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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SUNSET BRONSON ENTERTAINMENT PROPERTIES, LLC, et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B296269 (Los Angeles County Super. Ct. No. BC624024)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Reversed in part and remanded.

Greenberg Traurig, Colin W. Fraser, C. Stephen Davis, and Andrew W. Bodeau for Plaintiffs and Appellants.

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

INTRODUCTION

Appellants Sunset Bronson Entertainment Properties, LLC and Sunset Studios Holdings, LLC (collectively, the Studios) seek a property tax refund for the 2009 and 2011 tax years. The Studios contend the trial court erred by: (1) determining the Studios' cause of action for a refund of their 2009 property taxes was time barred; and (2) holding the County of Los Angeles Assessment Appeals Board No. 2 (AAB) properly affirmed the Los Angeles County Assessor's 2011 assessment of the property.

We conclude the Studios' cause of action for a refund of their 2009 property taxes was timely. Accordingly, we remand the matter to the trial court for further proceedings on that claim. We affirm the judgment in all other respects.

FACTUAL AND PROCEDURAL BACKGROUND

I. Statutory Scheme

By way of background, we begin with a brief summary of the statutory scheme governing assessments of real property and the tax refund process in California. "The Constitution mandates that the Legislature shall provide for an elected assessor in general law counties (Cal. Const., art. XI, § 1, subd. (b)) and that county charters shall provide for an elected assessor and the performance of functions required by statute. (Cal. Const., art. XI, § 4, subds. (c) and (d).)" (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 17 (*Plaza Hollister*).) "Article XIII A of the California Constitution—adopted by the voters as Proposition 13 in 1978—limits the ad valorem tax on real property to 1 percent of the property's 'full

cash value.' (Cal. Const., art. XIII A, § 1, subd. (a).)" (*Next Century Associates, LLC v. County of Los Angeles* (2018) 29 Cal.App.5th 713, 717 (*Next Century*).) "Thus, county assessors must 'assess all property subject to general property taxation at its full cash value.' (Rev. & Tax Code, § 401.)[1] Generally, [for properties (including the property at issue in this case) that have been purchased, newly constructed, or changed ownership after the 1975 lien date] 'full cash value' is 'the appraised value of real property when purchased, newly constructed, or a change of ownership has occurred . . . .' (Cal. Const., art XIII A, § 2, subd. (a).)." (*Ibid.*; see also § 110.1.)[2]

"Section 1603 permits a taxpayer to seek a reduction in assessed value from the [AAB] based on an asserted decline in value." (*Next Century, supra*, 29 Cal.App.5th at p. 718.) This is done by filing an Application for Changed Assessment with the AAB. Taxpayers may, but are not required to, designate their Applications for Changed Assessment as claims for refund. (§ 5097, subd. (b).)[3]

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1 All further statutory references are to the Revenue and Tax Code.

2 This value is known as the base year value. (§ 110.1, subd. (b).) Proposition 13 allows this base year figure to be adjusted upward annually by an inflationary rate not to exceed 2% per annum, reduced per appropriate deflationary data, or reduced to reflect damage, destruction, or other factors causing a decline in value. (Cal. Const., art XIII A, § 2, subd. (b).)

3 A reduction in assessed value does not automatically entitle the taxpayer to a refund. "Refunds are governed by separate provisions of the code, and the taxpayer may only recover a

At a hearing before the AAB on an Application for Changed Assessment, "'[a]n assessor is generally entitled to the presumption affecting the burden of proof provided in Evidence Code section 664 that he or she has properly performed his or her duty to assess all properties fairly and on an equal basis. [Citations.] "Thus, the taxpayer has the burden of proving the property was improperly assessed. [Citations.]'" (*Next Century, supra*, 29 Cal.App.5th at p. 718.) After the hearing, the AAB issues written findings of fact, which may be challenged in the Superior Court if a timely action is filed. (*Id.* at p. 720.)

If the taxpayer designated the Application for Changed Assessment as a claim for refund, the taxpayer's refund action to challenge the AAB's decision in Superior Court must be filed within six months of the AAB's final determination of the application, or on the date the final installment of the taxes for that assessment becomes delinquent, whichever is later. (§ 5141, subd. (c).)[4] Alternatively, taxpayers may file separate claims for refund before the County Board of Supervisors, which must be filed within four years of payment of taxes. (§ 5097, subd. (a)(2).) A taxpayer's lawsuit challenging the Board of Supervisor's decision is governed by a special statute of limitations. (§ 5141, subd. (a).) That statute of limitations—and its application to the Studio's refund claim—is central to the first issue raised in this appeal and is discussed below.

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refund by complying with those statutes . . . ." (*Mission Housing Development Co. v. City and County of San Francisco* (2000) 81 Cal.App.4th 522, 528.)

[4] A taxpayer may only bring a refund suit in court after first seeking relief from the AAB. (*Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948, 958.)

II. The 2009 Assessment and Administrative Proceedings

The property involved in this appeal is known as Sunset Bronson Studios (the Property). It is approximately twelve acres of studios and offices located on Sunset Boulevard in Hollywood. The Studios paid property taxes of $1,505,299.17 for the 2009 tax year based on an enrolled value of $110,160,000. The Studios filed Applications for Changed Assessment (the 2009 Applications) with the County of Los Angeles AAB on November 30, 2009 to reduce the Property's assessed value to what they believed to be its fair market value of $70,100,000. The Studios did not designate the 2009 Applications as "claims for refund," and instead filed a separate claim for refund with the Board of Supervisors.

At the hearing before the AAB, the Assessor valued the Property at $96,200,000. The Studios argued the assessment was improperly inflated because it included non-taxable value attributable to the Studios' business enterprise, i.e., equipment rentals and production support services. On June 17, 2013, the AAB issued findings of fact deciding the 2009 Applications, and reduced the assessment of the Property from $110,160,000 to $96,200,000.

On December 6, 2013, the Studios filed a claim for refund (the Claim for Refund) with the Board of Supervisors. The Claim for Refund sought $637,823.29 in overpaid taxes based on the Studios' view of the Property's fair market value of $70,100,000 (as opposed to the AAB's reduction of the assessed value to $96,200,000).

On February 14 and 24, 2014, the Los Angeles County Auditor-Controller issued partial refund checks to the Studios based on the reduction from the previous enrolled value ($110,160,000) to the value determined by the AAB ($96,200,000). The AAB also issued notices of the refund checks to the Studios, referencing the 2009 Applications and the AAB's 2009 findings of fact.

III. The 2011 Assessment and Administrative Proceedings

The Studios paid property taxes of $1,523,811.06 for the 2011 tax year based on an assessed value of $103,568,000. The Studios filed Applications for Changed Assessment (the 2011 Applications) with the AAB to reduce the Property's assessed value to what they believed to be its fair market value of $46,300,000. The Studios filed the 2011 Applications in response to a reassessment of the Property triggered by a change of ownership on June 29, 2010 (the Date of Value) due to an initial public offering by Hudson Pacific, Inc. (an indirect owner of the Studios).

At the hearing before the AAB in 2014 and 2015, the Assessor offered a new opinion of value of $99,600,000, which included an estimate of the value of development rights in unimproved land (the Potential Development). The Assessor valued the Potential Development, which he also referred to as "excess land," at $16,700,000, and stated the value of the development rights was erroneously omitted from previous appraisals. The Studios offered their own appraisal. They did not attribute any value to the Potential Development because, they

contended, as of the Date of Value, the Potential Development was not financially feasible or legally permissible based on lack of entitlements and then-existing zoning requirements. The Studios acknowledged that plans for redevelopment ultimately were approved, however, in 2013 and construction commenced in 2014.

The AAB issued findings of fact, denied the 2011 Applications, and adopted the Assessor's $16,700,000 valuation of the Potential Development. In reaching its value conclusion, the AAB found the Assessor met its "burden to prove that the subject property is likely to be rezoned and entitlements issued for future development," and made specific references to the Studios' "Conceptual Project Development Plan" dated February 2010, and a Los Angeles Business Journal article dated September 2010 that discussed potential redevelopment of the Property.

IV. The Superior Court Refund Action

On June 16, 2016, the Studios filed a Verified Complaint for Refund of Property Taxes against the County of Los Angeles, alleging two causes of action for recovery of taxes based on the allegedly incorrect 2009 and 2011 assessments of the Property, respectively. Following a bench trial, the court issued a Proposed Statement of Decision. The Studios filed objections, arguing the court improperly found their 2009 claim for refund time barred, and erred in finding a portion of the Property constituted "excess land" by basing its conclusion on evidence that did not exist as of the Date of Value. The court adopted the Proposed Statement of Decision as its final Statement of Decision with the addition of one paragraph.

On January 22, 2019, the court entered judgment in favor of the County. It held the Studios' "challenges to the [AAB]'s findings regarding the 2009 assessment year are time-barred" under section 5141. With respect to the 2011 assessment, the court held "[u]nder the specific facts here, where the [AAB] was presented with evidence showing that (1) [the Studios] actually did re-zone and redevelop the excess land in 2014 and (2) [the Studios] continuously manifested an intent to redevelop the excess land, the Assessor rebutted the presumption [imposed by § 402.1, subd. (b)], and the [AAB] properly found that excess land value existed." The Studios appeal from the judgment.

DISCUSSION

I. The Studios' cause of action for a refund of their 2009 property taxes is not time barred.

The Studios contend the trial court erred by concluding the Studios' refund claim for the 2009 property taxes is time barred under section 5141. We review this issue de novo. (See *Sahadi v. Scheaffer* (2007) 155 Cal.App.4th 704, 713-714 [application of statute of limitations on undisputed facts is a legal question reviewed de novo].) We agree with the Studios.

Section 5141, subdivision (a) establishes a six-month statute of limitations for an action for a property tax refund, stating that such an action "shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part." Section 5141, subdivision (b) provides that "if the board of supervisors or city council fails to mail notice of its action on a claim for refund within six months after the claim is filed, the claimant may, prior

to mailing of notice by the board of supervisors or city council of its action on the claim, consider the claim rejected and bring an action under this article." "The statute thus permits, but does not require, a claimant to deem its claim denied if the county or city fails to give notice of its action within six months of the filing of the claim." (*Geneva Towers Ltd. Partnership v. City and County of San Francisco* (2003) 29 Cal.4th 769, 773; see also *Georgiev v. County of Santa Clara* (2007) 151 Cal.App.4th 1428, 1435 ["The claimant is not *required* to 'consider the claim rejected' after six months."].)

The Studios filed the 2009 Applications with the AAB on November 30, 2009. The Studios did not designate the 2009 Applications as "claims for refund." On December 6, 2013, the Studios filed their Claim for Refund with the Board of Supervisors. On February 14 and 24, 2014, the Controller issued partial refund checks to the Studios based on the AAB's reduced assessed value of $96,200,000. The AAB issued notices to the Studios explaining the basis for the refunds, including a reference to the 2009 Applications. The notices did not reference the Claim for Refund. With respect to the separately filed Claim for Refund, however, it is undisputed the Board of Supervisors took no action. Because the Board of Supervisors took no action, it did not mail notice of its action on the Studios' Claim for Refund. Thus, no event triggered the running of the statute of limitations under section 5141. (See § 5141, subd. (a) [an action for a property tax refund in the superior court "shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part."]; see also *Sevilla v. Stearns-Roger, Inc.* (1980) 101 Cal.App.3d 608, 611 ["Statutorily imposed limitations on actions are technical

defenses which should be strictly construed to avoid the forfeiture of a plaintiff's rights [citation]."].)

Accordingly, we conclude the Studios' complaint for refund of property taxes under section 5140, filed in the Los Angeles Superior Court on June 16, 2016, is timely.[5] Because the trial court concluded the Studios' cause of action for a refund of their 2009 property taxes claim was time barred, it did not reach the merits of the Studios' claim. We decline the Studios' invitation to reach the merits of the Studios' claim in the first instance, and remand to the trial court for that purpose. (See e.g. *Daun v. USAA Casualty Ins. Co.* (2005) 125 Cal.App.4th 599, 610 [declining to reach issues in the first instance on appeal and remanding to the trial court].)

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[5] We note the Studios' complaint challenges both the AAB's findings of fact after a hearing on the Studios' 2009 Applications, and the Board of Supervisor's "rejection" of the Studios' Claim for Refund. On appeal, neither party addresses the statute of limitations for challenging the AAB's findings of fact when, as here, the Application for Changed Assessment filed with the AAB is not designated as a Claim for Refund, and a separate Claim for Refund is filed with the Board of Supervisors. In the Studios' diagram of the administrative process for property tax appeals submitted in the trial court, however, the Studios assert a taxpayer's action in Superior Court to challenge both the AAB's and the Board of Supervisor's decisions is timely if filed within six months of the Board of Supervisors rejecting the Claim for Refund (or any time if the Board of Supervisors takes no action).

II. Substantial evidence supports the AAB's finding that the Assessor met his burden to show the existing zoning and entitlement restrictions affecting the property would be removed or modified.

Preliminary, we address the County's assertion that the Studios appealed from the wrong judgment for their challenge to the 2011 assessment, and therefore, waived their contention. We are unpersuaded. The Studios' complaint alleged, among other things, that the Assessor improperly established the value of the Property by adding value attributable to the Potential Development in the 2011 assessment. Separately, the Assessor filed a writ petition against the AAB to challenge the exclusion from the 2011 assessment of revenue from parking and excess utilities. The actions on the Studios' complaint and the Assessor's writ petition were related, but not consolidated. On January 22, 2019, the trial court issued its judgment on the complaint and held the "Board properly found that excess land value existed." The trial court also issued a separate judgment in the writ proceeding to grant the Petition, ordering the AAB to "amend its valuation of the subject properly to include Power and A/C Income, Parking Income, and Management Fee Income" and "determine whether stage management income should be included in the valuation." Because the remaining issue on this appeal is whether the Assessor improperly added value attributable to the Potential Development in the 2011 assessment—an issue only addressed in the proceeding on the

Studios' complaint—the Studios correctly appealed from the judgment on their complaint.[6]

Turning to the merits, section 402.1, subdivision (a) states: "In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected." Under section 402.1, subdivision (b), "[t]here is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses." To rebut this presumption, "the assessor must show by a preponderance of the evidence that the restriction will be lifted in the predictable future." (*Meyers v. County of Alameda* (1977) 70 Cal.App.3d 799, 805 (*Meyers*).) The Studios contend that, as of June 29, 2010 (the valuation date), then-current land use restrictions on the excess land would have made the Potential Development impossible, and the Assessor did not successfully rebut the presumption that these restrictions would "not be removed or substantially modified in the predictable future." (§ 402.1, subd. (b).)

Contrary to the Studios' assertion, we review the AAB's finding that the Assessor met his burden to rebut the presumption in section 402.1, subdivision (b) for substantial

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6 At oral argument, County Counsel argued that a stipulation reached that morning between the Studios and the Assessor in on-going proceedings before the AAB mooted this appeal. We ordered supplemental briefing on the issue. We conclude the stipulation (of which we take judicial notice) does not affect our disposition of this appeal because it resolves the allocation of "miscellaneous revenue," an issue unrelated to this appeal.

evidence.[7] We hold substantial evidence supports the AAB's determination.

We agree that evidence the Studios eventually obtained the required entitlements and began construction on the Proposed Development in 2014 is not sufficient to rebut the presumption, although it is not necessarily irrelevant. The key inquiry when assessing "fair market value" (Cal. Const., art. XIII, § 1, subd. (a)) or "full cash value" (Cal. Const., art. XIII A, § 2) is what "amount of cash or its equivalent" would the property bring on the valuation date "if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes." (§ 110, subd. (a).) Further, Property Tax Rules provide that (when using an income approach to value) "the amount to be capitalized is the net return which a reasonably well informed

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[7] The Studios contend they are challenging the methodology for assessing a hypothetical development potential, which presents a legal question that should be reviewed de novo. (*Borel v. County of Contra Costa* (1990) 220 Cal.App.3d 521, 525 (*Borel)* ["when the taxpayer challenges the method, manner, or technique of valuation, the reviewing court is presented with a question of law."].) But the Studios do not argue the Assessor used an improper methodology in arriving at his approximately $16 million valuation of the excess land; instead, they argue the Assessor did not present sufficient evidence to rebut the presumption that then-existing restrictions would not be removed or substantially modified in the predictable future. This issue, therefore, should be approached as whether the AAB's conclusion was supported by substantial evidence.

owner and reasonably well informed buyers may anticipate on the valuation date that the taxable property existing on that date will yield under prudent management and subject to such legally enforceable restrictions as such persons may foresee as of that date." (Property Tax Rule, § 8, subd. (c).) Here, the Assessor used a valuation date of June 29, 2010, so the correct inquiry is whether substantial evidence supported the conclusion that the seller and/or well-informed potential buyers would foresee as of that date that the Potential Development was possible under the existing or foreseeable restrictions.

To support his determination that the Property had potential development rights, the Assessor relied on the following documents, among others: (1) a "Conceptual Project Development Plan" the Studios submitted to the City of Los Angeles in February 2010; and (2) a Los Angeles Business Journal article discussing the redevelopment of the Property, dated September 17, 2010. Referencing these documents, the AAB found "there is excess land available for additional development based upon the [existing] availability of increased [floor area ratio] and the subject property's future planned development concept; therefore, [the Studios'] available buildable area does contribute added-value to the subject property." Further, as the trial court noted, on June 23, 2010, less than a week before the change in ownership date, Hudson Pacific, Inc., an indirect owner of the Studios, made the following statement to prospective investors in an SEC filing: "In addition to Sunset Bronson's existing facilities, the current zoning designation for Sunset Bronson . . . permits a [floor area ratio] of 1.5x, which implies a maximum allowable density of 689,365 square feet or an incremental 391,729 square feet above the existing 297,729 [square foot] total [floor area],

including the KTLA portion of the property. As of March 31, 2010, we have engaged an architect and land use counsel and we are in the process of finalizing its master plan." In other words, the existing zoning permitted additional development.

Granted, additional entitlements were required before the Studios could build what they ultimately built. The Studios contend the Assessor did not rebut the presumption that the development restrictions would continue to exist, pointing to evidence that, as of June 29, 2010, the Proposed Development was put on hold pending improved market conditions and the Proposed Development required extensive entitlements that had not been issued. But here, the Assessor submitted evidence of plans for the Proposed Development that existed before the Date of Value. Thus, this case is distinguishable from *Meyers, supra,* 70 Cal.App.3d 799. In *Meyers*, the only evidence of a likelihood of rezoning was "a vague hope" from the attorney for appellants that "the property would, in fact, be rezoned by 1980," but appellant's attorney also stated "he expected the city authorities to do nothing until a large neighboring area was successfully developed." (*Meyers, supra*, 70 Cal.App.3d at p. 807.)[8] The evidence in this record demonstrates far more than a "vague hope." Rather, substantial evidence existed demonstrating the Studios' foresaw—before the Date of Value—there was a high likelihood that restrictions would be lifted, permitting the Potential Development.

The Studios' reliance on *Borel v. County of Contra Costa, supra,* 220 Cal.App.3d 521 is misplaced. In *Borel*, the court found

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[8] Appellants in *Meyers* requested the property be rezoned for commercial and residential development, but the application was rejected by city council. (*Meyers*, *supra*, 70 Cal.App.3d at p. 806.)

that on the date of assessment, appellant's property was zoned for heavy agricultural use and the trial court erred when it approved a valuation method where the property was valued as administrative offices. (*Id.* at p. 527.) The County argued that "since appellant had not applied for, let alone received, agricultural status [under the Williamson Act] on the valuation date, its assessor properly valued the property based on its use for administrative offices." (*Ibid.*) After the valuation date, the appellant's property received agricultural preserve status. (*Ibid.*) Thus, the court found the County's argument "incongruous" because "[u]nder County's argument, appellant would be prevented from showing he intended to maintain the agricultural use of the property for at least 10 years . . . yet County would be allowed to show that, in the near future, the use of the property would be nonagricultural." (*Ibid.*) Accordingly, the court held the County could not overcome the 402.1 presumption, "given that appellant manifested no intent to have his property rezoned from agricultural use and his property was entitled to agricultural preserve status." (*Borel, supra,* 220 Cal.App.3d at p. 528.)

Like *Borel*, in determining whether the Assessor rebutted the presumption, the AAB and the trial court considered evidence of the Studios' subjective intent concerning their land. We agree with the trial court that "[u]nder these facts, it would be disingenuous for [the Studios] to argue that the Assessor improperly saw value in the excess land while [the Studios were] concurrently engaging architects and land use counsel in a concerted effort to realize that value."

Finally, the Studios contend the AAB and trial court omitted an essential finding concerning the parking space required to support existing use of the Property as of the date of

value because land "required to service the existing use is, by definition, not 'excess.'" The Assessor considered the need for replacement parking in his appraisal, however.[9]

We conclude substantial evidence supports the AAB's finding the Assessor rebutted the presumption that the then-existing development restrictions would continue to exist in the predictable future.

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[9] The Assessor stated, "[o]n the main lot, new construction would cause a loss of 466 parking spaces. On Lot A, new construction would cause a loss of 130 parking spaces. In total, 596 spaces would be lost to make the developmental rights or excess land available. These parking spaces would be replaced in parking garages that are planned for both the main lot and Lot A."

DISPOSITION

The judgment is reversed in part and remanded to the Superior Court for further proceedings on the 2009 Claim for Refund. The judgment is affirmed in all other respects. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.

WE CONCUR:

WILLHITE, Acting P. J.

COLLINS, J.