

Case No. S158007

IN THE
SUPREME COURT OF CALIFORNIA

LORRAINE STEINHART,
Plaintiff and Appellant,

SUPREME COURT
FILED

v.

FEB 19 2010

COUNTY OF LOS ANGELES,
Defendant and Respondent.

Frederick K. Ohlrich Clerk

Deputy

After a Decision By The Court of Appeal
Second Appellate District, Division Three, Case No. B190957

Los Angeles Superior Court, Case No. LC073339
Honorable Michael B. Harwin

APPELLANT'S PETITION FOR REHEARING

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PETITION/REASONS

Appellant Lorraine Steinhart hereby petitions for a rehearing from the decision of the Court, filed on February 4, 2010, for the following reasons:

1. As to the issue of exhaustion of administrative remedies, specifically, the subissue of futility, the decision was based upon a mistake of law.

2. As to the issue of "change in ownership", the decision was based on an issue which was not proposed or briefed by any party to the proceeding, and the court failed to afford the parties an opportunity to present their views on the matter through supplemental briefing.

INTRODUCTION

Since early in its history, this Court as demonstrated its honor by granting rehearings in situations in which there is a serious doubt as to whether it correctly decided a case:

In re Jessup's Estate (1889) 80 C. 408, 471-472:

"If we are satisfied from the petition that, owing to any mistake of law or misunderstanding of facts, our decision has done an injustice in the particular case, . . . and it is seriously doubted whether we have correctly decided, we grant a rehearing."

Steinhart respectfully requests that the Court take a modicum of its time to review this Petition in light of the above-quoted sentiment.

GENERAL PROCEDURAL RULES

Pursuant to CRC 8.536(a), the Supreme Court may order a rehearing as provided in CRC 8.268(a). Pursuant to Rule 8.268(b), the petition for rehearing must be filed within 15 days after the filing of the decision, in the instant case, on or before February 19, 2010. On a decision following a normal appeal, the decision is final 30 days after filing, in the instant case, on March 8, 2010, CRC 8.532(b), unless the period is shortened or extended by order of court under that Rule. If the court does not rule on the petition before the decision is final, the petition is deemed

denied. CRC 8.536(c). An order granting a rehearing must be signed by at least four justices. CRC 8.536(d). An order granting a rehearing vacates the decision and any opinion filed in the case and sets the case at large in the Supreme Court. CRC 8.536(e).

A rehearing in the Supreme Court may be sought on any of the grounds that would support a rehearing in the Court of Appeal. As a practical matter, however, rehearings in the Supreme Court are rarely granted.

“In one instance, though, a rehearing is *mandatory*: If the court decided the case based on an issue that was not raised or briefed by any party, *and* failed to give the parties an opportunity to present supplementary briefs on that issue, a rehearing *must* be granted upon timely petition by any party. [Gov.C. § 68081 . . .].” The Rutter Group, *California Practice Guide: Civil Appeals and Writs*, ¶ 13:205. (Emphasis in original).

Gov.C. § 68081 provides:

“Before the Supreme Court . . . renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based on an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford an opportunity, a rehearing shall be ordered upon timely petition of any party.”

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ARGUMENT

I. AS TO THE ISSUE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, SPECIFICALLY, THE SUBISSUE OF FUTILITY, THE DECISION WAS BASED UPON A MISTAKE OF LAW.

In the instant case there were no disputed issues of fact. The statutory interpretation of California Const., Art. 13A and Revenue and Taxation Code § 60, et seq. required in this case constitutes a pure question of law. Government Code § 15606 provides in relevant part:

“The State Board of Equalization shall do all of the following: . . . (c) Prescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing”

Pursuant to the authority of § 15606, the State Board of Equalization promulgated the property tax rule set forth at 18 Cal. Code of Regs. § 462.060(a):¹

“Life estates. 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. However, the subsequent transfer of such a life estate by the transferor or the transferor’s spouse to a third party is a change in ownership. On termination of such a reserved life estate, the vesting of a right of possession or enjoyment of a remainderman (other than the transferor or the transferor’s spouse) is a change in ownership.”

At the time of Steinhart’s application to the Los Angeles County Assessor for a refund on the ground that the subject real property was improperly reassessed as of the date of Helfrick’s

¹ *Leckie v. County of Orange* (1998) 65 C.A.4th 334, 339. In *Leckie*, the court applied the aforesaid property tax rule, holding that the transfer of a life estate to a nonspouse third party constituted a change in ownership.

death, because the transfer of a beneficial life estate to Steinhart at Helfrick's death pursuant to provisions of her trust did not constitute a change in ownership, the Los Angeles County Assessment Appeals Board was bound by Regulation 462.060(a) (because it was promulgated pursuant to Government Code § 15606(c) to govern local boards of equalization), and arguably was further bound by the judicial authority of *Leckie*, which confirmed the validity of the Regulation.

Furthermore, during oral argument in the instant case, counsel for amicus State Board of Equalization stated that since the enactment of the subject statutes and regulations after the passage of Proposition 13, every county in California had consistently applied Regulation 462.060(a)'s change in ownership rules with respect to the transfer of a life estate to a nonspouse. On at least one past occasion, this Court relied upon a statement by counsel for an amicus made during oral argument. In *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 C.4th 155, 164, the Court observed in support of its decision:

“Any other conclusion would ignore the commercial realities of the transaction: *as counsel for amicus curiae City and County of San Francisco observed at oral argument*, any other interpretation would mean, in the case of a large commercial building, that a change in ownership would rarely occur, for there would usually be tenants remaining in the building. (Emphasis supplied).

Upon hearing that remark by amicus counsel at oral argument in the instant case, counsel for Steinhart argued that the comment by amicus counsel clearly demonstrated the applicability of the futility exemption to exhaust administrative remedies requirement.

In its opinion, the Court did not address this cogent argument made by Steinhart's counsel during oral argument. Furthermore, respectfully, the Court's reliance on *Sea & Sage Audobon Society, Inc. v. Planning Com.* (1983) 34 C.3d 412 on the futility issue is inappropriate because

that case is clearly distinguishable from the instant case. *Sea & Sage* involved a dispute over the approval by a municipal planning commission of a land development project that required submission of an environmental impact report by the developer, and review of the report by the planning commission as a prerequisite to its determination of whether or not to approve the development. Environmental impact reports are extremely detailed and fact-intensive. Because of that fact-intensive scenario, the appellant in *Sea & Sage* did not sustain the burden required for application of the futility exception. In the instant case, the change in ownership issue is a pure question of law statutory interpretation, there being no dispute as to any fact. As pointed out above, the Los Angeles County assessment appeals board (acting as a local board of equalization) was statutorily required to follow Regulation 462.060(a) in ruling on the subject issue of law. Respectfully, under these circumstances, the applicability of the futility exception is clear.

II. AS TO THE ISSUE OF "CHANGE IN OWNERSHIP", THE DECISION WAS BASED ON AN ISSUE WHICH WAS NOT PROPOSED OR BRIEFED BY ANY PARTY TO THE PROCEEDING, AND THE COURT FAILED TO AFFORD THE PARTIES AN OPPORTUNITY TO PRESENT THEIR VIEWS ON THE MATTER THROUGH SUPPLEMENTAL BRIEFING.

Pursuant to Gov. C. § 68081, the grant of a rehearing under the circumstances of this case is mandatory. In the proceeding before this Court, County was the petitioner and Steinhart was the respondent. As a result, County filed the Opening Brief on the Merits and Steinhart filed the Answer Brief on the Merits. As the respondent, Steinhart's sole responsibility was to respond to the issues and arguments thereon set forth in County's Opening Brief. Steinhart fulfilled that responsibility.

With regard to the "change in ownership" issue, County's Opening Brief did not address the ground upon which this Court's decision was based, namely, that when the owner of a fee

interest in real property transfers his entire fee interest by an instrument which includes the transfer of a present interest life estate combined with a future interest remainder, the value equivalency test is to be applied to the value of the entire fee interest transferred, rather than on the value of the present interest received by the life tenant. On the contrary, relying on *Leckie*, County applied the value equivalency test to the present interest life estate, arguing at page 17 of its Opening Brief, “that for the purposes of determining change in ownership, a life estate in real property is an interest equivalent in value to the fee interest.” In response, in the Answered Brief, Steinhart replied to that argument, contending that value of a life estate interest in real property is never substantially equal to the value of the fee interest, or in the alternative, that because of the age of Steinhart when her life estate interest vested, the value of her particular life estate was not substantially equal to the value of the fee interest.

As a matter of significant note, the unanimous Courts of Appeal in *Steinhart v. County of Los Angeles* (previously cited at 155 C.A.4th 1082), and *Leckie*, although they came to opposite conclusions, addressed only whether the value of the transferred present life estate interest was substantially equal to the value of the fee interest.

Because this Court did not previously afford the parties an opportunity to present their views as to its novel ground of decision on the change in ownership issue, pursuant to the above statutory authority, it is mandatorily required to grant a rehearing for the purpose of affording that opportunity.

III. RESPECTFULLY, THIS COURT’S NOVEL INTERPRETATION OF SECTION 60 IS NOT CORRECT BECAUSE IT APPEARS THAT THE COURT MISINTERPRETED OR MISAPPLIED THE WORD “TRANSFER.”

Because a petition for rehearing must be filed within 15 days of the filing of the decision, Steinhart did not have sufficient time to adequately brief its opposition to the Court’s ground of

ruling on the change in ownership issue. However, Steinhart feels constrained to make a preliminary showing to establish that the Court's statutory interpretation can be persuasively challenged.

Code of Civil Procedure § 1858 provides:

“Construction of statutes and instruments, general rule. In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.”

Rev. & Taxation Code § 60 provides:

“A ‘change in ownership’ means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.”

Respectfully, the interpretation given to § 60 by Steinhart, County, and the unanimous Courts of Appeal in *Steinhart v. County of Los Angeles* and *Leckie* may be expressed as follows:²

“A ‘change in ownership’ means a *transfer* of a present interest in real property, including the beneficial use thereof, the value of which [present interest] is substantially equal to the value of the fee interest.” (Emphasis added).

The Court's opinion correctly treats as synonymous the life estate “interest *Steinhart received*” (Op. at 31) with the “‘present interest’ transferred” (Op. at 32); and again in arguing that the Task Force Report “referred broadly to the value of ‘[t]he property rights transferred,’ not to the value of only the *present interest transferred*” (Op. at 32). (Emphasis added).

² In the following example interpretation, added words are included in brackets [as such].

Based upon the Court's observation as to the synonymy of the life estate received by Steinhart and the "transfer of a present interest" set forth in § 60, respectfully, the interpretation of § 60 adopted by the Court appears to misinterpret or misapply the word "transfer." The Court's opinion remarks that although it is linguistically possible to construe the language of § 60 as Steinhart does, the Court rejects this interpretation for three stated reasons. On the contrary, Steinhart respectfully submits that the interpretation adopted by her, as well as County and the unanimous *Steinhart* and *Leckie* Courts of Appeal is reasonably the only linguistically proper way to construe the section.

According to Webster's Third New International Dictionary the noun "transfer" as used in § 60 means: "the *conveyance* of right, title, or *interest* in real or personal property *from one person to another* by sale, gift, or other process." (Emphasis added). A "transfer" of a property interest requires one person giving and another receiving the particular interest. A transfer does not occur merely by one person giving an interest; in order for a transfer to occur, the act of one person giving must be completed by another person receiving the interest. The transfer of any specific interest in real property does not occur unless the interest transferred by the transferor is identical to interest received by the transferee. For example, if the transferee received a present life estate interest, it is required that the transferor gave that interest. If the transferor gave a different interest than the interest received by the transferee, a "transfer" of that interest between the two parties cannot be deemed to have occurred.

To illustrate the above point, we should be on the same page with regard to the relevant, fundamental principles of real property law:

"Classification of estates. Estates may be classified according to the duration of their enjoyment, their quality, the time of their enjoyment, or the number of their owners.

“Classification by duration. With respect to the duration of their enjoyment, estates in real property are either estates of inheritance or perpetual estates (called ‘estates in fee’), estates for life (called ‘life estates’), estates for years, or estates at will. The last two classifications are commonly called ‘leasehold interests’ or ‘tenancies.’

“ . . .

“Estates classified by time of enjoyment. Estates that are classified by the time of their enjoyment are called present or future interests and perpetual or limited interests. A present interest entitles the owner to the immediate possession of the property. A future interest entitles the owner to the possession of the property only at some future time. A perpetual interest has a duration equal to the existence of the property. The duration of a limited interest is less than the existence of the property.” 3 *Cal. Real Est.* § 9.2 (3d. ed.).

“Fee simple is an estate of indefinite duration. Every estate of inheritance is a fee, and unless defeasible or conditional, every estate in fee is a fee simple or absolute fee. It is the largest estate that can exist in land and is an estate of potentially infinite duration. It is an inheritable estate which the holder has the power to transfer by deed or by will. The ability to sell and transfer property is a fundamental aspect of property ownership. Property consists mainly of three powers: possession, use, and disposition.” 3 *Cal. Real Est.* § 9.3 (3d. ed.).

“Life estate. An estate for life is . . . measured in duration by the life or lives of one or more persons. The measuring life may be that of the life tenant or of some other third person or persons. . . .

“Remainder or reversion. Where a life estate is created in property, there usually is a remainder over to a third person or a reversion to the grantor, although it is

also possible have a life estate in which the corpus can be completely consumed.” 3 *Cal. Real Est.* § 9.19 (3d. ed.).

“A present interest entitles the owner to the immediate possession of the property.” Civil Code § 689. “A future interest entitles the owner to the possession of the property only at a future time.” Civil Code § 690.

“Future interests defined. When the time for possession and enjoyment is postponed, and there is no right to any present possession of the estate, the estate is called a ‘future interest.’ . . . Future interests include reversions . . . and remainders.”

“Future interests transferable. Future interests are descendible, devisible, and alienable the same manner as present interests, and they are assignable.” 3 *Cal. Real Est.* § 9.25 (3d. ed.).

By way of illustration: A owns the fee interest in Blackacre. Because A, as the owner of the fee, owns all property rights in Blackacre in perpetuity, including the rights of possession, use, and disposition, he is entitled to transfer the entirety of his rights to another person at one point in time, or to transfer property interests that are less than the fee interest (such as a life estate or term of years) to other persons; he may make a transfer that gives immediate possession of the property to the transferee, or a transfer that gives future possession of the property to the transferee; and he may make any of the transfers of said interests simultaneously at one time, or individually at different times. In other words, A’s fee interest, because it is infinite in duration, includes within it all estates of lesser duration, and includes the property right to present possession of Blackacre as well as the right to future possession of Blackacre, all of which rights are disposable by A in one fell swoop, separately at one point or separately at different points in time.

Transfer #1: A transfers the fee interest to C, and reserves a life estate interest in himself. By definition, A has transferred a future remainder interest in the fee to C, subject to reservation of a present life estate interest in himself.

Transfer #2: A transfers a present life estate interest to B, and retains the right of reversion in himself after the death of B. By definition, A has transferred a present interest to B, and retained a future interest reversion in himself.

Transfer #3: A transfers a present interest life estate to B, and simultaneously in the same instrument, transfers a future interest remainder in fee to C after the death of B. This is the category of transfer involved in the instant case. In this example, A has conveyed his entire fee interest in Blackacre, reserving no interest in the property in himself, but has done so not by making a transfer of the entire fee interest to another person, but by subdividing his entire fee interest into (1) a present interest life estate, and (2) a future interest remainder in fee; and has transferred each of those interests to a different transferee simultaneously at one point in time. A has transferred to B an estate less than the entire fee, because although it includes the right to possession and beneficial use of the property immediately, and therefore is a present interest, it is of limited rather than unlimited duration. A has transferred to C an estate less than the entire fee, because although it includes the right to possession and beneficial use of the property for unlimited duration, the commencement of the right to possession and beneficial use is postponed to a future time, thereby making it a future interest.

In order for a "transfer" of an interest in real property to occur, the interest received by the recipient must be identical to the interest given by the giver. Because the owner of the fee interest can carve out lesser interests from the fee and transfer the lesser interests to third parties, the fee holder can transfer all aspects of his fee interest at one time to two different parties simultaneously without transferring the fee interest to either one of them, e.g., to one he can

transfer a present interest life estate, and to the other the remainder at the conclusion of the precedent estate. By its clear, unambiguous provisions, § 60 focuses on comparing: (1) the value of the transferred present interest, with (2) the value of the fee interest.

If the Legislature had decided to do so, it could have simply promulgated the following statute: "A 'change in ownership' means a transfer in which the owner of the fee interest in real property transfers to another his or her entire interest." This would comport with the common understanding of a "change in ownership," such as when A buys the fee interest in a house from B. However, the Legislature did not adopt such a statute. If the statutory scheme actually adopted is too convoluted and pedantic to comply with common sense, it is for the Legislature to rectify the problem, not the Supreme Court.

Having given the statutory interpretation adopted by the Court some thought in the limited amount of time available, in addition to the foregoing, Steinhart has respectful criticism of various aspects of the Court's decision, including without limitation:

1. What happens when the life tenant dies? How can the provision of § 61(g) be reconciled with the Court's interpretation of § 60?³
2. Did the Court misuse judicial notice in referring to a portion of the Proposition 13 voters' pamphlet without giving the parties advance notice that it intended to take such judicial notice, and an opportunity to review the pamphlet so as to comment on the propriety of the court's argument? See Evidence Code § 450, et seq., specifically, §§ 459 and 455. Did the Court properly use the language in the pamphlet which provided that the value of real property could not be increased under Proposition 13 by more than 2% a year as long as the same taxpayer

³ Section 61(g): A "change in ownership" includes: "Any vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest [with exceptions not here applicable]."

continued to own the property? Did the Court improperly assume the converse of that language, by assuming that whenever the same taxpayer does not continue to own the property, a change in ownership is deemed to have occurred. This is certainly not the case when there is a transfer between parent and his child. See Rev. & Tax. Code § 63.1.

3. Are the Court's three reasons for rejecting the plain meaning, grammatically correct interpretation of § 60 adopted by *Steinhart*, County and the *Steinhart* and *Leckie* Courts of Appeal cogent, or on the contrary, are they subject to persuasive challenge? *Steinhart* respectfully contends that they are subject to persuasive challenge.

CONCLUSION

The Court should grant a rehearing as to both the issues of:

1. Exhaustion of administrative remedies, specifically the subissue of futility, because the Court failed to address in its Opinion the compelling factual/legal argument made by *Steinhart* during oral argument (based on the comment of counsel for amicus State Board of Equalization), which argument compels the conclusion that the futility exemption is properly applicable in this case.

2. Change in ownership, because the Court based its decision on this issue on a novel ground that was not proposed nor briefed by any party to the proceeding; and contrary to the mandate of Gov.C. § 68081, the Court did not afford the parties an opportunity to present their views on the matter through supplemental briefing.

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Although Steinhart has briefly addressed the Court's change in ownership ground of decision in support of the instant Petition, respectfully, she is entitled to a full opportunity with sufficient time therefore to submit a supplemental brief on the matter.

Respectfully submitted,

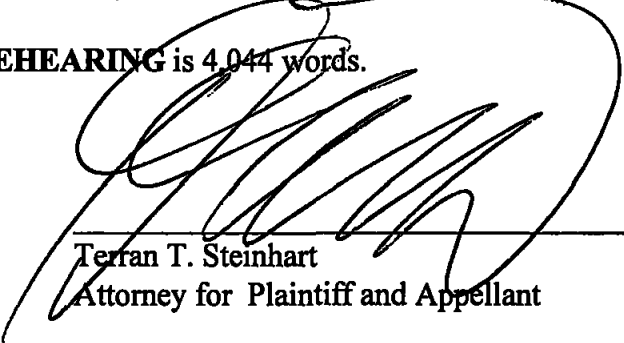


Terran T. Steinhart
Attorney for Plaintiff and Appellant

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

Counsel for plaintiff and appellant hereby certifies that the number of words in
APPELLANT'S PETITION FOR REHEARING is 4,044 words.

Date: February 17, 2010



Terran T. Steinhart
Attorney for Plaintiff and Appellant

PROOF OF SERVICE BY MAIL

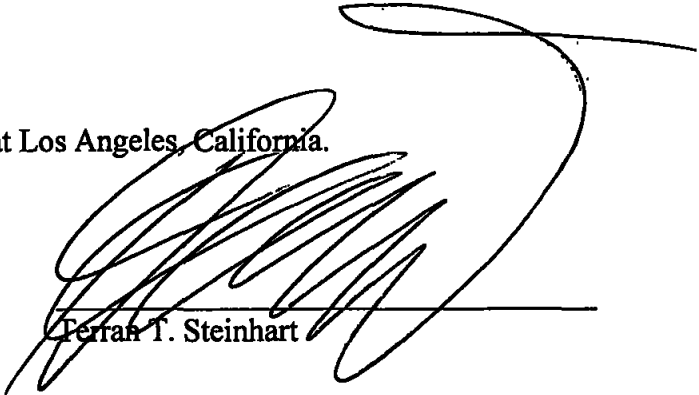
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4311 Wilshire Boulevard, Suite 415, Los Angeles, California 90010-3713, which is located in the county where the mailing described below took place.

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.

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

Executed on February 17, 2010 at Los Angeles, California.



Ferran T. Steinhart

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