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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

CITY OF SOUTH SAN FRANCISCO,

Plaintiff and Respondent,

v.

CALIFORNIA STATE BOARD OF
EQUALIZATION,

Defendant and Appellant;

A140024

(San Francisco City and County
Super. Ct. No. CPF-09-509231)

CITY OF BRISBANE,

Plaintiff and Respondent,

v.

CALIFORNIA STATE BOARD OF
EQUALIZATION,

Defendant and Appellant.

A140026

(San Francisco City and County
Super. Ct. No. CPF-09-509232)

CITY OF ALAMEDA et al.,

Plaintiffs and Respondents,

v.

CALIFORNIA STATE BOARD OF
EQUALIZATION,

Defendant and Appellant.

A140028

(San Francisco City and County
Super. Ct. No. CPF-09-509234)

After the trial court ruled in favor of nine cities (City Petitioners)¹ on their challenges to the State Board of Equalization's (SBE) interpretation of the Revenue and Taxation Code and its method for determining whether to apply a local use or sales tax to local retail transactions, City Petitioners requested attorney fees pursuant to Code of Civil Procedure section 1021.5.² The trial court awarded City Petitioners attorney fees and SBE appeals.

In *City of South San Francisco v. Board of Equalization* (2014) 232 Cal.App.4th 707 (*South San Francisco*) and in our nonpublished decision, *City of Brisbane v. California State Board of Equalization (Brisbane)* (Mar. 25, 2015, A137185), we reversed the judgments against SBE. City Petitioners are therefore not successful parties as required by section 1021.5, and we reverse the order granting City Petitioners attorney fees.

BACKGROUND

City Petitioners filed writs of mandate objecting to SBE's interpretation of the Revenue and Taxation Code and argued that SBE had been misapplying the local sales and use tax.³ The trial court agreed with City Petitioners and issued writs of mandate. It granted the City of Brisbane limited retroactive relief and granted the other eight cities prospective relief only.

¹ City Petitioners include the Cities of South San Francisco, Brisbane, Alameda, Irvine, Newport Beach, Roseville, San Ramon, Santa Fe Springs, and Intervenor El Segundo.

² All further unspecified code sections refer to the Code of Civil Procedure.

³ The underlying facts are set forth in *South San Francisco, supra*, 232 Cal.App.4th 707.

On November 13, 2012, City Petitioners filed their joint motions for attorney fees under section 1021.5. SBE opposed these motions. The trial court found that City Petitioners were the prevailing parties and their efforts had resulted in the enforcement of an important right impacting the public interest. The court granted the following attorney fees: \$410,649.97 to the City of South San Francisco, \$324,259.50 to the City of Brisbane, and \$1,552,663.00 to the Cities of Alameda, Irvine, Newport Beach, Roseville, San Ramon, and Santa Fe Springs. It also awarded \$95,423.50 in fees to Intervenor City of El Segundo.

SBE filed a timely notice of appeal from the order granting attorney fees.

DISCUSSION

Under the so-called “American rule,” each party to a lawsuit must ordinarily pay his or her own attorney fees. (§ 1021; *Essex Ins. Co. v. Five Star Dye House, Inc.* (2006) 38 Cal.4th 1252, 1257.) Here, the trial court awarded City Petitioners attorney fees under section 1021.5, the “private attorney general doctrine.” (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147.)

Section 1021.5 provides trial courts with discretion to award attorney fees. This statute states in relevant part: “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. . . .” (§ 1021.5.)

A party seeking an award of attorney fees under section 1021.5 must be successful or prevail. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 570 [“the terms ‘prevailing party’ and ‘successful party,’ as used in section 1021.5, are synonymous”].) Success “generally involves obtaining a favorable judicial decision, i.e., a judicially

sanctioned or recognized change in the legal relationship of the parties.” (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.)

As noted, in *South San Francisco, supra*, 232 Cal.App.4th 707 and *Brisbane* we reversed the judgments in favor of City Petitioners and therefore the awards of attorney fees premised on these judgments must also be reversed. (See, e.g., *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 16.) The attorney fee awards are overturned along with the underlying judgments because City Petitioners are no longer successful parties under section 1021.5. (*City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 979.)

DISPOSITION

The order awarding attorney fees is reversed. SBE is awarded the costs of appeal.

Kline, P.J.

We concur:

Richman, J.

Siggins, J.*

*Associate Justice of the Court of Appeal, First Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.