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CIM Urban REIT 211 Main Street (SF) LP v. City and County of San Francisco

Court of Appeal, First District, Division 5, California - March 3, 2022 - Cal.Rptr.3d - 2022 WL 620979 - 22 Cal. Daily Op. Serv. 2361

Following an unsuccessful administrative claim for a tax refund from city and county, two limited partnerships that each held title to real property filed an action against city and county, seeking a refund of nearly $12 million in tax, penalties, and interest paid after a merger that changed the ownership of limited partnerships' parent partnership triggered a transfer tax as to the properties.

The Superior Court denied limited partnerships' motion for summary judgment, and granted defendant's motion for judgment on the pleadings and summary judgment. Limited partnerships appealed.

The Court of Appeal held that:

- City and county ordinance did not conflict with state law;
- County recorder's failure to record and serve tax delinquency notice did not entitle limited partnerships to a refund of transfer tax;
- City and county were not required to hold a hearing prior to collecting delinquent transfer tax;
- Ordinance imposing a transfer tax on any "realty sold" applied to properties owned by limited partnerships;
- Ordinance imposing a transfer tax on realty held by a partnership upon partnership's termination applied to properties owned by limited partnerships;
- Limited partnerships were precluded from seeking a refund based on the argument they were not the proper taxpayer; and
- Language in merger agreement did not entitle limited partnerships to a refund.

City and county ordinance did not conflict with state law by imposing a tax rate on the transfer of real estate that exceeded the maximum authorized by state law, or by including in the tax base certain assets that were not actually conveyed, in tax refund action brought by limited partnerships that paid real property transfer tax to county and city following a merger involving their parent partnership; state law explicitly exempted city and county and charter cities from its mandates, and recognized that city and county had authority under home rule doctrine to impose transfer tax that did not conform to state law.

County recorder's failure to record and serve notice on limited partnerships of their tax delinquencies did not prejudice limited partnerships, and did not entitle them to a refund of real estate transfer tax paid to city and county following a merger that changed the ownership of limited partnerships' parent partnership; partnerships were adequately notified of the tax deficiency through a notice and demand for payment of transfer tax mailed to them by county recorder, failure to record the deficiency notice to notify third parties did not harm partnerships, and county recorder's failure to record and serve the notice was not jurisdictional.

City and county were not required to hold a hearing before the board of supervisors prior to collecting disputed transfer tax from limited partnerships, and thus limited partnerships were not entitled to a refund of real estate transfer tax paid to city and county following a merger that changed the ownership of limited partnerships' parent partnership; city and county ordinance required a hearing prior to imposing a lien against the real property, but not prior to collection of delinquent transfer tax.

City and county ordinance imposing a transfer tax on any "realty sold" applied to properties owned by limited partnerships following a merger that changed the ownership of limited partnerships' parent partnership; plain language of ordinance and propositions amending the ordinance and approved by voters imposed transfer tax on any real property reassessed pursuant to state law following an acquisition or transfer of ownership interest, whether the entity involved in the acquisition or transfer owned the real property directly or indirectly, and thus included limited partnerships' property following the merger.

City and county ordinance imposing a transfer tax on any realty held by a partnership upon the partnership's termination applied to properties owned by limited partnerships following a merger that changed ownership of limited partnerships' parent partnership, although limited partnerships did not terminate, where the merger caused the original owner partnership to terminate.

Limited partnerships that each held title to real property were precluded from seeking a refund of transfer tax paid to city and county following a merger that changed the ownership of their parent partnership, based on an argument that limited partnerships were not parties to the merger and thus not liable for transfer tax under city and county ordinance; limited partnerships paid the transfer tax as part of stipulated dismissal of city and county's collection action without disclosing that they would seek a refund based on this defense, limited partnerships failed to exhaust their administrative remedies by not raising the defense in their tax refund claim to the city and county, and limited partnerships failed to assert this cause of action in their pleadings.

Single clause in merger agreement involving parent partnership of limited partnerships that held title to real property, stating that the agreement did not confer benefits on any person other than the parties and their successors and assigns, did not entitle limited partnerships to a refund of realty transfer tax paid to city and county following the merger based on an argument that limited partnerships, as non-parties to the merger, were not liable for transfer tax under city and county ordinance; limited partnerships did not offer any independent evidence that they were not successors and assigns of the parties to the merger, and ordinance applied to any entity for whose use or benefit the merger agreement was made.

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