

Bond Case Briefs

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Morgan v. Ygrene Energy Fund, Inc.

Court of Appeal, Fourth District, Division 1, California - November 1, 2022 - Cal.Rptr.3d - 2022 WL 16569194

Homeowners who had entered into Property Assessed Clean Energy (PACE) loans to finance energy and water conservation improvements to their properties brought actions against private companies that made loans, were assigned rights to payment, or administered PACE programs for municipalities for violations of Unfair Competition Law (UCL), seeking property tax refunds, injunction against future tax assessments, and removal of tax liens.

Defendants demurred on basis that homeowners failed to exhaust administrative remedies by seeking property tax refunds. The Superior Court sustained demurrers without leave to amend and dismissed action. Homeowners appealed. Appeals were consolidated.

The Court of Appeal held that:

- As a matter of apparent first impression, homeowners were required to exhaust administrative remedies since they sought relief from tax assessments;
- County boards of equalization could provide adequate remedy to homeowners;
- County boards of equalization had competence to resolve issues of loan validity;
- Doctrine of primary jurisdiction did not apply; and
- Merits of homeowners' claims were not properly before Court of Appeal.

Homeowners' claims under Unfair Competition Law (UCL) against private companies which made loans to homeowners under Property Assessed Clean Energy (PACE) program, were assigned rights to payment of PACE loans, or administered PACE loans for municipalities sought relief from special assessments and tax liens placed on homeowners' properties to repay loans, and, thus, homeowners were required to exhaust administrative remedies before bringing claims; homeowners sought tax refunds, injunction against future tax assessments, and removal of tax liens, determination that PACE loans were void due to defendants' UCL violations would negate sole basis of homeowners' liability for assessments and liens at issue, and administrative procedure existed to provide relief.

County boards of equalization could provide adequate remedy for homeowners' alleged injury, namely imposition and enforcement of special tax assessment on their properties resulting from Property Assessed Clean Energy (PACE) loans that homeowners contended were void due to lenders' and other private entities' violations of Unfair Competition Law (UCL), and, thus, inadequate-remedy exception to requirement of administrative exhaustion did not apply to homeowners' claims against private entities under UCL, by which homeowners sought property tax refunds, injunction against future tax assessments, and removal of tax liens, where statute required boards to refund property tax that was erroneously or illegally assessed, and homeowners contended assessments, which repaid loans, were illegal.

County boards of equalization had competence to resolve issues of loan validity raised by homeowners' complaints against private entities, including lenders, for violations of Unfair

Competition Law (UCL), for which homeowners sought relief from property tax assessments imposed to repay loans under Property Assessed Clean Energy (PACE) program, and, thus, policies underlying nullity exception to administrative exhaustion rule did not permit homeowners to assert claims in court rather than exhausting remedies before boards, even though claims did not involve property valuation; board, with its quasi-judicial powers, could address factual issues such as whether lenders exercised high-pressure sales efforts, and applying exhaustion doctrine would serve interests of judicial economy.

Homeowners' claims against private lenders for violations of Unfair Competition Law (UCL), by which homeowners sought relief from tax assessments imposed to repay loans under Property Assessed Clean Energy (PACE) program, were not originally cognizable in court, and, thus, doctrine of primary jurisdiction did not permit homeowners to assert claims in court rather than before county boards of equalization, where homeowners had failed to satisfy administrative exhaustion requirement for claims for tax-related relief.