

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 REPLY BRIEF

Appeal from Los Angeles Superior Court

Hon. Michael B. Harwin

TERRAN T. STEINHART, ESQ.
4311 Wilshire Boulevard, Suite 415
Los Angeles, California 90010-3713
(323) 933-8263
Fax (323) 933-2391
Bar No. 036196

Attorney for Plaintiff/Appellant

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I. RESPONDENTS ARGUMENT THAT PLAINTIFF’S COMPLAINT WAS PROPERLY DISMISSED BECAUSE SHE FAILED TO EXHAUST ADMINISTRATIVE REMEDIES IS UNPERSUASIVE BECAUSE:

A. The Complained of a Reassessment Was a Nullity as a Matter of Law as Being in Violation of the California Constitution, Art. 13A, §§ 1-2, and No Factual Questions Were at Issue Regarding the Valuation of the Property.¹

This is a Proposition 13 case, subject to the provisions of California Constitution, Article 13A, Sections 1-2. Section 1(a) provides: “The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the *full cash value* of such property.” (Emphasis added). Section 2(a) provides: “The ‘full cash value’ means the county assessor’s valuation of real property as shown on the 1975-76 tax bill under ‘full cash value’ or, thereafter, the appraised value of real property when purchased, newly constructed, or a *change in ownership has occurred* after the 1975 assessment.” (Emphasis supplied).

In the instant case, commencing in 2001 when Steinhart obtained a life estate in the subject real property under the terms of her sister’s living trust, County reassessed the “full cash value” of the property on the ground that Steinhart’s acquisition of the life estate constituted a “change in ownership.” If Steinhart’s acquisition of the life estate did not constitute a “change in ownership,” within the meaning of Proposition 13, County’s reassessment was a nullity as being in violation of the Constitution. It is fundamental that governmental action in violation of the Constitution is null and void.

Star-Kist Foods, Inc. v. Quinn (1960) 504 C.2d 507, contains a holding favorable to Steinhart with regard to the exhaustion of administrative remedies doctrine in a tax refund case

¹ California Code of Regulations § 462.060(a) and Revenue and Taxation Code § 61(h), relied upon by County, are also unconstitutionally void.

involving the issue of whether a statute under which the amount of tax was to be calculated was constitutional. Star-Kist leased certain land and improvements owned by the City of Los Angeles. For the purpose of taxation, pursuant to Revenue and Taxation Code § 107.1, in evaluating such leasehold interests, the assessor is required to deduct the present value of rentals for the unexpired terms of the leases. In *Star-Kist*, the assessor valued the subject leasehold interest without applying such deduction on the ground that § 107.1 was void because inconsistent with Section 1 of Article 13 and Section 12 of Article 11 of the California Constitution. The assessor's contention was invalid, because in another Supreme Court case, it held that the applicable portion of § 107.1 was valid. Star-Kist did not apply to the Los Angeles board of equalization for correction of the erroneous assessments, but sought and obtained a writ of mandate commanding the assessor to cancel those assessments and to reassess the leasehold interest in accordance with § 107.1. The County contended that Star-Kist's failure to apply to the local board of equalization precluded judicial relief. In rejecting that contention, the Court held at 510-511:

“Ordinarily a taxpayer seeking relief from an erroneous assessment must exhaust available administrative remedies before resorting to the courts. [Citations.] Prior application to the local board of equalization has not been required, however, in certain cases where the facts were undisputed and the property assessed was tax-exempt [Citations], outside the jurisdiction [Citations], or non-existent [Citations.]

“In the present case petitioner does not contend that its leasehold interests should be free of tax [emphasis added], but attacks only the assessor's failure to deduct rental values as prescribed by section 107.1. Defendants contend that any such attack upon an assessment in part rather than in toto raises an issue of 'overvaluation' that must be presented initially to the local board. Several cases support defendants' contention.

[Citations]. In *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, . . . however, we said: ‘While in one sense it is true that almost any mistake which results in an excessive assessment amounts to an overvaluation of the property of a taxpayer, we 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 is properly determined by the nature of the issues in dispute, and not by whether an assessment is attacked in part or in toto.

[Citations.]

“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 had 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.”

In the instant case, the issue is as to the constitutionality of:

1. The subject reassessment by County on the ground “change in ownership;”
2. Revenue and Taxation Code § 61(h);
3. Title 18 of the California Code of Regulations, section 462.060 (a).

Steinhart respectfully contends that the reassessment and the above statutory and regulation sections are unconstitutional in that they improperly interpret and apply the concept of “change in ownership” within the meaning of California Constitution. Art. 13A, §§ 1-2. The Court’s

attention is respectfully invited to Steinhart’s discussion of the constitutional issue under Argument II, below.

In *Star-Kist*, exhaustion of administrative remedies was excused on an exception other than that the assessment was a nullity as a matter of law because the property was tax exempt, non-existent or outside the jurisdiction. Exhaustion was excused because the only substantive issue in that case was whether the an applicable statutory section was unconstitutional on its face. The Court analogized this to cases involving only the question of whether property is taxable, holding at 511:

“As in cases involving only the question whether property is taxable, there is no question of valuation that the local board of equalization had 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.”²

In the instant case, there is no issue presented as to the *amount* of the reassessed value of the subject property, but rather as to the *act* of reassessment, on the ground that the act of reassessing the property was unconstitutional because there was no “change in ownership” within the meaning of Art. 13A, §§ 1-2.

Respondent cites *Stenocord Corp. v. The City and County of San Francisco* (1970) 2 C.3d 984, in support of the proposition that the fact that an assessor erroneously overvalues property which is otherwise subject to tax does not render the assessment a nullity under the rule excusing a plaintiff from exhaustion of administrative remedies, because disputes regarding

² In *Eastern-Columbia, Inc v. Los Angeles County, et al.* (1943) 61 C.A.2d 734, 743, the court held: “The purpose of the Board of Equalization is to see that all properties in the County are ‘equalized’; that is to say that the assessor apprais all properties in the county at a constant level of opinion as to market value and keep all properties in their proper relationship one to the other.”

valuation are within the special competence of the board of equalization. However, the aforesaid holding in *Star-Kist* trumps the holding in *Stenocord*, because the issue in *Star-Kist* did not involve the **nullity** of the assessment, but actually involved the **amount or valuation** of the assessment. But the issue of valuation in *Star-Kist* was merely incidental to the paramount issue of whether the assessor had properly concluded that the statutory section involved was unconstitutionally void.

The instant case actually involves a nullity issue, because County is relying on a Revenue and Taxation Code section and a California Code of Regulations section that Steinhart contends are unconstitutionally void. Moreover, in the instant case, there is no issue as to the amount of the valuation, as there was in *Star-Kist*. Therefore, Steinhart's right to avoid the requirement of exhaustion of administrative remedies is even on firmer ground than was that of the plaintiff in *Star-Kist*.

Finally, County contends that Steinhart followed the wrong procedure by filing a claim for refund with County rather than a request for equalization. This issue is irrelevant if Steinhart is excused from the requirement of exhaustion of administrative remedies. For the sake of argument, if it were applicable:

The authority of *Star-Kist* is contrary. In *Star-Kist*, although the Court excused the plaintiff from the requirement of exhaustion of administrative remedies, it held that the plaintiff could have obtained relief by paying its taxes under protest and suing for refund thereof under Revenue and Taxation Code § 5136 et seq.; and that seeking a writ of mandate was improper because mandate is ordinarily denied when the petitioner has a plain, speedy, an adequate remedy in the ordinary course of law.

The Court did not opine that the plaintiff should seek equalization rather refund. Respectfully, County's contention in this regard brings to mind the antiquated 16th Century rules in which cases

were dismissed because the plaintiff pursued *detinue* instead of *trover* or *assumpsit*, or whatever. Furthermore, in regard to the equalization - refund dichotomy, County's reliance on *Westinghouse Electric Corp. v. County of Los Angeles* (1974) 42 C.A.3d 32, 38 is misplaced (see Respondent's Brief 11), because as above-noted, in the instant case Steinhart disputes the *fact* of the reassessment, not the *amount* of the reassessment, so there is no issue of "merely an inaccurate assessment" as spoken of in *Westinghouse*.

B. In the Event That the Court Disagrees with the above Constitutional Argument, the Doctrine of Estoppel Is Properly Applicable to this Case.

As noted above, *Star-Kist* held that the taxpayer in that case should have proceeded in by a claim for refund rather than by a petition for mandate. The current statutory scheme regulating claims for refund is Revenue and Taxation Code § 5096, et seq. Section 5096 provides that any taxes paid before or after delinquency shall be refunded if they were illegally assessed or levied. section 5097 provides that no order for a refund shall be made except on a claim verified by the person who paid the tax or his representative filee within four years after making of the payment sought to be refunded. Section 5097.02 specifies the format of the claim, which shall be in writing, specifying whether the whole assessment is claimed to be void or, if only a part, what portion; and the grounds on which the claim is founded. Section 5140 provides that the person who paid the tax, or his representative, may bring an action only in the Superior Court against a county or city to recover a tax which the board of supervisors of the city council has refused to refund a claim filed pursuant to Section 5096. Section 5141(a) provides that an action brought under section 5140 shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part.

Premised upon the advice of the Court in *Star-Kist*, Steinhart made a Claim for Refund of Property Taxes on a form provided therefor by the County of Los Angeles. See AA 8. In due

course, Steinhart received a notice from the office of the County Assessor stating: “We have determined the law applicable to this investigation and completed the indicated actions as follows: . . . The real property transferred is a ‘Change in Ownership’, as defined by law, and the 100% reappraisal of the property will stand.” AA 49. Almost simultaneously, Steinhart received five separate letters from the County of Los Angeles, Department of Auditor-Controller (one for each of the tax bills involved in her claim for refund) stating” ***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 the 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 the denial.”

Star-Kist held that the appropriate procedure for a taxpayer disputing an assessment was to file a claim for refund. Steinhart followed the claim for refund procedure. She received notice or denial of her claim from both the County Assessor and the County Department of Auditor-Controller. The latter notice referred Steinhart to Revenue and Taxation Code § 5141 (which as noted above, is in the claim for refund statutory scheme), and paraphrased its provision that a taxpayer has six months from the effective date of denial of his claim for refund to commence an action in the Superior Court. According to the five letters from the Department of Auditor-Controller, Steinhart was notified that: “***The County*** has completed its review of your claim(s) for refund” It therefore appeared that the “County” had spoken, and its word was that Steinhart’s claim had been denied, and pursuant to the applicable claim for refund statutory scheme, she had six months in which to commence an action in the Superior Court. Although

Steinhart was advised that should she have any questions or need further assistance she could contact the office of the Assessor, she did not have any questions and did not feel in need of further assistance.

In none of the notices from County was Steinhart advised that she should have proceeded by a request for equalization under Revenue and Taxation Code § 1601 et seq., rather than a claim for refund under Revenue and Taxation Code § 5096 et seq.; nor that prior to filing her action in the Superior Court within six months of the denial of her claim, she must first appeal to the Assessment Appeals Board. Having read *Star-Kist*, the applicable claim for refund statutory scheme, and the notices from County denying her claim, Steinhart naturally and normally proceeded to timely file her claim for refund lawsuit in the Superior Court, being understandably ignorant of any alleged requirement that she was first required to appeal to the Assessment Appeals Board.

If the above circumstances do not constitute grounds of estoppel against County, as one of the characters created by Charles Dickens observed: “If this be the law, then the law is an ass!”

II. WHETHER OR NOT THE RELEVANT ANALYSIS IN *PACIFIC SOUTHWEST* IS DICTUM, IT IS A PERSUASIVE ANALYSIS BY THE SUPREME COURT THAT THE TRANSFER OF A LIFE ESTATE TO A REVOCABLE TRUST BENEFICIARY OTHER THAN THE TRUSTOR OR HIS SPOUSE UPON HIS DEATH, WITH A REMAINDER INTEREST LEFT TO OTHER BENEFICIARIES, DOES NOT CONSTITUTE A “CHANGE IN OWNERSHIP” AS DEFINED IN THE STATUTORY SCHEME ENACTED TO IMPLEMENT THE CONSTITUTIONAL PROVISIONS OF PROPOSITION 13; AND THEREFORE, SHOULD BE ADOPTED AND FOLLOWED BY THIS COURT.

Steinhart’s contention on the issue of whether her receipt of a life estate under the trust

constitutes a change in ownership stands or falls on the persuasiveness of the Supreme Court's life estate analysis in *Pacific Southwest Realty Co. v. County of Los Angeles* (1992) 1 C.4th 155, reviewed in some detail below:

The Report of the legislative Task Force charged with the responsibility of recommending the statutory content in regard to the definition of "change in ownership" stated that it sought to distill the basic characteristics of payee "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 to which the task force could and those which it did not foresee. "The Task Force also was anxious that the single test be sufficiently consistent with the normal understanding of 'change in ownership' to withstand legal attack." [at 161]. Therefore, common types of transfers were identified and concrete rules for them were set forth by the Task Force and proposed Sections 61 and 62. The Task Force observed in this regard:

"It is important that specific statutory examples be consistent with the general test The entire statutory design would be destroyed by providing statutory treatment for specific transfers which are inconsistent with the general test. In that case, the general test would be overruled by the specific rules and the entire statutory design might be held invalid because of the lack of any consistent, rational interpretation of the constitutional phrase, 'change in ownership.'" [at 161].

Section 60's governing test contains three parts: "A 'change in ownership' means [1]the 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." To determine whether the transfer in *Pacific Southwest* worked a change in ownership under

Proposition 13, the Court analyzed the fact pattern in that case in relation to each of the three parts of the governing test. [In the instant case, Steinhart concedes that by obtaining a life estate in the property, she obtained the transfer of a present interest in the property (first factor); and her life tenancy gave her beneficial use of the property (second factor). It is the analysis of Court as to the third factor (“the value of which is substantially equal to the value of the fee interest”) that constitutes the relevant, determinative point in the instant case.]

“In enacting the third prong of section 60 the Legislature meant to insulate from Proposition 13's effect transfers in which only an estate of lesser value was conveyed. Two examples illustrate the Legislature' intent when it adopted the task force report's findings and enacted the statutory scheme before us.

“One example considers 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, the Legislature decided, following the task force's recommendation, that the creation of a 35-year lease would achieve 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 such duration will constitute the main economic value of the land, even though the leaseholder does not own a freehold estate—lenders are, in the report drafter's view, willing to lend on the security of such an instrument. Another example is the conveyance of a fee simple from parent to child subject to the reservation of a life estate. The Legislature desired to avoid creating a rule that would characterize such a conveyance as a change in

ownership. Because this is a relatively common form of conveyance, the Legislature, again following the task force's recommendation, included it in its list of examples of exempt transfers. . . . ***But even if the Legislature had not done so, reassessment would be barred under the carefully drafted basic test of section 60***, 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***. [Emphasis added] 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, creditor's demands, and the like. By contrast, ***when the 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***. [Emphasis added]. 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. (§ 61, subd. (f))”

Of utmost significance in considering the analysis by the Court in *Pacific Southwest* as to whether the value of a life estate is substantially equal to the value of the fee interest, is its observation that even if the Legislature had not provided that the conveyance of a remainder interest with a life estate reserved in the grantor is exempt from “change in ownership,” the three-part governing test would require the application of such exemption in that circumstance

because, amongst other things, the value of a life estate (as well as the value of the remainder interest) are not substantially equal to the value of the fee interest (the third factor of the three-part test).

California Code of Regulations, § 462.060(a) provides: “The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor’s spouse.” In Respondent’s Brief, County argues that section was among those adopted contemporaneously with the adoption of Section 60 in August 1979; and that contemporary administrative construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight “unless it is clearly erroneous” or unauthorized. County further argues that the Supreme Court in *Pacific Southwest* did not consider that section.

Respectfully, in view of the erudite analysis of the Supreme Court in *Pacific Southwest*, it would appear that if Section 462.060(a) had been before it for consideration, it would have ruled it to be invalid as being clearly erroneous. County also relies on the authority of Revenue and Taxation Code § 61(h), which provides: “Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to: . . . Any interest in real property that vests in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes a revocable.” It would also appear that had Section 61(h) been

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before the Court in *Pacific Southwest*, it would have rejected that section as being invalid because it was contrary to the Court's own legal analysis.

CONCLUSION

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

Respectfully submitted,

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 REPLY BRIEF is 3,856 words.

Date: December 10, 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' REPLY 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 December 11, 2006 at Los Angeles, California.

Terran T. Steinhart

SERVICE LIST

RAYMOND G FORTNER JR ESQ
RICHARD GIRGADO ESQ
648 KENNETH HAHN HALL OF ADMINISTRATION
500 W TEMPLE ST
LOS ANGELES CA 90012-2713
[Attorneys for Defendant COUNTY OF LOS ANGELES]

CALIFORNIA SUPREME COURT
300 S SPRING ST
LOS ANGELES CA 90017

CLERK OF THE COURT
HON MICHAEL B HARWIN
VAN NUYS COURTHOUSE EAST
6230 SYLMAR AVE
VAN NUYS CA 91401

794\Appellant's Reply Brief