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California Supreme Court rules Fresno Unified's contract illegal. Will it get \$36 million back?

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In the latest development in a [legal battle that has gone on for over a decade](#), the California Supreme Court ruled that the controversial lease-leaseback contract between Fresno Unified School District and Harris Construction that built Gaston Middle School was illegal.

Now the question is whether the construction company, owned by prominent Fresno developer Richard Spencer, will have to pay back Fresno Unified the \$36 million it received under the agreement, plus interest.

The saga began with a 2012 lawsuit from contractor Stephen K. Davis, who alleged Fresno Unified wrongfully used a lease-leaseback agreement with Harris Construction to build Gaston Middle School.

Unlike the traditional bidding process, which awards contracts to the lowest bidder, [lease-leaseback agreements allow school districts to handpick developers](#) who will front at least some of the construction costs and accept repayment from the district over time. It's intended to help cash-strapped districts finance construction projects.

But as the [state Supreme Court opinion](#), authored last week by Justice Martin Jenkins last week notes, the district had the money from bond measures passed by voters in previous election cycles to pay for the construction project.



In the latest development in a legal battle that has gone on for over a decade, the California Supreme Court handed down an opinion in late April finding a lease-leaseback contract between Fresno Unified School District and Harris Construction was illegal. (Bee file photo)

In a news release, Kevin Carlin, an attorney for Davis, said the case will now return to Fresno County Superior Court in pursuit of a judgment requiring Harris Construction to pay Fresno Unified back the \$36 million, plus an additional \$3.6 million in interest.

“Plaintiff Stephen Davis is not seeking payment of a single penny to himself,” he said. “Davis has continually asked FUSD throughout 11 years of litigation to stop paying their lawyers to oppose his efforts to recover FUSD’s money from Harris. Now that there are two Court of Appeal decisions and one Supreme Court decision against Harris, Davis again asks FUSD to help him get their money back.”

A Fresno Unified spokesperson declined to comment on the pending litigation.

Myron Moskowitz, an attorney for Harris Construction, said in an interview with the Ed Lab that their team was disappointed with the ruling but said the legal battle isn’t over.

“Now it goes back to the trial court, and Davis might try to get a trial on this case,” he said. “We might try to get the case dismissed. It’s not clear what’s going to happen now.”

He added that while the case has dragged on, the Harris construction completed its work on Gaston.

“Harris was very surprised by all this. They did a good job. They came in under budget. They came in on time. Kids are delighted to be going to a new school, and along comes this guy,” he said, alluding to Davis, “that wants to undo everything. It’s just very unfortunate.”

In a news release, Harris Construction President Michael Spencer said the company would take the latest ruling into account when contracting with school districts in the future.

“Essentially, the Court has provided more direction for public agencies on lease-leaseback financing,” he said of the Supreme Court opinion. “This was a very narrow legal issue before the court – and we look forward to our next lease-leaseback project with this additional clarity the California Supreme Court has provided.”

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