

## **State Supreme Court Rules Against FUSD, Harris Construction on School Building Contract**



The California State Supreme Court ruled Thursday against the type of construction contract Fresno Unified used to build Gaston Middle School in southwest Fresno. (FUSD)

By Bill McEwen, News Director  
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The nearly 11-year-old case involving Fresno Unified's use of a "lease-leaseback" agreement with Harris Construction to build Gaston Middle School might be nearing the finish line after the California Supreme Court unanimously ruled against the school district and Harris on Thursday.

The court upheld a November 2020 Fifth District Court of Appeal opinion that the district's agreement with Fresno-based Harris Construction was illegal because the district financed the construction with voter-approved bonds.



In contrast, the lease-leaseback construction model is intended to help districts build new facilities relying at least in part on financing provided by the contractor. The state's intention in approving this method was to enable districts short on funds to build needed facilities.

## **Will Harris Have to Repay \$37 Million to Fresno Unified?**

Fresno contractor Stephen K. Davis brought the lawsuit, arguing that Fresno Unified used lease-leaseback not as it was intended but to skirt competitive bidding rules under then-Superintendent Michael Hanson. Fresno Unified no longer uses lease-leaseback contracts to build or renovate schools.

At stake for Harris: \$37 million it received from Fresno Unified to build Gaston plus accrued interest and legal fees for the plaintiff. Since the beginning of the case, plaintiff's attorney Kevin Carlin of San Diego has argued that under state law, Harris must repay Fresno Unified the \$37 million.

"The lawsuit raises numerous legal questions and has a lengthy procedural history," wrote state Supreme Court Associate Justice Martin J. Jenkins, who authored the opinion. "However, we granted review to address a single question: 'Is a lease-leaseback arrangement in which construction is financed through bond proceeds rather than by or through the builder a 'contract' within the meaning of Government Code section 53511?' We conclude that the specific lease-leaseback arrangement at issue here is not a 'contract[]' within the meaning of Government Code section 53511.

"Accordingly, we affirm the judgment of the Court of Appeal."

A Fresno Unified spokeswoman told GV Wire that the district wouldn't comment on the state Supreme Court opinion "because the case is still ongoing."

## **Case Likely to Return to Fresno Superior Court**

There will be a 30-day period for the plaintiffs and defendants to review the court's opinion and raise issues of contention.

After that, the case likely will return to Fresno Superior Court for the civil trial to continue. However, with the Court of Appeal and the state Supreme Court having ruled on many of



the legal theories in the case, there will be a narrow lane to introduce arguments on behalf of the defendants.

“We’re at the 1-yard line in this case and now we need to punch it into the end zone,” Carlin told GV Wire. “We can now proceed with seeking a civil disgorgement (return of bond funds paid to Harris back to Fresno Unified) because there’s no dispute now that this was not a genuine lease-leaseback contract.”

Carlin added that Fresno Unified’s decision to side with Harris in the legal fight “has always been a head-scratcher.”

“We’re seeking to get the money back to the district. Why oppose that effort? Why not stay neutral and save millions in attorney’s fees?”

### **Harris Construction: We Built a Beautiful School, Followed Law in Every Way**

In 2020, after Harris suffered a setback in the Court of Appeal, company president Michael R. Spencer said in a statement to reporters: “Gaston Middle School – completed in 2014 – is a beautiful school and community center that we very proudly built for the Fresno Unified School District to serve the children and community of southwest Fresno. We believe Harris Construction and Fresno Unified followed the law in every way in building the project.”

Controversy over the Gaston contract and other lease-leaseback contracts contributed to Hanson’s exit from the district after 12 years, according to district trustees at the time. But Hanson insisted that an FBI investigation into the matter had nothing to do with him leaving.

In April 2019, the FBI acknowledged that it had concluded the probe and wouldn’t file charges.

Hanson always maintained that the lease-leaseback agreements gave Fresno Unified the flexibility to choose the most qualified contractor, instead of merely awarding the build to the lowest bidder. He also said that lease-leasebacks provided a “significant advantage” to the district.