

Santa Clara Stadium Authority



Informational Report on Stadium Litigation

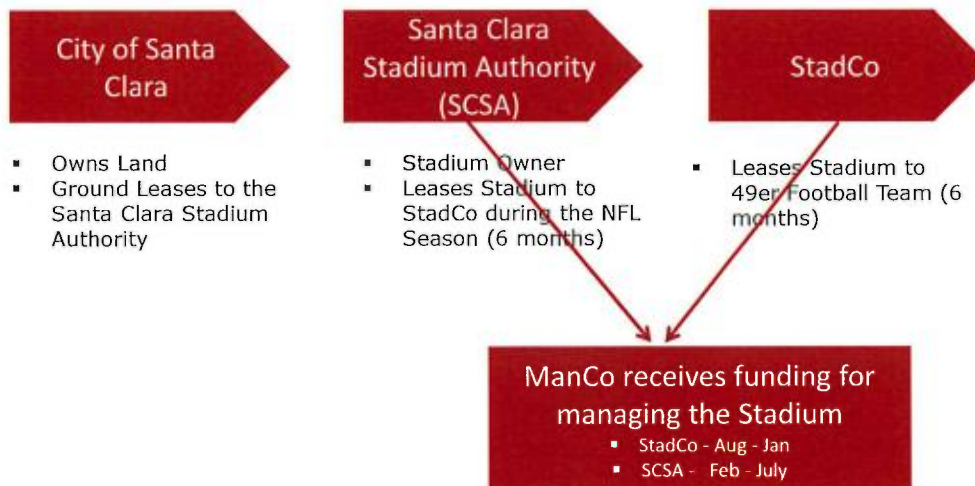
September 29, 2020



1

1

Stadium Authority Flowchart



2

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2

Cases Filed by 49ers against Stadium Authority in Arbitration

- Shared Stadium Expenses
- Public Safety Cap
- Procurement Ordinance Amendment
- Buffet Costs
- Facility Rent Re-set (concluded)



3

3

Cases Filed by 49ers against Stadium Authority in Superior Court



- Declaratory Relief – 49ers seek to prevent access to documents and financial records
- Termination Case – 49ers seek to stop the termination of the Management Agreement.



4

4

Cases Filed by 49ers against City

in Superior Court



- Golf Course Parking Agreement – 49ers sued City to recover more than \$1 million from the City's General Fund for "erroneously" paid fees for parking use of the Golf Course.



5

5

Shared Stadium Expenses



- 49ers refuse to show proper purchasing and labor code compliance to support Shared Stadium Expenses. 49ers then prepare a "Shared Expense" budget for joint Stadium Management.
- SCSA questioned the amounts because there was no back up to show proper purchasing and labor code compliance
- 49ers force SCSA to borrow money through a Revolving Loan from them to pay themselves \$\$\$ that SCSA says has not been justified.
- At the end of the year, SCSA directs Trust to use SCSA revenue to pay Subordinated Loan
- 49ers refuse the repayment of the Subordinated Loan and instead pay themselves back on the Revolving Loan
- **RESULT:** 49ers pay themselves \$\$\$ that the SCSA never authorized and earn interest on Subordinated Loan amounts that were not repaid.



6

6

Public Safety Cap



- Measure J prohibits City from paying Stadium operating costs
- Stadium Lease contains a Public Safety Threshold or “Cap” of \$170K per NFL game that 49ers must pay City and requires SCSA to pay excess to City out of *non-NFL* revenue
- Every year since Stadium opened, Cap has been exceeded by hundreds of thousands of dollars, resulting in reduction in Performance Rent that gets paid to City.
- SCSA triggered right to negotiate a change in the Cap after the first 3 years. 49ers refused to increase the cap at all and demand payment of almost \$700K for the 4th year and \$1M+ for 5th year.
- SCSA’s position is that the 49ers breached the Lease by failing to negotiate a Cap increase and for miscalculating the Cap.

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7

7

Procurement Ordinance Amendment

- Under the Management Agreement 1st Amendment, in 2013 the SCSA Board delegated all of the Executive Director’s contracting authority to Stadium Manager. (at the time only contracts more than \$250K had to be approved by the Board)
- After the Executive Director and Board learned that 49ers were not procuring contracts in accordance with the law, the Board/Council amended the Ordinance to require all contracts to be brought to the Board for approval
- 49ers have filed an arbitration claim calling the Board’s action a breach of contract.
- SCSA maintains that the SCSA Board can revoke the ED’s authority

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8

8

Buffet Costs

- The Stadium Lease says that 49ers can require the SCSA to pay the costs of buffets that are provided to certain SBL holders
- For the 2014 – 2017 seasons, 49ers never billed for such costs.
- In 2019, the 49ers suddenly demanded costs of more than \$4 million for 4 years past
- SCSA questions the validity of the claims for payment and Manager's failure to budget and account for expenses for 4 years



9

9

Declaratory Relief - Records



- In 2016 the Board demanded the SCSA's records from the Management Co. which Manager refused to provide.
- In 2017 Manager sued the Stadium Authority and the Mayor to demand certificates that Manager has not breached any obligation
- SCSA could not confirm that no breach occurred and countersued to obtain the records
- Manager has dismissed its lawsuit against SCSA and Mayor
- SCSA's lawsuit continues because Manager still refuses to provide SCSA with its own records



10

10

Termination Case

- In September 2019 SCSA terminated Management Agreement as to non-NFL events, based on breaches related to violations of Labor Code, procurement codes, and other duties
- Within days Manager sued SCSA to prevent the termination
- SCSA countersued to enforce the Termination
- After discovery of further violations and self-dealing violations of state conflict of interest laws, SCSA terminated the entire Management Agreement and amended its counterclaim to include the new termination bases and also breach claims
- Court denied Manager's attempt to dismiss SCSA's counterclaim
- Consolidated with Records Case



11

11

Golf Course Case

- Separately from the Stadium Lease and from the Management Agreement, the 49ers leased the Golf Course from the City as an overflow parking facility
- The lease has a formula to compensate the City for the parking use
- After following the formula for entire lease term, the 49ers refused to pay same amount/calculation during a later month-month period.
- City sent a bill for unpaid rent which 49ers refused to pay
- 49ers sued the City for a refund of more than \$1 million paid
- City has countersued for the amount that was owing (almost \$700K).



12

12

Validation Action

- State law provides a public agency a procedure to ask the courts to determine “the validity of its bonds, warrants, contracts, obligations or evidences of indebtedness”.
- Any interested person within the public entity’s jurisdiction may respond to a Validation Action.
- Pursuant to its budgetary authority, SCSA’s Board adopted its budget in March 2020. The 49ers disagreed and have taken actions to encumber SCSA with debt outside of the authorized budget.
- SCSA filed a Validation Action asking for a judgment that SCSA’s approval of its budget is valid and that public funds can only spent under the approved SCSA budget.



13

13

49ers Tax Appeal

- *To support the bid for reduction in property taxes, CFO MacNeil told the AAB that the parties’ contracts were designed to allow the Authority to remove the 49ers’ management company and appoint an outside booking agent, if the public entity was not satisfied with the performance of the 49ers’ management company in booking events.*

49ers v SCSA

- *In the pending lawsuit against the Authority, however, the 49ers argue the management contract may be terminated only based on specified categories of wrongdoing, such as fraud or misappropriation.*



14

14

FACTS

- Neither the City Council or the SCSA Board has initiated **any** litigation against the 49ers
- SCSA authorized collection of Facility Rent when 49ers stated that they would deduct 20%. 49ers paid.
- The City and the SCSA must defend the public's funds and assets against the 49ers' claims in litigation and must assert legitimate counterclaims against them



15

15

City and SCSA Goals



Not pay public funds that are not due to 49ers



Restore public trust in how the publicly-owned Stadium is being managed



Ensure public funds have been expended properly and legally



Protect blue collar workers at Levi's Stadium



Ensure the debt can be repaid and the City's General Fund receives what is due



16

16

49ers' Goal: HIDE SPENDING



Spend public money outside the approved budget



Susidize NFL operations with Stadium Authority revenue



Hide records of their financial management



Hide failure to pay prevailing wage



Hide self-dealing

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17

17

Resolving the Litigation?

- SCSA cannot unilaterally dismiss claims that 49ers have initiated against SCSA
- 49ers have never provided the public with a full, transparent accounting of their management of the Stadium
- The Stadium Authority's defense of its rights will preserve Performance Rent payments to the City's General Fund and public control of non-NFL revenue and expenses

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18

18

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