SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

BS171262
CHIQUITA CANYON LLC VS COUNTY OF LOS ANGELES ET AL

November 13, 2019
8:40 AM

Judge: Honorable Daniel S. Murphy
Judicial Assistant: Nancy DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: HEARING ON ISSUE OF EQUITABLE ESTOPPEL RULING ON SUBMITTED MATTER

The court having taken the above matter under submission on November 12, 2019, now makes its ruling as follows:

Petitioner Chiquita Canyon, LLC ("Petitioner") moves for an order determining that Respondents County of Los Angeles and Los Angeles County Board of Supervisors ("Respondents" or "County") are equitably estopped from asserting in this writ action, based on Lynch v. California Coastal Com. (2017) 3 Cal.5th 470, that Petitioner forfeited its right to challenge 13 operational conditions in Petitioner's conditional use permit for the Chiquita Canyon Landfill.

County's Evidentiary Objections

(1) Overruled
(2) Overruled
(3) Overruled
(4) Overruled
(5) Overruled
(6) Overruled

Petitioner's Evidentiary Objections

(1) Overruled. However, the court will consider any inconsistencies in Claghorn's deposition testimony and declaration when giving weight to the evidence.
(2) Overruled
(3) Overruled

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Procedural History

On October 20, 2017, Petitioner filed a verified petition for writ of administrative mandate and complaint against County challenging the legality of 29 conditions of the conditional use permit ("CUP") approved by County on July 25, 2017 for the Chiquita Canyon Landfill ("Landfill"). Pursuant to a stipulation, Petitioner filed a first amended petition for writ of mandate and complaint on March 23, 2018.

On July 17, 2018, the court (Judge Mary Strobel) granted County's motion to strike and sustained its demurrer, with leave to amend, dismissing Petitioner's challenge to 13 operational conditions of the CUP on the ground that Petitioner forfeited its right to challenge those conditions when it accepted the CUP and continued to operate the Landfill. (See County Exy. D; Lynch v. California Coastal Com. (2017) 3 Cal.5th 470.)

On August 16, 2018, Petitioner filed a second amended petition for writ of mandate and complaint. Petitioner subsequently filed a petition for writ of mandate in the Court of Appeal.

On February 25, 2019, the Court of Appeal granted the petition and issued a writ directing this court to overrule the demurrer and deny the motion to strike. The Court of Appeal held that Petitioner alleged sufficient facts to support a claim for equitable estoppel against County's forfeiture defense. The Court of Appeal reasoned as follows:

While courts should entertain estoppel theories advanced against local governments only in limited circumstances, Chiquita has pled facts here that, if taken as true (which we do at this stage of the proceedings), would justify application of estoppel principles. As Chiquita tells it, the County directed Chiquita to reserve its rights in a particular manner and then contested the reservation's effectiveness, which deprived Chiquita of the opportunity to make the hard choice of whether to comply with the 2017 CUP permit as issued or cease operating the Landfill while its challenge to certain conditions was heard in court. (Pet. Exh. A.)

On May 28, 2019, after the remittitur was filed, the court entered a new order overruling County's demurrer and denying its motion to strike. The court set a hearing on the equitable estoppel issue for November 12, 2019, and set a briefing schedule.

On August 9, 2019, Petitioner filed its third amended petition and complaint ("petition" or "3AC"). County answered on October 21, 2019, asserting an affirmative defense for forfeiture

pursuant to Lynch v. California Coastal Com. (2017) 3 Cal.5th 470, Pfeiffer v. City of La Mesa (1977) 69 Cal.App.3d 74, and County of Imperial v. McDougal (1977) 19 Cal.3d 505.

On October 11, 2019, Petitioner filed its opening brief for the equitable estoppel hearing. The court has received County's opposition and Petitioner's reply.

Factual Background

Landfill Regulatory History 1

"The Landfill, located in Castaic, provides waste management, recycling, and disposal services. It is the second largest landfill in Los Angeles County and provides nearly one-quarter of the County's solid waste management needs. The Landfill was approved for waste disposal in 1967 and has been in use as a landfill since 1972. Beginning in 1977, the County issued conditional use permits (CUPs) to companies, ultimately including Chiquita, to operate the Landfill. CUPs for the Landfill reissued in 1982 and 1997." (Pet. Exh. A; see also County Exh. H, Claghorn Decl. ¶ 11.)

"In 2004, [Petitioner's predecessor] applied for a new CUP well in advance of the point at which the 1997 CUP was to expire; the application sought authorization to continue Landfill operations, which would entail some expansion of waste disposal on contiguous property at the current site. Some twelve years later, the permit application had not yet been resolved and the Landfill reached the maximum tonnage permitted under the terms of the 1997 CUP. Chiquita requested, and the County granted, a 'clean hands waiver' to permit Chiquita to operate the Landfill uninterrupted through [July 31, 2017], which would allow for resolution of the ongoing permit approval process." (Pet. Exh. A; Claghorn Decl. ¶¶ 12-15.)

"During the administrative permit review process before the County's Planning Commission, Chiquita objected to various proposed CUP conditions and fees. When the Planning Commission recommended approval of the CUP notwithstanding Chiquita's objections, Chiquita appealed to the County Board of Supervisors, reprising its objections to conditions and fees. In July 2017, the Board approved, over Chiquita's objections, a new CUP that imposed 139 conditions, including approximately $300,000,000 in fees and other costs (the 2017 CUP)." (Pet. Exh. A; Claghorn Decl. ¶¶ 16-17.)

Acceptance of the CUP Conditions and Related Communications

Condition 5 of the CUP required Petitioner to file with Regional Planning an "affidavit stating that [Petitioner is] aware of and agree[s] to accept all of the conditions of [the CUP], and that the conditions of [the CUP] have been recorded[.]" (Depo. Exh. 1 at COLA 0032.) On July 28, 2017, Petitioner recorded the conditions of the permit with a standard form affidavit of acceptance, which recites that Petitioner agreed to comply with all conditions of the permit. Petitioner added language to the form stating that Petitioner's "filing of this affidavit does not constitute a waiver or forfeiture of [its] legal rights to challenge any of the Conditions of Approval in a court of law" and that such rights were "expressly reserved." (Depo. Exh. 1 at COLA 0003.)

On August 1, 2017, Lisa Patricio, Petitioner's outside counsel, sent a copy of the recorded affidavit of acceptance to Richard Claghorn, the Principal Regional Planner responsible for permit-related communications with Petitioner, with a cover email explaining that Petitioner "added language to the standard County form affidavit to be clear that Chiquita Canyon, LLC is not waiving its legal rights to challenge any of the conditions of approval in a court of law and that all such rights are expressly reserved." (Depo. Exh. 4; Pet. Exh. D at 15:15-16:5, 19:6-22.) Claghorn responded by email that same day stating that "[t]he language that was added to the affidavit invalidates it, and it will need to be re-recorded with the affidavit form that we sent you, without the alterations." (Depo. Exh. 6.)

On August 2, 2017, representatives from Petitioner and the County discussed Petitioner's affidavit of acceptance on a phone call. Present on the call were Sam Dea (Supervising Regional Planner), Claghorn (Principal Regional Planner) and Julia Weissman (County Counsel), for the County, and Steve Cassulo (Landfill manager), Brenda Eells (Petitioner consultant), and Patricio (outside counsel) for Petitioner. (Pet. Exh. F at 29:13-15.)

During the call, Patricio explained Petitioner's need to reserve the right to challenge conditions of the permit. (Pet. Exh. C [Patricio] ¶ 11.) Weissman, the County Counsel, stated her opinion that Petitioner's reservation of rights would only be effective as to fee conditions under the Mitigation Fee Act. (Pet. Exh. F at 30:13-19; Pet. Exh. C ¶ 11; County Exh. J ¶ 11.) However, according to Patricio, Dea "basically interrupted" Weissman ("[s]he got like two sentences out") and directed Petitioner to "remove the language from the recorded document and to separately reserve [its] rights in a separate document." (Pet. Exh. F at 33:6-9, 30:3-5.)

Eells, also present on the August 2 call, described that the "take-away" of the call was that "Chiquita was being directed . . . to file a clean affidavit and separately reserve their rights." 2 (Pet. Exh. G at 36:1-3; see ibid. at 35:18-24.) Cassulo testified similarly, that "my take-away was that we needed to file a clean affidavit, and then we needed to reserve our rights at another time."

(Pet. Exh. H at 37:2-4.) Petitioner's representatives on the call understood Dea's direction to separately reserve the right to challenge the permit as an implicit representation that the reservation would be effective. (Pet. Exh. C ¶¶ 11, 16; Pet. Exh. B ¶¶ 7-10.) At the close of the August 2 call, Patricio said that she would take this direction back to Petitioner's team, and they would follow-up with their decision. (Pet. Exh. C ¶ 16.)

Regional Planning's Dea and Claghorn partly corroborated Patricio's account of the August 2 call. Claghorn acknowledged that Dea told Petitioner to place its reservation of rights "in a separate document . . . outside of the affidavit." (Pet. Exh. D at 52:7-13.) Dea admitted he told Petitioner it could not include a reservation of rights on the affidavit, but it "could put it on a separate document . . . ." (Pet. Exh. E at 58:1-3.) Both Dea and Claghorn testified that, while they understood that Patricio would take their direction back to her team for a decision, they were expecting that Petitioner would file an unaltered affidavit of acceptance with a separate reservation of rights letter. (Pet. Exh. D [Claghorn] at 52:20-53:1, 60:8-9 ["I was expecting them to submit a letter with . . . their objections"], 57:13-58:2; Pet. Exh. E [Dea] at 80:14-18 ["We were expecting . . . some correspondence from Chiquita . . . asserting the same language that was put in the affidavit."].)

The County did not state, during the August 2 call or any other time prior to its demurrer, that Petitioner was being put to a choice of whether to cease operations in order to challenge the permit conditions. (Pet. Exh. B ¶¶ 9-10; Pet. Exh. C ¶ 16; Pet. Exh. I; Pet. Exh. E at 78-82; Pet. Exh. D at 56, 67.) The County did not want the landfill to shut down. (Pet. Exh. L at 71; Pet. Exh. E at 42-43.) Further, the County faced public outcry from community activist groups if it were discovered that the landfill was technically operating without an "effective" permit. (Pet. Exh. E at 42, 96; Pet. Exh. M at 30.)

That same day, on August 2, 2017, Richard Bruckner, the Director of the Department of Regional Planning, spoke with David Waite, counsel for Petitioner. Bruckner confirmed the County's position that the placement of additional language invalidated the affidavit of acceptance. (County Exh. M at 8.) At deposition, Bruckner claimed that he also told Waite, "You accept these conditions … or don't. You don't pick and choose." (Id. Exh. R at 83-84.) In his declaration, Bruckner states that told Waite that Petitioner cannot challenge the CUP conditions. Bruckner also claims that he never authorized Dea, or anyone else in the Planning Department, to direct Petitioner's representatives to assert the reservation of rights in a separate document. (Id. Exh. S ¶¶ 8-9.)

Also on August 2, Chris Perry, the planning deputy for Supervisor Kathryn Barger of the Fifth

Supervisorial District, in which Petitioner is located, separately contacted Petitioner's representatives John Musella and Coby King and stated that if Petitioner did not file an unaltered affidavit of acceptance by the next day, August 3, at noon, the Board of Supervisors would begin permit revocation proceedings. (Depo. Exh. 20, 52; Pet. Exh. Q [King]; Pet. Exh. P [Musella].)

Petitioner decided to act on the County's directive to file the standard affidavit of acceptance and separately reserve its rights to challenge CUP conditions. Petitioner's representatives contacted Dea and Perry on the evening of August 2 and told them that Petitioner would record an unaltered affidavit of acceptance. (Pet. Exh. N; Depo. Exh. 53.) On August 3, Petitioner executed the amended affidavit of acceptance. (County Exh. 2.) Patricio recorded the signed document, keeping Regional Planning and Perry informed of Petitioner's progress. (Pet. Exh. O; Pet. Exh. C ¶ 13.)

The following day, August 4, 2017, Patricio emailed a copy of the amended affidavit of acceptance to Claghorn and Dea with a cover email memorializing Petitioner's understanding with the County: "[a]s you directed, we have recorded an amended affidavit without the reservation of rights language included on the recorded document itself and Chiquita Canyon, LLC will document its protest and reservation of rights in a separate letter[.]" (Depo. Exh. 8.) On August 23, Petitioner's outside counsel, David Waite, sent Claghorn the separate, two-page letter confirming Petitioner's ongoing reservation of rights, copying Dea. (Depo. Exh. 9.) Both Dea and Claghorn read the email and letter, but neither felt any need to respond to either communication. (Pet. Exh. D at 52:20-53:1, 60:8-9; Pet. Exh. E at 80:14-18.)

Neither the August 4 email nor the August 23 letter were sent by Petitioner to Weissman or Jill Jones, the County attorneys advising County on the Landfill project, or to anyone else at the County Counsel's office. (County Exh. O at 28; Exh. P at 36.) Dea and Claghorn, of the Planning Department, also did not forward the August 4 email or August 23 letter to County Counsel. (See Pet. Exh. E at 82-83; County Exh. K at 82-84.) There is also no evidence that the County Counsel's office followed up with the Planning Department or with Petitioner regarding Patricio's prior statement that Petitioner intended to reserve the right to challenge conditions of the permit. (See Pet. Exh. C ¶ 11.)

Subsequently, the County determined that it would use July 28, 2017 as the effective date of the permit because it was the date that Petitioner recorded its original affidavit of acceptance. (Depo. Exh. 64 at p. 1-15; Pet. Exh. R; Depo. Ex. 11; Pet. Exh. D at 80:5-6.) After August 2017, Petitioner regularly discussed permit compliance issues with Claghorn, the "point person" for Petitioner regarding permit compliance. (See Pet. Ex. D at 19:6-22; 72:3-12.) County never told

Petitioner that it considered the separate reservation of rights to be ineffective before its December 2017 demurrer to Petitioner's complaint. (Pet. Exh. I [Waite] at 32:12-25.)

The Landfill serves about one quarter of County's waste management needs. Petitioner did not consider closure of the Landfill a viable option. As confirmed by John Little, executive vice president of engineering and disposal, "to turn away the thousands of tons of waste [Petitioner] receives on a daily basis would risk health and environmental harms" and "is not a gamble that any responsible company could take." (County Exh. U at 13-14; County Exh. 61.)

Analysis

"The requisite elements for equitable estoppel ... are: (1) the party to be estopped was apprised of the facts, (2) the party to be estopped intended by conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended, (3) the party asserting estoppel was ignorant of the facts, and (4) the party asserting estoppel suffered injury in reliance on the conduct. '[T]he doctrine of equitable estoppel may be applied against the government where justice and right require it.'" (Medina v. Board of Retirement (2003) 112 Cal.App.4th 864, 868; see also City of Pleasanton v. Board of Administration (2012) 211 Cal.App.4th 522, 542-543.)

"Correlative to this general rule, however, is the well-established proposition that an estoppel will not be applied against the government if to do so would effectively nullify 'a strong rule of policy, adopted for the benefit of the public....'" (Medina, supra at 868-869.) "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 496-497.)

County was Apprised of the Facts

During the August 2, 2017 call, Dea directed Petitioner to "remove the language from the recorded [affidavit of acceptance] and to separately reserve [its] rights in a separate document." (Pet. Exh. F at 33:6-9, 30:3-5.) Dea and Claghorn were uncertain whether the County would ultimately accept Petitioner's reservation of rights, but they did not disclose that uncertainty to Petitioner. (Pet. Exh. D [Claghorn] at 73, 78; Exh. E [Dea] at 78, 95.) As admitted by Weismann, County Counsel believed that Petitioner "could not challenge operating conditions of the CUP,

but that the Mitigation Fee Act ... authorized it to reserve its right to challenge certain fee conditions." (Weismann Decl. ¶ 11.) However, as analyzed further below, that opinion was negated by Dea's statements on August 2 and County's subsequent failure to object to Petitioner's August 4 email and August 23 letter.

In meet and confer in November 2017, just a couple months after the August 2 call, County informed Petitioner's attorneys of County's legal position that Petitioner's challenge to the CUP operating conditions was barred by Lynch v. California Coastal Com. (2017) 3 Cal.5th 470. (Pavlovic Decl. ¶ 6.) County filed a demurrer on that basis in December 2017. (Ibid.)

Based on this evidence, the court finds that County was apprised of the relevant facts, i.e. that it would deem ineffective a reservation of rights undertaken in the manner in which Dea insisted in the August 2 call.

County Intended for Petitioner to Act Upon its Directions to File an Unaltered Affidavit of Acceptance with a Separate Reservation of Rights Letter

When evaluating County's intent for Petitioner to rely on its directions, the court may consider whether County had the requisite authority to undertake the conduct at issue. (See Fredrichsen v. City of Lakewood (1971) 6 Cal.3d 353, 358-359.) Here, Lynch specifically contemplates that "in some cases the parties may be able to reach an agreement allowing construction to proceed while a challenge to permit conditions is resolved in court." (Lynch, supra, 3 Cal.5th at 481.) Lynch supports that County had authority to direct Petitioner to file a separate reservation of rights letter and to continue to operate the Landfill while it challenged operating conditions.

Regional Planning, and specifically Dea and Claghorn, had the power to direct Petitioner's actions with respect to implementation of the CUP conditions. (See Pet. Exh. E at 28; Pet. Exh. D at 19; Pet. Exh. L at 41, 86.) As stated by Director Bruckner, Dea and Claghorn had authority to speak with Petitioner on behalf of Regional Planning with respect to Petitioner's draft permit and the "mechanics" of filing the affidavit of acceptance. (Pet. Exh. L at 41, 86.) Based on prior experience, Petitioner knew that Regional Planning expected it to take direction from Dea and Claghorn. (Pet. Exh. L at 88; Pet. Exh. J at 34.) Significantly, both Dea and Claghorn testified that they were expecting that Petitioner would file an unaltered affidavit of acceptance with a separate reservation of rights letter, as Dea instructed. (Pet. Exh. D at 52:20-53:1, 60:8-9, 57:13-58:2; Pet. Exh. E at 80:14-18.)

The circumstances also support that County intended for Petitioner to act on its directions. The

County did not want the landfill to shut down. (Pet. Exh. L at 71; Pet. Exh. E at 42-43.) Further, the County faced public outcry from community activist groups if it were discovered that the landfill was technically operating without an "effective" permit. (Pet. Exh. E at 42, 96; Pet. Exh. M at 30.) County's primary concern was obtaining an acceptable affidavit of acceptance. (Pet. Exh. E at 79.)

In his declaration, Director Bruckner claims that he never authorized Dea, or anyone else in the Planning Department, to direct Petitioner's representatives to assert the reservation of rights in a separate document. (County Exh. S ¶¶ 8-9.) This statement is somewhat inconsistent with Bruckner's deposition testimony, in which he agreed that Dea had authority to speak with Petitioner on behalf of Regional Planning with respect to permit issues. (Pet. Exh. L at 41, 86.) Moreover, even if Bruckner did not expressly authorize Dea to make that statement, Dea was authorized to act on behalf of the County during the August 2 call and subsequent communications with Petitioner. There is no evidence Bruckner instructed Dea not to give the directions at issue.

County argues that Dea and Claghorn "are planners, who are not expected to articulate legal reasons behind the County's requirement that an affidavit of acceptance be recorded." (Oppo. 9.) County argues that it is implausible that Dea, "a mid-ranking County planner, disregarded representation of the County attorney on the Conference Call ...[and] singlehandedly waived the County's forfeiture defense." (Oppo. 8.) Dea had significant authority in the Planning Department, and particularly with respect to the Landfill CUP, as discussed above. Moreover, although she was present for the August 2 call, attorney Weissman did not override or contradict Dea's directions. Dea had the "last word." (See Pet. Exh. B ¶¶ 8-9; Exh. C ¶ 11; Pet. Exh. E at 57; Pet. Exh. F at 33; County Exh. J ¶¶ 12-13.) As Weismann admitted, the County Planning Department is like any client and may not always defer to advice or statements of legal counsel. (Pet. Exh. K at 42.)

Based on this evidence, the court finds that County intended for Petitioner to act upon its directions to file an unaltered affidavit of acceptance with a separate reservation of rights letter, including with respect to CUP operating conditions.

Petitioner was Unaware that County would Deem its Reservation of Rights Ineffective

As discussed, Dea instructed Petitioner to reserve its legal rights in a separate document, even after Weissman had stated her opinion that a reservation of rights would only be effective as to fee conditions. In the August 4 email and August 23 letter, Petitioner reserved its right to

challenge "any" of the CUP conditions. (Depo. Exh. 8, 9.) Both Dea and Claghorn read the email and letter, but neither felt any need to respond to either communication. (Pet. Exh. D at 52-53, 60; Pet. Exh. E at 80.) Thus, Petitioner's direct interactions with County would lead it to believe that County deemed the reservation of rights effective.

The circumstances also support that reasonable belief. Halting Landfill operations could have been detrimental not only to Petitioner's business, but to the County as well. (County Exh. U at 13-14; County Exh. 61.) County had an interest in allowing Petitioner to continue operations while it challenged CUP conditions in court. County's decision to rely on the original July 28, 2017 affidavit (containing a reservation of rights) as the effective date of the CUP further underscored that Regional Planning was satisfied with the reservation of rights. (Depo. Exh. 64 at p. 1-15; Pet. Exh. R; Depo. Ex. 11; Pet. Exh. D at 80:5-6.) After August 2017, Petitioner regularly discussed permit compliance issues with Claghorn, the "point person" for Petitioner regarding permit compliance. (See Pet. Ex. D at 19:6-22; 72:3-12.) County never told Petitioner that it considered the separate reservation of rights to be ineffective before its December 2017 demurrer to Petitioner's complaint. (Pet. Exh. I [Waite] at 32:12-25.) Petitioner did not raise equitable estoppel in the original petition. (County Exh. A.) All of this evidence supports that Petitioner was unaware that County would deem its reservation of rights ineffective, and that Petitioner did not have "convenient or ready means" to learn of County's true position. (See Mansell, supra, 3 Cal.3d at 492.)

In opposition, County accuses Petitioner of "trickery" and, specifically, sending the August 4 email and August 23 letter only to non-lawyers Dea and Claghorn. County contends that Petitioner "manufactured" the estoppel claim. (Oppo. 10-11.) County contends that Petitioner was represented by "seasoned land use attorneys" and should have verified with County that Dea's statements represented the official position of the Department. (Oppo. 11-12.) The court is not persuaded by these arguments. As discussed below with respect to the unclean hands defense, County does not show that Petitioner was required by Rules of Professional Conduct to send the August 4 email and August 23 letter to County's attorneys. Dea and Claghorn were point persons with regard to CUP issues, and regularly corresponded directly with Petitioner's attorney Patricio. Although not lawyers, they were capable of understanding the legal significance of the August 4 email and August 23 letter, but nonetheless declined to forward those documents to County counsel. Weismann, a County attorney, was present for the August 2 call. No one from County ever objected to the reservation of rights, until County's demurrer. County's "trickery" argument is contradicted by the evidence that Petitioner acted in compliance with County's own directions.

County seems to argue that Dea lacked authority to make the statements at issue. (Oppo. 12, citing Burchett v. City of Newport Beach (1995) 33 Cal.App.4th 1472, 1479.) As discussed above, the court concludes that Dea's statements during the August 2 call, as well as his subsequent actions with respect to the August 4 email and August 23 letter, were within the scope of his authority. County never took any steps until its demurrer to refute Dea's statements, even though the August 4 and August 23 correspondence were in the possession of the County.

Based on this evidence, the court finds that Petitioner was unaware, and reasonably so, that County would deem its reservation of rights ineffective.

Petitioner Reasonably Relied on County's Direction to its Detriment

The court assumes, without deciding, that the Lynch forfeiture rule applies to operating conditions of a government-permitted operation such as the Landfill. County now asserts that by continuing to operate the Landfill in reliance on the reservation of rights, Petitioner is barred from challenging all operating conditions in the CUP. Losing the ability to challenge CUP operating conditions is a substantial detriment.

County contends that Petitioner's reliance was not reasonable. (Oppo. 11-13.) The court has considered and rejected that argument in the section above.

County contends that it did not cause Petitioner to forfeit its rights because halting Landfill operations was not something Petitioner would have considered. (Oppo. 13.) However, as stated by the Court of Appeal, County never forced Petitioner to make "the hard choice of whether to pursue its challenges to the 2017 CUP while shuttering operations." (Pet. Exh. A.) The pertinent question is whether County caused Petitioner to lose the opportunity to make that hard choice and take other necessary steps to preserve its challenge to the CUP operating conditions. For instance, Petitioner could have sought an immediate court ruling on the applicability of Lynch prior to deciding whether to halt CUP operations.

The court finds that Petitioner reasonably relied on County's directions to its detriment.

The Injustice to Petitioner is Great, and Justifies Estoppel against the County

The Landfill has operated for many years as a valid, permitted use, and it processes approximately a quarter of all waste in the County. The July 2017 CUP contains numerous operating or use-related conditions that Petitioner challenges. Halting Landfill operations to

challenge those conditions would have been detrimental both to Petitioner's business and to County's waste management needs. As discussed above, there is strong evidence that County, through statements and conduct of its Planning Department, reasonably caused Petitioner to believe that it could continue its ongoing operations while challenging permit conditions if it placed its reservation of rights in a separate document. County did not object to the reservation of rights prior to its demurrer. In these circumstances, substantial injustice would result from a failure to uphold an estoppel against County.

Applying estoppel in this case would not nullify a strong rule of policy, adopted for the benefit of the public. The court's holding would only apply to the unique circumstances discussed above. For the reasons stated above, the court rejects County's theory that Petitioner engaged in trickery to "manufacture" an estoppel defense to the Pfeiffer-McDougal rule. (Oppo. 13.)

Based on the foregoing, all requirements of equitable estoppel are satisfied.

Petitioner Does Not Have Unclean Hands

County contends that Petitioner has unclean hands because attorneys Patricio and Waite "never obtained County attorneys' consent to send communications of legal nature to the County planners," in violation of California Rules of Professional Conduct, Rule 2-100. (Oppo. 14-15.)

"It is a fundamental principle of equity that he who comes into equity must do so with clean hands." (Bennett v. Lew (1984) 151 Cal.App.3d 1177, 1186-87; see also Lynn v. Duckel (1956) 46 Cal.2d 845, 850.) "The defense of unclean hands does not apply in every instance where the plaintiff has committed some misconduct in connection with the matter in controversy, but applies only where it would be inequitable to grant the plaintiff any relief. The court must consider both the degree of harm caused by the plaintiff's misconduct and the extent of the plaintiff's alleged damages. Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries. The decision of whether to apply the defense based on the facts is a matter within the trial court's discretion." (Dickson, Carlson & Campillo v. Pole (2000) 83 Cal.App.4th 436, 446-447.)

Rule 2-100, which was replaced by Rule 4.2 in November 2018, prohibited an attorney from communicating "directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer." (Rule 2-100(A).) 3 Rule 2-100 defined a party as "an officer,

director, or managing agent" of an "association" or "an employee of an association ... if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization." (Rule 2-100(B).) The rule did not apply to "Communications with a public officer, board, committee, or body." (Id. Rule 2-100(C)(1).)

Rule 2-100 did not define "public officer." In its brief, County does not cite any case law that interpreted that term for purposes of Rule 2-100. (Oppo. 14-15.) Both County and Petitioner cite to the following definition of "public official" in the new rule: "'Public official' means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1) [including managing agent]." (Rule 4.2(d)(2).) 4

County states that Patricio's and Waite's practice was to copy County attorneys on all important legal communications involving the Landfill project. (Oppo. 15, citing County Exh. 50, 58-59, 60, 61, 67-72.) The cited exhibits include communications to the Board of Supervisors and Regional Planning Commission regarding Petitioner's legal challenges to the CUP (Exh. 50, 60, 61-Waite, 67-69); email correspondence regarding the public hearings (Exh. 70); meeting sign-in sheets (Exh. 58-59); and correspondence between counsel regarding an indemnity provision in a covenant required by Condition 18 (Exh. 71-72.)

However, other evidence shows that Regional Planning routinely included Petitioner's attorneys, but not County Counsel, on communications regarding permit compliance issues. (See Pet. Exh. 6-7; Pet. Reply Exh. T and 18.) County Counsel would only attend calls between Regional Planning and Petitioner "as needed," even though Petitioner's attorney Patricio typically attended. (Reply Pet. Exh. E at 50, Exh. F at 29; Patricio Decl. ¶ 3.) County counsel Weismann admitted that it was standard practice for Dea and Claghorn to communicate directly with Petitioner's legal counsel in carrying out their official business. (Reply Exh. K at 57-58 ["to the extent that they are invoking statutory rights"].)

As discussed above, during the August 2, 2017 call, Dea directed Petitioner to "remove the language from the recorded [affidavit of acceptance] and to separately reserve [its] rights in a separate document." (Pet. Exh. F at 33:6-9, 30:3-5.) County Counsel Weismann was present for this call, but did not object to or overrule the procedure that Dea proposed. The August 4 email and August 23 letter simply complied with County's directions given on the August 2 call. In

that context, and considering the practice of Regional Planning to communicate directly with Petitioner's attorneys about permit compliance issues, the court is not persuaded that Petitioner's attorneys were required by Rule 2-100 to copy County's attorneys on the August 4 email and August 23 letter.

In reply, Petitioner argues that Dea and Claghorn "plainly" fall within the definition of "public officer." (Reply 13.) Evidence supports that Dea, as a supervising regional planner, worked directly with CUP holders. (Pet. Exh. E at 27-28.) Nonetheless, the court finds it unnecessary to resolve whether Dea or Claghorn were "public officers" because County does not show, for the reasons stated above, that Petitioner's attorneys were required by Rule 2-100 to copy County's attorneys on the August 4 email and August 23 letter.

Finally, County's unclean hands defense to estoppel depends on the totality of the circumstances, and not solely whether Petitioner's attorneys violated Rule 2-100. For all the reasons discussed at length above, the evidence strongly supports estoppel in this case against County. Moreover, the August 4 email and August 23 letter appear to have been sent by Petitioner only to Regional Planning in a manner consistent with the parties' standard practice. Even assuming a technical violation of Rule 2-100 occurred (which County did not establish), the court finds that the equities weigh in favor of granting Petitioner's equitable estoppel claim.

County's unclean hands defense to estoppel is denied.

Conclusion

The court concludes that County is equitably estopped from asserting in this writ action, based on Lynch v. California Coastal Com. (2017) 3 Cal.5th 470 and related cases, that Petitioner forfeited its right to challenge operational conditions in Petitioner's conditional use permit for the Chiquita Canyon Landfill.

FOOTNOTES:

1- For purposes of this equitable estoppel hearing, the facts regarding the Landfill's regulatory history appear largely undisputed. Accordingly, the court adopts some parts of the Background in the Court of Appeal's decision.
2- County argues in a footnote that the court should not credit Eells' testimony because, inter alia, she was biased and was on Petitioner's payroll for a separate contract. (Oppo. 9, fn. 2.) The court is not persuaded by County's evidence that Eells was an unreliable witness. Eells

corroborates other evidence about the August 2 call.
3- County has not requested judicial notice of this rule or supplied a copy. The court judicially notices the rule from the webpage of the State Bar of California. Rule 2-100 was replaced by Rule 4.2 effective November 1, 2018, after the events at issue. (County Exh. Z.) The two rules are similar, but not identical, in language.
4- Comment 7 to Rule 4.2 states, in pertinent part: "When a lawyer communicates on behalf of a client with a governmental organization, or certain employees, members, agents, or other constituents of a governmental organization, however, special considerations exist as a result of the right to petition conferred by the First Amendment of the United States Constitution and article I, section 3 of the California Constitution. Paragraph (c)(1) recognizes these special considerations by generally exempting from application of this rule communications with public boards, committees, and bodies, and with public officials as defined in paragraph (d)(2) of this rule."

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The trial date of April 23, 2020, stands.

A copy of this minute order is mailed to counsel of record via U.S. Mail.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	**FILED** Superior Court of California County of Los Angeles 11/13/2019 Sherri R. Carter, Executive Officer / Clerk of Court By: Nancy DiGiambattista Deputy
PLAINTIFF/PETITIONER: CHIQUITA CANYON, LLC	
DEFENDANT/RESPONDENT: LOS ANGELES, COUNTY OF et al	
CERTIFICATE OF MAILING	CASE NUMBER: BS171262

**I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (HEARING ON ISSUE OF EQUITABLE ESTOPPEL
RULING ON SUBMITTED MA...) of 11/13/2019 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.**

Jacob P. Duginski
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456 MONTGOMERY STREET, PC STE 1800
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Dusan Pavlovic
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Los Angeles, CA 90012-2713

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 11/13/2019

By: Nancy DiGiambattista
Deputy Clerk

CERTIFICATE OF MAILING