

220.0623 **Sale and Leaseback Transactions.** Evidence Code section 662 provides that the owner of legal title is presumed to be the owner of the full beneficial title and that the presumption may be rebutted only by clear and convincing proof.

When the lease specifically provides that the transaction constitutes ". . . a bona fide purchase and lease of the property . . . and shall not be construed to be a financing transaction for any purpose whatsoever. . . .", the presumption is not rebutted, regardless of statements outside the lease to the contrary. C 3/7/89.



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March 7, 1989

Mrs. M. ROBERTS
Property Tax Consultants
44 Page Street, Suite 601E
San Francisco, CA 94102

Re: 330 Townsend Street, San Francisco; APN 3786 - 14
1988-89 Assessment on Land Increased From \$627,810 to \$1,600,000

Dear Mrs. Roberts:

This is in response to your February 28 request for an opinion regarding the property tax effects of a 1987 sale and leaseback agreement between Hampton-Roberts Properties-III, Ltd., a California Limited Partnership and Leah F. McConnell.

Your letter states that the San Francisco Assessors' office asked that you forward the materials enclosed with your letter to us. You state that you are seeking a cancellation of the 1987 land reappraisal on the subject property (330 Townsend Street) on the grounds that the sale and leaseback agreement with Leah McConnell was essentially a refinancing arrangement and not a true change of ownership. You further state that Ms. McConnell was basically a private lender giving the owners a \$1,600,000 loan on the property and that for her own business reasons she needed the transaction to be structured as a sale and leaseback on the land under the building rather than a second trust deed. You state that the materials enclosed with your letter evidence the intent of the parties.

The information enclosed with your letter consists of a letter dated January 18, 1989, from Mr. Bob Roberts, General Partner, of the Hampton-Roberts Partnership; a September 14, 1987, letter to Home Federal Savings and Loan Association of San Diego from Mr. Robert P. Gates, attorney for the Hampton-Roberts Partnership; an October 28, 1987, letter to Western Title Insurance Company from Mr. Thomas H. Stanford, counsel for Home Federal Savings and Loan Association; and a 40-page Ground Lease, dated October 20, 1987, for property located at 330 Townsend Street, San Francisco, between Ms. McConnell as Lessor and Hampton-Roberts Partnership as Lessee.

Although not included with the materials submitted, we assume that on or about October 20, 1987, the Hampton-Roberts Partnership

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executed a grant deed which transferred ownership of the subject property from the partnership to Ms. McConnell. The question presented is whether this deed transferred beneficial ownership of the property to Ms. McConnell or whether it transferred legal title only as a security interest.

Revenue and Taxation Code section 60 defines "change in ownership" as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Revenue and Taxation Code section 62, subdivision (c)(1), provides that change in ownership shall not include the creation of a security interest. Thus, if the deed transferred full beneficial ownership to Ms. McConnell then the transfer constituted a change in ownership which requires a reappraisal of the property. If the deed did not transfer full beneficial ownership, however, and transferred only a security interest then the transfer did not result in a change in ownership. (See also subdivisions (k)(1) and (k)(4) of Property Tax Rule 462.)

Evidence Code section 662 provides that the owner of legal title to property is presumed to be the owner of the full beneficial title. It further provides that this presumption may be rebutted only by "clear and convincing proof." If our assumption regarding the deed is correct, then Ms. McConnell is presumed to be the full beneficial owner of the property and this presumption may only be rebutted by clear and convincing proof.

While our analysis of the question of whether the presumption has been overcome by clear and convincing proof would ordinarily require a rather extensive analysis of the 40-page Ground Lease as well as the other information provided, it appears that the last section of the Lease is dispositive of the issue. That section provides as follows:

42. Bona Fide Ground Lease. The parties hereto hereby acknowledge and agree that the Lessor's purchase of the property and Lessee's lease back of the property pursuant to this Ground Lease constitute a bona fide purchase and lease of the property, and that said purchase and/or this Ground Lease is not, are not, and shall not be construed to be a financing transaction for any purpose whatsoever. Each party waives the provisions of Civil Code Section 2925, including, without limitation, the right to assert that said purchase and/or Ground Lease constitutes a mortgage or deed of trust.

The Lease which you have submitted as evidence of the intent of the parties contains a clear and unambiguous statement by the parties that the transaction is a "bona fide purchase and lease of the property" and not a "financing transaction for any purpose

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whatsoever." In light of these emphatic statements of intent, we are unable to conclude that the Evidence Code section 662 presumption has been overcome by clear and convincing proof. Thus, we conclude that the evidence presented demonstrates that the San Francisco Assessor correctly reappraised this property in 1987.

The opinions expressed herein are, of course, advisory only and they are not binding upon the San Francisco Assessor.

Very truly yours,



Richard H. Cohnsner
Assistant Chief Counsel

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cc: The Honorable Samuel Duca, Assessor
City and County of San Francisco
Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton