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LITIGATION

Key hearing next week in ownership battle over Ontario Airport

Ontario's uphill battle to claim control over its airport

By Vik Jolly
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RIVERSIDE — Next week, a Superior Court judge here could put to rest a big chunk of a highly unusual legal tug-of-war over LA/ Ontario International Airport by deciding whether Ontario's claims seeking to wrest control of the struggling facility from Los Angeles are more than 40 years late.

A ruling by Judge Gloria C. Trask could, as one attorney for Ontario put it, be the "beginning of the end" of litigation, should she agree with Ontario's contention that the municipality has the right to rescind or revise agreements governing the airport. The city argues that the agreements hurt public interest and officials did not have the authority decades ago to relinquish control of the airport forever.

Los Angeles contends the agreements are valid and cannot be changed.

Last year, Riverside County Superior Court's law and motion Judge Thomas A. Peterson overruled Los Angeles' demurrer to all five of Ontario's causes of action, advancing a suit lawyers have said is a rare attempt to transfer a public airport from one agency to another.

James P. Rhatican, an eminent domain and real estate attorney with Wolff & Samson PA in New Jersey, said while unusual, disputes akin to the legal battle between Los Angeles and Ontario have occurred elsewhere in the country over airports for "not just control but how they're operated."

In an April 2013 claim which later became a lawsuit, Ontario demanded that Los Angeles transfer ownership of the facility to Ontario and agree to dissolve contracts assigning control of the facility to Los Angeles. L.A.'s airport arm, Los Angeles World Airports, has operated the airport since 1967, when Los Angeles and Ontario formed a joint powers authority. Until 2007, Ontario had no complaints with how LAWA operated the facility. But after its air traffic dropped more than 40 percent between 2007 and 2012, Ontario city leaders sought to regain control.



The New York Times

An interior shot of Ontario Airport, which has experienced a 40 percent drop in passenger traffic since 2007.

Ontario's complaint seeks damages for breach of contract, among other things, and also seeks to invalidate the agreements that led to the airport's transfer to Los Angeles. *City of Ontario v. City of Los Angeles*, RIC1306498 (Riverside Super. Ct., filed June 3, 2013).

The agreements cannot be rescinded or altered, attorneys for LAWA contend. "Because the statutes of limitation for rescission and reformation are four and three years, respectively, Ontario's claims are more than 40 years late," Steven S. Rosenthal of Kaye Scholer LLP argued in court briefs. "In addition, Ontario's claims are barred because, absent fraud (which Ontario has not alleged), a court cannot rescind a transfer of real property after delivery of a deed."

Even if Ontario's claims were timely, the defendants, including Los Angeles and the Los Angeles Board of Airport Commissioners, contend they lack merit. The Ontario City Council in 1967 unanimously approved a transfer of the airport to L.A. and the council in 1985 approved an acquisition agreement deeding the airport to L.A., consummating the sale after certain conditions were met.

"The transfer was unquestionably a 'sale' because Los Angeles gave consideration in the form of millions of dollars, as well as the time and effort to grow ONT from an airport that handled two destinations per day to one that handles millions of passengers per year," Rosenthal wrote.

Defendants have said previously that \$4 million was transferred from Los Angeles to Ontario under the joint powers authority agreement and Los Angeles paid another \$2 million in bond debt.

Plus, the government code does not require a definite term for a JPA and a court cannot invalidate it or an acquisition agreement upon alleged violations of public interest, the lawyers said in court documents.

Ontario, for its part, argues its effort to rescind the agreements is meritorious. Ontario officials "lacked the authority to indefinitely surrender control" of its airport's operations "without any effective means of enforcing the 'best efforts' requirement in the agreements and protecting ONT from being destroyed by defendants' continuing acts and omissions."

Los Angeles and Ontario made a "mutual mistake" when entering into an agreement that violated the government code and permitted the deal "to include illegal and improper terms," attorneys for Ontario argue in their court papers. The statute of limitations cannot "make valid that which is void," the attorneys argue, adding the decades-old agreements between the two cities are "improper attempts to delegate or release core governmental functions. Therefore, the statute of limitations is inapplicable."

"Los Angeles agreed in the JPA to 'exercise its best efforts to attract and obtain additional regular scheduled airline service for ONT,' and it appeared to do so for a number of years," an attorney for Ontario, Catherine La Tempa of Sheppard, Mullin, Richter & Hampton LLP, wrote in court papers. But starting in 2007, Los Angeles "virtually abandoned" Ontario, opting to promote and increase traffic levels at Los Angeles International Airport — an inevitable result of the old agreements that "set

the stage for the conflict of interest that eventually materialized."

Los Angeles' "untenable" conflict in owning and operating both airports has caused a financial and operational "death spiral" for Ontario, harming the public interest of the city and surrounding communities, its attorneys argue. The number of passengers at Ontario fell from 7.2 million in 2007 to 3.9 million in 2013, a decline of 43 percent which has cost the city \$24.9 million to \$58.1 million in tax revenue losses, its attorneys said in court documents.

"Why didn't Ontario come back like all other airports?" said Andre J. Cronthall, a partner with Sheppard Mullin who's co-counsel for Ontario.

Lawyers for Los Angeles could not be reached for comment.

Trask on Oct. 31 will weigh two of Ontario's five claims — whether the agreements can be rescinded or revised. The damage claims arising from breach of contract, breach of implied covenant, and the breach of fiduciary duty will be addressed another day.

Mark Austin, a Rutan & Tucker LLP partner, said in general, when it comes to JPAs and the government code provisions related to JPAs, "the law contemplates that the parties can agree to a specific end date but does not require it."

"In fact, the code contemplates that [the JPA] might not have an end date."

However, Austin, who focuses on public agency and real estate litigation, added: "If one party wants out unilaterally, I believe they'd be able to withdraw so long as it is not inconsistent with the terms of the contract."

The resolution of the issues in the airport case will turn largely on the terms of the cities' JPA, he said.

In a telephone interview Tuesday, Rhatican said, "viscerally there's some practical appeal to the argument being advanced by the city of Ontario. I'd bet that the [Federal Aviation Administration] is carefully watching the situation, but is unlikely to intervene."

The FAA's interest, he said, would be to ensure operations at the airport are not compromised.

The FAA chief, Michael Huerta, told reporters last week in Riverside that he cannot intervene in the dispute but would like to see both sides come to a resolution, according to published reports.