

# CLIENT NEWS BRIEF

## Appellate Court Rules That a Challenge to a Lease-Leaseback Contract Is Moot due to Completion of the Project

In a recent ruling, a California Appellate Court determined that a taxpayer's reverse validation action alleging conflicts of interest in lease-leaseback agreements became moot upon completion of the project. (*James D. McGee v. Torrance USD* (2020) 49 Cal.App.5th 814.) However, this decision may lead to more immediate and aggressive litigation for public agencies defending reverse validation actions in the future.

### Background

In 2013, taxpayer James D. McGee initiated a series of three reverse validation actions challenging lease-leaseback agreements between the Torrance Unified School District and Balfour Beatty Construction for several schools built within the District. Generally, reverse validation actions are a mechanism for individuals to challenge the legality of contracts awarded by public agencies related to bonds, warrants, or indebtedness. McGee's actions initially included multiple claims for invalidation of the construction contracts; however, after two appeals in this matter, the actions were narrowed to allegations of conflicts of interest. In reliance on *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, the trial court dismissed McGee's remaining conflict of interest claims because the challenged projects had all been completed, thus rendering the reverse validation action moot.

### Appellate Court Decision

In his appeal, McGee argued that lease-leaseback agreements are not subject to validation since they are not one of the types of "contracts" mentioned by the validation statutes. However, the Appellate Court held that the validation statutes do apply to lease-leaseback agreements since they are a method of financing school construction and the construction in question was funded by bonds. Furthermore, the Court noted that McGee had specifically sought invalidation under those statutes during most of this litigation.

McGee also argued that his remaining conflict of interest claims were not covered by the validation statutes. The Appellate Court disagreed, holding that the "gravamen" of the claims was "the invalidity of the lease-leaseback agreements."

Importantly, the court reasoned that allowing the claims to proceed even after completion of the projects would undercut the public policy of promptly resolving the validity of public agency actions. The court pointed to the 60-day period in which a public agency's actions must be challenged as evidence of the Legislature's intent to resolve these issues quickly. In discussing the delay in resolving McGee's claims, the court noted that because he had not sought a stay or injunction to stop the project, he was in "no position" to complain of the result.

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## Takeaways

This case removes some uncertainty regarding the ability to continue litigation about the validity of a project after the project has been completed. Where an agreement for a construction project is subject to a reverse validation action, the completion of the challenged project effectively forecloses any claim seeking to invalidate the agreement.

However, the result in this case may shift future plaintiffs' strategy toward more aggressive litigation. The conflict of interest claims were barred by the completion of the projects, and the court noted that McGee failed to attempt to stop the construction at the beginning of his actions. Thus, the Appellate Court has now made it clear for future plaintiffs that, when seeking invalidation of a contract, they should immediately request an injunction against performance of the contract, which would greatly increase the stakes for the public agency at the very beginning of the litigation.

For more information about this ruling and conflict of interest issues, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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