

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Superior Court of California, County of Ventura, Hall of Justice, Department 40

2023CUMC008352

DAVID BYRNE, et al. vs LESLIE RULE, et al.

May 18, 2026

8:24 AM

Judge: Honorable Mark S. Borrell
Judicial Secretary: Tammy Brantner
CSR: None

APPEARANCES:

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 05/15/2026, now rules as follows:

The Ojai City Council met three times in closed session to discuss an issue with its attorneys. Afterward, Defendant Leslie Rule (Rule), a councilmember, publicly disclosed comments made at the closed sessions, including legal advice an attorney had given. Plaintiffs contend Rule violated California's open meeting law and sue for a judicial declaration and injunction. Rule counters that the closed sessions were not noticed properly and, consequently, what was said in those meetings was not confidential.

Plaintiffs move for summary judgment. Because the court finds that material issues of fact exist, the motion is denied.

Evidentiary Issues

The unopposed request for judicial notice is granted.

Plaintiffs object to some of Rule's evidence. But Plaintiffs' objections do not comply with California Rules of Court, rule 3.1354, in that the objections are not individually numbered. More importantly, Plaintiffs object to substantial passages from the contested declarations without specifying which matter within those passages is objected to. Compounding the problem, Plaintiffs state multiple objections to these passages, and it appears from context that the different objections may apply to different parts of the quoted passage. The form of these objections places the court in the untenable position of trying to determine what Plaintiffs intended or, worse, which objection might fit some part of the cited passage. The court declines to take on that role. Only two of the objections are not beset with these shortcomings. They are: Paragraph 2 of the Rule Declaration (overruled) and Paragraph 9 of the Francina Declaration (sustained). All other objections are deemed waived.

The court determines that the "facts" objected to on relevance grounds in Paragraphs 16, 17, 18, 22, 24, 25, 26, 27, 30 and 31 of the Rule Declaration are not material, and the court has not considered them in determining the motion.

To the extent that Rule has agreed with matters stated in Plaintiffs' separate statement, those matters are determined to be established for purposes of this motion.

For purposes of this motion, the following "undisputed material facts" offered by Plaintiffs are determined to be not established:

No. 5. Rule's cited evidence creates a triable issue of fact as to whether the Simply Ojai lawsuit was discussed at the December 13, 2022 closed session.

No. 6. This is, in part, a legal conclusion.

No. 11. Rule's cited evidence creates a triable issue of fact as to whether the Simply Ojai lawsuit was discussed at the January 9 and 10, 2023 closed sessions.

Nos. 18-20. Each of these is, in part, a legal conclusion.

Discussion

Plaintiffs are residents of the city of Ojai. They bring this action under the Ralph M. Brown Act (Gov.Code, § 54950 et seq. (the Brown Act)). The Brown Act generally requires that "[a]ll meetings of the legislative body of a local agency shall be open and public..." (§ 54953.) It is designed to "ensure the public's right to attend the meetings of public agencies" and "to facilitate public participation in all phases of government decision making." (*International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 293.)

Plaintiffs contend that Rule violated the Brown Act – specifically Government Code section 54963 -- by disclosing confidential communications that were made in closed sessions. [1] They seek a judicial declaration that Rule violated Section 54963 and an injunction restraining further violations. (See First Amended Complaint, ¶ 57.)

1. Factual Background

The Ojai City Council (Council) approved a development for the benefit of The Becker Group. (Plts. Sep. Stmt, No. 1.) The approval was controversial. A non-profit organization, Simply Ojai, sued the City to challenge the approval. (*Id.* No. 2.) The Council issued notices for three closed session meetings in December 2022 and January 2023. The related notices and agenda items referenced "Existing Litigation" and identified the Simply Ojai case. (*Id.* Nos. 3, 7, 8, 9.) Legal counsel for the Council attended each of the close session meetings. (*Id.* Nos. 4, 10.) Rule, as a councilmember, was also at each of the meetings. (*Ibid.*)

As will be discussed below, the parties do not agree on what occurred at the closed session meetings. The evidence established that the discussion at each meeting touched on the approval, the legal consequences if the Council decided to rescind it, and options to mitigate those consequences. Rescinding the approval would moot the action brought by Simply Ojai. It could also draw a new suit from The Becker Group.

To this end, the Council at the December closed session directed the City Manager to retain additional counsel to advise the Council about the options to avoid or minimize the impact of litigation with The Becker Group. (Plts. Sep. Stmt. No. 6.) At the next closed session, January 9, the Council met with outside counsel, Heather Minner. The attorney outlined strategies to avoid legal action with The Becker Group if the approval was rescinded. (*Ibid.*) At the January 10 closed session, the selection of Ms. Minner as outside counsel was discussed.

In the days following these closed sessions, Rule asked the City Attorney if she could publicly disclose what was said during the meetings. She was told she could not. (Pltfs. Sep. Stmt. No. 12.) Nevertheless, at the Council's next open meeting, Rule attempted to read a statement revealing what had occurred in the closed session meetings. (*Id.* No. 14.) Rule was admonished to stop. She also released a written statement at the hearing. (*Id.* No. 15.) That statement questioned whether the Council acted impartially in selecting outside counsel and described some of what was said in closed session. (*Ibid.*) Rule's statement also repeated the legal advice given by outside counsel at the January 9 closed session. (*Ibid.*)

2. *The Brown Act*

The Brown Act permits a legislative body of a local agency to meet in closed session in limited circumstances. A legislative body of a local agency may meet with legal counsel in closed session about "pending litigation" if, based on the advice of counsel, it is determined that "discussion in open session concerning those matters would prejudice the position of the local agency in the litigation." (§ 54956.9, subd. (a).) For purposes of section 54956.9, litigation is considered "pending" when "[l]itigation, to which the local agency is a party, has been initiated formally" (*id.* subd. (d)(1)) or "[a] point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency" (*Id.* subd. (d)(2)).

When a public body intends to meet in closed session, it must comply with the Brown Act's notice requirements. "Prior to holding a closed session pursuant to [section 54956.9], the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session." (§ 54956.9, subd. (g).) "If the session is closed pursuant to paragraph (1) of subdivision (d) [i.e., existing litigation], the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage." "No action or discussion shall be undertaken on any item not appearing on the posted agenda, except [as not inapplicable here]." (§ 54954.2, subd. (a).)

Plaintiffs sue to enforce Section 54963. It states in part, "A person may not disclose confidential information that has been acquired by being present in a closed session . . . to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information." (§ 54963, subd. (a).) Section 54963 further provides that is not a violation of the section to disclose "information acquired by being present in a closed session under this chapter that is not confidential information." (§ 54963, subd. (c)(3).) "Confidential information" is defined by the statute as "a communication made in a closed session that is specifically related to

the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.” (§ 54963, subd. (b).)

3. *Were the Disclosed Statements Confidential?*

The parties’ arguments are straightforward. Plaintiffs contend that the notices published ahead of each of the three closed sessions properly identified the topic of those meetings as the existing litigation with Simply Ojai, and that the Council only discussed matters related to that litigation. Rule disagrees. She contends that the Council’s discussions centered on how to address potential litigation with The Becker Group and that the notices failed to identify potential litigation as an agenda item. She asserts that the discussions about potential litigation were not properly noticed and, therefore, those discussions were not confidential under subdivision (b) of Section 54963.

The court’s determination of these contentions involves questions of fact as to what was discussed at each of the closed sessions. For Plaintiffs to prevail on this motion, they must show that no triable issue of fact exists as to each element of their cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

Plaintiffs principally rely upon a memorandum of the City Attorney, Matthew T. Summers, dated May 16, 2023, as evidence of what was said in the three closed sessions. (See Pltfs. Sep. Stmt. Nos. 5, 6, 11.) As for the December 13, 2022 closed session, Mr. Summers wrote:

“the City Council discussed the Simply Ojai lawsuit, including these options: answering the lawsuit’s writ petition and fighting it, answer the writ petition and admitting the plaintiffs’ allegations, doing nothing, or mooted the lawsuit via repealing the ordinance as was then expected to be possible if the then pending referendum petition were to be found to have enough valid signatures. The Council took no reportable action on December 13, 2022, per Government Code section 54957.1, and instead provided direction for the City Manager to retain additional counsel to advise the City Council about the options and consequences of those options for the lawsuit, its subject the development agreement, and one option to end the lawsuit — namely by rescinding the ordinance via the referendum.”

The opposition evidence conflicts with this account. Rule offers her own declaration and that of Suza Francina, a former councilmember. These declarants are in agreement that at the outset of the December 13, 2022 closed session, Mayor Stix said that she wanted a fresh perspective on the development agreement and proposed hiring outside counsel. A conversation occurred concerning the law firm the mayor suggested the Council should hire. Rule and Ms. Francina declare that nothing was stated in that closed session about the Simply Ojai litigation.

With respect to the January 9, 2023 closed session, Mr. Summers wrote that the purpose of the meeting was “to receive the requested advice regarding the Simply Ojai lawsuit” from “the then-hired outside counsel, Heather Minner with Shute Mihaly & Weinberg, LLP, and the City Council, City Attorney, and City Manager.” He stated that this advice “considered the Simply Ojai lawsuit, how the lawsuit could be mooted via the referendum if the Council rescinded the ordinance approving the development agreement, and possible consequences and opportunities of exercising that option.” He added, “Ms. Minner’s advice was also not ... limited to only the referendum or the development agreement – but instead considered and advised on the lawsuit too, and the related issues – the lawsuit, how to moot the lawsuit via rescinding the development

agreement via the referendum, and what consequences and opportunities would stem from that option to end the lawsuit.”

Rule and Ms. Francina recall the January 9, 2023 closed session differently. Each declared that the Simply Ojai lawsuit was not discussed at that meeting. Rather, they say the topic was what The Becker Group might do if the agreement was rescinded, including the risk of litigation.

As for the January 10, 2023 closed session, Mr. Summer stated that the Council discussed “the referendum option to moot the [Simply Ojai] lawsuit” and “the hiring of its additional counsel” for purposes of providing “legal advice to the City about one of the then-pending options to moot the [Simply Ojai] lawsuit by rescinding the development agreement’s approving ordinance via referendum.”

Ms. Rule disputes this account. She and Ms. Francina declare that the Council’s discussions at the January 10, 2023 closed session focused on whether Mayor Stix’s recommendation to hire Ms. Minner’s firm was influenced by a personal relationship with one of Simply Ojai’s attorneys and whether the mayor had communications with outside counsel individually.

This conflicting evidence as to what was said in each of the closed sessions presents triable issues of fact. The disputed facts are material because the propriety of the notices depends upon the extent to which the Council’s discussions concerned the existing litigation with Simply Ojai or the potential litigation with The Becker Group. Therefore, Plaintiffs have not established that they are entitled to summary judgment.

As an alternative ground for the motion, Plaintiffs argue that even if the closed sessions were not properly noticed, Rule could not disclose attorney-client communications. Plaintiffs correctly assert that the Council was the holder of the attorney-client privilege (see *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373; also see Evid.Code, § 954), and therefore only the Council, acting as body, could waive the privilege. But Plaintiffs’ cause of action is solely to redress an alleged violation of Section 54963. For purposes of the Brown Act, the Legislature, in Section 54956.9, subdivision (b), abrogated the attorney-client privilege held by a public body except to the extent that communications with counsel made in closed session are “confidential” under Section 54963, subdivision (b). As discussed above, triable factual issues exist as to what was said and in what context it was said at the January 9, 2023 closed session. Those issues prevent the court from concluding as a matter of law that Minner’s advice was “specifically related” to existing litigation (see § 54963, subd. (b)), the predicate finding needed to determine that the communication was “confidential.” For purposes of the cause of action pleaded here, only “confidential” attorney-client communications made in closed session are potentially privileged. [2] The issues considered on a motion for summary judgment are limited to those raised by the pleadings. (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444.)

Conclusion

The motion for summary judgment is denied.

The clerk is directed to give notice.

[1] All statutory references are to the Government Code unless indicated otherwise.

[2] In *Roberts*, the Supreme Court upheld the claim of privilege noting that the Brown Act “broadly preserv[es] the attorney-client privilege for local governing bodies.” (*Roberts, supra*, 5 Cal.4th at p. 373.) It is not necessary on this motion to determine whether a remedy exists outside the Brown Act to redress Rule’s disclosure of otherwise privileged attorney-client communications because Plaintiffs only allege a violation of the Brown Act and they are not the holder of the privilege.