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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

AIDS HEALTHCARE  
FOUNDATION,

Plaintiff and Respondent,

v.

COUNTY OF LOS ANGELES,

Defendant and Appellant.

B266665

(Los Angeles County  
Super. Ct. No. BC544498)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. Barbara Ann Meiers, Judge. Affirmed.

Mary C. Wickham, County Counsel and Albert Ramseyer,  
Deputy County Counsel for Defendant and Appellant.

Liza M. Brereton and Tom Myers for Plaintiff and  
Respondent.

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Defendant and appellant County of Los Angeles (the County) challenges a judgment entered in favor of plaintiff and respondent AIDS Healthcare Foundation (AHF) following AHF's successful motion for summary judgment, granting it a property tax exemption for certain real property that it owned and operated for charitable use. The County contends that (1) AHF's motion for summary judgment was untimely, and (2) it raised triable issues of fact regarding the use of the property.

We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

AHF is headquartered in Los Angeles and provides medical care and advocacy to those affected by HIV and AIDS. One of its properties is commonly referred to as Carl Bean House, which is located in South Los Angeles. Carl Bean House has served as a healthcare center, providing charity care to underserved patients in Los Angeles County with HIV and AIDS.

AHF filed applications for property tax exemption in 2009 and 2010 for Carl Bean House. The County denied AHF's applications, prompting AHF to file a complaint for refund of property taxes for Carl Bean House.<sup>1</sup>

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<sup>1</sup> AHF also sought a tax exemption for another property, commonly known as the Linn House. At some point during the course of the litigation, the County admitted that the Linn House was entitled to a property tax exemption for 2009 and 2010. The parties entered into a stipulation regarding AHF's entitlement to the welfare tax exemption. Thus, the trial court only considered AHF's motion for summary judgment vis-à-vis Carl Bean House, and this appeal concerns only the trial court's order with respect to that property.

On January 30, 2015, AHF filed a motion for summary judgment, arguing that it was entitled to a refund. The motion was served by Federal Express. It was set for hearing 75 days later, on April 15, 2015.

On April 1, 2015, the County filed an opposition to AHF's motion, arguing that AHF did not provide adequate notice. Thus, it requested that the motion be denied.

On April 10, 2015, the trial court considered an ex parte application by AHF to continue trial. At that time, the trial court continued the hearing on AHF's motion to May 20, 2015, indicating that the County could file an additional opposition.

On May 5, 2015, the County filed a supplemental opposition to AHF's motion, arguing that AHF was not entitled to an exemption regarding Carl Bean House. While the County reiterated its timeliness objection, it did not assert that it did not have sufficient time to oppose AHF's motion; nor did the County contend that it was prejudiced by the lack of timely service.

On June 12, 2015, after entertaining oral argument, the trial court granted AHF's motion for summary judgment. The trial court found it undisputed that Carl Bean House was being used charitably in 2009 and 2010.

Judgment was entered, and this timely appeal ensued.

## **DISCUSSION**

### *I. Standard of review*

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

That said, we review the trial court's ruling on the notice issue for an abuse of discretion. (*Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1261 (*Robinson*).)

## II. *Timeliness of AHF's motion*

The County argues that AHF's motion should have been denied because it did not provide adequate notice.

California Code of Civil Procedure section 437c, subdivision (a)(2) provides that notice of a motion for summary judgment "shall be served on all other parties to the action at least 75 days before the time appointed for hearing. . . . If the notice is served by . . . express mail . . . the required 75-day period of notice shall be increased by two court days."

According to this rule, AHF's motion for summary judgment was filed and served two days late; it was filed on January 30, 2015, served by Federal Express, and set for hearing 75 days, as opposed to 77 days, later.

The issue then becomes how the County should have responded to the untimely motion. "If counsel is convinced his or her legal position is correct, he or she may appear at the hearing without filing a response to the motion and request a continuance for the purpose of preparing a proper response. If counsel makes a complete record relating to both the defective service and/or inadequate notice and the inability to prepare a proper response, and the court denies the continuance, the record will be well preserved for any future writ proceeding or appeal.

"If counsel is unwilling to take the chance that a continuance will be granted, he or she should file the best opposition possible under the circumstances. The opposition should include counsel's position on the defective-service/inadequate-notice issue, as well as the merits. The

opposition should contain a complete discussion of counsel's position as to why a more complete opposition was not able to be filed (e.g., because the defective notice of motion did not give counsel adequate time to prepare a response). Counsel should then appear at the hearing, object to the hearing taking place because the service was defective and/or inadequate notice of the hearing was received; again explain to the court the prejudice that has been suffered by reason of the defective service and/or inadequate notice; and request a continuance of the hearing so that a proper response to the motion may be filed. Obviously, if the court denies a continuance, counsel should be prepared to argue the motion on the merits. If, however, the steps described in this paragraph are taken, the record will be well preserved for any future writ proceeding or appeal." (*Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697–698.)

The County here did not take any of these steps. While it did file an opposition pointing out that AHF's motion was untimely, it did not explain why a complete opposition could not be filed, it did not argue that it was prejudiced by the two-day delay, and it did not request a continuance so that a proper opposition could be filed.

Nevertheless, the trial court continued the hearing on AHF's motion, giving the County ample time to respond. And, the County did respond, filing a substantive opposition to AHF's motion as well as a responsive separate statement. At the continued hearing on AHF's motion, the County did not argue that it could not provide an adequate opposition on the merits to the motion. Under these circumstances, we conclude that the County waived any alleged defective service or inadequate notice. (*Carlton v. Quint, supra*, 77 Cal.App.4th at p. 698.)

Urging us to reverse, the County relies heavily upon *Robinson, supra*, 168 Cal.App.4th at pages 1267–1268. *Robinson*, however, actually confirms that the County’s analysis is incorrect.

In *Robinson*, the defendants moved for summary judgment, noticing the hearing for less than the statutorily required period and setting the hearing within 30 days of the trial date. The plaintiffs filed opposition papers raising these errors but did not address the motion on the merits. The trial court continued the hearing for four days. At the hearing, without any opposition on the merits having been filed, the trial court granted the defendants’ summary judgment motion. (*Robinson, supra*, 168 Cal.App.4th at pp. 1260–1261.)

After reviewing *Carlton v. Quint, supra*, 77 Cal.App.4th 690, *Urshan v. Musicians’ Credit Union* (2004) 120 Cal.App.4th 758 (*Urshan*), and *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645 (*Boyle*), the *Robinson* court concluded: “Where inadequate notice is approved by the trial court—through either a case-specific order (*Urshan*) or a local court order (*Boyle*)—a full-blown opposition on the merits, in writing and at the hearing, does not appear to waive a timeliness objection.” (*Robinson, supra*, at 168 Cal.App.4th at pp. 1262–1267.) However, the court distinguished the situation in *Carlton v. Quint*, where (as here) untimely notice is attributable to a statutory violation “by the moving party (see § 437c, subd. (a)).” (*Robinson*, at p. 1267.) The *Robinson* court then ruled that the trial court had erred in continuing the hearing date for just four days, since at that point the statutory notice period had to begin anew. (*Id.* at pp. 1267–1268.) The court further noted that, unlike the opposing party in *Carlton v. Quint*, the plaintiffs in *Robinson* did not argue the

merits. (*Robinson*, at pp. 1267–1268.) Thus, *Robinson* was distinguishable from *Carlton v. Quint* (and the matter before us), because (1) it was the trial court’s order setting the hearing date in *Robinson* that was found to be erroneous, and (2) the opposing parties had not waived their right to object anyway because they did not file an opposition on the merits.

Here as in *Carlton v. Quint*, and unlike *Urshan*, *Boyle*, and *Robinson*, the allegedly untimely notice was attributable to the moving party. Moreover, the County filed an opposition on the merits and did not argue that it was prejudiced by the untimely service. It follows that the County has no challenge to the sufficiency of the notice.

### III. *The trial court properly awarded AHF summary judgment*

The requisite elements of a welfare exemption are set forth in California Revenue and Taxation Code section 214. The property must be used for the actual operation of the exempt activity and may not “exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.” (Rev. & Tax. Code, § 214, subd. (a)(3).) In addition, the owner may not be operated for a profit. (Rev. & Tax. Code, § 214, subd. (a)(1).)

The test for determining whether a particular property is used for exempt charitable purposes is that the use at the property is “incidental to and reasonably necessary for the accomplishment of [the organization’s charitable] purposes.” (*House of Rest of Presbyterian Church v. County of Los Angeles* (1957) 151 Cal.App.2d 523, 532–533.)

Here, as the trial court found, AHF met its burden; it established that Carl Bean House was used for charitable purposes, namely operating as a healthcare center and providing

charity care to underserved patients in Los Angeles County with HIV and AIDS.

The County contends that there are triable issues of fact regarding AHF's use of Carl Bean House. Almost in passing, the County asserts that AHF is not entitled to a tax exemption for Carl Bean House because it was comprised of AHF's information technology (IT) department. But, as the County admitted, AHF's IT department is necessary for AHF to be in compliance with strict regulations regarding the handling of patient data. And, as the County admitted, AHF's IT department's functions are necessary for the work coming out of Carl Bean House. In other words, as the County conceded, the IT department at Carl Bean House is reasonably necessary for the accomplishment of AHF's charitable purpose. (*House of Rest of Presbyterian Church v. County of Los Angeles*, *supra*, 151 Cal.App.2d at pp. 532–533.)

Directing us to *Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 729, 745–746 (*Cedars*), the County further claims that because the property was used in part to further commercial activities, namely AHF's pharmacy and thrift store operations, AHF is not entitled to an exemption. The County's reliance upon *Cedars* is misplaced. In that case, the court held that the specific physical space occupied by a thrift store at a hospital was not entitled to an exemption because the purpose of the thrift store itself was to generate profits to fund the organization's work. (*Id.* at p. 745 [“such enterprise, laudable as its purpose manifests it to be, cannot escape classification as an independent undertaking to raise revenue, and it cannot be said to have been incidental to and reasonably necessary for the accomplishment of hospital purposes. In truth it was conducted solely for revenue purposes as distinguished from hospital



purposes”].) The County offers no evidence of any such profit-generating facility at Carl Bean House. And we decline the County’s suggestion that *Cedars* can be stretched to hold that because AHF’s IT department is housed at Carl Bean House, and the IT department must support AHF’s income-generating activities, Carl Bean House is not entitled to a property tax exemption.

Furthermore, the County claims that because the property remained vacant, AHF is not entitled to a property tax exemption. But, the County offers no evidence that Carl Bean House was vacant in 2009 and/or 2010.

Finally, the County contends that Carl Bean House is “[m]ixed use” and, pursuant to *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23, 29–30 (*Honeywell*), is therefore not subject to an exemption. *Honeywell* is readily distinguishable. In that case, the Court of Appeal recognized “that the use of the computer system . . . was not reasonably necessary to further the primary purpose of the [public schools, which would have qualified for a tax exemption], but was merely a revenue generating device.” (*Id.* at p. 29.) In contrast, AHF is a nonprofit public benefit organization and Carl Bean House was used to advance AHF’s public service.

### **DISPOSITION**

The judgment is affirmed. AHF is entitled to costs on appeal.

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\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.\*  
GOODMAN

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\* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.