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926 North Ardmore Avenue, LLC v. County of Los Angeles

Supreme Court of California - June 29, 2017 - P.3d - 2017 WL 2806261

Single member limited liability company (LLC) apartment building owner brought action for tax refund after it was required to pay a documentary transfer tax, based on the value of the apartment building, when its single member partnership sold approximately 90% of its partnership interests to two trusts.

The Superior Court entered judgment for county. LLC appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Transfer tax is not a fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property, but rather is an excise tax on the privilege of conveying real property by means of a written instrument, disapproving *City of Cathedral City v. County of Riverside*, 163 Cal.App.3d 960, 210 Cal.Rptr. 60;
- Written instrument conveying an interest in a legal entity that owns real property may be taxable under the Documentary Transfer Tax Act, even if the instrument does not directly reference the real property and is not recorded; and
- Transfer was subject to documentary transfer tax.

Apartment building owned by limited liability company (LLC) had changed ownership when partnership interest were transferred and thus was subject to documentary transfer tax. Building initially was owned by trust beneficiary, who maintained beneficial interest when building was transferred to trust, trustees established LLC, with trust as sole member, to acquire and hold building, trust transferred its membership interest in LLC to partnership and divided partnership interest among four subtrusts established for beneficiary's benefit such that beneficiary maintained beneficial interest, but three of those four subtrusts subsequently transferred their interests to trusts maintained for beneficiaries sons such that they obtained an interest in building.

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