Notice of Special Tax Lien to be recorded, as Document No. 2000-0105732-00 in Stanislaus County, to secure payment of the special taxes pursuant to the duly authorized Rate and Method of Apportionment of Special Tax levied against all real property within CFD No. 1. *UMF No. 3.*

Between July 5, 2001 and July 8, 2015, plaintiff adopted multiple resolutions which authorized the issuance of special tax bonds, a Fiscal Agent Agreement and supplements to that agreement, and resolutions to incur bonded indebtedness. Plaintiff also recorded amended tax liens. *UMF No.'s 4 - 11.*

The special taxes levied in CFD No. 1 are authorized to be collected in the same manner as ordinary property taxes and become delinquent if not paid semi-annually on December 10<sup>th</sup> and April 10<sup>th</sup> of each year. *UMF No. 12.*

However, the special taxes are different from ordinary property taxes because once the requisite Notice of Intent to Remove Delinquent Special Tax Installments from the Tax Roll has been recorded, the County Tax Collector is no longer authorized to accept payment for the delinquent special taxes on behalf of the plaintiff. *UMF No. 13.* The delinquent special taxes must be recovered by plaintiff through a judicial foreclosure action. *UMF No. 14.*

A one-time penalty in the amount of 10% of a delinquent special tax installment accrues and is due and payable on the statutory delinquency date of a delinquent special tax installment, and a monthly redemption penalty in the amount of 1.5% of a delinquent special tax installment accrues and is due and payable on the next succeeding July 1<sup>st</sup> and on the first of each month thereafter until the delinquent special tax installment is paid. *UMF No.'s 15 & 16.*

Special taxes became delinquent for tax years 2018/2019 and 2019/2020.

UMF No. 17. The principal amounts of the delinquent special taxes total \$283,500.00. UMF No. 18.

On October 11, 2019 and April 19, 2021, plaintiff caused Notices of Intent to Remove Delinquent Special Tax Installments from Tax Roll to be recorded for tax years 2018/2019 and 2019/2020. UMF No.'s 19 & 20.

Subsequently the Board of Directors for plaintiff authorized the bringing and prosecution of this foreclosure action to recover the delinquencies. UMF No. 21.

Defendant Angels Crossing LLC is the current owner of the properties. UMF No. 22.

Defendant Diablo Grande Residential Association owned an interest in one of the parcels, but the Association has disclaimed that interest. UMF No.'s 23 & 24.

Plaintiff has shown that defendants have not paid the special taxes levied in CFD NO. 1 against the properties, and that the amount owed to plaintiff as of August 1, 2022, is \$622,095.29. UMF No.'s 26 & 27.

#### **Defendant Has No Valid Defense to this Action**

Even if there was an issue of material fact as to whether or not the special taxes were validly issued, defendant cannot challenge the validity of the special taxes, both because defendant has not paid the taxes first and because the statute of limitations has run.

Pursuant to *The California Constitution, Article XIII, Section 32, and Revenue and Taxation Code Section 4807*, in order to assert a defense, defendant would have had to have paid the taxes first. *Section 4807* "...creates a statutory bar to orders enjoining the collection of a county tax which is comparable to the constitutional prohibition against enjoining the collection of a state-imposed tax." *Connolly v. County of Orange* (1992) 1 Cal. 4<sup>th</sup> 1105, 1114.

Plaintiff has shown that the defendant has failed to pay any of the delinquent special taxes. UMF No.'s 18, 32, 33, 36, 37, 38 & 39. Therefore, defendant is not entitled to assert a defense.

Additionally, even if defendant had paid the special taxes before filing its answer to the complaint, the defendant would still be unable to assert a defense because the statute of limitations has run.

The statute of limitations to challenge the validity of special taxes is set forth in *Government Code Section 53359*, which provides that an action to determine the validity of bonds or the validity of any special taxes must be brought within 30 days after the voters approve the issuance of the bonds or the special tax. Also, *Government Code Section 53341* provides that any action or proceeding to attack, review, set aside, void or annul the levy of a special tax or an increase in a special tax shall be commenced within 30 days after the special tax is approved by the voters.

The statute of limitations has long since run. As set forth above, the

special taxes were levied in 2000 and bonds were issued in 2001. UMF No.'s 2 - 5. The last set of special tax bonds were issued in 2015. UMF No.'s 10 - 11.

### **Angels Crossing Cannot Show that it is Entitled to an Offset**

Angels Crossing argues that it is entitled to an offset because of amounts allegedly owed to it by plaintiff. However, the existence of an alleged offset is not supported by any evidence submitted by Angels Crossing. The Master Agreement between the District and the prior property owner, Diablo Grande Limited Partnership, entered into in 1998, related only to the provision of water, sewer and storm drainage services. *Opposition, Hale Declaration, paragraph 3, Exhibit 12, Master Agreement*. As this agreement was entered into before the issuance of the 2001 Bonds and before any special taxes had been levied, no offset could have been contemplated by the parties to that agreement.

The Addendum was entered into the by District and defendant World International LLC in 2009 regarding World International's purchase of the property from Diablo Grande and its assumption of the Master Agreement. As this agreement was entered into in 2009, it could not have contained an offset for tax years 2018-2019 and 2019-2020 delinquencies which are the subject of this foreclosure action. Additionally, the Addendum did not mention an offset for any special tax delinquencies. *Opposition, Hale Declaration, paragraph 4, Exhibit 13, Addendum*.

The Assignment to Angels Crossing was entered into by the District, Angels Crossing and World in 2020 after Angels Crossing purchased the properties from World. Although the recitals in the Assignment mention an alleged \$16.8 million dollar loan that had been made to the District and World being in default of its obligations to pay \$8.7 million in special taxes, nothing is actually stated in that document that the parties have agreed to offset the two amounts. *Opposition, Hale Declaration, paragraph 2, Exhibit 11, Assignment*.

Also, Angels Crossing cannot rely on any alleged offset or any alleged failure by the District to perform its contractual obligations as a defense to prevent the collection of the delinquent special taxes. Plaintiff is a nominal plaintiff only, suing on behalf of bondholders whose obligation was to pay for the bonds. The bondholders have no obligation to defendants which are subject to offset.

...disputes between property owners and the issuing entity of bonds under the Act, whether related to construction of the improvements or other matters, cannot constitute defenses to an action by those entitled to payment to foreclose a lien securing a levy made under the taxing power. Harvills' claim CFD failed to perform contractual obligations, thereby excusing payment of special taxes, is not a defense to this type of action.

*Community Facilities District No. 8808 v. Harvill* (1999) 74 Cal. App. 4<sup>th</sup> 878, 881.

"Where...it is undisputed Harvills' special taxes remain unpaid, the court

cannot prevent or enjoin the collection of those taxes." *Id.* at 882.

It is undisputed that the delinquent special taxes have not been paid. *UMF No.'s 18 and 33.* Therefore Angels Crossing cannot rely on any alleged offset or any alleged failure by the District to perform its contractual obligations.

Angels Crossing argues that because the penalties accrued before Angels Crossing owned the properties, such penalties should not be awarded against Angels Crossing.

There is no merit to this argument because the penalties and interest on delinquent special taxes continue to accrue even after there is a change in ownership. *Govt. Code 53356.1.5.*

#### **Plaintiff's Claimed Attorney's Fees and Costs are Reasonable**

Plaintiff also seeks attorney's fees in connection with this action pursuant to *Government Code Sections 53356.3(c) (payment of attorney's fees authorized by the local agency) and 53356.5(b) (the judgment shall include reasonable attorneys' fees and costs).*

Plaintiff claims that the attorneys have spent 148.1 hours at the rate of \$265.00 per hour, and the paralegals have spent 33.2 hours at the rate of \$115.00 per hour. *Kosla Declaration, paragraphs 4 and 5, attached as Exhibit W to Volume 20.* This totals \$43,064.50 (\$39,246.50 in attorney's fees and \$3,818.00 in paralegal fees), plus legal costs and expenses of \$1,005.79. *Id.* at paragraph 6.

Angels Crossing claims that the attorney's and paralegal hourly rates are reasonable, but that the time estimates are excessive. Defendant argues that 25 hours of attorney time and 10 hours of paralegal time is reasonable.

Angels Crossing seriously underestimates the time necessary to prepare for and prosecute this action. Plaintiff's counsel had to review all of the various delinquency reports and spreadsheets prepared by plaintiff's delinquency management company and correspondence about the delinquencies, review numerous Official Statements concerning the issuance of multiple series of bonds, obtain and review litigation guarantees, review the various resolutions and recorded documents and notices of intent, prepare the complaint, engage in settlement discussions, prepare discovery requests, and prepare the moving and reply papers for the summary judgment motion.

PROOF OF SERVICE BY MAIL  
[1013a(3) C.C.P.]

STATE OF CALIFORNIA )  
                                  ) SS  
COUNTY OF STANISLAUS)

I am over the age of 18 years and employed by the Superior Court of the State of California, County of Stanislaus, and not a party to the within action. I certify that I served a copy of the attached **MINUTE ORDER** by placing said copy in an envelope addressed to the following:

MARTIN KOSLA ESQ  
BURKE, WILLIAMS & SORENSEN LLP  
1770 IOWA AVENUE SUITE 240  
RIVERSIDE, CA 92507

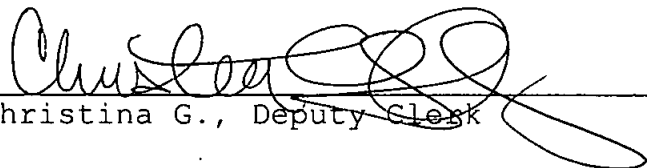
JUNE D COLEMAN Esq  
MESSER STRICKLER BURNETTE LTD  
5960 SOUTH LAND PARK DRIVE #1059  
SACRAMENTO, CA 95822

Said envelope was then sealed and postage thereon fully prepaid, and thereafter was on November 22, 2022 deposited in the United States mail at Modesto, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2022 at Modesto, California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF STANISLAUS

By \_\_\_\_\_  
Christina G., Deputy Clerk