

SUPREME COURT OF THE STATE OF CALIFORNIA

Stephen K. Davis  
Plaintiff and Respondent

v.

Fresno Unified School District, and  
Harris Construction Co., Inc.

Defendants and Appellants

No. S266344

Court of Appeal  
No. F079811

After a Published Decision by the Court of Appeal,  
Fifth Appellate District

**APPELLANT HARRIS CONSTRUCTION CO.'S  
OPPOSITION TO DAVIS'S MOTION TO STRIKE**

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## OPPOSITION TO DAVIS'S MOTION TO STRIKE

Davis moves to strike the portions of Harris's Opening Brief which argue that — if this Court should reject our contention (at pages 46–73 of our Opening Brief) that the validity of lease-leaseback contracts come within the validation statutes — the Court should ameliorate the problems such a holding would impose on school districts, by rejecting the substantive holdings reached by the Fifth District Court of Appeal.

In his Motion to Strike, Davis argues that our contention is not “related or fairly included” to the issue this Court designated for review.

We disagree, for several reasons.

First, the Fifth District's substantive holdings — if allowed to stand — would significantly exacerbate the adverse *effect* of a holding that lease-leaseback contracts are not subject to the validation statutes. This Court should consider that effect when deciding whether the validation statutes cover lease-leasebacks.

Second, when adopting any new rule, this Court can and should consider ancillary rules that will support the new rule or diminish its potential negative effects.

Third, at pages 41–46 of his Answering Brief, Davis contends that he has a right to trial on his claim that the lease-leaseback contract at issue in this case is invalid. If this Court agrees, then the Court should provide guidance to the trial court regarding the issues we raise. In particular, if the trial court finds that the lease-leaseback contract was invalid, is disgorgement of the entire contract price a proper remedy — even if Davis intentionally chose not to seek to enjoin the project before it was completed (see Answering Brief s p. 20, fn. 2)? Indeed, at page 12 of his Answering Brief, Davis himself expressly asks this Court to rule on this issue. And Davis argues this issue at pages 38–41 of his Answering Brief.

Finally, we note that Davis’s Answering Brief devotes several pages (7–11 and 20–21) to arguing that Davis has standing to claim that a construction contract is tainted by a conflict of interest. Our Opening Brief never claimed otherwise, because this issue has only a remote connection (if any) to the issue designated by this Court. We contend that the validity of a school district’s bond-funded lease-leaseback contract must be determined under the validation statutes. Conflict of interest is, of course, a basis for determining that a contract is invalid.

But we filed no motion to strike those portions of the Answering Brief. Our Reply Brief will argue that those portions are irrelevant, and we will leave it to this Court's opinion to resolve whether they are. The arguments challenged by Davis's Motion To Strike should be resolved the same way.

Date: July 13, 2021

Respectfully submitted,  
Moskovitz Appellate Team

/s/ Myron Moskovitz  
By: Myron Moskovitz  
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Harris Construction Co., Inc.

STATE OF CALIFORNIA  
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA  
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DISTRICT**Case Number: **S266344**Lower Court Case Number: **F079811**

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7/13/2021

Date

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