

The Ghost of *Davis*: Trick or Treat for Lease-Leaseback?

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Written by:

Arne B. Sandberg
Partner
Walnut Creek

Harold M. Freiman
Partner
Walnut Creek

Daniel Maruccia
Partner
Sacramento

Suitably for this time of year, a legal specter from the past has returned once again to haunt school district facilities improvement programs across California. An opinion from the California Court of Appeal for the Fifth Appellate District (*Davis v. Fresno Unified School District* (Cal. Ct. App., Oct. 22, 2026, No. F089619) (*Davis IV*) has invalidated a lease-leaseback contract based in part on the school district's use of general obligation bonds to fund the project.

This decision sets the stage for a potential Supreme Court conclusion to this chilling saga. Until then, we are left with uncertainty about lease-leaseback contracts across the State.

Previous *Davis* Decisions

In 2015, the Fifth Appellate District held in *Davis v. Fresno Unified School Dist.* (2015) 237 Cal. App. 4th 261 (*Davis I*) that in order to comply with the lease-leaseback exception to competitive bidding, Harris Construction's (Harris) lease with the Fresno Unified School District (District) must be genuine, must provide the District with contractor-financing, and must provide for the District's use of the facilities during the term of the lease. (See Lozano Smith's [2015 Client News Brief Number 30](#).)

In 2016, the Second Appellate District published *McGee v. Balfour Beatty Construction, LLC* (2016) 247 Cal.App.4th 235, which disagreed with *Davis I*. *McGee* concluded that the additional three elements are not required since the Legislature did not expressly include them in the lease-leaseback statute. (See [2016 Client News Brief Number 25](#).)

In response to these cases, the Legislature completely revised lease-leaseback contracting procedures effective January 1, 2017. (See [2016 Client News Brief Number 63](#).) However, the statutory changes stopped short of resolving the split of authority between *Davis I* and *McGee*.

In 2017, the First Appellate District issued its decision in *California Taxpayers Action Network v. Taber Construction, Inc.* (2017) 12 Cal.App.5th 115, which agreed with *McGee* that the *Davis I* terms were not required. (See [2017 Client News Brief Number 23](#).)

Davis v. Fresno Unified School Dist. (2020) 57 Cal.App.5th 911 (*Davis II*) and *Davis v. Fresno Unified School Dist.* (2023) 14 Cal.5th 671 (*Davis III*) were issued by, respectively, the Fifth Appellate District and the California Supreme

Court. They focused on validation and taxpayer action procedures, rather than the lease-leaseback contract terms lurking below the surface. Of note, *Davis III* characterized the Harris lease-leaseback contract as one that was not “inextricably bound up with government indebtedness or with debt financing guaranteed” by the District, since the contract did not act as a contractor-financing vehicle. Instead, the project was funded by general obligation bonds.

The *Davis IV* Decision

On remand following *Davis III*, a bench trial was held in 2024, and the Superior Court issued a statement of decision in 2025 which held that the Harris lease-leaseback contract met all three of the requirements added by *Davis I*. The plaintiff once again appealed.

Davis IV was published on October 23, 2026. It focused on one of the three *Davis I* elements: The need for contractor financing in order for a lease-leaseback contract to be valid. *Davis IV* cited evidence at trial which – consistent with the holding in *Davis III* – established that the project had been financed by the issuance of bonds. Due to the lack of traditional lease-leaseback contractor-financing, *Davis IV* declared that the Harris lease-leaseback contract was void and unenforceable, and it reversed the trial court’s decision.

Since the Harris lease-leaseback contract was entered prior to July 1, 2015, *Davis IV* held that Harris would only have to disgorge its actual net profit back to the District, per Education Code section 17406, subdivision (d).

Almost lost in the above lease-leaseback drama was the sub-plot regarding conflict of interest. The trial court had held that plaintiff had not established that Harris was an “officer” or “employee” of the District subject to a conflict-of-interest statute (Government Code section 1090). *Davis IV* agreed with the trial court on that issue.

Takeaways

Under *Davis IV*, any lease-leaseback contract in the State – even under the current version of the lease-leaseback statutes – could be challenged based on use of non-contractor financing (general obligation bonds, Mello-Roos special tax bonds, or certificates of participation, for example). A trial court in the Fifth Appellate District will likely apply *Davis IV*, thus a lease-leaseback contract financed by anything other than the contractor may be voided. In the First and Second Appellate Districts, a trial court will presumably apply *Taber* and *McGee*, respectively, meaning that the type of financing would not be relevant. In other appellate districts, it is unclear how a court might rule on this specific issue.

Also, if a lease-leaseback contract entered into before July 1, 2015, is voided by a court, the contractor would have to pay back its net profit. However, if the voided contract was entered after that date, then the contractor may have to disgorge *all* payments back to the school district.

Consequently, contractors may be less willing to submit proposals for lease-leaseback contracts funded by general obligation bonds or other forms of non-contractor debt financing, and any proposals submitted may have higher prices to compensate for the increased risk.

If one of the parties appeals *Davis IV* to the Supreme Court, the Supreme Court may finally resolve the split of authority and bring clarity to these issues. In the meantime, school districts should consult with legal counsel about how this decision might affect current and future lease-leaseback contracts.

If you have any questions regarding this case, or for any questions regarding lease-leaseback or other construction delivery methods, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#) and [LinkedIn](#), or download our [mobile app](#).

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