

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

CENTRAL

MINUTE ORDER

DATE: 12/16/2016

TIME: 03:30:00 PM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack

CLERK: Terry Ray

REPORTER/ERM: R Jerrod Jones CSR# 11750

BAILIFF/COURT ATTENDANT: L. Wilks

CASE NO: 37-2016-00030312-CU-TT-CTL CASE INIT.DATE: 08/29/2016

CASE TITLE: **Friends of the San Dieguito River Valley vs. CITY OF SAN DIEGO [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Friends of the San Dieguito River Valley

CAUSAL DOCUMENT/DATE FILED: Notice - Other Notice of Request for Hearing, 11/18/2016

APPEARANCES

Julie M Hamilton, counsel, present for Petitioner(s).

Jenny K Goodman, counsel, present for Respondent(s).

G. Scott Williams, counsel, present for Real Party In Interest (Rpii), Interested Party(s).

Leslie Gaunt, counsel, present for Petitioner.

The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the court makes the below ruling:

This is a motion for a preliminary injunction brought by petitioner Friends of the San Dieguito River Valley against respondent City of San Diego and real-party-in-interest Surf Cup Sports, LLC.

A statement of decision is not required in granting or denying a preliminary injunction. *People v. Landlords Professional Services, Inc.* (1986) 178 Cal.App.3d 68, 70 – 71. Accordingly, this ruling should not be interpreted as a statement of decision. Furthermore, since a ruling on a motion for preliminary judgment is not an adjudication of the ultimate rights in controversy, this ruling should not be interpreted as an adjudication of any of the issues to be decided at the time of trial. *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.

"[T]he decision to grant a preliminary injunction rests in the sound discretion of the trial court. *IT Corporation v. County of Imperial* (1983) 35 Cal.3d 63, 69.

"In determining whether to issue a preliminary injunction, the trial court considers: (1) the likelihood that the moving party will prevail on the merits and (2) the interim harm to the respective parties if an injunction is granted or denied. The moving party must prevail on both factors to obtain an injunction. Thus, where the trial court denies an injunction, its ruling should be affirmed if it correctly found the moving party failed to satisfy either of the factors." *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1145.

The court finds that petitioner has not satisfied either of the two factors and, accordingly, petitioner's motion for preliminary injunction is denied.

In reaching the above decision, the court has considered all papers, as well as the oral argument of counsel.

Although not necessary for the court's decision in this case, the court notes that two of the terms of petitioner's proposed injunctive order would limit on-site parking to 300 spaces and limit the number of days of operation to 25 per year, an order which would significantly disrupt the status quo, which provides for up to 2,000 on-site parking spaces and is not limited to 25 days of operation per year. "The general purpose of [a preliminary] injunction is the preservation of the status quo until a final determination of the merits of the action." *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.

Furthermore, and again not central to the court's decision-making in this case, petitioner has conceded that it would be unable to afford other than a nominal bond. Given the credible showing by the real-party-in-interest of the significant financial harm (\$315,000) that would reasonably flow from the granting of petitioner's motion for preliminary injunction, coupled with the fact that a judge may not waive the bond requirement for a preliminary injunction merely because petitioner is prosecuting an action ostensibly in the public interest (*Mangini v. J.G. Duran International* (1994) 31 Cal.App.4th 214, 216 – 219), the court seriously questions whether petitioner would be able to post what would be a far-from-nominal bond in the event that the court had concluded that there was a reasonable probability that petitioner would prevail in this action. "Since the injunction is conditioned upon filing the undertaking, it will not be effective until the undertaking is filed." Weil & Brown, Jr., Rutter: Cal. Practice Guide – Civil Procedure Before Trial, ¶9:659, p. 9(II) – 43 (2016).

The court makes the following evidentiary rulings:

1. The City's objections to petitioner's evidence nos. 1 – 3 are sustained.
2. Real-party-in-interest's request for judicial notice is granted.
3. Petitioner's request for judicial notice is granted, except as to no. 1, *supra*.
4. Real-party-in-interest's objection to petitioner's reply brief is overruled.
5. Petitioner's objection to real-party-in-interest's sur-reply brief is overruled.

The court schedules the following:

Trial: July 10, 2017 @ 9:00 a.m.

Hearing on motion to augment: Feb. 24, 2017 @ 10:00 a.m.



Judge Gregory W Pollack