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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CITY OF LOS ANGELES, Plaintiff and Respondent, v. MANOJ RAMU AHIR, Defendant and Appellant.	B259818 (Los Angeles County Super. Ct. No. BC480109)

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm Mackey, Judge. Affirmed.

Law Offices of Frank A. Weiser and Frank A. Weiser for Defendant and Appellant.

Michael N. Feuer, City Attorney, Beverly A. Cook, Assistant City Attorney, and Daniel M. Whitley, Deputy City Attorney, for Plaintiff and Respondent.

INTRODUCTION

The trial court entered judgment in favor of the City of Los Angeles (the City) and against defendant Manoj Ahir finding that Ahir was obligated to pay $109,554.93 in delinquent Transient Occupancy Tax (TOT) payments pursuant to Los Angeles Municipal Code, chapter II, article 1.7, section 21.7.3. Ahir appeals contending he was not given constitutionally adequate notice of the assessment against him and was not given any notice of the administrative hearing for another taxpayer. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Ahir obtained a business tax registration certificate in 2003 to operate the El Blanco Motel in the City. The motel's TOT, a percentage of the rent charged by the hotel's "operator" (L.A. Mun. Code, ch. II, art. 1.7, §§ 21.7.3 & 21.7.5),[1] was paid to the City by check from the account of Ahir dba El Blanco Motel.

The City audited the TOT for Prafull and Madhu Solanki, owners of the El Blanco Motel, and determined, after crediting them with Ahir's payments, that the Solankis failed to report all of the TOT owed. An assessment review officer (ARO) (L.A. Mun. Code, Ch. II, art 1, § 21.16(b)) held a hearing and determined that the Solankis did not "operate" the motel between 2003 and 2008. Los Angeles Municipal Code, chapter II, article 1.7, section 21.7.5 obligates the hotel's "operator" to collect the TOT. Los Angeles municipal Code, Chapter II, article 1.7, section 21.7.2(f) defines "Operator" as "the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, lessee, or mortgagee in possession, licensee or any other capacity." The ARO found that the Solankis retired to

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[1] Section 21.7.3 reads in part, "For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax . . . of the rent charged by the operator . . . at the rate of fourteen percent (14%) . . . . Said tax constitutes a debt owed by the transient to the City which is extinguished by the payment to the operator or to the City. . . ."

Section 21.7.5 reads in part, "Each operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged and each transient shall receive a receipt for payment from the operator. . . ."

India and their son, Kalpesh Solanki, had leased the motel to Ahir and his sister, Ramila V. Ahir, for a five-year term from December 1, 2003 to November 30, 2008. Paragraph 8 of the lease placed the burden of paying the TOT on the tenants, the Ahirs. Sometime after the Solankis left for India, the Ahirs cancelled their tax registration certificate and, unknown to the Solankis, reported the TOT under the old account number used by the Solankis, although the Ahirs were operating the motel. In June 2008, the Ahirs defaulted on their lease and the Solankis returned to take over motel operations. Ahir's whereabouts were unknown, but the ARO heard speculation that he was in India. Based on these facts, the ARO found that "from December 2003 until early June 2008 the Ahirs were the primary operators. There were no secondary operators. The Solankis fit neither definition." The ARO entered its decision in early 2009 that "No T.O.T. is owed by the Solankis until after they resumed operation of the motel."

After the ARO's decision, on December 23, 2009, the City mailed its notice of assessment to Ahir at the motel's address. The assessment for the period of May 2005 through April 2008, including interest and penalties, amounted to $86,138.07. Ahir did not respond to this notice. The notice was returned to the City.

On October 27, 2010 AllianceOne, a debt collector, attempted to collect the delinquent tax from Ahir in Brigham City, Utah.

Ahir sent a letter to the City by certified mail, postmarked November 8, 2010. In this letter, Ahir notified the City that he had moved out of California on July 3, 2008, and was staying in Brigham City, Utah. He asked to close his tax registration account.

On December 9, 2010, Caine & Weiner, another debt collector, sent a letter to Ahir in Utah, asking him to contact them about taxes due and notifying him that he had 30 days to dispute the debt.

On January 15, 2011, the City sent a Notice of Tax Due and a Notice of Referral for Tax Lien to Ahir at the address in Brigham City, Utah that Ahir had provided. On January 25, 2011, Ahir replied by letter claiming that "I did worked [*sic*] at that property but nothing in the City of Los Angeles was under my name. I moved to Utah on 1st July 2008. The owner of that property . . . are" the Solankis. Ahir hired counsel who

explained to the City that Ahir disputed the alleged tax delinquency and claimed that the Solankis, as owners of the motel, were the people responsible for payment of the TOT from 2005 to 2008 when Ahir "managed" the motel.

Ahir wrote to the City Attorney explaining that although he had applied for his own tax number and business license, the TOT was received by the Solankis under their name and so Ahir paid the money over to the Solankis to be forwarded to the County Tax Office. He also pointed out that he had paid the TOT directly under the Solankis' name as of the middle of 2006.

The City filed a complaint against Ahir in March 2012 for money due. The City moved in limine to exclude evidence not raised during the administrative process on the ground Ahir had not exhausted all of his administrative remedies. The City noted that because Ahir did not request an administrative hearing when he had the opportunity to do so, the assessment against him became final under Los Angeles Municipal Code, chapter II, article 1, section 21.16(b) and so he was barred from adducing evidence at trial. Ahir opposed the motion, on the ground, inter alia, that administrative collateral estoppel should not apply because he did not receive proper notice of the assessment, the administrative hearing, or the Solankis' assessment appeal. In a subsequent notice of ruling, the City indicated that the trial court granted the in-limine motion.

However, the trial court allowed Ahir to present evidence. The City put on evidence of Ahir's lease and the amount of TOT assessment against Ahir. Ahir cross-examined the City's two witnesses about the notice given to him, the City's knowledge of his whereabouts, and its efforts to locate him. Ahir testified about the tax payments. He explained that Solanki and his son calculated the TOT and had Ahir sign the documents. Ahir testified that the TOT return was in the Solankis' names. In 2008, Prafull Solanki asked Ahir to leave because Solanki's daughter was going to run the motel. Ahir moved to Utah. He testified he did not receive anything from the City about an audit assessment. He was unaware of the Solankis' audit. The first time he heard from the City about taxes was from a collection agency.

Alicia Vega, a supervisor in the City's Office of Finance, testified that she saw nothing in the file to indicate that the City asked the Solankis for Ahir's address. She saw nothing to indicate that Ahir underwent an audit. Solanki stated that Ahir was no longer at the property as of June 2008.

After a one day trial to the bench, the court found in favor of the City. The court found Ahir leased the motel and that Ahir was given due process. Ahir filed his timely appeal.

DISCUSSION

Ahir does not challenge the assessment amount. Rather, he contends "the issue is whether [he] had a procedural due process right to *notice and opportunity to be heard* at the administrative level to contest *at Solanki's appeal hearing* whether he was a lessee or property manager and a right to *notice and opportunity to be heard* subsequently after [*sic*] he was assessed with the TOT instead of Solanki and whether such right was violated." (Italics added.)

1. *Ahir was not denied due process because he received notice of the assessment against him.*

Ahir argues he was not given adequate notice of the assessment against him because the City sent notice to him at the motel and, after the notice was returned unclaimed, took no other steps to notify him of the TOT delinquency.[2] He cites *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306 (*Mullane*) and a series of Supreme Court cases concerning the 14th Amendment Due Process right to notice and an opportunity to be heard. (*Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80; *Mennonite Board of Missions v. Adams* (1983) 462 U.S. 791 [mortgagee has constitutional right to notice of tax sale of real property]; *Jones v. Flowers* (2006)

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[2] Ahir argues that "[t]he simplest reasonable step the City could have taken to determine where Ahir was would have been to inquire of Solanki of a new mailing address which Ahir testified Solanki knew." However, according to the record, Ahir was "presumed to be somewhere in India." Had the City followed up on that advice, it would not have found Ahir, who was instead in Utah.

547 U.S. 220, 227 [when mailed notice of tax sale returned unclaimed, state must take additional reasonable steps to attempt to provide notice to property owner before selling real property].) Based on our independent review of the record, we conclude that Ahir had notice of the tax assessment against him and an opportunity to be heard.

Mullane established that before initiating an action that affects an interest in life, liberty, or property protected by the 14th Amendment's Due Process Clause, a state must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of *the pendency of the action* and afford them an opportunity to present their objections." (*Mullane*, *supra*, 339 U.S. at p. 314, italics added.) Notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met." (*Id*. at pp. 314-315.) What is adequate notice "will vary with circumstances and conditions." (*Walker v. Hutchinson City* (1956) 352 U.S. 112, 115.)

The record before us shows that the City sent notice of the assessment to Ahir at the motel but that the notice was returned to the City unclaimed. For nearly a year, the City did not attempt any alternative method of providing notice, such as by personal service or by publication. However, the record also shows that Caine & Weiner and AllianceOne located Ahir in Utah. Although the record does not contain evidence explaining how these companies found him, it is undisputed that the City then sent Ahir notice of the tax delinquency to his Utah address.

Moreover, the City served Ahir with its complaint at his Utah address. Ahir retained counsel, appeared at trial, and presented evidence and testimony. The City put on evidence that Ahir was the lessee, and pursuant to the lease and ordinance, was the motel's "operator." It also put on evidence of the amount of the unpaid TOT. Ahir testified that he was not the "operator;" the Solankis were. The trial court received the evidence, heard the testimony, and made its ruling. Unlike the cases upon which Ahir relies, no final decision was made depriving Ahir of property *before* he received notice and had an opportunity to be heard. (Compare *Jones v. Flowers*, *supra*, 547 U.S. at pp. 224-225 [property owner did not receive notice before state sold it at public sale for delinquent taxes]; *Mennonite Board of Missions v. Adams*, *supra*, 462 U.S. at p. 794

[mortgagee did not receive notice before state sold property for delinquent property taxes]; *Peralta v. Heights Medical Center, Inc*., *supra*, 485 U.S. at pp. 82-83 [real property sold to satisfy default judgment before debt guarantor received notice].) Rather, Ahir received notice and presented his case at trial. Stated otherwise, *the City notified Ahir of the assessment prior to the commencement of the proceeding that resulted in the judgment against him.* (*Mullane*, *supra*, 339 U.S. at p. 314.) He was accorded due process.

Ahir also contends that because he was not given notice, he did not timely request an administrative hearing to contest the amount of the assessment. Thus, he argues, he should not be precluded from presenting evidence that would have been presented at an administrative hearing. We reject the contention. Although the City attempted to block Ahir from adducing evidence he could have presented in an administrative appeal had he requested one, Ahir admits that the trial court allowed him to introduce that evidence, notwithstanding its order granting the City's in-limine motion. Ahir was not prejudiced.

2. *Ahir was not prejudiced by the lack of notice of the Solankis' administrative hearing*.

Ahir next contends that he was entitled to notice and an opportunity to be heard at the Solankis' administrative hearing because, he argues, he had a "substantial property interest" that was "significantly affected by" that hearing, namely, the possibility that he would be held responsible for the deficiency. He argues that he had a right at the Solankis' hearing to "contest . . . whether he was a lessee or property manager" and to rebut Mr. Solanki's evidence of the lease and the ARO's finding that Ahir was the motel's operator. Yet, he was never given notice. He asserts that it remains disputed whether, on the one hand, he was a lessee with the obligation to pay the TOT or, on the other hand, "a property manager not subject to the TOT" because the Solankis had "control of possession of the property."

The City counters that Ahir had no right to intervene in the audit of another taxpayer and cites *Lexington Nat. Ins. Corp. v. Ranger Ins. Co*. (3d Cir. 2003) 326 F.3d

416, which stated that a taxpayer's failure "to pay its taxes in full cannot create 'a private right of action for a third party to seek an audit of [its] return.' " (*Id.* at p. 421.)

We conclude, that even if Ahir was entitled to intervene in the audit of another taxpayer, he was not prejudiced by the failure of the City to notify him of the Solankis' administrative hearing. He asserts he should have been present at that hearing to establish that he had no interest in the motel that would require him to pay the TOT. However, as explained, the question of whether Ahir had a tax obligation for which he was delinquent was fully adjudicated in his own trial, in which it was determined that he was a lessee and hence the "operator' obligated to pay the TOT. After the trial, nothing remained in dispute. The court had the lease, the decision of the ARO in the Solankis' hearing, Ahir's testimony and letters, and that of the City's witnesses. The court heard that the City believed that the Solankis were the "operators," until the ARO determined otherwise. With all of this evidence, the court ruled against Ahir. Ahir had constitutional notice, appeared, and put on evidence and witnesses in what was effectively his own assessment hearing. Ahir was not prejudiced.

DISPOSITION

The judgment is affirmed. Appellant to pay costs on appeal.

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ALDRICH, J.

We concur:

EDMON, P. J.

HOGUE, J.*

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