

C.A. No. 15-60069
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: MAINLINE EQUIPMENT, INC.
dba Consolidated Repair Group,
Debtor,

LOS ANGELES COUNTY TREASURER AND TAX COLLECTOR,
Appellant,

v.

MAINLINE EQUIPMENT, INC.,
Appellee.

Appeal from a Decision of the Bankruptcy Appellate Panel of the Ninth Circuit,
BAP No. CC-14-1429
United States Bankruptcy Court for the Central District of California, Los Angeles
Case No. 2:12-bk-39746-WB·Adversary No. 2:13-ap-01705-WB

Honorable Randall L. Dunn, Honorable Frank L. Kurtz,
and Honorable Laura Stuart Taylor, Bankruptcy Judges

**AMICI CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION
OF COUNTIES AND THE CALIFORNIA ASSOCIATION OF COUNTY
TREASURERS AND TAX COLLECTORS IN SUPPORT OF APPELLANT
LOS ANGELES COUNTY TREASURER AND TAX COLLECTOR**

[All Parties Have Consented. FRAP 29(a)]

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TOPICAL INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	ii
IDENTITY AND INTEREST OF AMICI CURIAE	1
ARGUMENT	
I. SUMMARY OF ARGUMENT	3
II. RECORDING A CERTIFICATE OF TAX LIEN UNDER RTC § 2191.4 PERFECTS A LIEN AGAINST PERSONAL PROPERTY BY OPERATION OF LAW	4
III. A LIEN UNDER RTC § 2191.4 IS ENFORCEABLE AGAINST A BFP WITH ACTUAL KNOWLEDGE.....	5
IV. <i>CUMMINS</i> ONLY REQUIRES AN ANALOGOUS PROVISION IN THE CCP FOR A LIEN UNDER RTC § 2191.4 TO ATTACH TO PERSONAL PROPERTY.....	7
V. THE REQUIREMENT THAT COUNTIES MUST OBTAIN A SEPARATE MONEY JUDGMENT AND FILE IT WITH THE SECRETARY OF STATE CREATES AN ABSURD RESULT .	8
CONCLUSION.....	9
CERTIFICATE OF COMPLIANCE	11
STATEMENT OF RELATED CASES.....	12

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<i>Bird v. McGuire</i> , 216 Cal.App.2d 702 (1963).....	6
<i>County of Humboldt v. Grover (In re Cummins)</i> , 656 F.2d 1262 (9 th Cir. 1981)	3, 4, 6, 7, 8, 9
<i>Glue-Fold, Inc. v. Slautterback Corp.</i> , 82 Cal.App.4th 1018 (2000)...	8
<i>In re Mainline Equipment, Inc.</i> , 539 B.R. 165 (B.A.P. 9th Cir. 2015)	4, 6, 7
<i>In re Winn's Stores, Inc.</i> , 177 B.R. 253 (Bankr. W.D. Tex. 1995)	6
<i>Melendrez v. D & I Investment, Inc.</i> , 127 Cal.App.4th 1238 (2005) ...	5
<i>Merrill v. Pacific Transfer Co.</i> , 131 Cal. 582 (1901).....	6
<i>People v. Pieters</i> , 52 Cal.3d 894, 898 (1991).....	8, 9

STATUTES

Code of Civil Procedure	
Section 697.510	4, 7, 8
Revenue and Taxation Code	
Section 2191.4	2, 3, 4, 5, 6, 7, 8, 9
11 United States Code	
Section 545(2)	3, 5, 6

IDENTITY AND INTEREST OF AMICI CURIAE

This brief is submitted by the California State Association of Counties (“CSAC”) and the California Association of County Treasurers and Tax Collectors (“CACTTC”). CSAC and CACTTC respectfully submit this brief in support of Appellant Los Angeles County Treasurer and Tax Collector (“County”).

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association’s Litigation Overview Committee, comprised of county counsels throughout the state. The Committee monitors litigation of concern to counties statewide and has submitted amicus curiae briefs in prior appellate court cases involving matters that impact county government in general and the collection of property taxes in particular.

CACTTC is a professional association formed in 1981 comprised of the duly elected and appointed County Treasurers and Tax Collectors in California.¹ Its purpose is to promote the general interests of the

¹ Prior to 1981, there were two Associations: the California Association of County Tax Collectors and the California Association of County Treasurers.

active members and the respective counties they represent. CACTTC also monitors litigation of concern and has submitted amicus curiae briefs in prior appellate court cases involving matters that impact California Counties and the collection of property taxes in particular.

CSAC and CACTTC have an interest that dovetails with the public interest in assuring that property tax laws are properly administered and that property tax revenues for the provision of public services are collected. They have determined that this case will affect the collection of property tax revenue in all counties. The means of perfecting and enforcing personal property tax liens is vital to the administration of property tax collection. The decision of the Bankruptcy Appellate Panel (“BAP”), if sustained, will seriously impair the ability of counties and their tax collectors to ensure the collection of unsecured personal property taxes. Therefore, CSAC and CACTTC have an immediate and direct interest in this litigation and the resolution of the pending appeal.

The amici curiae brief will assist the court in deciding the matter by focusing on the interpretation of California Revenue and Taxation Code (“RTC”) § 2191.4, California’s recognition of the difference

between notice and knowledge with respect to bona fide purchasers, and the impact of the BAP decision.

It is CSAC's and CACTTC's position that the bankruptcy court's order setting aside the County's tax liens and the BAP's decision affirming that order should be reversed. All parties have consented to the filing of this brief. *See* FRAP 29(a). No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person — other than amici curiae, its members, or its counsel — contributed money that was intended to fund preparing or submitting the brief.

I. SUMMARY OF ARGUMENT

Despite the plain language of RTC § 2191.4, the BAP determined that the County's tax liens were not perfected and were properly set aside under 11 U.S.C. § 545(2) relying on this Court's decision in *County of Humboldt v. Grover (In re Cummins)*, 656 F.2d 1262, 1265-1266 (9th Cir. 1981) ("*Cummins*") wherein it was held a lien against personal property created under RTC § 2191.4 could not defeat a bona fide purchaser ("BFP"). *See In re Mainline Equipment, Inc.*, 539 B.R. 165, 168 (B.A.P. 9th Cir. 2015) ("*Mainline*"). Further, the BAP held that the County must obtain a separate money judgment and file that

judgment with the California Secretary of State under Code of Civil Procedure (“CCP”) § 697.510 to perfect the RTC § 2191.4 liens.

Mainline, 539 B.R. at 171-172.

But as discussed below, a perfected lien is created under RTC § 2191.4 upon recordation of a certificate of tax lien and that certificate is enforceable against a BFP with actual knowledge. The BAP misapplied *Cummins* by requiring that the County obtain money judgments and file them with the Secretary to perfect their liens. Finally, construing RTC § 2191.4 to require that counties obtain a separate money judgment and file it with the Secretary creates an absurd result because the intent of that provision was to avoid such requirements.

II. RECORDING A CERTIFICATE OF TAX LIEN UNDER RTC § 2191.4 PERFECTS A LIEN AGAINST PERSONAL PROPERTY BY OPERATION OF LAW.

RTC § 2191.4 provides in pertinent part:

“From the time of filing the certificate for record [in the office of the county recorder] pursuant to Section 2191.3 [for unsecured personal property taxes], the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name...The lien has the force, effect, and priority of a judgment lien...”

The plain language of RTC § 2191.4 thus provides that a lien for unsecured personal property taxes is created and perfected -- with the

force, effect and priority of a judgment lien -- upon the recordation of the certificate of tax lien. The State Legislature does not require any further process be taken to perfect a lien for taxes. Therefore, only recordation is required to create and perfect a lien against personal property of the assessee within the county.

III. A LIEN UNDER RTC § 2191.4 IS ENFORCEABLE AGAINST A BFP WITH ACTUAL KNOWLEDGE.

Pursuant to 11 U.S.C. § 545(2), a trustee may set aside a statutory lien on property that is not perfected or enforceable against a BFP except where provided under State law.

A “bona fide purchaser” is defined as a purchaser who acquires a property interest for valuable consideration, in good faith, *without actual or constructive notice* of another's asserted rights in the property. *Melendrez v. D & I Investment, Inc.*, 127 Cal.App.4th 1238, 1251 (2005) (Emphasis added). However, RTC § 2191.4 provides that from the time of recording the certificate of tax lien with the county recorder it “constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate... *except that the lien upon unsecured property shall not be valid against a purchaser for value or encumbrancer without actual knowledge of the lien* when he or she

acquires his or her interest in the property.” (Emphasis added.)

Accordingly, while a trustee generally may avoid a lien against personal property as a BFP without notice, a trustee may avoid a lien under RTC § 2191.4 only as a BFP without actual knowledge.

A party can have actual knowledge of a fact without ever being provided the instrumentality of notice. “Notice” is not synonymous with or the equivalent of “knowledge”. *Bird v. McGuire*, 216 Cal.App.2d 702, 713 (1963) (“*Bird*”); *Merrill v. Pacific Transfer Co.*, 131 Cal. 582, 588-589 (1901) (“*Merrill*”). Actual “knowledge” is a more demanding awareness standard than a lack of “notice” for a BFP. *Cf. In re Winn's Stores, Inc.*, 177 B.R. 253, 257 (Bankr. W.D. Tex. 1995). Consequently, for a BFP to avoid a lien created under RTC § 2191.4, a lack of knowledge must be demonstrated. Mere status as a BFP under 11 U.S.C. § 545(2) is insufficient. The BAP failed to recognize this distinction between the language of RTC § 2191.4 and the definition of a BFP. Instead, it erroneously relied on this Court’s decision *Cummins*. See *Mainline*, 539 B.R. at 168-170.

This reliance was misplaced because an opinion is authority only for points actually decided. In *Cummins*, it was conceded that the lien under RTC § 2191.4 could not defeat a BFP. *Cummins*, 656 F.2d at

1265. The County makes no such concession here. There is no reference in RTC § 2191.4 allowing a “bona fide purchaser” to avoid the lien. The statute provides a recorded certificate of tax lien is valid against any purchaser for value, including a BFP, except where that purchaser is without actual knowledge of the lien.

IV. CUMMINS ONLY REQUIRES AN ANALOGOUS PROVISION IN THE CCP FOR A LIEN UNDER RTC § 2191.4 TO ATTACH TO PERSONAL PROPERTY.

The BAP also misapplied *Cummins* to hold that the County must obtain a money judgment and file that judgment with the California Secretary of State under CCP § 697.510 in order to perfect its RTC § 2191.4 liens against personal property. See *Mainline*, 539 B.R. at 169-172.

Cummins held that for RTC § 2191.4 liens to be perfected, there must be an analogous provision in the CCP allowing for a judgment lien to attach to personal property, like the CCP provision allowing judgment liens to attach to real property. *Cummins*, 656 F.2d at 1265 and fn.3. *Cummins* did **not** require that a county obtain a separate money judgment and follow the procedures under the CCP for a lien under RTC § 2191.4 to be created or perfected. Indeed, with regard to real property the Court stated: “If the tax debtor has real property in the county in which a

certificate is filed, the taxing entity clearly obtains a lien on that property equivalent to a judgment lien.” *Cummins*, 656 F.2d at 1265.

Since this Court’s decision in *Cummins*, the California Legislature enacted an analogous CCP provision, § 697.510, which allows judgment liens to attach to personal property. The lien on personal property created under RTC § 2191.4 “has the force, effect, and priority of a judgment lien”. Therefore, the liens on personal property created by RTC § 2191.4 do attach to personal property under the reasoning of *Cummins*, and the County is not required to also obtain a money judgment and follow the procedures under the CCP.

V. THE REQUIREMENT THAT COUNTIES MUST OBTAIN A SEPARATE MONEY JUDGMENT AND FILE IT WITH THE SECRETARY OF STATE CREATES AN ABSURD RESULT.

“Statutory language must be read in light of the consequences produced by a particular construction, and with the aim of promoting, not defeating, the statute’s purpose.” *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal.App.4th 1018, 1028 (2000). “The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law.” *People v. Pieters*, 52 Cal.3d 894, 898 (1991). “[L]anguage of a statute should not be given a literal

meaning if doing so would result in absurd consequences which the Legislature did not intend.” *Id.*

The plain language of RTC § 2191.4, and legislative history behind that provision, shows it was enacted to provide a streamlined procedure for obtaining a lien against personal property. But the BAP’s ruling would make the statute’s language creating a lien on personal property meaningless. It would require that a separate money judgment be obtained and filed with the Secretary of State in every case.

Each year there are thousands of certificates of tax lien recorded in the 58 California counties for delinquent personal property taxes. The counties cannot know which taxpayers will file for bankruptcy or when that will occur in order to prevent the loss of public revenue. This creates a huge litigation and administrative burden on the counties; an absurd burden not intended by the Legislature.

CONCLUSION

A recorded certificate of tax lien creates a perfected lien against personal property under RTC § 2191.4. That lien is enforceable against a BFP with actual knowledge. Furthermore, an analogous provision in the CCP allows for a judgment lien to attach to personal property under the reasoning in *Cummins*. Finally, the BAP’s ruling creates an absurd

result because it requires counties to obtain and file judgments in contravention of legislative intent. For these reasons, the bankruptcy court order setting aside the County's tax liens on personal property and the BAP ruling affirming that order should be reversed.

DATED: January 28, 2016, Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief is produced using 14-point Times New Roman type and contains 2,011 words, including footnotes. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: January 28, 2016,

Respectfully Submitted,

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Amici Curie, the California State Association of Counties and the California Association of County Treasurers and Tax Collectors state that they are not a party to a related case pending before this Court.

DATED: January 28, 2016, Respectfully Submitted,

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