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Abatement District
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF ORANGE**

9 **SANTIAGO GEOLOGIC HAZARD**
10 **ABATEMENT DISTRICT**, a political
subdivision of the state of California,

11 Petitioner,

12 v.

13 **CITY OF ANAHEIM**, a California
14 charter city,

15 Respondent.
16

) **Case No. 30-2021-01203933-CU-PT-CJC**

) *Case Assigned to the Hon. Supervising
Judge, Department C12*

) **PETITIONER'S REPLY BRIEF ON
PETITION TO COMPEL
ARBITRATION**

) **RES NO. 73542810**

) **Hearing Date: September 2, 2021
Time: 2:00 p.m.
Dept: C12**

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21 **INTRODUCTION**

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23 The City of Anaheim ("Anaheim") does not dispute the existence of a valid arbitration
24 provision in a written agreement ("Agreement") between it and Petitioner Santiago Geologic Hazard
25 Abatement District ("SGHAD"). It acknowledges that it refused to submit to arbitration after a proper
26 demand. And it does not contend that any of the four conditions exists for the Court to decline to
27 order the parties to arbitration. Thus, the grounds for granting the petition have been conclusively
28 established. (Code Civ. Proc. § 1281.2.)

1 Nevertheless, Anaheim resists arbitration based on a theory that there is no dispute over the
2 interpretations of the Agreement. This defense ignores well-pled allegations in the Petition and
3 requires the Court to determine that SGHAD’s contentions lack substantive merit, which it may not
4 do. (Code Civ. Proc. § 1281.2.) Issues related to the existence of a justiciable controversy are for the
5 arbitrator, not the Court, to adjudicate. (*Bunker Hill Park, Ltd. v. U.S. Bank National Ass’n* (2014)
6 231 Cal.App.4th 1315, 1328-1329. (*Bunker Hill*)).) But even if the Court were permitted to make such
7 a determination, Anaheim failed to adduce competent *evidence* demonstrating a lack of controversy.
8 Its *argument* that it has not yet decided whether it agrees or not with SGHAD’s interpretations is
9 woefully insufficient to overcome SGHAD’s allegations.

10 The interpretation and enforcement of this Agreement are critically important to property
11 owners, SGHAD, and Anaheim. The parties agreed to resolve disputes over the Agreement through
12 an expedited arbitration procedure. SGHAD respectfully requests that the Court compel Anaheim to
13 honor its contractual commitment.

14 **ARGUMENT**

15 **A. THE CITY HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT THE**
16 **CLAIM IS NOT SUBJECT TO THE ARBITRATION PROVISION**

17 Code of Civil Procedure section 1281.2 requires the Court to order the petitioner and
18 respondent to arbitrate a controversy if the petition alleges the existence of a written agreement to
19 arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, unless
20 one of four conditions exists. (Code. Civ. Proc. § 1281.2.) Anaheim does not dispute the existence of
21 a written agreement to arbitrate a controversy. Nor does it dispute that it has refused to arbitrate the
22 controversy. And it does not invoke any of the four exceptions. Thus, the statutory grounds to
23 compel arbitration have been met.

24 Instead, Anaheim contends that the arbitration provision does not cover the claims asserted by
25 SGHAD. Specifically, it argues that SGHAD “has not produced any evidence of a dispute.”
26 (Respondent’s Memorandum of Points and Authorities in Opposition to Petitioner’s Motion to
27 Compel (“Oppo.”) at 5:11; see also 6:8-9 [“on the face of the Petition it is apparent that there is no
28 dispute”]; 8:26-27 [“the issues SGHAD seeks to arbitrate are beyond the scope of the parties’

1 agreement because there is no dispute”].)

2 This argument fails for three reasons.

3 First, Code of Civil Procedure section 1281.2 states that “[i]f the court determines that a
4 written agreement to arbitrate a controversy exists, an order to arbitrate that controversy may not be
5 refused on the ground that the petitioner’s contentions lack substantive merit.” (Code Civ. Proc. §
6 1281.2; see also *Cal. Correctional Peace Officers Ass’n v. State of California* (2006) 142 Cal.App.4th
7 198, 211; *Amalgamated Transit Union v. San Diego Transit Corp.* (1979) 98 Cal.App.3d 874, 879
8 [“The limited function reserved to the courts in ruling on an application for arbitration is not whether
9 the claim has merit, but whether on its face the claim is covered by the contract.”].) The claim, on its
10 face, is covered by the arbitration provision. SGHAD alleges that its contractual duties under the
11 Agreement will be excused when its funds on hand have been depleted, based on the doctrines of
12 impossibility, impracticability, and/or frustration of purpose. (Petition, ¶ 47.) It also contends that the
13 Agreement does not impose on SGHAD any obligation to operate, maintain, or repair the Dewatering
14 Facilities if it has no means to fund such. (*Ibid.*) SGHAD alleges that Anaheim contends that
15 SGHAD’s performance is not excused by the doctrines of impossibility, impracticability, and/or
16 frustration of purpose and that SGHAD’s obligations continue despite the depletion of funds. (*Id.* at ¶
17 48.) While Anaheim seeks to *contradict* SGHAD’s allegations by claiming that there is no dispute
18 over the interpretation and enforcement of the Agreement, it is not the Court’s role in this Petition to
19 determine whether SGHAD’s allegations (i.e., that there is a dispute) lack substantive merit. If the
20 grounds for a declaratory judgement are lacking (i.e., there is no controversy), the arbitrator can make
21 such a finding.

22 On this point, *Bunker Hill Park, supra*, 231 Cal.App.4th 1315 is dispositive, contrary to
23 Anaheim’s protestations otherwise. (See *Oppo*, at 9:11-20.) *Bunker Hill* involved a desire by a landlord
24 to ascertain, upon a potential early termination of a ground lease, rights as between it and tenants. (*Id.*
25 at p. 1322.) The tenant argued that the arbitration request was “based on the faulty premise that there
26 will be an early termination of the ground lease before its termination in 2077.” (*Id.* at p. 1321.) The
27 trial court denied the petition to compel arbitration after determining that the effect of the termination
28 of the ground lease was “not sufficiently crystallized such that declaratory relief [was] appropriate.” It

1 framed the issue as whether the parties’ “dispute” presented an actual controversy (i.e., was ripe) or
2 whether an adjudication would be tantamount to rendering an advisory opinion. (*Id.* at p. 1323.)

3 The Court of Appeal reversed. It held that a petition to compel need not satisfy the statutory
4 requirements imposed upon claims for declaratory relief. (*Id.* at p. 1328; see also *id.* at p. 1329
5 [“There is no doubt that the relief Bunker Hill ultimately seeks is declaratory in nature. But a petition
6 to compel arbitration is, consistently with the contractual nature of arbitration, simply a suit in equity
7 seeking specific performance of that contract.”], internal quotes and citations omitted.) Furthermore,
8 “[a] petition to compel arbitration is a separate proceeding, distinct from the claims it relates, which
9 ‘states a separate cause of action subject to its own limitations period.’” (*Ibid.*, citation omitted.)
10 Accordingly, *Bunker Hill* held that it is “irrelevant whether the petition to compel arbitration
11 articulates an ‘actual controversy’ that could support an award for declaratory relief.” (*Ibid.*)
12 “Whether compelling arbitration is ‘necessary or proper at the time under all the circumstances’ (§
13 1061) is an equally inapposite consideration...” (*Ibid.*) Because Anaheim’s sole defense (i.e. that
14 there is no actual dispute) goes to the merits of the declaratory relief claim, it may not be adjudicated
15 by the Court in this Petition.

16 Anaheim claims that the *Bunker Hill* holding is being limited to the issue of ripeness. (Oppo.
17 at 9:21-10:3.) But there is no meaningful difference between an unripe case and one in which no
18 dispute exists. (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559,
19 1573 (*Wilson & Wilson*) [“Unripe cases are ‘[t]hose in which parties seek a judicial declaration on a
20 question of law, though **no actual dispute or controversy ever existed** between them requiring the
21 declaration for its determination.”], emphasis added; citation omitted.) Moreover, *Bunker Hill*
22 actually stands for the proposition that issues related to the merits of the declaratory relief claim (i.e. a
23 justiciable controversy) sought be adjudicated in arbitration should not be decided by a court in light
24 of the limited nature of a petition to compel arbitration. (See *Bunker Hill*, at p. 1329 [“For purposes of
25 section 1281.2, the statute that expressly governs petitions to compel arbitration, all a petitioner is
26 required to show before arbitration ‘shall’ be ordered is the existence of a valid agreement to arbitrate
27 the issue underlying the petition and the opposing party’s refusal to arbitrate the controversy.”],
28 citations omitted.) The lack of a justiciable controversy (i.e. unripe claim, lack of dispute) is a defense

1 to a declaratory relief claim. (See *Wilson & Wilson*, at pp. 1573-1574.) Accordingly, the arbitrator,
2 not the Court, should decide this issue.

3 Second, assuming that this Court was authorized to delve into the merits (which it is not), it
4 was *Anaheim*'s burden to prove that the claim is not subject to the arbitration provision. (*Guiliano v.*
5 *Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1284.) But it failed to sustain this burden
6 with competent evidence. For example, it does not provide any testimony or other evidence reflecting
7 that it unequivocally agrees with SGHAD's interpretations. Instead, it *argues* that it "has no position
8 on these matters and no current need to formulate a position." (Oppo. at 9:3; see also 7:15 ["the City
9 has not taken a position on matters alleged in the Petition..."].) Arguments raised in a brief do not
10 constitute evidence. (*Dickinson v. Cosby* (2019) 37 Cal.App.5th 1138, 1163, fn. 8, citation omitted.)
11 And regardless, Anaheim should not be allowed to circumvent a valid arbitration provision with
12 equivocations over its interpretation of the Agreement. There is little doubt that when the arbitration
13 proceeding commences, Anaheim will affirmatively and actively dispute SGHAD's interpretation of
14 the Agreement. Indeed, the only reason to stymie the arbitration is to deprive SGHAD of an
15 arbitration award that relieves it of the contested contractual obligations. If Anaheim does not dispute
16 the declaratory relief claim, it should have offered a legally-binding document to that effect, not
17 equivocations in a brief. If can certainly stipulate to an arbitration award at the outset of the
18 arbitration proceeding to avoid extensive proceedings if it genuinely does not dispute SGHAD's
19 claims.

20 Third, even if there was some question regarding the arbitrability of this claim, a court should
21 "indulge every intendment to give effect to such proceedings." (*Pacific Investment Co. v. Townsend*
22 (1976) 58 Cal.App.3rd 1, 9 (*Pacific Investment*)). Indeed, as the California Supreme Court has
23 explained, "the Legislature has expressed a 'strong public policy in favor of arbitration as a speedy
24 and relatively inexpensive means of dispute resolution.'" (*Moncharsh v. Heily & Blase* (1992) 3
25 Cal.4th 1, 9, citation omitted.) Accordingly, the general rule is that arbitration will be ordered "unless
26 it can be said with assurance that the arbitration clause is not susceptible of an interpretation that
27 covers the asserted dispute." (*Pacific Investment*, at p. 9.)
28

1 **B. SGHAD’S PLEADING ALLEGES AN ULTIMATE FACT THAT THERE IS A**
2 **DISPUTE AND DOES NOT CONTAIN INTERNAL INCONSISTENCIES**

3 The Petition pleads a dispute over the interpretation and enforcement of the Agreement.
4 (Petition, ¶¶ 47-48.) Anaheim does not contend otherwise. Instead, it attacks SGHAD’s allegations as
5 “conclusory.” (See Oppo. at 6:10-11 [“...SGHAD alleges in a purely conclusory manner that the
6 parties disagree in their interpretation of the Agreement.”].) But this allegation is legally sufficient.
7 The rules covering complaints are applicable to petitions to arbitrate, including rules regarding
8 pleadings. (See *City of Hope v. Bryan Cave, LLP* (2002) 102 Cal.App.4th 1356, 1369.) And “[t]he
9 rules of pleading require, with limited exceptions [], only general allegations of ultimate fact.”
10 (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1469.) “The plaintiff need not
11 plead evidentiary facts supporting the allegation of ultimate fact.” (*Committee on Children’s*
12 *Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 212.) Here, the Petition pleads the
13 ultimate fact that Anaheim disputes SGHAD’s interpretations of the Agreement. (See Petition, ¶ 48.)
14 SGHAD was not required to plead other facts to bolster this allegation as Anaheim contends.

15 Anaheim suggests that the Petition contains internal inconsistencies and any general allegation
16 should give way to a more specific allegation to the contrary. (Oppo. at 6:20 – 7:14.) But no specific
17 allegation (or exhibit) contradicts the allegations in the Petition (¶¶ 47-48). The City Attorney’s May
18 28, 2021 letter [Petition, Ex. C] stating that the Arbitration Demand did not raise any actual disputes
19 concerning the interpretation or enforcement of the Agreement is too vague to be meaningful.
20 Moreover, to the extent it could be read as a statement that it does not dispute SGHAD’s claims, it
21 contradicts Anaheim’s own arguments in this proceeding that it “has not yet taken a position on the
22 matter.” (Oppo. at 7:15.)

23 Finally, Anaheim notes that SGHAD is a separate political entity and it has avoided
24 intervening in SGHAD’s internal affairs. (Oppo. at 8:15-21.) This is not relevant to any issue herein.
25 Moreover, it fails to appreciate that Anaheim is a *party* to a critical Agreement, the interpretation of
26 which may dictate whether a devastating landslide may continue to be averted in the years to come.
27 As a party to the Agreement, Anaheim has a right to challenge SGHAD’s interpretation of its terms. It
28 is in that capacity that SGHAD invokes the arbitration provision against it.

1 **CONCLUSION**

2 Anaheim’s defense is not well-taken. Beyond the legal deficiencies, it makes no sense that it
3 would resist this Petition if there was no dispute. The parties have wasted three months on this matter
4 while SGHAD’s funds – intended to mitigate a future landslide – continue to be depleted each month.
5 An arbitrator’s decision on the interpretation and enforcement of this Agreement is urgently needed so
6 that the parties may govern their actions accordingly and avert another disaster. SGHAD respectfully
7 requests that the Petition be granted in its entirety.

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10 DATED: August 19, 2021

BENINK & SLAVENS, LLP

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