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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CITY OF LOS ANGELES,

Plaintiff and Respondent,

v.

LANCE JAY ROBBINS
PALOMA PARTNERSHIP,

Defendant and Appellant.

B336837

(Los Angeles County
Super. Ct. No.
19STCV18917)

APPEAL from a judgment of the Superior Court of Los Angeles County, Theresa M. Traber, Judge. Affirmed.

Law Offices of Thomas A. Nitti and Thomas A. Nitti for Defendant and Appellant.

Hydee Feldstein Soto, City Attorney, Charles Hong, Assistant City Attorney, and Daniel M. Whitley, Deputy City Attorney, for Plaintiff and Respondent.

The City of Los Angeles (City) sent tax assessment notices to Lance Jay Robbins Paloma Partnership (Paloma). Paloma responded by suing City, rather than requesting administrative review. City, in turn, filed this lawsuit to recover unpaid taxes, interest and penalties. Three years after receiving notice, Paloma dismissed its lawsuit and requested an administrative hearing. The trial court granted summary judgment for City because Paloma failed to timely exhaust its administrative remedy.

Paloma lists a single issue on appeal: “Can the late-filing of an administrative appeal justify a void tax assessment for over one million dollars?” The size of the assessment did not affect Paloma’s duty to seek timely administrative review. By failing to do so, it forfeited the right to contest the assessment. We affirm.

FACTS AND PROCEDURAL HISTORY

Respondent City imposes tax on “ ‘Transient[s]’ ” who occupy property for 30 days or less. “[A]ny structure” housing transients is a “ ‘Hotel.’ ” (L.A. Mun. Code (LAMC), § 21.7.2(d), (b).) The hotel operator must register with City, collect transient occupancy tax (TOT), and remit it to City monthly. City may assess an operator who fails to collect or remit TOT.

Appellant Paloma owns the Ellison, a 58-unit residential building in Venice. For years, City treated Paloma as a lessor of long-term rentals. It discovered in 2018 that the building had been converted into a hotel offering short-term rentals.

In August 2018, City sent Paloma notice of noncompliance, asserting it was operating a hotel and failed to remit TOT. The building was previously a rent-controlled apartment complex, but now has 43 hotel suites. It directed Paloma to “report monthly rent collected from all transients” to determine its TOT liability.

On September 14, 2018, City's finance office sent Paloma a notice covering July 2007 to May 2018, listing an "estimated assessment of \$1,328,406.58" for unpaid TOT, interest and penalties, "due and payable immediately." It warned that City "will finalize this estimated assessment" unless it heard from Paloma by November 3, 2018, reflecting the 45-day period within which a taxpayer may request a hearing under City ordinance.

The notice included an "Assessment Response Form" to request a hearing. It read, "If no written application for a hearing is filed . . . the total amount of this assessment will become final," and advised that failure to pay the assessment could result in criminal charges, collections, legal action and a lien on property used to operate the business generating the tax.

City sent Paloma a second notice in October 2018, assessing \$10,476.58 in unpaid TOT for June 2018. A third notice, dated November 1, 2018, sought payment for July 2018.¹ As before, Paloma was warned the estimate would become final unless it pursued its administrative remedy. City's tax compliance officers declared that the Notices were mailed to Paloma's address of record in the ordinary course of business.

City has no record that Paloma contacted it to request a hearing. As a result, the tax assessments became final. In April 2019, City sent "Final Notification" that Paloma owed \$1,359,528.68 in unpaid TOT, interest, and penalties, noting Paloma's failure to respond to the Notices.

Days after City sent the final notice, Paloma's attorney replied that the Notices "are currently in litigation." He did not deny receipt of the Notices or request administrative review. He

¹ The assessment notices are referred to as "the Notices."

provided a copy of a complaint for declaratory relief filed September 26, 2018 (the Complaint). (*Lance Jay Robbins Paloma Partnership v. City of Los Angeles*, Super. Ct. of L.A. County, 2021, No. BC723218.) The Complaint acknowledged City’s August 2018 “Notice of Non-Compliance” for failure to pay TOT and asserted that City could not charge rent stabilization fees while also demanding TOT. Paloma’s declaratory relief action did not ultimately go to trial.²

City filed this lawsuit in 2019. It seeks unpaid TOT, interest and delinquency penalties of \$1,349,359.74.

In August 2021, Paloma sent City an Assessment Response Form for tax years 2010–2018. It requested an administrative hearing and claimed it owed City nothing because it did not conduct a business requiring it to collect TOT. City did not set a hearing on the request for administrative review and responded that the file was closed.

City moved for summary judgment. In support of the motion, City employees declared that Paloma was served with the Notices and directed to initiate administrative review to challenge the assessments. Paloma did not seek review or submit evidence to City showing the assessments are improper. It failed to exhaust administrative remedies and cannot introduce evidence at trial to disprove City’s assessment.

In opposition, Paloma claimed it did not operate the short-term rental business on its property. It gave that right to Brick Investment Corp. (Brick) under lease agreements. Notably, Paloma principal Stanley Treitel is the signatory and sole authorized occupant listed in the Brick leases, which state

² Superior Court records show Paloma dismissed the Complaint on August 30, 2021, one day before trial.

“sublets are strictly prohibited” and no one other than Treitel may occupy the premises without “written authorization” from Paloma. Meanwhile, Paloma paid business taxes to City for supposedly operating an apartment house with long-term rentals.

Paloma argued, “City provides no proof that any assessment was sent” to it or to the operator of the business subject to TOT. City cannot impose a million-dollar debt based on “one letter [sent] via regular mail.” Further, City offered no evidence that Paloma collected rents, and the assessments predate the law imposing TOT on short term rentals, which became effective on July 1, 2019. Paloma claimed its 2021 administrative appeals “were timely” and equitable tolling applies while it pursued declaratory relief. Further, it is not subject to the TOT ordinance because it does not operate the rental business in its building.

Paloma asserted that City’s administrative remedy is inadequate because it does not allow for cancellation of an assessment; Paloma seeks cancellation, so an administrative appeal would have been futile. The administrative procedure violates due process because hearings are held by individuals who are biased in favor of City.

In supplemental papers, Paloma argued that City changed its TOT law in 2023, in response to this litigation. The law prevents hotel operators from engaging in tax avoidance by creating an asset-less secondary operator who fails to collect and remit TOT to City. Paloma continued to assert that City sent the assessment notices to the wrong party, because Brick sublet the units on a short-term basis.

The Trial Court's Ruling

The court wrote that City proved it sent the Notices. Paloma conceded receipt by telling City it had instituted litigation over the Notices. Paloma's claim that it was not the proper party to collect TOT "is a challenge to the validity of the assessment, not whether service of the assessment was effectively made on the putative operator."

The court found Paloma failed to exhaust its administrative remedy, rejecting claims that administrative review was tolled while it pursued litigation against City, or that administrative review would be futile. Amendments to the LAMC did not apply to this case. Paloma's rights were not violated by having a City hearing officer act as administrative review officer (ARO).

The court granted City's motion for summary judgment. Paloma objected to the proposed judgment, raising new arguments. The court overruled objections that the judgment was void or beyond its jurisdiction; the evidence did not show taxable activity; the property was not subject to TOT; and penalties cannot be awarded on summary judgment. It entered judgment for City, awarding unpaid TOT of \$864,360; penalties of \$342,137.60; and prejudgment interest of \$367,973.99.

DISCUSSION

1. Appeal and Standard of Review

The judgment is appealable. (Code Civ. Proc., §§ 437c, subd. (m)(1), 904.1., subd. (a)(1).) A motion for summary judgment must be granted if no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (*Id.*, § 437c, subd. (c).) The procedure enables courts to cut through the pleadings and determine if trial is necessary. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

We independently examine the record to determine if triable issues exist. (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) Evidence presented in opposition to summary judgment is liberally construed. (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618.)

2. Overview of the Administrative Process

“ “[I]t is evident that the state has the power to assess taxes and fix methods for the collection thereof, and it does not matter if these remedies be summary in their nature, so long as the taxpayer is in some way, at some stage of the proceedings, given an opportunity to be heard and have his rights determined before some competent tribunal.” ’ ” (*People v. Skinner* (1941) 18 Cal.2d 349, 360; *People v. Sonleitner* (1960) 185 Cal.App.2d 350, 360–361 (*Sonleitner*).)

To prove an assessment is incorrect, a taxpayer may request a hearing by an ARO within 45 days from the mailing of the assessment notice. At the hearing, a taxpayer may present evidence supporting its challenge. (LAMC, current (2025 Rev. 5) §§ 21.16(b) [eff. Oct. 4, 2011] & (e) [eff. Aug. 19, 2001], 21.7.10.) The taxpayer may appeal the ARO’s decision to a Board of Review. If no administrative review is pursued, the assessment becomes due and owing. (LAMC, current (2025 Rev. 5) § 21.16(g) & (i)(6) [both subsections eff. Mar. 23, 2025].)

A taxpayer must go through the administrative process to secure judicial review of a dispute. “[E]xhaustion of the administrative remedy is ‘a jurisdictional prerequisite to resort to the courts.’ ” (*Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708, 722 (*Williams*).) “ [A] taxpayer cannot defend an action for collection of a delinquent tax, on the ground of irregularities in assessment or revaluation, without having

first exhausted his statutory remedies to seek revision of the assessment.’ Any other rule would completely nullify the doctrine of exhaustion of administrative remedy.” (*Sonleitner, supra*, 185 Cal.App.2d at p. 371; *People v. West Publishing Co.* (1950) 35 Cal.2d 80, 87–88; *City of Los Angeles v. California Towel & Linen Supply Co.* (1963) 217 Cal.App.2d 410, 417–419.)

There are important reasons for requiring exhaustion of remedies. “First, it allows the administrative agency an opportunity to redress the alleged wrong without resorting to costly litigation. [Citation.] Second, even where complete relief is not obtained, it can serve to reduce the scope of the litigation or possibly avoid litigation. [Citation.] Third, an administrative remedy ordinarily provides a more economical and less formal forum to resolve disputes and provides an opportunity to mitigate damages. [Citation.] Finally, the exhaustion requirement promotes the development of a more complete factual record and allows the administrative agency or entity implicated in the claim an opportunity to apply its expertise, both of which assist later judicial review if necessary.” (*Williams, supra*, 121 Cal.App.4th at p. 722.)

3. Paloma Did Not Exhaust Its Administrative Remedy

City’s tax compliance officers declared that their office mailed the Notices in the ordinary course of business. In response to City’s first notice, counsel for Paloma filed the Complaint. He later advised City that the Notices “are currently in litigation.”

City provided Assessment Response Forms to facilitate Paloma’s challenge to the proposed TOT assessment. Nothing in the record shows Paloma returned the forms. Had it done so, an ARO would have scheduled a hearing. Paloma could have

submitted relevant evidence and had an opportunity to argue that the evidence supported its challenge.

On administrative review, an ARO could have explored whether Paloma or another party rented rooms, which would have allowed City to “take appropriate steps to recover the taxes that are owed.” (*Williams & Fickett v. County of Fresno* (2017) 2 Cal.5th 1258, 1279 (*Fickett*).) Renting to transients is a taxable event mandating prompt resolution of responsibility for TOT in an administrative hearing.

Paloma bypassed administrative review and filed litigation to delay City’s efforts to collect TOT, claiming it did not have to pay long-term apartment rental fees *and* TOT. Three years later, it dismissed the Complaint. Paloma waited years to start the administrative process, though City ordinance allows 45 days to do so. Its belated attempt to seek administrative review cannot be countenanced; otherwise, taxpayers could delay tax payment by filing a lawsuit instead of requesting administrative review. (See *People v. Keith Railway Equipment Co.* (1945) 70 Cal.App.2d 339, 346–347 [litigants cannot obtain judicial review without securing factual findings from an administrative agency].)

The size of the assessment does not excuse Paloma’s failure to pursue its administrative remedy. As this court once observed, “ ‘It would be strange indeed if [we] were to sanction a practice whereby a taxpayer could regularly refrain from paying taxes, the obligation of which he disputes, and then urge that, by reason of his large delinquency, the ordinary remedies provided for reviewing his liability are inadequate in his particular case.’ ” (*Sonleitner, supra*, 185 Cal.App.2d at p. 371.)

4. None of Paloma's Arguments Have Merit

a. Administrative Review Was Not Tolled

Paloma argues that requiring administrative review before filing suit elevates “form over substance” and forecloses its “righteous claims.” Filing suit was a tactic to stymie City’s efforts to collect TOT. By dismissing the Complaint one day before trial to begin the administrative process, Paloma has delayed payment of TOT for a decade.

After waiting three years to start the administrative process, Paloma now complains City “failed to provide [it] with any administrative remedy” when it first sought an ARO hearing in August 2021, reasoning that its obligation to seek prompt administrative review was equitably tolled by the 2018 Complaint. Paloma is mistaken.

“[E]quitable tolling has never been applied to allow a plaintiff to extend the time for pursuing an administrative remedy by filing a lawsuit.” (*Bjorndal v. Superior Court* (2012) 211 Cal.App.4th 1100, 1109.) “Allowing a plaintiff to toll the time for complying with an administrative claim procedure while pursuing a lawsuit . . . would render the administrative remedy pointless. The typical administrative claim procedure . . . is intended as a precursor to an adversarial proceeding, ideally to render the judicial proceeding unnecessary.” (*Id.* at p. 1110.)

b. Lack of Notice

Paloma claims it was deprived of due process because City did not prove it sent the Notices. Paloma argues it cannot be obliged to pay over \$1 million because it “fail[ed] to respond to a single letter allegedly mailed first class” and City could have sent “multiple letters to increase the chance that one is received.” The argument falls flat.

Paloma *conceded receipt* of the Notices in its summary judgment papers and appellate brief: These filings characterize the 2018 Complaint as a “direct response” challenging the validity of City’s first notice of assessment. Paloma wrote that the second and third notices followed “soon thereafter.”

City’s employees declared that the Notices were sent in the ordinary course of business. We need not address City’s method of sending notices because Paloma concededly had actual notice. Due process is met when a party receives “*actual* notice.” (*United Student Aid Funds, Inc. v. Espinosa* (2010) 559 U.S. 260, 272 [130 S.Ct. 1367, 176 L.Ed.2d 158]; *Benson v. California Coastal Com.* (2006) 139 Cal.App.4th 348, 353 [“Actual notice satisfies due process.”].)

c. Adequacy of the Administrative Remedy

Paloma contends that it need not exhaust administrative remedies that “could not furnish the specific relief” it sought. The relief it sought was to cancel the assessment altogether. If Paloma wanted to cancel the assessment because it was not responsible for TOT—claiming it was not the operator of the vacation rental business in its building—the proper place to raise that was before an ARO, to allow City to pursue whoever was responsible for collecting TOT. Paloma did not present the issue to an ARO. An ARO may reduce an assessment, even down to zero, upon a proper showing by the taxpayer.

In *Fickett, supra*, 2 Cal.5th 1258, the issue was whether exhaustion of remedies is required when a tax assessment “is challenged on the ground that the taxpayer does not own the property involved.” (*Id.* at p. 1264.) When the reduction sought is zero payment (because the taxpayer did not own the property), the taxpayer had to pursue its administrative remedy to preserve

its right to file suit: The government body levying the tax could agree with the taxpayer at an administrative hearing. (*Id.* at p. 1267.) “A challenge brought on the ground of nonownership of assessed property will typically entail a question of fact, as to which administrative exhaustion through the assessment appeal process would facilitate the development of a record conducive to judicial review. The parties also might resolve their disagreement over ownership through the administrative process. Such an outcome could eliminate the need to pay the tax under dispute.” (*Id.* at p. 1272.)

The reasoning in *Fickett* applies here. Had Paloma raised the issue of responsibility for collecting TOT at an administrative hearing, an ARO could have eliminated Paloma’s need to pay the tax. Or, the ARO could have found the alleged operator, Brick, is an alter ego: Brick and Paloma are led by Stanley Treitel, who signed the leases for Brick. The leases prohibit subleases and state that no one but Treitel may occupy the dozens of units he leased. Brick could not sublease apartments to transients without Paloma’s “written authorization.”

An ARO could have determined that the Brick leases are a tax avoidance scheme. (See *Fashion Valley Mall, LLC v. County of San Diego* (2009) 176 Cal.App.4th 871, 880 [sham paper agreements to avoid taxes are a legal fiction and are not recognized].) Paloma failed to present its alleged non-responsibility for collecting TOT to an ARO, forfeiting its right to present that claim for the first time in litigation.

In any event, Paloma fell within the definition of an “operator.”³ It owned the building and had the right to lease

³ An operator means “the proprietor of the hotel or any other person who has the right to rent rooms within the hotel,

apartments, which it rented to its president, Stanley Treitel. He and his entities are responsible for collecting and remitting TOT. Paloma did not prove the existence of legally binding agreement to have Brick collect and remit TOT to City. (LAMC, § 21.7.2(f).) On the contrary, it submitted evidence showing that subleases—including short-term rentals—are strictly prohibited.

d. Claimed Illegality of the Assessments

Paloma argues the TOT assessments were “illegal” and void. It reasons that City ordinance, in 2018, did not authorize collection of TOT for “short-term rentals.” We disagree. City’s TOT ordinance was enacted in 1964. It has long imposed TOT on “any structure” where “transients” lodge for less than 30 days, including apartment houses.

When City sent the Notices, TOT applied to “any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, *apartment house*, dormitory, public or private club, or other similar structure” (LAMC, § 21.7.2(b), *italics added*.)

whether in the capacity of owner, lessee, mortgagee in possession, licensee or any other capacity. The owner or proprietor who is primarily responsible for the operation of the hotel shall be deemed to be the principal operator. If the principal operator performs or assigns its functions, in whole or in part, through a managing agent, a booking agent, a room seller or room reseller, or any other agent or contractee, including but not limited to on-line room sellers, on-line room resellers, and on-line travel agents, of any type or character other than an employee, those persons shall be deemed to be secondary operators.” (LAMC, § 21.7.2(f).)

The Ellison is a “structure” used for occupancy by transients and thus a “hotel” requiring collection of TOT.

By amendment effective July 1, 2019, City added wording about “Short-Term Rental[s].” (LAMC, current § 21.7.2(b) [eff. July 1, 2019].) The amendment did not negate the prior version of the ordinance applying TOT to any structure, including apartment houses, and Paloma did not timely seek an administrative determination that it did not rent to “transients” or was not an “operator.” Neither City nor the trial court applied the amended version of LAMC section 21.7.2; therefore, we need not address Paloma’s argument that the 2019 amendment was applied retroactively.

e. ARO Bias

Paloma asserts that the administrative review process violates due process because individuals biased in favor of City preside over the proceeding. It claims administrative review would be futile because examiners are “paid to rule in Respondent’s favor.” Paloma is not challenging a particular ARO; it is attacking the entire administrative process.

“[D]ue process does not forbid the government to pay an adjudicator when it must provide someone with a hearing Indeed, the government must ordinarily pay the adjudicator in such cases to avoid burdening the affected person’s right to a hearing.” (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1031.) Bias may exist “when the government unilaterally selects and pays the officer on an ad hoc basis and the officer’s income from future adjudicative work depends entirely on the government’s goodwill.” (*Id.* at p. 1024.)

Paloma made no showing that City hires ARO’s on an ad hoc basis. There is no proof of a financial motive, or fear of a pay

cut or termination if an ARO rules against City. Presumably, ARO's are employees who can be terminated only for just cause; ruling against City would not be just cause. In short, there is no grounds for claiming all ARO's are biased or the process is futile.

DISPOSITION

The judgment is affirmed. Respondent is entitled to recover its costs on appeal from appellant.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

SIGGINS, J.*

* Retired Presiding Justice of the Court of Appeal, First Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.