

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director

Office of the Director

1515 Clay Street, 17th Floor

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To All Interested Parties:

Re: Public Works Case No. 2013-024
 South Gate Senior Villas
 City of South Gate

The Coverage Determination, dated November 13, 2013, and Decision on Administrative Appeal, dated October 22, 2014, in Public Works Case No. 2013-024, *South Gate Senior Villas, City of South Gate*, were reversed by the Los Angeles Superior Court on February 24, 2016, in *South Gate Senior Villas, L.P. v. Christine Baker, et al*, Case No. BS152917. The Court found that the project was not subject to prevailing wage requirements.

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July 7, 2017

Jeffrey Oderman
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1931

Re: Public Works Case No. 2013-024
South Gate Senior Villas
City of South Gate

Dear Mr. Oderman:

On January 12, 2016, in the Los Angeles Superior Court, Department 82, Judge Mary H. Strobel heard South Gate Senior Villas, L.P.'s Petition for Peremptory Writ of Mandate to set aside the Director of Industrial Relations' Coverage Determination regarding coverage on the above-referenced project. On February 24, 2016, the Court issued a "Judgment on Petition for Writ of Mandate" (Court's Order), which is attached hereto as Exhibit 1. Pursuant to the Court's Order, the Coverage Determination that determined the city-subsidized construction of a 4-unit residential addition to a privately owned, mixed-use commercial and residential building (Project) was a public work and not exempt from the requirement to pay prevailing wages is hereby set aside. In accordance with the Court's Order, the Director finds that the Project does meet the exemption under Labor Code section 1720, subdivision (c)(1) because it is a private residential project built on private property and not built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority. Therefore, the Project is exempt from California Prevailing Wage Law.

Sincerely,

A handwritten signature in cursive script that reads "Christine Baker".

Christine Baker
Director

cc: Rick Navarrete
Alvardo Smith, APC
633 W. Fifth Street, Suite 1100
Los Angeles, CA 90071

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2013-024
SOUTH GATE SENIOR VILLAS
CITY OF SOUTH GATE

I. INTRODUCTION

On November 13, 2013, the Director of the Department of Industrial Relations (“DIR”) issued a public works coverage determination (“Determination”) in the above-referenced matter, finding that the construction of the South Gate Senior Villas in the City of South Gate (“Project”) was a public work subject to prevailing wage requirements. On December 6, 2013, South Gate Senior Villas, L.P. (“Developer”) timely filed an Appeal. All interested parties were thereafter given an opportunity to provide legal argument and no arguments were presented in opposition to the Appeal. In responding to the Appeal and to avoid repetition, the original Determination is incorporated by reference. For the reasons stated below, the Appeal is denied and the Determination is affirmed.

II. DISCUSSION

On appeal, Developer argues that the Project is exempt from prevailing wages because it meets the three elements of the exemption from prevailing wages under Labor Code section 1720, subdivision (c)(1).¹ The subdivision states:

(c) Notwithstanding subdivision (b):

(1) Private residential projects build on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

¹ All subsequent references to statutory sections are to the Labor Code and all subsequent references to subdivisions are to Labor Code section 1720.

Developer argues the Project meets the three elements in subdivision (c)(1) because: it is part of a private residential project; it is being built on private property; and it is being built pursuant to a contract with the City of South Gate, which is not a state agency, redevelopment agency, or local public housing authority. Nothing in the Determination found that the public subsidy received by the Project precludes application of the exemption under subdivision (c)(1). Developer contends that by virtue of the prefatory language in subdivision (c), subdivision (c) “overrides” the definition of public work set forth in subdivision (b). Developer argues that if the three elements of subdivision (c)(1) are met, private residential projects “are not subject to the requirements of this chapter” even if they receive public funding as defined by subdivision (b).

The addition of the four units to the development, however, is for a mixed-use commercial and residential project, not merely a private residential project. According to the Regulatory Agreement and Declaration of Covenants and Restrictions (“Regulatory Agreement”) and pursuant to a Disposition and Development Agreement dated May 13, 1998, (as amended), the Redevelopment Agency of the City of South Gate (“RDA”) loaned Petitioner’s predecessor-in-interest, South Gate Senior Villas, LLC, over \$7 million for purposes of site acquisition, development, and maintenance of 73 units of affordable senior citizen rental units and related improvements that included approximately 20,000 square feet of commercial space. RDA conveyed fee parcels to Petitioner’s predecessor on October 27, 1998. The budget for the overall Project was in excess of \$9 million. Because the four-unit addition is part of a mixed-use development, the Project is not exempt under subdivision (c)(1).²

Developer argues, alternatively, that the public subsidy at issue, a forgivable loan that accrues no interest and is “fully and irrevocably forgiven and excused” at the end of ten years, is a “below-market interest rate loan” within the meaning of subdivision (c)(6)(E). For the reasons cited in the Determination, Developer’s argument on this point is rejected. The exemption under subdivision (c)(6)(E) does not include forgivable or continent loans..

² The four units to be added constitute a part of the existing complex, not a stand-alone project. Two units replace an existing outdoor terrace not being used, one replaces a storage area, and one replaces an unused common area room.

III. CONCLUSION

Because the Project is a public work that is exempt from prevailing wages, and for the reasons set forth in the Determination and in this Decision on Administrative Appeal, the Appeal is denied and the Determination affirmed. This Decision constitutes the final administrative action in this matter.

Dated: 8/29/2014


Christine Baker, Director