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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITY OF LOS ANGELES et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

CITY OF ONTARIO, A MUNICIPAL
CORPORATION,

Real Party in Interest.

E062718

(Super.Ct.No. RIC1306498)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Gloria Trask, Judge.

Petition granted in part and denied in part.

Kaye Scholer, Steven S. Rosenthal and Joshua Stambaugh for Petitioners.

No appearance for Respondent.

Sheppard, Mullin, Richter & Hampton, Andre J. Cronthall, Scott Sveslosky, and Catherine La Tempa, for Real Party in Interest.

In this matter we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

Having now reviewed the reporters' transcripts of all hearings, as well as the entire file, we conclude that we cannot grant the relief requested, but that the issues raised by petitioners should be brought before the trial court through whatever procedural mechanism petitioners believe appropriate.

On December 16, 2014, the trial court entered its order granting real party in interest's motion to compel production of documents. At this time real party in interest relied exclusively on the "official information" privilege (Evid. Code, § 1040), and it was *only* this privilege that the trial court considered and rejected.

At some point thereafter, according to petitioners, it was discovered that a relatively small number of documents were *also* subject to the attorney-client privilege. Accordingly, petitioners refused to produce them.

Real party in interest then asked the trial court to insist upon production of the disputed documents, and this was heard on January 16, 2015. In their response,

petitioners explained their tardy discovery of the privileged nature of the documents. However, the trial court's remarks clearly reflect that it refused to consider the attorney-client privilege because it had not previously been raised in specific opposition to the motion to compel or during the meet and confer period. We do not consider this arbitrary or erroneous.

The same position clearly led to the result on January 20, 2015, in response to petitioners' ex parte request for relief predicated at least in part on Code of Civil Procedure section 473 as the trial court considered the ex parte nature of the request to be improper. Again, we do not criticize the trial court's ruling in this respect.

We therefore reach three conclusions. First, that the trial court has never considered on the merits whether petitioners may at this time rely on their assertion of the attorney-client privilege or the authorities it cited in support of this position. Second, that as a result, there is no order determining the issues raised in the petition that we can appropriately review. Third, due to the importance of the privilege (*Edwards Wildman Palmer LLP v. Superior Court* (2014) 231 Cal.App.4th 1214, 1225), it is most desirable that the privilege not be deemed implicitly waived without a full hearing on the legal and factual issues involved.

Accordingly, the petition is granted in part and denied in part.

DISPOSITION

Let a peremptory writ of mandate issue, directing the Superior Court of Riverside County to stay its order for disclosure of the disputed documents for a period of 30 days.

During such period petitioners may file an affirmative, noticed motion for relief from the order of December 16, 2014, on whatever factual and legal grounds deemed appropriate, and if petitioners do so, the trial court shall continue the stay until the determination of any such motion.

In all other respects the petition is denied. Nothing in this opinion is intended to express any opinion on the merits of the case or whether alternative sanctions would be appropriate.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties. In the interests of justice the parties shall bear their own costs, if any.

The previously ordered stay is lifted.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

RICHLI
J.