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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL 4TH DIST DIV 3
FILED
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Deputy Clerk

WORD OF GOD FELLOWSHIP, INC., DBA DAYSTAR TELEVISION NETWORK, Petitioner and Appellant, v. COAST COMMUNITY COLLEGE DISTRICT, Defendant and Respondent, KOCE FOUNDATION, Real Party in Interest and Respondent.	G033901 (Super. Ct. No. 04CC03347) OPINION

Appeal from a judgment of the Superior Court of Orange County, Corey S. Cramin, Judge. Reversed with directions.

Sherman & Nathanson, Richard Lloyd Sherman and Cameron H. Totten for Petitioner and Appellant.

Rutan & Tucker, Milford W. Dahl, Jr. and Lisa N. Neal for Defendant and Respondent.

Palmieri, Tyler, Wiener Wilhelm & Waldron and Scott R. Carpenter for Real Party in Interest.

* * *

This case involves the proper interpretation of a statute governing the sale of property (except real property) belonging to community college districts -- Education Code section 81450.

Here is what the statute says, in full: "The governing board of any community college district *may sell for cash* any personal property belonging to the district if the property is not required for school purposes, or if it should be disposed of for the purpose of replacement, or if it is unsatisfactory or not suitable for school use. There shall be no sale until notice has been given by posting in at least three public places in the district for not less than two weeks, or by publication for at least once a week for a period of not less than two weeks in a newspaper published in the district and having a general circulation there; or if there is no such newspaper, then in a newspaper having a general circulation in the district; or if there is no such newspaper, then in a newspaper having a general circulation in a county in which the district or any party thereof is situated. *The board shall sell the property to the highest responsible bidder, or shall reject all bids*. [¶] (b) The governing board may choose to conduct any sale of personal property authorized under this section by means of a public auction conducted by employees of the district or other public agencies, or by contract with a private auction firm. The board may delegate to the district employee responsible for conducting the auction the authority to *transfer the personal property to the highest responsible bidder upon completion of the auction and after payment has been received* by the district." (Italics added.)[1]

[1] Reprinted versions of the statute may have a footnote in the text of the statute itself noting that there was a typo in the enrolled bill, spelling "responsible" as "reponsible." (See 28A West's Ann. Ed. Code (2003 ed.) § 81450, p. 452.) The Legislature obviously meant "responsible," and that's the way we quote it here.

In 2002, and hurting for funds, the trustees of the Coast Community College District decided to sell one of the district's main assets -- television station KOCE. The Coast trustees rejected a $40 million cash bid, and accepted, instead, a bid for $8 million cash plus a promise to repay $17.5 million over 30 years interest free, with no payments at all in the first five years, plus another $2.5 million services in the form of carrying district educational programming.[2]

Why? The reason was that the $40 million bid came from a group of televangelists. Indeed, there is a smoking gun in the record in the form of a statement by one of the district's sales brokers to the effect that the district's trustees were bound and determined from the beginning to "filter out" any televangelists, whom the trustees foresaw would be making the highest bid.[3] Instead, KOCE was sold to the KOCE Foundation, a group of community and civic leaders who want to keep KOCE within the orbit of the public broadcasting system (PBS).[4]

That didn't stop the televangelists (plaintiff Word of God Fellowship, Inc., dba Daystar Television Network) from bringing this action seeking a writ of mandate ordering the board to set aside the sale as violative of Education Code section 81450. The trial court entered judgment denying the writ request on the ground that the "may" in the first sentence of section 81450 allowed the district's trustees *discretion* to accept a *credit* bid as well as a *cash* bid.

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[2] Here are the terms of the sale as ultimately approved by a board meeting held December 10, 2003:

"$100,000 in cash payable upon execution of definitive purchase and sale agreement.

"$7,900,000 in cash payable at the closing.

"$17,500,000 in cash to be paid over 25 years commencing with the 6th year after the closing, to be secured by a no interest note and security agreement.

"$2,500,000 in services and programming to be provided over 7 years after the closing; and

"$4,000,000 in estimated avoided costs that would likely be incurred if the operations were sold to another bidder."

[3] At the deposition of a broker hired by the District to conduct the sale, Elliott Evers, in response to the question of whether he believed that the Coast board of trustees discriminated against the televangelists, replied: "I believe that the die was cast in that the certain Board members were determined to have a locally owned or at least someone who would keep a PBS affiliate in Orange County. . . . [¶] but Jerry Patterson [a board member] said, you know, well, let's not accept bids from anyone other than someone who will in writing commit to continue to be a PBS affiliate in Orange County. [¶] So, you know, there's always a desire to filter out the folks that we said were always going to be the highest and best bidder, the televangelist. . . ."

[4] It does seem safe to say that, as between the traditional PBS format or the televangelists, no matter who ultimately prevails in this case or who ultimately buys the station, there is still going to be a lot of on-air fund raising.

We must reverse because the trial court's reading of the statute is simply incorrect. It is true that the word "may" is normally both permissive and indicative of discretionary authority. (See *County of Orange v. Bezaire* (2004) 117 Cal.App.4th 121, 129; *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 433; *Decker v. U.D. Registry, Inc.* (2003) 105 Cal.App.4th 1382, 1389.)

However, there is also a rule against interpretations of statutes which render portions of those statutes surplus. (E.g., *Elsner v. Uveges* (2005) 34 Cal.4th 915, 931 ["We will avoid constructions that render parts of a statute surplusage."]; *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22 ["Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage."].)

Additionally, courts must strive for readings of statutes which are internally consistent rather than self-contradictory. (E.g., *Brown v. Guy* (1959) 167 Cal.App.2d 211, 214 ["It is a cardinal rule of statutory construction that parts of a statute must be construed together and harmonized as far as possible to avoid repugnancy . . . ."]; *Elsenheimer v. Elsenheimer* (2004) 124 Cal.App.4th 1532, 1539; *Cancun Homeowners Assn. v. City of San Juan Capistrano* (1989) 215 Cal.App.3d 1352, 1358.)

The problem with the trial court's interpretation is that it renders the words "for cash" entirely redundant. If, as the trial court surmised, the statute allows a district to (a) sell personal property for cash or (b) sell personal property for credit, then there was no need to insert the words "for cash" into the statute in the first place. All the Legislature needed to say was "may sell." Under the district's theory, the statute could just as easily have read, "The governing board of any community college district may sell any personal property belonging to the district if . . . ."

Further, the trial court's reading contravenes the words "after payment has been received" in section 81450. In context, the "payment . . . received" clause, given its close association with the *completion of the auction* and a particular district "employee" responsible for conducting the auction, implies that payment is to be received at or near the time of sale, rather than stretched out over what, in this case, is decades.

Finally, the trial court's reading ignores provisions in section 81450 which contemplate an "auction" with the sale going to the "highest bidder." That is, an ordinary reading of just the words of the statute would indicate that it contemplates *easy comparisons* between "auction" bids, not the sort of complex credit deals where one needs an accountant's table of present values and discount rates to figure out who really is the "highest" responsible bidder.[5]

We recognize, of course, that in the word "may," section 81450 affords districts a fair degree of discretion as to *whether* to sell an asset of a district, a discretion reinforced in the phrase, "The board shall sell the property to the highest responsible bidder, or shall reject all bids." That is, a district doesn't have to sell *at all*. But if it does sell, it "shall sell" to the "highest responsible bidder" -- no discretion -- and "for cash." The true import of the statute is, "may sell for cash or may not sell at all."

There remain several arguments advanced by the Coast trustees to uphold the judgment.

The trustees argue that KOCE Foundation's bid really was a "cash bid" after all, because the word "cash" has many meanings. Whatever it means, though, cash doesn't mean credit. If it is tied up in a fixed state -- and a loan is only a set of legal relationships in a fixed state -- it is not "cash." (See *In re Chamberlain's Estate* (1941) 46 Cal.App.2d 16, 20.) A promise to pay in the future is no better than a post-dated check. (See *Highway Trailer of California, Inc. v. Frankel* (1967) 250 Cal.App.2d 733, 735.)

The weakest variation of this argument is that the Foundation's 30-year note is "cash over time." No, that's sophistry. As we have pointed out above, it is incompatible with the statutory language that the district "*transfer the personal property* to the highest responsible bidder upon completion of the auction and *after payment has*

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[5] In context, the word "responsible" as in "responsible bidder" must be taken to mean a bidder who is serious, and who has the financial resources to actually make good on his or her or its bid. The Legislature obviously did not want sham bids by parties not able to make good on them disrupting the section 81450 auction process. On that score there is no question the televangelists were "responsible" bidders. No one has argued that the televangelists are any *less likely* to actually come up with the money they bid than the Foundation is on the money it bid.

been received by the district." The statute equates "payment" at the completion of the auction with cash.

A somewhat stronger argument is that the operative choice was not between a $40 million cash bid from the televangelists or the $8 million cash bid plus a promise to pay $20 million over 30 years (interest free, and no payments at all for the first five years) from KOCE Foundation. Rather, according to the district, the operative choice was between the televangelists' *first bid* of $25.1 million bid and the Foundation's ultimately accepted bid of $8 million in cash plus a promise to repay $20 million over 30 years (interest free, and no payments at all for the first five years). The argument is based on the notion that the $40 million bid was made too late, i.e., after the bidding was closed.

The argument fails for two reasons, the most important of which is that, under the plain text of section 81450, even the televangelists' (unquestionably timely) first bid of $25.1 million in cash beats $8 million in cash first bid by the Foundation. (And the trustees make no argument that the present value of $8 million now, plus $20 million over 30 years (interest free, etc.) is higher than $25.1 million cash now.)

The second reason is that the district is estopped to claim that the $40 million bid from the televangelists was not operative. Here are the undisputed facts regarding the *timing* of the respective competing bids:

On the last day of the bidding, the KOCE Foundation presented a bid for $8 million cash and $*24* million over time. That $*24* million -- not the $20 million ultimately accepted -- is significant.

The televangelists had already submitted a bid for $25.1 million cash. The *very next day* the televangelists submitted a bid for $40 million cash. The trustees rejected that bid as inoperative because it was made too late and elected to treat the televangelist's bid as only for $25.1 million. Thus, as between KOCE Foundation's $8 million in cash now plus $24 million over time, and the televangelist's $25.1 million in cash now, the trustees chose the KOCE bid.

Now, it is strange, but understandable, that people who are responsible for running a community college district to go out of their way to treat the chance to put about an extra $15 million in the pocket of the district as non-existent: Understandable because a deadline is a deadline, the process had to stop sometime, and, most of all, it *wouldn't be fair to other bidders* to let one bidder make a post-deadline bid. All well and good.

But, and here is the crux of the matter -- *two months after the deadline the trustees allowed the KOCE foundation to materially modify the terms of its bid -- downward by $4 million in credit.* The trustees determined that because KOCE Foundation was going to keep KOCE in the PBS system,[6] and because $4 million in liabilities to the district was avoidable by doing so -- that is, it would have cost the district $4 million to sell to a bidder who would have taken the station out of the PBS system -- $4 million could be shaved from the Foundation's obligation to otherwise pay $24 million. Thus the terms ultimately accepted were for loans of $17.5 million, and $2.5 in future services (the basis for the $20 million) with another $4 million credited to the Foundation for the money saved just for promising to keep the station a PBS station.

The $4 million reduction in the promise to pay (and that over time, with no payments due for five years) was clearly a material change in the terms of the deal from the ultimately successful bidder, KOCE foundation. $4 million is still a lot of money in some circles. To assert that a bid from televangelists made the very next day after bidding was closed for an extra $15 million in cash while letting a favored bidder off the hook for $4 million two months after the bidding was closed can only be described as the rankest sort of favoritism.

The district's absolute best argument in favor of the propriety of the sale concerns possible liabilities that the district *might* incur if KOCE slipped out of the PBS

[6] Technically the "PBS system" is a redundancy, but less awkward than saying "the PBS."

orbit.[7] The district contends that the sale of KOCE to a non-PBS entity would trigger substantial liabilities totaling about $30 million.

No. Here the district is estopped by its own post-bidding conduct toward the KOCE Foundation. The district credited the Foundation for having saved it *$4 million* -- not $30 million -- by promising to keep the station in the PBS, so that is what must be considered to be the most likely substantial liability.

Moreover, on this record, $4 million is the only figure supported by substantial evidence for the probable liabilities that would be incurred if KOCE were taken out of the PBS system.[8] The televangelists' $25.1 million cash (even minus a putative $4 million in contingent liabilities) is still a lot more than $8 million cash.[9]

The trial court should have granted the sought-after writ invalidating the sale of KOCE to the KOCE Foundation. We therefore reverse the judgment, with directions to the effect that the writ be granted. In essence, this means a new sale -- or, if the district's trustees find that the prospect of televangelists eventually acquiring KOCE to be too distasteful, no sale at all. As we have shown they certainly have at least that discretion under the statute. But if they do sell, it must be a fair sale to the highest cash bidder, with no favoritism as regards bidding deadlines.

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[7] If they ever materialized, these liabilities would be brought to us in part from the Corporation for Public Broadcasting, the US Department of Commerce, and viewers who contributed to the station over the years. Specifically, the Department of Commerce has made grants to KOCE of $631,000, CPB has made grants and loans of $22 million over the last 25 years, there are donor gifts of up $7.6 Million.

[8] Of the $30 million, we may discount immediately donor gifts of $7.6 million. It is first year contract law that charitable donations, once given, cannot be reclaimed. (See *Day v. Greene* (1963) 59 Cal.2d 404, 411 [requiring fraud, violation of confidential relationship or breach of trust in order to get charitable donations back].) That leaves about $22 million, almost all which represents grants from the CPB. But there is no authority in this record that CPB has any viable repayment claim at all against KOCE, or that, if it did, the present value of that claim would total $22 million -- one must remember that a good chunk of that $22 million went to help pay for programming that has long since aired. The best one can make is the theory that CPB could reclaim its *capital contributions* to KOCE, but those capital contributions amount to only a few million dollars. Thus, even if we subtract that as a dollar-for-dollar liability, the televangelists still outbid KOCE Foundation by about $20 million in terms of *net cash*.

[9] The televangelists also have a point that they were sandbagged on the whole PBS liability angle. They point out that they might have given the district an indemnity agreement, which would be a whole lot more profitable to the district than lowering the price of the accepted bid by $ 4 million.

Appellants shall recover their costs on appeal.

SILLS, P.J.

WE CONCUR:

ARONSON, J.

IKOLA, J.