IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

LORRAINE STEINHART,	)	Appeal No. B190957
	)	
Plaintiff and Appellant,	)	Superior Court No. LC 073339
	)	Los Angeles County
vs.	)	Northwest Dist./Van Nuys Courthouse East
	)	
COUNTY OF LOS ANGELES and	)	
DOES 1 THROUGH 10, Inclusive,	)	
	)	
Defendant and Respondent.	)	
	)	
______________________________	)	

APPELLANT'S OPENING BRIEF

Appeal from Los Angeles Superior Court

Hon. Michael B. Harwin

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STATEMENT OF THE CASE

Appealability and Timeliness

This is an appeal by plaintiff/appellant Steinhart from a final Judgment of Dismissal (CCP § 581(f)(1)) in favor of defendant/respondent County entered by the Los Angeles Superior Court, Hon. Michael B. Harwin, Judge presiding. The Judgment was entered upon an order sustaining County's demurrer to complaint without leave to amend. AA 130.[1] The Judgment is appealable pursuant to CCP § 904.1(a)(1).

The appeal is timely. The Judgment was entered on March 10, 2006 (AA 130), and Notice of Appeal was filed on April 27, 2006 (AA 133), within the 60-day time period provided in CRC § 2(a).

Standard of Review

This appeal is subject to the independent/*de novo* standard of review relating to pure questions of law (*Ghirardo v. Antonioli* (1994) 8 C.4th 791, 799), in that it involves review of the trial court's sustaining of a demurrer without leave to amend.

Procedural History

The instant action is based upon Steinhart's Complaint for Recovery of Real Estate Taxes Paid and Declaratory Relief, filed on August 29, 2005, AA 1, in which Steinhart alleged, in summary, as follows:

> During her lifetime, decedent Helfrick created a living trust into which she transferred to herself as trustee the subject residential parcel of real property in Sherman Oaks ("residence"). Attached to the Complained as Exhibit A is a copy of Steinhart's Claim for Refund of Property Taxes, mentioned below. AA 8. A copy of the Living

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"AA" denotes Appellant's Appendix in Lieu Clerk's Transcript, followed by the relevant page reference of the Appellant's Appendix.

Trust document is attached to the Exhibit A Claim for Refund as Exhibit 1 thereto. AA 14. The trust was revocable during decedent's lifetime, and upon her death, named successor co-trustees to succeed her at which time the trust would become irrevocable.

At Decedent's death, if plaintiff Steinhart, her sister, survived her, Steinhart would have the right to occupy the residence for as long as she lived, subject to her paying all taxes, insurance and assessments on the residence, and all necessary repairs and costs of utilities.

Decedent died on March 24, 2001. Pursuant to the terms of the trust, decedent's position as trustee was taken over by co-trustrees, and Steinhart became the life tenant of the residence, subject to paying all taxes, etc.

Prior to decedent's death, the last tax bill for the fiscal year 2000-2001 reflected taxes in the amount of $1,105.79. After her death, County generated a Supplemental Property Tax Bill for the fiscal year 2000-2001, recalculating the tax for that year at $4,340.75, and for the portion of the year following decedent's death at $1,085.19.

For each fiscal year thereafter, County sent out escalating tax bills (all of which were paid by Steinhart) as follows:

2001-2002: $5,492.67

2002-2003: $5,764.45

2003-2004: $6,245.33

Copies of the subject tax bills, and the fronts and backs of Steinhart's canceled checks reflecting her payment of the same, are attached as Exhibits 2-7 to the Exhibit A Claim for Refund. AA 33-48.

On or about April 4, 2004, plaintiff filed a Claim for Refund of Property Taxes on the ground that pursuant to the provisions of the trust, a "change of ownership" as defined

with respect to Proposition 13 did not occur at decedent's death, as a consequence of which County was not legally authorized to reevaluate and tax the property under Proposition 13 at its value as of the date of decedent's death.

On or about March 3, 2005, County sent written notice that the transfer of the residence occurring as of the date of decedent's death constituted a "change of ownership" as defined by law, and that the 100% reappraisal of the property would stand, and the claim for refund was denied as to each of the aforesaid tax bills.

County's written notice consisted of two groups of documents: (1) a document dated March 3, 2005 RE: Investigation of Ownership Change; and (2) five separate letters, each dated March 2, 2005, each containing the same content other than that each referred to a separate tax bill number. Copies of those six documents are attached to the Complaint as Exhibit B. AA 49.

The first document, RE: Investigation of Ownership Change stated: "The real property transfer is a `Change in Ownership', as defined by law, and the 100% reappraisal of the property will stand." At its bottom, it contained a Notice which stated: "This notice is your record of our action on your request for investigation. It is your responsibility to pay all billed tax installments. Disputes involving the assessed value of your property should be formerly addressed to the Assessment Appeals Board at (213) 974-1471. *If we have indicated that a correction is being made*, you have 60 days from the date of receipt of your *corrected tax bill* to file an appeal." [Emphasis added].

The second group of documents (i.e., the five letters) stated in relevant part: "*The County has completed its review* of your claim(s) for refund of taxes and/or penalties you filed with us on DECEMBER 21, 2004. Your claim(s) was reviewed by the ASSESSOR. Based on the documentation you submitted, they determined that your claim does not

meet the provisions in the Revenue and Taxation Code for granting a refund. For this reason, *your claim(s) for refund is denied* effect of March 2, 2005. Section 5141 of the State of California Revenue and Taxation Code *allows you six months from the effective date of denial of your claim(s) to commence an action in the Superior Court to seek judicial review of this denial*." [Emphasis added].

In this action, Steinhart seeks a judicial declaration that no change of ownership of the residence occurred for the purpose of Proposition 13, and granting her a refund from County of the excess real property taxes she has previously paid on the residence pursuant to the aforesaid tax bills issued by County.

The Complaint was filed as a Limited Civil Case–over $10,000, in that a tax refund was sought for less than $25,000. County filed a Demurrer to the Complaint. (AA 55). Steinhart filed Opposition to Demurrer (AA 63), which included a Request for Judicial Notice (AA 76). At the demurrer hearing, the limited civil case department ruled that it did not have jurisdiction over a complaint for declaratory relief pursuant to CCP § 86(a)(7), and thereupon ordered the case reclassified as an unlimited civil case; the case was thereupon given a new case number and transferred to an unlimited civil case department. AA 81, 82, and 83.

After the case was so transferred, County again filed a Demurrer to Complaint (AA 84) on three grounds:

1. Steinhart's action was barred by her failure to exhaust administrative remedies.

2. Pursuant to Revenue and Taxation Code § 60, the transfer of a life estate in real property to a nonspouse third party, such as the transfer from the decedent to Steinhart under the living trust document, constituted a "change in ownership" pursuant to which a reassessment of the property valuation as of date of death is authorized.

3. Steinhart's action for refund of taxes previously paid is prohibited by Revenue

and Taxation Code § 4807, because it constitutes an action to enjoin or prevent the collection of taxes in that it improperly included a request for declaratory relief.

Steinhart filed Opposition to Demurrer (AA 95); and County filed a Reply to Opposition (AA 113) including a Request for Judicial Notice (AA 125). The hearing on the Demurrer was held on March 7, 2006 in the court below, Hon. Michael B. Harwin, Judge presiding. See Reporter's Transcript ("RT"). After extensive oral argument, the court sustained the Demurrer without leave to amend (RT 17:25), and requested that County provide a Judgment accordingly (RT 18:9-22).

QUESTIONS PRESENTED

1. Was Steinhart excused from the requirement of exhausting administrative remedies on her Claim for Refund on the ground that County's reassessment of the subject property under Proposition 13 was illegal because Steinhart's acquisition of a life estate in the property does not constitute a "change in ownership" pursuant to Revenue and Taxation Code § 60 on either or both of the following grounds:

    a. The complained of reassessment was a nullity as a matter of law, and no factual questions existed regarding the valuation of the property;

    b. County was estopped from contending that Steinhart failed to exhaust administrative remedies by reason of its written advice to Steinhart following its denial of her Claim for Refund, upon which advice Steinhart relied in seeking judicial review of that denial without seeking further administrative review?

2. Pursuant to Revenue and Taxation Code § 60, does the transfer of a life estate in real property to a nonspouse third party, pursuant to the provisions of a living trust at the trustor's death, constitute a "change in ownership" upon which a reassessment of the value of the property at the date of death can legally be based?

3. Is Steinhart's action seeking a refund of previously-paid real property taxes prohibited by Revenue and Taxation Code § 4807 on the ground that it constitutes an action to enjoin or prevent the collection of taxes and/or impermissibly contains a request for judicial relief.

ARGUMENT

I. STEINHART WAS EXCUSED FROM THE REQUIREMENT OF EXHAUSTING ADMINISTRATIVE REMEDIES ON HER CLAIM FOR REFUND ON THE GROUND THAT COUNTY'S REASSESSMENT OF THE SUBJECT PROPERTY UNDER PROPOSITION 13 WAS ILLEGAL, BECAUSE STEINHART'S ACQUISITION OF A LIFE ESTATE IN THE PROPERTY DOES NOT CONSTITUTE A "CHANGE IN OWNERSHIP" PURSUANT TO REVENUE AND TAXATION CODE § 60.

At the Demurrer hearing, the court below stated that it agreed with the position taken by County that Steinhart 's action was barred for failure to exhaust administrative remedies. RT 13. Steinhart respectfully contends that conclusion is prejudicially erroneous for the reasons set forth below.

A. A Taxpayer is Not Required to Exhaust Administrative Remedies When the Complained of Reassessment Was a Nullity as a Matter of Law, and No Factual Questions Existed Regarding the Valuation of the Property.

In *Stenocord Corporation v. City and County of San Francisco* (1970) 2 C.3d 984, 987, the Supreme Court held:

> "Ordinarily a taxpayer seeking relief from an erroneous assessment must exhaust available administrative remedies before resorting to the courts. [Citations.] *An exception is made when the assessment is a nullity as a matter of law* because, for example, the property is tax exempt, non-existent or outside the jurisdiction [Citations],

and no factual questions exist regarding the valuation of the property which, upon review by the board of equalization, might be resolved in the taxpayer's favor, thereby making further litigation unnecessary [Citations]." (Emphasis supplied).

This principle was applied in *Star-Kist Foods, Inc. v. Quinn* (1960) 54 C.2d 507, 511 (a case relied upon by *Stenocord*) wherein the Supreme Court held in relevant part:

> "`[W]e think there is a real and distinct difference between those cases in which it may properly be said that the error is one of overvaluation and those cases in which the overvaluation is a mere incidental result of an erroneous assessment of property which should not have been assessed.' The necessity of recourse to the board [administrative remedy] is properly determined by the nature of the issues in dispute . . . . The only substantive issue in the present case is whether section 107.1 is unconstitutional on its face. As in cases involving only the question whether property is taxable, *there is no question of valuation that the local board of equalization has special competence to decide. There is no dispute as to the facts and no possibility that action by the board might avoid the necessity of deciding the constitutional issue or modify its nature.* [Citation.] Under the circumstances, therefore, recourse to the local board of equalization was not required before seeking a judicial determination of the constitutionality of section 107.1." (Emphasis added).

The question as to whether Steinhart is entitled to a refund of the real property taxes she previously paid to County is a pure question of law (i.e., statutory interpretation of Revenue and Taxation Code § 60) as to whether a transfer of a life estate in real property to a nonspouse third party, pursuant to the terms of a living trust at the death of the trustor, constitutes a "change in ownership" upon which a reassessment of value at date of death can legally be based. Steinhart did not contest the amount to which the property was reevaluated by County. She merely

contended that County did not have the legal right to perform a reevaluation because the undisputed, relevant facts of this case do not constitute a "change in ownership." Therefore, there was no question of valuation that the local board had special competence to decide; nor was there any dispute as to the relevant facts and no possibility that action by the board might avoid the necessity of a court's deciding the statutory interpretation issue. Therefore, pursuant to *Stenocord* and its forerunners, Steinhart was not required to exhaust administrative remedies in this case, but could resort immediately to the courts.

In seeking to deflect Steinhart's reliance on *Stenocord*, in its Demurrer papers, County plucked out the following language from *Stenocord* : "An exception is made when the assessment is a nullity as a matter of law *because, **for example**, the property is tax exempt, non-existent or outside the jurisdiction* . . . . " (Emphasis added). County then argued that *Stenocord* does not apply to this case because the statutory interpretation issue of law presented here is not one of the *Stenocord* examples, in that Steinhart is not contending that the residence is tax exempt, non-existent, nor outside the jurisdiction. Respectfully, *Stenocord* merely cited those three circumstances as *examples*, without stating they constituted the only circumstances in which exhaustion of administrative remedies is not required. If one removes the recitation of those examples from the court's statement, the principal of the holding is made clear: "An exception is made [to the exhaustion of remedies requirement] when the assessment is a nullity as a matter of law . . . and no factual questions exist regarding the valuation of the property which, upon review by the board of equalization, might be resolved in the taxpayer's favor, thereby making further litigation unnecessary."

B. County Is Estopped from Contending That Steinhart Failed to Exhaust Administrative Remedies by Reason of its Written Advice to Steinhart Following its Denial of Her Claim for Refund, Upon Which Advice Steinhart Relied in Seeking Judicial Review of That Denial Without Seeking Further Administrative Review.

In 2004, Steinhart filed with County a Claim for Refund of Property Taxes on the ground that pursuant to the provisions of her deceased sister's living trust under which she obtained a life estate in real property, a "change in ownership" as defined in Revenue and Taxation Code § 60 did not occur upon the transfer of the life estate at the sister'sdeath, as a consequence of which County was not legally authorized to reevaluate the property as of the date of death. Several months later, County sent written notice that the transfer of the residence occurring as of the date of death constituted a "change in ownership" as defined by law, that the 100% reappraisal of the property would stand, and the claim for refund was denied as to each of the subject tax bills.

County's written notice consisted of two groups of documents:

Document 1: A document dated March 3, 2005 RE: Investigation of Ownership Change; and;

Document 2: Five separate letters, each dated March 2, 2005, each containing the same content other than that each referred to a separate tax bill number. Copies of those six documents are attached the Complaint as Exhibit B. AA 49-54.

Document 1 stated:

> "The real property transfer is a `Change in Ownership', as defined by law, and the 100% reappraisal of the property will stand." At its bottom, it contained a Notice which stated: "This notice is your record of our action on your request for investigation. You are responsible to pay all billed tax installments. Disputes involving the assessed value of

your property should be formerly addressed to the Assessment Appeals Board at (213) 974-1471. *If we have indicated that a correction is being made*, you have 60 days from the date of receipt of your *corrected tax bill* to file an appeal." (Emphasis added).

Document 2 stated in relevant part:

"*The County has completed its review* of your claim(s) for refund of taxes and/or penalties you filed with us on DECEMBER 21, 2004. Your claim(s) was reviewed by the ASSESSOR. Based on the documentation you submitted, they determined that your claim does not meet the provisions in the Revenue and Taxation Code for granting a refund. For this reason, *your claim(s) for refund is denied* effective March 2, 2005. Section 5141 of the State of California Revenue and Taxation Code *allows you six months from the effective date of denial of your claim(s) to commence an action in the Superior Court to seek judicial review of this denial*." (Emphasis added).

Document 1 expressly stated that: "If we have indicated that a correction is being made, you have 60 days from the date of receipt of your corrected tax bill to file an appeal [to the Assessment Appeals Board]." Document 1 *did not* indicate that a correction was being made; and no corrected tax bill was generated or received by Steinhart. Therefore, the language regarding appealing within 60 days was not relevant.

Document 2 stated: "The County" has completed its review of Steinhart's claim for refund, and that since it did not meet the provisions of the Revenue and Taxation Code for granting a refund, it was denied, effective March 2, 2005. It further advised that statutory law allowed Steinhart six months from the effective date of denial of claim to commence an action in the Superior Court to seek judicial review of the denial.

Taken together, Documents 1 and 2 advised Steinhart that: *The County* had completed its review of Steinhart's claim for refund and that it did not pass statutory muster for the granting of

a refund, as a result of which it had been denied; and that Steinhart had six months from the effective date of the denial to seek judicial review of the denial. Nowhere did it advise her that under the circumstances of her case, prior to seeking judicial review within said six-month period, she was first required to seek review by the Assessment Appeals Board. In fact, Document 1 specified the factual circumstances under which review by the Board was required, which circumstances were different from those in the instant case.

Steinhart obviously relied on the advice given by County in filing her civil action below without first seeking review by the Assessment Appeals Board. These circumstances constitute a classic case of equitable estoppel. A valid claim of equitable estoppel consists of the following elements: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it. *Wood v. Blaney* (1894) 107 C. 291, 295; *Seymour v. Oelrichs* (1909) 156 C.782, 795. Furthermore, an actual fraudulent intent is ordinarily unnecessary to raise an estoppel if the circumstances are such that a fraud would be perpetrated by permitting a denial of the representations. *Seymour, supra* at 796; *Crestline Mobile Homes Mfg. v. Pacific Finance Corp.* (1960) 54 C.2d 773, 778 ("Negligence that is careless and culpable conduct is, as a matter of law, equivalent to an intent to deceive and will satisfy the element of fraud necessary to an estoppel.").

Subject to the rule that there can be no estoppel against a governmental agency which would defeat operation of a policy protecting the public (see *e.g., Merco Const. Engineers v. Los Angeles Unified School Dist. of Los Angeles* (1969) 274 C.A.2d 154, 162), the estoppel doctrine is now applied freely against the state, its subdivisions, and other governmental agencies. See *United States Fidelity & Guaranty Co v. State Bd. Of Equalization* (1956) 47 C.2d 384, 388;

Shoban v. Board of Trustees of Desert Center Unified School Dist. (1969) 276 C.A.2d 534, 542; *Crumpler v. Board of Administration Public Employeee' Retirement System* (1973) 32 C.A.3d 567, 579. In *Long Beach v. Mansell* (1970) 3 C.3d 462, 496, the Supreme Court observed that the doctrine of equitable estoppel may be applied against the government "where justice and right require it"; but it will not be applied where this would nullify a strong rule of public policy adopted for the benefit of the public; and "[t]he tension between these twin principles makes up the doctrinal context in which concrete cases are decided." (3 C.3d 493). "The Government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of the court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (3 C.3d 496).

II. PURSUANT TO REVENUE AND TAXATION CODE § 60, THE TRANSFER OF A LIFE ESTATE IN REAL PROPERTY TO A NONSPOUSE THIRD PARTY, PURSUANT TO THE TERMS OF A LIVING TRUST AT THE DEATH OF THE TRUSTOR, DOES NOT CONSTITUTE A "CHANGE IN OWNERSHIP" UPON WHICH A REASSESSMENT OF THE VALUE OF THE PROPERTY AT THE DATE OF DEATH CAN LEGALLY BE BASED.

County argued below that pursuant to Revenue and Taxation Code § 60, the deceased trustor's transfer of a life estate to Steinhart, her sister, constituted a "change in ownership," citing *Leckie v. County of Orange* (1998) 65 C.A.4th 334, 76 C.R.2d 426, and Title 18 of the California Code of Regulations § 462.060(a) in support of this proposition. Steinhart respectfully concedes that *Leckie* holds that a transfer of a life estate pursuant to the terms of a revocable trust on the death of the trustor constitutes a "change in ownership" pursuant to Revenue and Taxation Code

§ 60; and that California Code of Regulations, Title 18, § 462.060(a) provides that the creation of a life estate in real property is a "change in ownership" at the time of the transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, plaintiff respectfully contends that:

1. The decision in *Leckie* is in error as being contrary to the holding of the Supreme Court in *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 C.4th 155, 2 C.R.2d 536.

2. The California Code of Regulations section is without effect and may not be enforced as it exceeds the Legislature's grant of authority as expressed in Revenue and Taxation Code § 60, *et seq*.

In reaching its holding, *Leckie* rejected the taxpayer's argument that the Supreme Court in *Pacific Southwest Realty* characterized a life estate as "an estate of questionable value" which does "not approach that of a fee" as being dicta contained in a discussion of a life estate retained by a transferor which is clearly exempt from the "change in ownership" provisions pursuant to Revenue and Taxation Code § 62(c); and the Court did not discuss what the result would be where the holder of the life estate was someone other than the transferor.

Respectfully, *Leckie*'s attempt to distinguish *Pacific Southwest Realty* is erroneous, in that *Pacific Southwest Realty*'s discussion of the status of a life estate was an essential part of its analysis of what type of interests in real property have a value which is substantially "equal to the value of the fee interest" within the meaning of Revenue and Taxation Code § 60. In *Pacific Southwest Realty*, a vendor sold a fee simple interest in an office building to a purchaser and simultaneously acquired from the purchaser a leasehold interest in the property for 60 years with 10 consecutive renewal options for 5 years each. When the property was reassessed on the basis that the transfer constituted a "change in ownership" and the vendor's claim for a reduction in the

reassessment was rejected, it brought a court action.

In holding that the transaction constituted a "change in ownership" within the meaning of the statute, *Pacific Southwest Realty* was constrained to discuss whether the interest so transferred fell within the third prong of Revenue and Taxation Code § 60, which requires that the value of the interest transferred be substantially "equal to the value of the fee interest."

In coming to its conclusion, *Pacific Southwest Realty* engaged in a thorough review of the Legislative enactment of Revenue and Taxation Code §§ 60, 61 and 62.

> Following adoption of Proposition 13 by popular election, it fell to the Legislature to create consistent and uniform guidelines to define the phrase, "change in ownership," in the Proposition. This task was delegated to the Task Force on Property Tax Administration, the recommendations of which resulted in the enactment of the aforesaid sections of the Revenue and Taxation Code. The Report of the Task Force stated that it sought to distill the basic characteristics of a "change in ownership" and embody them in a single test (now Section 60) which could be applied evenhandedly to distinguish between "changes" and "non-changes," both those which the Task Force could and those which it did not foresee. The Task Force was also anxious that the single test be sufficiently consistent with the normal understanding of "change in ownership" to withstand legal attack. The Task Force recommended that its general definition of change in ownership (Section 60) should control all transfers, both foreseen and unforeseen; and also recommended the use of statutory "examples" to elaborate on common transactions, foreseeing that lay assessors and taxpayers would otherwise have difficulty applying legal concepts such as "beneficial use" and "substantially equivalent." Thus, common types of transfers were identified and concrete rules for them were set forth in Sections 61 and 62. The Report explained that: "It is important that the specific statutory examples be

consistent with the general test."

Section 60's governing test contains three parts: "A `change in ownership' means [1] a transfer of a present interest in real property, [2] including the beneficial use thereof, [3] the value of which is substantially equal to the value of the fee interest."

In holding that the Section 60 test was met under the facts of that case, the Court stated that in enacting the third prong of § 60, the Legislature meant to insulate from Proposition 13's effect transfers in which only an estate of lesser value than the fee was conveyed, observing that two examples illustrated the Legislature's intent when it enacted the statutory scheme of Revenue and Taxation Code § 60, *et seq*. One example considered the conveyance of a lease for one year. It would not be rational to apply a constitutional provision for reassessment following a "change in ownership" when the owner of an apartment leases it to another for one year, thereby conveying an estate of lesser value than that retained. By contrast, in enacting § 61(c)(1), the Legislature decided that the creation of a 35-year lease would constitute a change in ownership because the length of the lease would give the lessee's interest some of the practical attributes of a conveyance of a fee simple. A lease of that duration constitutes the main economic value of the land, even though the leaseholder does not own a freehold estate (i.e., an estate of indeterminate duration), in that lenders are willing to lend on the security of such an instrument, citing the Report of the Task Force with reference to defining "change in ownership."

A second example is the conveyance of a fee simple from parent to child subject to the reservation of a life estate in the parent, which the Legislature included in its list of examples of transfers exempt from "change in ownership," referring to Revenue and Taxation Code § 62(e). With reference to this example, the Court went on to hold at

1053:

> "*But even if the Legislature had not done so* [by specific example in § 62(e)]*, reassessment would be barred under the carefully drafted basic test of section 60* [emphasis added], not only because the beneficial use would not have transferred, but also because the value of each divided interest in the estate would not approach that of a fee. A purchaser of the reserved estate would be buying a life estate *per autre vie*--a freehold estate, to be sure, but an estate of questionable value because subject to complete defeasance at an unknown time. Rare is the mortgagee willing to lend on the security of an estate so ephemeral. The value of the reversionary or remainder interest would also be reduced because the time of vesting would be uncertain and, depending on the care with which the original conveyance was drafted, the value of the ultimate estate might be less at the time of vesting because of intervening conveyances, creditors' demands, and the like.
>
> "By contrast, when a life estate ends and the remainder or reversion indefeasibly vests in the grantees the value of the estate is known and is identical to the value of the fee. It is at that point that a change in ownership has occurred, as the Legislature specifically provided in accord with the task force's recommendation."

Leckie's statement that the life estate being discussed in *Pacific Southwest Realty* was a reserved estate in the transferor, rather than a life estate granted by the transferor to a transferee, is a distinction without a difference. The value of a life estate in comparison to the value of the fee is the same whether it is a *reserved* or *transferred* life estate. Both are "of questionable value because subject to complete defeasance at an unknown time" and "[r]are is the mortgagee willing to lend on the security of an estate so ephemeral."

Furthermore, *Pacific Southwest Realty* stated that, as noted above, even if the Legislature had not included Revenue and Taxation Code § 62(e) [conveyance of a fee simple interest from parent to child subject to a reservation of a life estate in the parent] in its list of examples of transfers exempt from "change in ownership," reassessment would be barred under the carefully drafted three-pronged test in Section 60, because amongst other reasons, neither the value of the life estate nor the value of the remainder would approach that of a fee. The Court's conclusion that the value of a life estate does not approach the value of a fee was based upon the inherent characteristics of a life estate in and of itself, regardless of whether it is created by reservation in the grantor, or by transfer by the grantor to a grantee. Again, *Leckie's* attempt to distinguish *Pacific Southwest Realty* on this basis (echoed by County in the court below) is illogical and unsound.

Steinhart concedes that the court in *Pacific Southwest Realty* was not called upon to decide whether either a transferred or a reserved life estate constituted a "change in ownership," but was dealing there with a long-term lease. However, the Court felt constrained to draft a law review-type opinion to support its statutory interpretation, and then apply it to the facts of the case before it. In so doing, it appears to have used a "book ends" analysis in which it discussed a long-term lease as an example of a type of interest that was equivalent to a fee, on one end, as compared to a life estate which was not equivalent to a fee, on the other end. Because reference to these two types of real property interests was necessary to the Court's statutory interpretation analysis, such reference was necessary to the opinion, since the statutory interpretation analysis was necessary to the opinion. Thus, that analysis, including the Court's discussion of the value of a life estate within it, should not be construed as mere dictum rather than an essential part of the holding.

If the discussion of the value of a life estate in *Pacific Southwest Realty* is deemed to be

part of its holding, rather than mere dictum, that holding is binding on this court and requires reversal of the Judgment.

Furthermore, as a court of equal jurisdiction, this court is not bound by *Leckie*. Therefore, even assuming, purely for the sake of argument, that the life estate discussion in *Pacific Southwest Realty* constitutes mere dictum, it is nonetheless a sound, logical and persuasive point that should be adopted and applied by this court. Frankly, if this case should eventually be reviewed by the Supreme Court, it is hard to imagine that it would depart from its well-reasoned life estate value analysis in *Pacific Southwest Realty*, even if that analysis is deemed to be dictum.

As noted in *Pacific Southwest Realty*, by contrast to the ephemeral nature of a life estate which is subject to complete defeasance at an unknown time, the creation of a 35-year lease constitutes a change in ownership because the length of the lease gives the lessee's interest some of the practical attributes of a conveyance of a fee simple, in that a lease of such duration constitutes the main economic value of the land.

A life estate is subject to complete defeasance at an unknown time, because the date of one's death is unknown. If it were argued that the value of a life estate should be measured by the life tenant's normal life expectancy per an official life expectancy table, such an argument would be of no avail in the instant case. At the time of the deceased trustor's death in March 2001, plaintiff was 73 with a life expectancy of 13.4 years pursuant to the CACI Life Expectancy Table.[2] Such life expectancy is far short of the 35 year lease term which is the lower threshold

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[2] In the Court below, Steinhart requested the court to take judicial notice of her date of birth. In support of her opposition to the first Demurrer, she filed Plaintiff's Request for Judicial Notice Re Opposition to Demurrer, requesting that the Court take judicial notice that she was born on February 13, 1928, attaching thereto a certified copy of her birth certificate. AA 76-80.

for a transfer constituting a "change in ownership" by virtue of an interest for a duration of years.

Notwithstanding the arguably superseding authority of *Pacific Southwest Realty* over *Leckie*, since *Leckie* appears to be direct authority for the proposition contended for by defendant, this Court may feel it is required to follow *Leckie*'s authority rather the less direct authority of *Pacific Southwest Realty*. On the other hand, it would not seem improper for this Court to accept *Pacific Southwest Realty* as binding on it notwithstanding *Leckie*, especially since it would appear that on appeal, it is likely that the authority of *Pacific Southwest Realty* will prevail.

Finally, County's reliance on California Code of Regulations, Title 18, § 462.060(a) is misplaced. An administrative rule that exceeds the Legislature's grant of authority as expressed in Revenue and Taxation Code § 60, et seq., dealing with changes in ownership of real property which will permit reassessment at current market value, is without effect and cannot be enforced. *Pacific Southwest Realty* at 171. Pursuant to the holding of *Pacific Southwest Realty* that a life estate is not substantially of equal value to the fee interest, the administrative regulation relied upon by defendant, which is inconsistent with the holding, is without effect and is unenforceable as exceeding the Legislature's grant of authority.

III. STEINHART'S LAWSUIT, SEEKING A REFUND OF PREVIOUSLY-PAID REAL PROPERTY TAXES (INCLUDING ITS REQUEST FOR A DECLARATORY JUDGMENT), IS NOT PROHIBITED BY REVENUE AND TAXATION CODE § 4807, BECAUSE IT DOES NOT CONSTITUTE AN ORDER TO ENJOIN OR PREVENT THE COLLECTION OF PROPERTY TAXES.

Revenue and Taxation Code § 4807 provides in relevant part:

> "No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be

collected."

Paragraphs 12 and 13 of the Complaint, alleged, in summary:

> A judiciable controversy exists between the parties because plaintiff contends that pursuant to the terms of the trust instrument, a change of ownership did not occur upon decedent's death; whereas County contends that a change of ownership did occur upon decedent's death, as a consequence of which it had the legal right to tax the residence at its reassessed value as of the date of decedent's death. "Plaintiff seeks a judicial declaration that no change of ownership so occurred, and *granting her recovery of the excess real property taxes she has previously paid* on the residence pursuant to the tax bills issued by [County]." (Emphasis added).

Steinhart respectfully submits that her action seeking a judicial declaration that no change in ownership had occurred, and as a consequence thereof she is entitled to a refund of the excess real property taxes she had previously paid, does not fall within the prohibition of Section 4807. First, the Section prohibits types of court orders, not types of civil actions. Second, in its Demurrer papers, below, County argued that declaratory relief is strictly prohibited under Revenue and Taxation Code § 4807. AA 113, 121. The statutory language, quoted above, does not so provide. Furthermore, County provided no case authority in support of its assertion. Section 4807 merely prohibits the issuance of an *order* that would prevent or enjoin the collection of property taxes sought to be collected. Steinhart did not seek declaratory relief for that purpose.

Steinhart sought a judicial declaration only in aid of obtaining a refund, i.e., an order of court stating that no change in ownership had occurred and therefore the reassessment of the residence on the basis that a change in ownership had occurred was improper, and by reason of plaintiff's payment of taxes on the reassessed residence valuation, she was entitled to a refund of

the excess taxes so paid.

The instant case is clearly distinguishable from the relied upon by County below, namely, *Merced County Taxpayer's Association v. Cardela* (1990) 218 C.A.3d 396, 267 C.R. 62 and the Supreme Court case upon which it is based, namely, *Pacific Gas & Electric Co. v. State Board of Equalization* (1980) 27 C.3d 277, 165 C.R. 122. Those cases were *prepayment of tax cases* in which the plaintiff sought an order of court to *prevent the collection of taxes* from them on the ground that the assessments of the property values upon which those taxes were based were improper. The Supreme Court in *Pacific Gas* held that such prepayment cases were barred by law, and that the proper recourse was an action for a refund under the Revenue and Taxation Code. In the instant case, plaintiff has pursued the proper recourse, i.e, an action for a refund.

In summary, there is no vice in requesting a judicial declaration when the taxpayer is not pursuing a prepayment of tax remedy that would in effect enjoin collection of taxes; but the taxpayer previously paid the tax, and is seeking a refund of the improper excess portion of the tax so paid (and a judicial declaration in aid of her refund claim).

CONCLUSION

For all of the reasons set forth above, the Judgment should be reversed.

Respectfully submitted,

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Terran T. Steinhart
Attorney for Plaintiff and Appellant

ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH CRC § 14(c)

Counsel for plaintiff and appellant hereby certifies that the number of words in **APPELLANT'S OPENING BRIEF** is 6,610 words.

Date: October 5, 2006

____
Terran T. Steinhart
Attorney for Plaintiff and Appellant

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4311 Wilshire Boulevard, Suite 415, Los Angeles, California 90010-3713, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On the date set forth below, at the aforesaid place of business, one copy each of the document described as **APPELLANTS' OPENING BRIEF** was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully pre-paid, addressed as set forth in the attached Service List to opposing counsel and the Superior Court judge care of the court clerk, and four copies to the California Supreme Court per said Service List; and that envelope was placed for collection and mailing on said date following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that foregoing is true and correct.

Executed on October 5, 2006 at Los Angeles, California.

____
Terran T. Steinhart

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794\Appellant's Opening Brief