

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/18/08

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
8.

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR# 9095

Reporter

9:30 am

BS116362

Plaintiff

Counsel

STEPHEN L. JOSEPH (X)

SAVE THE PLASTIC BAG COALITION
VS

Defendant

CITY OF MANHATTAN BEACH ET AL

Counsel

ROBERT V. WADDEN, JR. (X)

'CEQA' assgn

NATURE OF PROCEEDINGS:

PLAINTIFF, SAVE THE PLASTIC BAG COALITION'S, MOTION FOR PRELIMINARY INJUNCTION STAYING PLASTIC BAG ORDINANCE;

Matter comes on for hearing and is argued.

Plaintiff's application for a preliminary injunction is granted.

Plaintiff, a group of plastic bag manufacturers and distributors, seek a preliminary injunction to prohibit the City from implementing an ordinance which prohibits retailers, grocery stores, food vendors, restaurants, pharmacies and city facilities, from providing plastic carry-out bags to customers at the point of sale.

The provisional remedy of a preliminary injunction is sought in an underlying petition for a writ of mandate that challenges the validity of the ordinance on the ground that it violates the California Environmental Quality Act, Public Resources Code section 21000 et seq (CEQA), because of the failure by the City to prepare an Environmental Impact Report (EIR) prior to adopting the ordinance.

Instead of ordering the preparation of an EIR, the City adopted a negative declaration, finding the

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project to be categorically exempt under CEQA Guidelines section 15061(b)(3) and 15308, on the basis of a Swedish study made in the year 2000 which found that plastic bags have a greater negative impact upon the environment than paper bags.

Petitioner cites two conflicting studies that reach a contrary conclusion.

The solution required by CEQA in such cases is to publicly air the dispute between the experts by ordering an EIR, rather than ignoring or suppressing the existence of such a dispute. CEQA Guideline 15151 provides as follows:

"An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."

In BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, v. CITY OF SAN JOSE, 181 Cal.App.3d 852(1986) the court held that an EIR is a disclosure document, and an agency may choose among differing expert's opinions when those arguments are correctly identified in a

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responsive matter.

Petitioner is therefore likely to succeed on the merits of its claim that an EIR is required in the circumstances of this case.

The balancing of conflicting harms also favors the issuance of a preliminary injunction. The ordinance will go into effect while the litigation is pending, but will then have to be suspended while an EIR is prepared if petitioner prevails. Once the EIR is prepared and submitted to public discussion, the decision to pass the ordinance is likely to be upheld because it will be supported by substantial evidence. The confusion to the public caused by the repeated implementation and suspension of the ordinance will be avoided if the ordinance is not implemented until an EIR is prepared and adopted.

Plaintiffs are to furnish an undertaking in the sum of \$ 60,000.00.

Counsel for plaintiff is to submit a proposed preliminary injunction, together with the required undertaking, to this department with a proof of service showing that copies of said documents have been served upon opposing counsel by hand delivery or facsimile.