Case No. S235735

SUPREME COURT OF CALIFORNIA

RAND RESOURCES, LLC, et al

Plaintiffs and Appellants,

v.

LEONARD BLOOM, et al

Defendants and Respondents.

REPLY TO ANSWER TO PETITION FOR REVIEW

On Appeal From the California Court of Appeal for the State of California, Second Appellate District, Division One
Appellate Case No. B264493

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I. INTRODUCTION

The arguments made in the Answer filed by Plaintiffs and Appellants, Rand Resources, LLC and Carson El Camino, LLC ("Appellants") are inconsistent with the record on appeal and the holding of the *Tuchscher* decision. Specifically, the thrust of Appellants' argument in their Answer is that there is no public interest as between two rival entities acting as an agent in dealing with the NFL. In making this argument, Appellants have artificially narrowed the issue in this case in a manner that is not supported by the record, as explained below.

Moreover, Appellants' arguments in their Answer miss the mark in trying to reconcile the published opinion in this case with the published opinion in *Tuchscher*. While Appellants' argument in their Answer is that there is no public interest as between two rival entities acting as an agent in dealing with the NFL, Appellants concede later in their Answer that "neither any party nor the Court of Appeal drew any distinction between the overall importance of the project and the importance of the particular issues under discussion" in *Tuchscher.*[1]

Simply stated, the artificially narrowed distinction made by Appellants in their Answer is something they have created, rather than applied directly from the holding of the Court of Appeal in *Tuchscher.* Drilling down into the substance of Appellants' arguments shows that Appellants cannot provide any meaningful way to truly reconcile the

[1] Answer, at p. 10.

holding in the published opinion in this case with the holding in the published opinion in *Tuchscher* that is actually supported by the holding of each opinion.

The published opinion in this case also raises a matter of public interest in terms of the application of California's Anti-SLAPP statute to an Exclusive Agency Agreement ("EAA") to negotiate the designation and development of major projects of tremendous public interest such as a National Football League ("NFL") stadium. Public officials should be protected by the Anti-SLAPP statute for all communications related to such major projects of tremendous public interest. Otherwise, public officials cannot adequately do their jobs out of fear of liability. The artificially narrowed construction of the Anti-SLAPP statute urged by Appellants will only hinder public consideration of major projects of tremendous public interest because of liability concerns.

This Court's recent opinion in *Baral v. Schnitt*, (2016) __ Cal.4th __ Case No. S225090 (decided August 1, 2016) also underscores how this Court has construed the Anti-SLAPP statute broadly to causes of action alleging both protected communications and those communications not protected by the Anti-SLAPP statute. The artificially narrowed construction of the Anti-SLAPP statute urged by Appellants in their Answer is completely at odds with this Court's recent holding in *Baral v. Schnitt, supra.*. This Court should grant review accordingly.

II. ARGUMENT

A. The Published Opinion In This Case Conflicts With Well-Settled Case Law Establishing That The Negotiation Of Large-Scale Developments Of Widespread Interest Are A "Public Issue" Or "An Issue Of Public Interest" Subject To California's Anti-SLAPP Statute

Appellants' attempts to characterize the EAA as an agreement simply for the selection of the City's agent for dealing with the NFL, and therefore, not a matter of public interest, fails to accurately depict the EAA and the record on appeal. (Answer, at p. 1.) The EAA between the City and Rand Resources stated that the EAA was to appoint Rand Resources as the City's agent for the purpose of "(a) ***coordinating and negotiating with the NFL for the designation and development of an NFL football stadium ("NFL Stadium") in the City***" and "(b) facilitating the execution of appropriate agreements between the NFL and the ***City documenting the designation and development of [Rand Resources'] Property as an NFL football stadium***". (AA:I:2:29-30.) The development of a NFL Stadium is clearly a matter of public interest.

Similarly, *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port District*, involved an Exclusive Negotiating Agreement ("ENA") "under which the City and TDE would take preliminary steps and negotiate towards a development agreement for the creation of a mixed use real estate project (the project or Crystal Bay) on certain bayfront property within the City." (*Tuchscher Dev. Enters. Inc. v. S.D. Unified Port District* (2003) 106 Cal.App.4th 1219, 1227.) The court in *Tuchscher* correctly

found that a "commercial and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest." (*Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist., supra,* 106 Cal. App.4th at p. 1234; *see also Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 15 [discount mall with potential environmental effects such as increased traffic and impacts on natural drainage are clearly a matter of public interest.])

Here, the EAA involved the potential development of a specific piece of property, one which formerly operated as a landfill and for which the environmental remediation would be daunting. (AA:I:5:79-80.) This EAA did not only involve the selection of the City's agent in discussions with the NFL. Appellants' reliance on *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* is misplaced. In *Commonwealth*, a telemarketing firm's Anti-SLAPP motion was denied because a telemarketing pitch on behalf of a firm that sells information was determined not to be a public issue or an issue of public interest. (*Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003)110 Cal.App.4th 26.) In contrast, here, Rand Resources was the alleged exclusive agent of the City for negotiations with the NFL regarding an NFL stadium ***and*** Rand Resources was specifically proposing a property which it partially owned as the site of the NFL stadium. The public has a clear interest in the location of an NFL stadium, and the potential development thereof.

Rand Resources mischaracterizes the EAA, downplaying its public import, in an attempt to avoid the reach of the Anti-SLAPP statute. This approach does not comport with common sense, and it does not conform to published case law.

B. The Published Opinion In This Case Conflicts With Case Law Establishing The Statements Made By Public Officials In Connection With The EAA Are "Protected Speech" Within The Meaning Of The Anti-SLAPP Statute

In its First Amended Complaint ("FAC"), Rand Resources relies on communications between the City, then-Mayor Jim Dear, and the Bloom Petitioners to support its fraud-based causes of action. As described in detail in the Petition, these alleged communications were "made in connection with an issue under consideration or review by a legislative, executive, or judicial body", specifically the City Council's consideration of the EAA and the potential extension thereof. These statements were nearly identical in procedure and content to those recited in the *Tuchscher* decision, and as such, are protected speech.

In both cases, the communications that were the target of a special motion to strike were alleged to have been private, behind closed doors, and involved both oral and written communications (in *Tuchscher* the communications alleged were "closed door meetings, telephone calls and emails'" in the instant action the FAC alleged communications that consisted of "clandestine meetings," "talk(s) by the phone or through text messages," and "confidential emails.") (AA:I:2:31, 35-36, 37.) Moreover,

the "gist" of the communications in both cases were designed to "induc[e] the City to cease negotiations" to end the exclusive negotiation agreement (in *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port District, supra*, 106 Cal.App.4th at p. 1228) just as they were designed here "to cause[] the City to breach its prior representations and agreement to extend the EAA." (AA:I:2:33.)

The Second Appellate District found that any speech was incidental to the asserted breach of contract, and that it was not protected. (Opinion at 13.) As previously discussed, this mischaracterizes the alleged speech and activity underlying each cause of action. However, even assuming, *arguendo*, the causes of action arose from both protected and unprotected activity, at a minimum Petitioners' Anti-SLAPP motion to strike should serve to strike the allegations in the cause of action that arise from protected activity. (*Baral v. Schnitt*, (2016) __ Cal.4th __ Case No. S225090 (decided August 1, 2016) [Holding that an anti-SLAPP motion to strike may be used to strike allegations of protected activity even without defeating a pleaded cause of action or primary right].)

III. CONCLUSION

For the reasons set forth in the Petition for Review and this Reply, Petitioners respectfully request that this Court grant review.

Respectfully Submitted,

DATED: August 4, 2016

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By: _____
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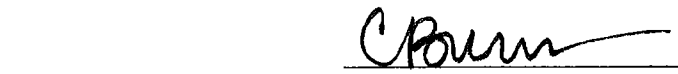
CERTIFICATE OF WORD COUNT

I certify that pursuant to Rule 8.504 (d)(1) of the California Rules of Court, the attached Reply to Answer to Petition for Review by California Supreme Court was produced on a computer and contains 1,376 words as counted by the Microsoft Word 2010 word-processing program used to generate the Reply to Answer to Petition for Review by California Supreme Court.



Christina M. Burrows

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

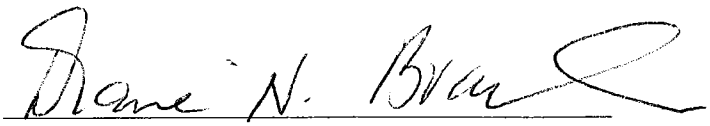
On **August 5, 2016**, I served true copies of the following document(s) described as **REPLY TO ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 5, 2016**, at El Segundo, California.



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