

Memorandum

To Mr. Verne Walton

Date August 10, 1987

From Michele F. Hicks

Subject: Date of Change in Ownership

This is in response to your memorandum dated June 11, 1987, in which you request our advice concerning the date of a change in ownership of property located in San Luis Obispo County. The facts as determined from the documents which you forwarded with your request are as follows:

1. An agreement dated March 12, 1980, between L, an individual and president of Inc., and R states that L sold property identified as to R pursuant to an oral agreement in June 1978. The Agreement states that the parties wish to reiterate the conditions of the oral agreement in written agreement form. The Agreement states that sold the property plus building to for the amount of cost plus five percent of the total construction cost and that agreed to pay all principal and interest payments on the loan obtained on the property.
2. L died on September 30, 1984 and died on May 13, 1985.
3. On August 2, 1985, president of J, Inc. deeded the property to R. The deed was recorded on December 9, 1985.
4. The San Luis Obispo County Assessor's Office asks which date should be considered the effective date of the property transfer: (A) June 19, 1978, the date of the oral agreement as specified in the written agreement; (B) March 12, 1980, the date the oral agreement was committed to writing; or, (C) December 9, 1985, the date the grant deed was recorded.

Rule 462(n)(1)(A) provides that for sales of property the date of change in ownership is rebuttably presumed to be the date

Michele F. Hicks

the deed is recorded. This presumption may be rebutted by evidence proving a different date such as the date the agreement of the parties became specifically enforceable.

In general, an oral agreement to sell real property is invalid unless some note or memorandum is in writing and subscribed by the party to be charged. (Civ. Code § 1624(4).) However, this rule does not apply where the oral agreement is fully executed. When the oral agreement is fully executed, the contract is not assailable, either by the parties to the agreement or by a third person. (Robinson v. Hanley (1955) 136 Cal.App.2d 820, 825.) In the present case, the original agreement to sell the subject property was oral. However, the March 12, 1980 Agreement is a memorandum of the original agreement and describes the sale of the subject property as taking place in June 1978. The Agreement was signed by both parties to the transfer. It states that the property was "sold" in June 1978. The Agreement describes the terms of the sale (cost plus 5% and R's agreement to pay principal and interest on the loan). We believe that this is evidence that the sale did occur in June 1978, and that the contract was fully executed, and, therefore, specifically enforceable.

The main element which causes doubt about the date of sale is the fact that the deed was executed on August 2, 1985, seven years after the purported sale took place. We advise that the county ask Mr. to furnish additional evidence such as documentation relating to his assumption of the loan on the property in 1978 or cancelled checks of loan payments. Such evidence would conclusively show that the sale did occur in June 1978.

If you have any further questions or if you wish to discuss this further, please contact me.

Michelle J. Hicks

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cc: Gordon P. Adelman
Robert H. Gustafson