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Attorney for Plaintiff GREEN VALLEY LANDOWNERS ASSOCIATION

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

GREEN VALLEY LANDOWNERS ASSOCIATION, a California mutual benefit corporation, on behalf of its members and others similarly situated,

Plaintiff,

vs.

THE CITY OF VALLEJO, and DOES 1 through 1000, inclusive,

Defendants.

Case No. FCS042938

SUPPLEMENTAL BRIEF RE: APPLICATION OF "GENERAL LAW" IN OPPOSITION TO DEFENDANT'S DEMURER TO COMPLAINT

Dept: 4
Judge: Hon. Arvid W. Johnson
Date: April 23, 2014
Time: 10:00 a.m.

Action Filed: January 23, 2014
Trial Date: Not Scheduled

A. With Respect to Municipal Affairs, a Charter City Is Never Subject to the General Law – Even if the Charter is Silent on the Subject

The court's ruling on the breach of contract claims stems from a single false premise – namely, that a charter city is bound by the general law on municipal affairs upon which the charter is silent.[1] The first line of the tentative rulings provides that: "A chartered city remains subject to state statutes [i.e., the "general law"], except for 'municipal affairs' governed by the charter."

This has not been the rule in California for 100 years. It was only under the 1896 version of the California Constitution that the general law would control where the charter was silent (*City of Pasadena v. Charleville* (1932) 215 Cal. 384, 388 [Under the 1896 version of the California Constitution, with respect to "municipal affairs upon which the charter was silent, the provisions of any general law thereto would control the subject").

In 1914, the California Constitution was amended and the powers of charter cities were liberalized. Its current iteration is found in Article 11, §5(a) which provides that a charter city "may make and enforce all ordinances and regulations in respect to municipal affairs, *subject only to restrictions and limitations provided in their several charters* and in respect to *other matters* [i.e. matters other than municipal affairs] they shall be subject to the general laws." The "other matters" language modifies "municipal affairs" – *i.e.*, in matters *other than municipal affairs*, the general law applies. **In all other matters, a charter city is limited *only by* its charter**.

The difference between the pre- and post-1914 versions of the Constitution was explained by the Supreme Court as follows:

> In the early stages of municipal home rule in California, the charter prevailed only where it expressly covered the particular power exercised. Under the liberalizing constitutional amendment of 1914, the charter is not a grant of power but a restriction only, and the municipality is supreme in the field of municipal affairs ***even as to matters on which the charter is silent***" (*Butterworth v. Boyd* (1938) 12 C2d 140, 146, emphasis added).

[1] In its Response to Sur-Reply, Vallejo argued (for the first time) that "where the charter contains no special procedure concerning a municipal subject, the general laws govern" (Response to Sur-Reply at 1:15-16).

"*The result* [of the 1914 amendment] *is that the city has become independent of general laws upon municipal affairs. Upon such affairs a general law is of no force*" (*Wiley v. City of Berkeley* (1955) 136 CA2d 10, 13, italics in original, quoting *Bank v. Bell*, 62 CA 320, 329; *Charleville*, 215 C at 388-89 ["The result [of the 1914 amendment] is that the city has become independent of general laws upon municipal affairs."]; *Wiley v. City of Berkeley* (1955) 136 CA2d 10, 13 ["Under the liberalizing constitutional amendment of 1914, the charter is not a grant of power but a restriction only, and the municipality is supreme in the field of municipal affairs *even as to matters on which the charter is silent*" [italics in original]). Pursuant to the 1914 amendment, "the power of a charter city over exclusively municipal affairs is all embracing, restricted and limited **only by the city's charter, and free from any interference by the state through the general laws**" (*Simons v. City of Los Angeles* (1976) 63 CA3d 455, 468(emphasis added); *Charleville*, 215 Cal. at 388-89).

In its tentative ruling the Court correctly observes that (1) "the manner in which a city may form a contract is a municipal affair", and (2) Vallejo's Charter "does not specifically prescribe how its contracts must be executed." **This is the beginning and end of the inquiry**. If Vallejo's Charter does not prescribe the manner in which municipal water contracts are entered into, the court may not create or imply a restriction on the City's power to contract (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 170 [a charter city "has all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter"]). Further, since "charter provisions are construed in favor of the exercise of the power over municipal affairs and against the existence of any limitation or restriction thereon which is not expressly stated in the charter . . . **restrictions on a charter city's power may not be implied**" (*id.* at 171, emphasis added). [2]

[2] Against this weight of authority, Vallejo pulls a single quote from a case entitled *McLeod v. Board of Pension Commissioners* (1971) 14 CA3d 23, 29) in its Response to Sur-Reply. The issue in *McLeod* was whether Government Code §68092.5, which relates to payment to expert witnesses, applied to a charter city. The court, without elaboration, stated that "where the charter contains no special procedure concerning a municipal subject, the general law governs." The single quote from *McLeoad* should be ignored because: (1) it is incorrect, (2) it has never been cited by a single case for the same proposition, (3) the court relied on *pre-1914* case law with respect to charter

B. Section 201 of the Charter Are Permissive – Not Mandatory

Section 201 of the Charter says the "City shall have the power to act pursuant to procedure established by any law of the State unless a different procedure is required by this Charter." The court seeming interprets this as a mandatory directive – *i.e.*, where the charter is silent, the City is bound by the general law. However, the language in §201 is permissive, not mandatory. Thus, the City *may* act pursuant to the general law, but it is not *required to do so*.

The Supreme Court addressed virtually identical charter language in *City of Glendale v. Trondsen* (1957) 48 C2d 93, 100-101. There, the Glendale charter provided that nothing "shall prevent the Council from proceeding under general laws." The Supreme Court held that this language was "**obviously** . . . nothing more than a permissive method" (*id.*, emphasis added). The *Trondsen* case was followed in *Redwood City v. Moore* (1965) 231 CA2d 563. The Redwood City charter provided that the city "shall have all the powers granted to cities by the constitution and general laws of this state" (*id.*at 573). The court held:

> Accordingly, pursuant to section 74 the City may still invoke the procedure provided by general law. It is apparent from a reading of section 74 that the City **may follow the general laws** in the making of improvements. However, **it is not required to do so** because by its very language section 74 is **permissive and not mandatory**" (*id.*, emphasis added).

There is nothing in Vallejo's charter indicating or suggesting that it is *bound by* the general law on municipal affairs. In fact, §200 of the Charter provides that "The enumeration in this Charter of any particular power shall not be held to be exclusive of or any limitation upon this general grant of power." [3]

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cities, namely, *Civic Center Assn. v. Railroad Com.* (1917) 175 C 411, *City of Sacramento v. Adams* (1915) 171 C 458, and *Hyde v. Wilde* (1921) 51 CA 82, and (4) the court ignored Article 11, Section 5 of the Constitution and the extensive case law holding that under the 1914 amendment, the general law is not binding, even if the charter is silent.

[3] Compare the language *Trondsen*, *Moore* and §§200 and 201 of the Charter to the language in *City of San Jose v. Lynch* (1935) 4 C2d 760, 762-63, where the San Jose charter provided that "where the general laws of the State provide a procedure for the carrying out and enforcement of any rights or powers belonging to the City, **said procedure shall control and be followed** unless a different procedure shall have been provided in this charter or by ordinance."

C. The Court May Not Imply Limitations on the Powers of a Charter City

As in *G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 CA4th 1087 (a case involving a general law city), the Court "read together" Article 11, §5 of the Constitution, §201 of the Charter and §3.20.045 of the City Code[4] to imply a requirement that all city contracts be in writing. However, as discussed above (and at length in the Sur-Reply at 1:20-3:13), unlike a general law city, "the enumeration of powers [in the city's charter] does not constitute an exclusion or limitation" and "**restrictions on a charter city's power may not be implied**" (*Domar*, 9 C4th at 170-71). This implied limitation on the power of the City to enter into contracts is inconsistent with the rights of charter cities in California. If the Charter does not prohibit a certain mode of contracting, the City necessarily has the power to contract in any manner not prohibited by the Charter.

D. Conclusion

The general law, and in particular Government Code §40602, is not binding on Vallejo with respect to the manner of entering into municipal water contracts. Since the Charter does not address how municipal water contracts are entered into, the Court cannot imply a limitation on the power of City enter into contracts. As a result, the 1st, 2nd and 10th causes of action necessarily survive the demurrer (as should the 4th cause of action[5]).

DATED: June 10, 2014

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[4] Section 3.20.045 of the City Code was not even enacted until *2011* – decades after the implied agreements at issue were entered into. Plaintiff fails to see how a 2011 municipal code provision can alter the enforceability of contracts entered into decades earlier.

[5] As explained in the Opposition (and as recognized by the Court), to the extent the implied agreements are valid, Proposition 218 cannot abrogate or impair those agreements (U.S. Const., Art. 1, Sec. 10).