

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

JAMES V. LACY et al.,
Plaintiffs and Respondents,
v.
CITY AND COUNTY OF SAN FRANCISCO
et al.,
Defendants and Appellants.
A165899
San Francisco County No. CPF22517714

BY THE COURT:*

The petition for writ of supersedeas is granted.

“An injunction that requires no action and merely preserves the status quo (a so-called prohibitory injunction) ordinarily takes effect immediately, while an injunction requiring the defendant to take affirmative action (a so-called mandatory injunction) is automatically stayed during the pendency of the appeal.” (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1035 (*Daly*)). “[T]he core rationale underlying the mandatory-prohibitory distinction was based on an abiding concern with preserving the status quo pending appeal.” (*Id.* at p. 1041.) “Like many distinctions in the law, the distinction between a mandatory and a prohibitory injunction sometimes proves easier to state than apply.” (*Id.* at pp. 1041-1042, internal citations omitted.) Here, while couched in prohibitory language, the superior court’s injunction is mandatory in

* Before Simons, Acting P.J., Burns, J. and Wiseman, J. (Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

character, and therefore automatically stayed on appeal. (See *Byington v. Superior Court* (1939) 14 Cal.2d 68, 72-73.) The court is persuaded by the San Francisco City Attorney's argument concerning *United Railroads v. Superior Court* (1916) 172 Cal. 80. (See Aug. 25, 2022 Letter Brief, pp. 1-2.) Additionally, as respondents concede, the superior court's granting of mandate relief is automatically stayed on appeal. (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 727.) (See Respondents' Aug. 29, 2022 Oppo., p. 5.) Assuming it was appropriately advanced in respondents' opposition, respondents' request that this court lift the stay applicable to the writ of mandate under Code of Civil Procedure section 1110b is denied on the merits, as respondents have not shown they "will suffer irreparable damage in [their] business or profession if the execution is stayed."

Even if the injunction is more properly viewed as a prohibitory injunction that is not automatically stayed, the court finds discretionary supersedeas appropriate to stay the injunction pending resolution of the appeal. (*Daly, supra*, 11 Cal.5th at pp. 1039, 1054; *People ex. Rel. S.F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 537; *Deepwell Homeowners' Protective Assn. v. City Council* (1965) 239 Cal.App.2d 63, 66-67; *California Table Grape Com. v. Dispoto* (1971) 14 Cal.App.3d 314, 316.)

Appellants' alternative request for calendar preference is denied as moot, without prejudice to any party filing a motion for preference under California Rules of Court, rule 8.240.

In addition to regular service of this order, the Clerk of Division Five shall forthwith notify the parties by telephone of the contents of this order.

Date: 08/31/2022

Simons, J., Acting P.J.