

09/20/2021

DISTRICT COURT OF | Kevin J. Lane, Clerk | TE OF CALIFORNIA

DIVISION ONE

D079215

MARCH 26, 2021

KIM R. ROSS, CSR 7842
SAN DIEGO SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

UL CHULA TWO LLC)
PLAINTIFF AND APPELLANT,)
VS.) 37-3030-00041554
CITY OF CHULA VISTA ET AL.)
DEFENDANTS AND RESPONDENTS)
MARCH AND ASH CHULA VISTA,)
INC. ET AL.)
REAL PARTIES IN INTEREST)
AND RESPONDENTS,)
_____)

REPORTER'S TRANSCRIPT

MARCH 26, 2021

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF:

GARY K. BRUCKER, JR.
LEWIS BRISBOIS
BISGAARD & SMITH440550
WEST C STREET,
STE. 1700
SAN DIEGO, CA 92101

FOR THE DEFENDANT:

ALENA SHAMOS
COLANTUONO, HIGHSMITH
& WHATLEY, PC
440 STEVENS AVENUE,
STE. 200
SOLANA BEACH, CA 92075

KIM R. ROSS, CSR 7842
SAN DIEGO SUPERIOR COURT

SAN DIEGO SUPERIOR COURT, FRIDAY, MARCH 26, 2021, 9:00 A.M.

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THE COURT: UL CHULA TWO LLC VERSUS CITY OF CHULA VISTA.

MS. SHAMOS: ALENA SHAMOS ON BEHALF OF CITY OF CHULA VISTA AND THE CHULA VISTA MANAGER.

MR. STENSER: PHILIP STENSER ON BEHALF OF G ENTERPRISE.

MR. RUCKER: GARY BRUCKER ON BEHALF OF PETITIONER. UL CHULA VISTA TWO?

MS. RILEY: HEATHER RILEY ON BEHALF OF REAL PARTY IN INTEREST MARCH AND ASH CHULA VISTA.

THE COURT: LET ME SAY FIRST PEOPLE THAT CHECKED IN ONE AT A TIME, YOU WERE SPEAKING OVER EACH OTHER.

MR. RUCKER: GARY RUCKER FOR THE PETITIONER.

MS. SHAMOS: ALENA SHAMOS FOR THE CITY OF CHULA VISTA AND CHULA VISTA CITY MANAGER.

THE COURT: ANY COMMENTS ON THIS TENTATIVE RULING?

MR. RUCKER: GARY RUCKER FOR THE PETITIONER. NO COMMENT ON THE TENTATIVE RULING TO CONTINUE THE HEARING. I WOULD LIKE TO BE HEARD BRIEFLY ON THE PAGE LIMITS FOR THE MERIT BRIEFING. THE STIPULATION CONTEMPLATED 25 FOR OPENING OPPOSITION AND 15 FOR REPLY. WE ARE NEARLY READY TO FILE OUR OPENING BRIEF, WE DON'T NEED 25 BUT WE HAVE A LOT OF SUBSTANTIVE ISSUES. THIS IS ESSENTIALLY A SUMMARY JUDGMENT MOTION IN TERMS OF COMPLEXITY. AND I WOULD ASK THAT, AT LEAST THE FOR THE OPENING BRIEF, WE HAVE 20 PAGES, YOUR HONOR. SO

1 THAT WE CAN THOROUGHLY VET OUR ARGUMENTS.

2 THE COURT: ANYONE ELSE?

3 MR. STENSER: PHILIP TENSER, THE ONLY ISSUE WE HAVE IS
4 IT BASICALLY EFFECTIVELY GRANTS THE INJUNCTION WITHOUT ACTUALLY
5 RULING ON IT. MY CLIENT SPENT TIME AND MONEY ON THIS BRIEFING
6 AND NOW THE COURT'S NOT EVEN GOING TO RULE ON THE ISSUE.

7 FURTHER, ON THE PRELIMINARY INJUNCTION, RATHER THAN
8 EFFECTIVELY MAKING IT MOOT, BECAUSE YOU'RE GOING TO EXTEND THE
9 TRO UNTIL THE TIME OF THE HEARING WHICH THE PRELIMINARY
10 INJUNCTION WILL NOT BE RELEVANT TO THAT POINT IF WE'RE GOING TO
11 HAVE THE HEARING ON THE MERITS, ON THE VERY ISSUE OF THE CASE.

12 THE COURT: ANYBODY ELSE?

13 MS. SHAMOS: YOUR HONOR, ALENA SHAMOS ON BEHALF OF THE
14 CITY. I DID WANT TO CLARIFY THAT I WAS -- THE CITY WAS
15 ORIGINALLY WILLING TO STIPULATE TO THE STAY. IT WAS IN ORDER
16 TO AVOID THE MOTION PROCEEDINGS THAT WE'VE BEEN UNDERGOING IN
17 THE TRO AND INCURRING THE COST THAT WE NECESSARILY HAD TO
18 INCUR. AND ANY AGREEMENT THAT CITY HAD WAS SUBJECT TO THE
19 RIGHTS OF THE REAL PARTIES IN INTEREST. AND TO THE EXTENT THAT
20 THE REAL PARTIES IN INTEREST OBJECT, WE HAVE TO STAND BY THAT
21 OBJECTION AS WELL AS THE CITY.

22 THE COURT: ANYONE ELSE?

23 MS. SHAMOS: I WAS ALSO GOING TO SAY THAT AS A
24 RESERVATION OF THE CITY'S RIGHT ON THE MERIT, WE WANT TO MAKE
25 CLEAR THAT THE PETITIONER HAS NOT MET ITS BURDEN ON THE
26 PRELIMINARY INJUNCTION AND ON THE MERITS AND WANT TO ENSURE
27 THAT THERE IS NO IMPLICATION OF ANY WAIVER OF THAT ARGUMENT DUE
28 TO THE COMMENTS THAT THE PETITIONER MADE AT THE TRO HEARING.

1 THE COURT: ALL RIGHT. ANYONE ELSE HAVE ANY
2 COMMENTS?

3 MS. RILEY: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. I'M GOING TO CONTINUE THIS
5 HEARING TO COINCIDE WITH THE OTHER AND WE'LL MOVE THE WHOLE
6 THING TO MAY 21st AT 9:00 A.M. AND THE 20 PAGE REQUEST WILL BE
7 AUTHORIZED.

8 THE CLERK: FOR CLARITY ARE WE ADVANCING THE 6/18
9 HEARING?

10 THE COURT: YES. WE'LL TAKE EVERYTHING UP ON MAY
11 21ST, 9:00 A.M.

12 MS. RILEY: WE DID HAVE A STIPULATED BRIEFING SCHEDULE
13 FOR THE JUNE DATE THAT WE PROBABLY NOW HAVE TO ADJUST. WOULD
14 YOU LIKE THE PARTIES TO DO THAT OURSELVES? WHEN WOULD YOU LIKE
15 THE PAPERS BY?

16 THE COURT: YOU CAN DO IT PER CODE, YOU HAVE ENOUGH
17 TIME. WE NEED THE REPLY PAPERS BY MAY 14TH.

18 MR. RILEY: THANK YOU, YOUR HONOR.

19 THE COURT: MS. SHAMOS.

20 MS. SHAMOS: WE HAVE CERTIFIED AND SERVED THE RECORD,
21 BUT WE HAVE NOT YET LODGED IT. AND I WAS HOPING TO TAKE THIS
22 OPPORTUNITY TO CONFIRM WHAT FORM THE COURT WOULD LIKE THE
23 RECORD.

24 THE COURT: HOW LARGE IS THE RECORD.

25 MS. SHAMOS: I THINK IT'S ABOUT 500 PAGES.

26 THE COURT: I THINK THE BEST WAY IS TO SUBMIT IT
27 ELECTRONICALLY.

28 MS. SHAMOS: AND WOULD THE COURT LIKE EXCERPTS AS

1 WELL TO BE SERVED WITH THE PARTY'S PAPERS OR JOINTLY SUBMITTED
2 AND IN WHAT FORM AS WELL?

3 THE COURT: LET ME ASK WHAT WORKS HERE. THEY CAN
4 SUBMIT THE ENTIRE RECORD?

5 MS. SHAMOS: THE COMPATIBILITY AND EXCERPTS ANYTHING
6 THEY CITE TO ON PAPER WILL BE HELPFUL.

7 THE COURT: STAFF ADVISES THAT IF YOU CAN GIVE US THE
8 ENTIRE RECORD ON A THUMB DRIVE OR SOMETHING LIKE THAT, THAT WE
9 CAN USE WITH OUR COMPUTERS AND ANY EXCERPTS THAT YOU WANT TO
10 SUBMIT, IF YOU COULD GIVE THOSE TO US ON PAPER.

11 MS. SHAMOS: THANK YOU, YOUR HONOR.

12 THE COURT: THANK YOU VERY MUCH;

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17 (THE PROCEEDINGS WERE ADJOURNED)

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22 STATE OF CALIFORNIA)

23)

24 COUNTY OF SAN DIEGO)

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27 I, KIM R. ROSS, CSR NO. 7842 AN OFFICIAL REPORTER PRO
28 TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN

1 AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I REPORTED
2 IN MACHINE SHORTHAND THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED
3 CAUSE, AND THAT THE FOREGOING TRANSCRIPT, CONSISTING OF PAGES
4 NUMBERED 23-29 IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
5 SAID PROCEEDINGS.

6 DATED AT SAN DIEGO, CALIFORNIA, THIS 10TH DAY OF
7 SEPTEMBER, 2021.

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11 _____
12 KIM R. ROSS, CSR 7842
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