

Bond Case Briefs

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LIENS - CALIFORNIA

Kahan v. City of Richmond

Court of Appeal, First District, Division 1, California - May 23, 2019 - Cal.Rptr.3d - 2019 WL 2225041 - 19 Cal. Daily Op. Serv. 4759

Foreclosure sale purchaser of property brought putative class action against city, challenging city's practice of recording liens for unpaid garbage collection fees.

The Superior Court sustained general and special demurrers to each cause of action and granted city's motion to dismiss. Purchaser appealed.

The Court of Appeal held that:

- Provision of Government Code authorizing county board of supervisors to "establish a schedule of fees to be imposed on land...for financing waste collection...and disposal services" authorized city to charge delinquent garbage fees as a special assessment against parcel and as lien on property for amount of delinquent fees, rather than only to charge fees for acquisition and maintenance of landfills;
- Procedures of Revenue and Taxation Code for pursuing a refund of a tax or assessment applied to purchaser's action;
- Ordinance authorizing special assessment liens for delinquent garbage fees was not preempted by state lien priority law; and
- Purchaser's conclusory allegation that one or more mortgage interests existed on the property at some unspecified point before city recorded garbage lien was insufficient to plead that those mortgages were subsequent encumbrances placed after the garbage lien arose without notice of it, as would be required to invoke bona fide encumbrancer exception to garbage lien attachment.