

Cedar Fair, L.P. v. City of Santa Clara (April 28, 2011) 194 Cal.App.4th 1150

This is litigation over the proposed relocation of the San Francisco “49ers” to a prospective stadium in the City of Santa Clara. Cedar Fair is the owner and operator of the Great America theme park. The City, its redevelopment agency, and 49ers had entered into a “Stadium Term Sheet” that identified a parcel that Cedar Fair leases for parking space as the future site of the stadium. The City and redevelopment agency did not prepare a CEQA document prior to entering into that agreement.

Cedar Fair sued the City, alleging that the Stadium Term Sheet committed the City to enter into an agreement with the 49ers for construction of a stadium and therefore should be subject to CEQA analysis. The trial court ruled that the term sheet did not constitute a “project” for CEQA purposes and therefore no CEQA document was necessary. The Court of Appeal upheld that decision.

The Stadium Term Sheet was apparently quite detailed in describing the outcome that the City, its redevelopment agency, and the 49ers hoped to achieve. However, it specifically provided that:

"This Term Sheet is intended to provide a general framework for the subsequent negotiation of definitive agreements regarding the development and operation of the Stadium and is not intended to create any binding contractual obligations on any Party or to commit any Party to a particular course of action. A transaction of this type involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the Parties that, in order to effectuate the Stadium project, binding agreements will have to be negotiated, agreed to by the Parties and ultimately submitted to the City Council for approval."

The term sheet further stated that:

"the City and the Agency retain the absolute sole discretion to (i) modify the transaction, create and enter into transactional documents, and modify the project as may, in their sole discretion, be necessary to comply with CEQA, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Stadium project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, and/or (iv) determine not to proceed with the Stadium project. No legal obligations will exist unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, subject to all applicable governmental approvals."

The Court looked to the Supreme Court’s *Save Tara* decision for guidance in determining whether this term sheet, which contained both extensive detail about the hoped for outcome of future negotiations between the City, redevelopment agency, and the 49ers and language reserving to the City and agency full discretion to change or deny the

project, sufficiently committed the City and agency to the extent that CEQA was invoked. In *Save Tara*, the Supreme Court held that there is no brightline test for when a public agency has sufficiently committed itself to an action to require preparation of a CEQA document. A detailed project description is not, by itself, determinative. There must be evidence that the agency has committed itself to the extent that it forecloses alternatives or mitigation measures that would ordinarily be part of the CEQA review of that public project. The Supreme Court instructed that:

“In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (citation) In this analysis, the contract's conditioning of final approval on CEQA compliance is relevant but not determinative.” (*Id.* at p. 139.) Courts must “look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development constitutes a ‘decision . . . which commits the agency to a definite course of action in regard to a project.’ (Cal.Code Regs., tit. 14, § 15352.)”

In that context, the Court of Appeal concluded that:

“Under *Save Tara*, the critical question is ‘whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See Cal.Code Regs, tit. 14, § 15126.6, subd. (e).)’ (*Save Tara, supra*, 45 Cal.4th at p. 139.) In this respect, the term sheet is different from the conditional development agreements set forth in *Save Tara*, which conditionally committed the City of West Hollywood to take concrete actions toward realizing the development project. In contrast, the Stadium Term Sheet merely ‘memorialize[s] the preliminary terms’ and only mandates that the parties use the term sheet as the ‘general framework’ for ‘good faith negotiations.’ Under the express language of the term sheet agreement, the City and the Redevelopment Agency ‘retain the absolute sole discretion’ to make decisions under CEQA, including deciding ‘not to proceed with the Stadium project’ and the term sheet creates ‘[n]o legal obligations’ ‘unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process’ The term sheet makes clear the parties' intent to not ‘create any binding contractual obligations’ with respect to the development of the stadium or to commit any party to “a particular course of action.” The term sheet itself and the July 6, 2009 Agenda Report both recognized that a no project option was still available.

“Thus, although the term sheet is extremely detailed, it expressly binds the parties to only continue negotiating in good faith. (See *Copeland v. Baskin Robbins U.S.A.* (2002) 96 Cal.App.4th 1251, 1253, 1255 [recognizing cause of action for breach of agreement to negotiate in good faith].) A contract to negotiate an agreement is distinguishable from the ultimate agreement that parties hope to eventually reach.”

Further:

“The commitment to continue negotiations pursuant to the term sheet is unlike the commitment in *Save Tara*, where the City of West Hollywood contractually bound itself to sell land for private development conditioned upon CEQA compliance, or *Riverwatch* [*Riverwatch v. Olivenhain Municipal Water District* (2009) 170 Cal.App. 4th 1186], where the water district contractually bound itself to deliver water for 60 years.”