

1 LAW OFFICES OF SHEPARD S. KOPP
2 11355 W. OLYMPIC BLVD.
3 LOS ANGELES, CALIFORNIA 90064
4 TELEPHONE (310) 914-4444
5 FACSIMILE (310) 914-4445
6 SHEP@SHEPARDKOPPLAW.COM

7
8
9
10
11 Shepard S. Kopp SBN: 174612
12 Attorney for Property Owner Hiuyan (Tina) Lam

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE BOARD OF SUPERVISORS FOR
THE CITY AND COUNTY OF SAN FRANCISCO

IN RE COMMITTEE OF THE WHOLE) OWNER TINA LAM'S REPLY
HEARING TO CONSIDER RESCISSION) BRIEF IN OPPOSITION TO
OF THE TAX SALE OF THE PRESIDIO) REQUEST FOR RESCISSION;
TERRACE COMMON AREA) AND SUPPORTING DOCUMENTS
)
)
) DATE: November 28, 2017
) TIME: 3:00 PM

16 The owner of the Presidio Terrace Common Area, Tina Lam, submits the following
17 reply brief and attached documents in response to the briefs filed by the Petitioner Presidio
18 Terrace Association ("PTA").

19
20 I.

21 UPON RECEIVING A RETURNED NOTICE OF A TAX SALE, DUE
22 PROCESS ONLY REQUIRES A TAX COLLECTOR TO TAKE FURTHER
23 ACTION IF IT IS PRACTICABLE TO DO SO. HERE, THE TAX
24 COLLECTOR TOOK ALL REASONABLE STEPS TO IDENTIFY
25 PARTIES OF INTEREST BEFORE HE SENT THE NOTICE, AND THUS
26 WAS NOT REQUIRED TO DO ANYTHING ELSE THEREAFTER.

27 The PTA's arguments obscure what the United States Supreme Court has actually
28 held on the matter of constitutionally required notice to make a tax sale legal. To avoid

1 any confusion or misunderstanding, we quote the actual holding of the Court in the *Jones*
2 case:

3 “We hold that when mailed notice of a tax sale is returned unclaimed, the
4 State must take additional reasonable steps to attempt to provide notice to
5 the property owner before selling his property, if it is practicable to do so.”

6 (*Jones v. Flowers* (2006) 547 U.S. 220, 225, underscoring supplied.)¹

7 As shown by the Tax Collector’s memo, he did what was practicable to identify
8 parties of interest before mailing the notice of sale, by hiring not one but two outside
9 firms to perform a title search on the property. This is the same procedure used by tax
10 collectors in other counties around the state, and it followed the policy set forth in the
11 California Controller’s manual on how to conduct tax sales. These searches did not
12 reveal any parties of interest. Having taken these reasonably practicable measures to
13 identify parties of interest before mailing the notice of tax sale, the Tax Collector was not
14 constitutionally required to do more after receiving the undelivered notice. He certainly
15 was not required to conduct the wild goose chase that the PTA suggests was mandatory.

16 Moreover, the Revenue and Taxation Code does indeed identify “parties of
17 interest” as lienholders and those with title of record to some or all of the property. If the
18 title searches conducted by the outside vendors did not disclose any parties of interest
19 who could be notified of the sale, the Tax Collector cannot be faulted for not poring
20 through a 47 page document setting forth conditions, covenants, and restrictions on that
21 property, looking for addresses which in the end would still have failed to provide the
22 desired notice.

23 Indeed, the very structure of the state Revenue and Taxation Code indicates that
24

25
26 ¹ It is at least arguable that the *Jones* case does not have any precedential value for the sale of
27 the Presidio Terrace Common Area, because in *Jones* the parcel at issue was an occupied
28 piece of property on which a house had been built, while here we are dealing with vacant
land. As discussed below, the Legislature treats vacant land differently than it does occupied
parcels, and requires that more affirmative steps be taken by the Tax Collector to provide
notice prior to a tax sale of occupied parcels.

1 the Legislature considers the procedure of mailing and then publishing notices of sale in a
2 newspaper as sufficiently protective of the due process rights of owners of vacant land.
3 This can be seen by comparing the different notice requirements for occupied parcels
4 versus those of vacant land. Certain portions of the Revenue and Taxation Code require
5 that Tax Collectors make extra efforts to notify owners of occupied parcels of property
6 about an impending tax sale, by either visiting the property in person, or posting notice on
7 the property if the owner cannot be reached. (See R&T Code §3704.7) The Code,
8 however, does not require that those steps be taken with respect to vacant parcels, which
9 indicates that the Legislature understood that requiring tax collectors to go to such lengths
10 would not be practicable and would rarely, if ever, result in notice actually being
11 delivered. Remember, we are talking about a piece of property that was assessed at a
12 little over \$300. It makes no sense at all and certainly would not be practicable to require
13 more of the Tax Collector than was done in this situation.

14 15 II.

16 THE PTA'S SUGGESTION THAT SEARCHING THROUGH THE 17 CC&R'S WAS NECESSARY, AND WOULD HAVE ACTUALLY 18 RESULTED IN NOTICE BEING RECEIVED, IS ERRONEOUS.

19 In its initial brief, the PTA suggests that had the Tax Collector pored through the
20 45 pages of restated Conditions, Covenants, and Restrictions ("CC&R") concerning the
21 Terrace, he would have seen addresses to which notice of sale could and should have
22 been mailed. Upon close examination, the logic of this argument falls apart.

23 First, the PTA says that the Tax Collector should have mailed a notice of sale to
24 Roderick G. Snow as the President of the PTA at his address of 28 Presidio Terrace.
25 However, as the attached grant deed (Exh. 9) makes clear, Mr. Snow sold the property in
26 1995 and had not lived at that address for 20 years. Thus, any mail sent to Mr. Snow at
27 28 Presidio Terrace in 2015 would have been returned unclaimed or undeliverable and
28 would not have alerted the PTA of the impending sale.

1 Next, the PTA says that the Tax Collector should have sent a notice of sale to an
2 attorney who had done some work for the PTA, William M. Scherer, at an address listed
3 at 214 Grant Avenue, Suite 400, San Francisco, CA 94108. However, by 2015 that
4 attorney had not used that address for several years and in fact today lists his address on
5 the California State Bar website as being at 140 Geary St., Seventh Floor, San Francisco,
6 CA 94108. (Exh. 10.) Thus, mailing a notice of sale to that attorney at that address in
7 2015 would not have alerted the PTA of the impending sale.

8 But these arguments by the PTA are just more of the same attempt to shift the
9 blame for this situation away from the place it really lays, which is at the feet of the PTA
10 itself. Attached as Exhibit 11 is a printout of the form provided by the Assessor for
11 owners of property to keep a current, valid mailing address on file with the Assessor.
12 Rather than blame its previous accountants, or the Tax Collector, or any other person or
13 entity for its woes, if the PTA had just kept its correct address on file with the Assessor
14 and Tax Collector, it would have received its tax bills and presumably paid them on time.
15 After all, having lost the property once for failing to pay its taxes, it seems that the PTA
16 would and should have learned this simple lesson.

17 For these reasons and those stated in our initial brief, this Board should not rescind
18 the sale.

19
20
21 Dated: 11/27/17



Shepard S. Kopp
Attorney for Tina Lam

Exhibit 9

RECORDING REQUESTED BY:

Fidelity National Title
When Recorded Mail Document
and Tax Statement To:

Feng Jung Yeh
28 Presidio Terrace
San Francisco, CA 94118

Escrow No. 861947-CMC
Title Order No. 861947

San Francisco Co Recorder's Office
Gregory Joseph Diaz, County Recorder
DOC - 95-FB32971-00
Acct 11-FIDELITY NATIONAL Title Company
Friday, AUG 18, 1995 11:06:06
REC \$6.00/PAG \$2.00/MIC \$1.00
STP \$1.00
TTL Pj\$1 Nbr-0000406475
REEL 6448 IMAGE 0221 car/AB/2

2 23

APN: LOT 23, BL 1355
JPN

GRANT DEED

The undersigned grantor(s) declare(s)

AMOUNT OF REAL PROPERTY TAX DUE IS SHOWN ON SEPARATE
City tax \$ PAPER

Documentary transfer tax is \$

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area City of SAN FRANCISCO

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

RODERICK G. SNOW AND BETTY B. SNOW, HUSBAND AND WIFE

hereby GRANT(S) to FENG JUNG YEH, AN UNMARRIED MAN

the following described real property in the City of SAN FRANCISCO
County of SAN FRANCISCO State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

DATED: August 02, 1995

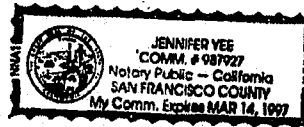
STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
ON AUGUST 3, 1995

before me,
JENNIFER YEE, NOTARY PUBLIC personally appeared
RODERICK G. SNOW AND BETTY B. SNOW

Roderick G. Snow
RODERICK G. SNOW

Betty B. Snow
BETTY B. SNOW

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature *[Signature]*

MAIL TAX STATEMENTS AS DIRECTED ABOVE

FILE NO. 861947

FS32971

EXHIBIT "ONE"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 28, according to Map entitled "Map of Presidio Terrace", filed June 28, 1905, in Book 1 of Maps, Page 219, in the office of the Recorder of the City and County of San Francisco, State of California.

A.P.N.: Lot 23, Block 1355.

Exhibit 10

The State Bar of California

William McClellan Scherer - #135974

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

The following information is from the official records of The State Bar of California.

Bar Number:	135974	Phone Number:	(415) 433-1099
	Scherer Smith & Kenny LLP		
	140 Geary St.	Fax Number:	(415) 433-9434
Address:	Seventh Floor		
	San Francisco, CA 94108		
	Map it		
Email:	wms@sfcounsel.com	Undergraduate School:	Univ of California Davis; Davis CA
County:	San Francisco		
District:	District 1	Law School:	UC Berkeley SOL Boalt Hall; Berkeley CA
	Business Law		
Sections:	Trusts & Estates		
	Real Property Law		

Status History

Effective Date	Status Change
Present	Active
12/7/1988	Admitted to The State Bar of California

Actions Affecting Eligibility to Practice Law in California

Disciplinary and Related Actions

This member has no public record of discipline.

Administrative Actions

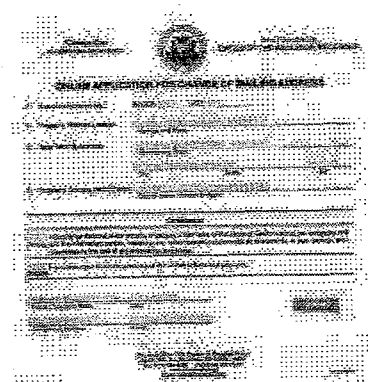
This member has no public record of administrative actions.

Exhibit 11

Published on CCSF Office of Assessor-Recorder (<http://www.sfassessor.org> (<http://www.sfassessor.org>))

Home (/) > Change of Mailing Address, English version (online)

Address Change



Please complete and submit this online form (http://sfassessor.force.com/forms/timbasurveys__survey?id=a0U0P00000BP8W3UAL) [1] to report a change in mailing address.

Access Tool (http://sfassessor.force.com/forms/timbasurveys__survey?id=a0U0P00000BP8W3UAL)

[1] It is the owner's responsibility to advise the Assessor when the mailing address has changed. The form must be signed by an owner, their attorney, an officer of the corporation, or an authorized property manager (online version: type in initials).

You can also visit our office and submit the form in person.

Source URL: <http://www.sfassessor.org/mailling-update>

Links

[1] http://sfassessor.force.com/forms/timbasurveys__survey?id=a0U0P00000BP8W3UAL

1. Assessor's parcel No.: BLOCK _____ LOT _____

2. Property Address Location:

3. New Mailing Address:

Number and Street

City

State

Zip

4. Property Owner's Agent (if any):

Care of Name - Person or Agent

Certification

I certify (or declare) under penalty of perjury under laws of the State of California that the foregoing and all the information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief.

Initial

I am either the owner or assessee of the above referenced property.

Owner Initial

Owner/Agent's Name

Date

Email
