

Daily Journal

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TOP VERDICTS OF 2012

TOP PLAINTIFFS' VERDICTS BY IMPACT

Berg & Berg v. City of San Jose

It's not common for contractors to successfully sue cities over permitting issues, but in the summer of 2012, Berg & Berg Enterprises not only managed the task but did so emphatically, winning a \$6.1 million jury verdict against the city of San Jose over a breach of contract claim.

San Francisco-based Allen Matkins Leck Gamble Malory & Natsis LLP attorneys Robert R. Moore and Michael J. Betz argued that the city took the developer's money, then failed to provide as promised an expedited permitting process for a \$250 million infrastructure project. The result was that a city council less friendly to the project took over following an election, and the new council rejected the project.

Moore said the city was paid to provide a quick turnaround.

"Expedition was in the contract," he said. But the city didn't take speedy action, and instead "made a bunch of excuses."

The three-week trial in Santa Clara County Superior Court

CASE INFO
Breach of contract
Santa Clara County Superior Court Judge Franklin Bondonno
Plaintiffs' attorneys: Allen Matkins Leck Gamble Malory & Natsis LLP, Robert R. Moore, Michael J. Betz
Defense attorneys: San Jose city attorney's office, Richard Doyle, Christian Nielsen, Margo Laskowska

resulted in what Moore characterized as a rare finding.

"Typically, the cities always take the position that they're exercising their police powers and can do what they want to do," Moore said. "Twelve people on a jury said you contracted to expedite this process, you took over \$8 million from these developers and then turned around and failed to take the steps you promised to take."

Moore said the case could send a signal to other developers.



MICHAEL J. BETZ



ROBERT R. MOORE

"They can look and say, 'This is a promising outcome, if we can now get these kinds of agreements and hold cities to them,'" he said.

However, City Attorney Richard Doyle, whose office handled the case for San Jose, said the city will try to present post-trial issues to the judge, adding that the jury made the wrong decision.

"The work was done," he said. "The process was delayed, and the city staff took longer processing the appli-

cation, but in the end, [the developers] not getting the result they wanted ... was the basis for arguing a breach of contract. Our argument was [Berg & Berg] was paying for a process."

Doyle said the case could set a bad precedent.

"It emboldens developers to take a shot at a city if they don't like a result," he said. "There's a good chance [we'll appeal], but we're not there yet."

— Paul Jones