

Case No. B298794

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

JEFFREY PRANG, Los Angeles County Assessor
Petitioner and Respondent,

v.

LOS ANGELES COUNTY ASSESSMENT
APPEALS BOARD NO. 1, *Defendant and Respondent,*

AMEN FAMILY 1990 REVOCABLE TRUST,
Real Party in Interest and Appellant.

**AMICUS CURIAE BRIEF OF THE
CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE
CALIFORNIA ASSESSORS ASSOCIATION IN SUPPORT OF
PETITIONER AND RESPONDENT JEFFREY PRANG**

On Appeal from the Los Angeles County Superior Court
Case No. BS173698
The Honorable James C. Chalfant

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I. INTRODUCTION

This case raises what appears to be a novel issue in the Court of Appeal: the proper interpretation of the term “stock” in Revenue and Taxation Code section 62(a)(2).¹ Fundamentally, resolution of this issue depends on properly understanding the distinction between two methods of making changes in corporate ownership of real property:

- (1) A change in the control of the corporation, and
- (2) A transfer of interest in property itself.

The statutory structure on its face makes clear that the first situation, corporate control, is determined based on voting stock, while the second situation is determined by stock generally, both voting and non-voting. Unfortunately, Appellants obfuscate this distinction by repeatedly citing to statutory language and interpretive documents related to the first situation, corporate control. But this is not a corporate control case.

At best, the numerous references made by Appellant to examples in the code where consideration of stock is specified as only voting stock serve to prove the Assessor’s point — the Legislature clearly knows how to designate voting stock when it so intends. It did not do so in Section 62(a)(2).

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¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

The trial court, therefore correctly found that Section 62(a)(2)'s reference to "stock" includes both voting and non-voting stock. The opinion should be upheld.

II. INTEREST OF AMICI CURIAE²

The California State Association of Counties (CSAC) is a non-profit corporation whose 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 Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties in that this Court's decision will impact important issues of governance statewide.

The California Assessors Association (CAA) is a statewide nonprofit professional association for the Assessors representing each of California's 58 counties. The CAA was formed in 1902 and is dedicated to improving California assessment procedures and laws for the public good.

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² This brief is filed at the invitation of the Court, which stated that an application for permission to file the brief is not required. No party or counsel for a party authored this brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

III. ARGUMENT

A. **The trial court correctly distinguished between corporate control and ownership of real property in concluding that “stock” section 62(a)(2) includes both voting and non-voting stock.**

Appellant’s arguments largely revolve around statutory provisions that relate to corporate control, which is determined by voting stock. However, as the trial court noted, the argument that corporate control is determined by voting stock is a “red herring.” “There is no dispute in this case that a corporation is controlled by its shareholders. Shareholders, however, do not own corporate property; their corporation does. . . . The Trust therefore errs in equating beneficial ownership of real estate with ownership or control of the corporation that owns the real estate.” (Trial Ct Stmt of Decision, pp. 10-11.)

Appellant never comes to terms with this distinction. Instead, Appellant continues to argue that because corporate ownership interests are measured by voting stock, beneficial ownership of real estate should also be determined by voting stock. (See Opening Br., pp. 32-35.) But as the trial court aptly held, corporate control and ownership of real estate are two separate concepts, and the plain language of the statute related to the latter is based on all stock of the corporation, voting and non-voting.

Indeed, there are good policy reasons why the Legislature may have elected to determine change in ownership of real estate and proportionality

based on all stock as opposed to considering only voting stock. As the Assessor notes, there are absurdities that result from Appellant's view of the statute, including a change in ownership when proxies grant corporation management voting control over the corporation for voting at annual meetings and the like. (Assessor's Br, pp. 24-27 [explains this and other examples of absurd results of Appellant's voting stock only argument].) The trial court correctly agreed, concluding that the "legislative purpose of section 62(a)(2) is to exempt from reassessment those real properties held by a person or legal entity where the transfer results in the same proportional ownership interest. This purpose is not served where the proportional interests turn on control and not ownership." (Trial Ct Stmt of Decision, p. 12.)

Certainly the Legislature knows how to designate voting stock when that is intended. In fact, the Legislature specifically designated "voting stock" numerous times in the statutory scheme related to change in ownership and purchase (§§ 60-69.5).³ Section 62 has been amended eighteen times since it was enacted, providing the Legislature ample opportunity to specify that section 62(a)(2) means "voting stock" if that is what is intended.⁴ It has not, and the plain meaning of the statute as

³ Sections 62(a)(1); 62(b)(1)&(2); 62.2(b); 62.5(a); 62.5(b)(1); 64(b)(1)&(2); 64(c)(1); 64(e); and 66(c).

⁴ Stats 1979 ch. 1161 § 3; Stats 1980 ch. 285 § 2.6, ch. 1081 § 2, and

adopted by the Legislature should prevail.

Notwithstanding this plain meaning, *Amicus Curiae Ajalat, Polley, Ayoob & Matarese* (“APAM”) argues that it makes more sense to view section 62(a)(2) as including only voting stock, analogizing non-voting stock to a contingent trust. APAM asserts that the economic interest in non-voting stock can be eliminated at any time by the voting stock, and therefore like contingent trusts, ownership does not change when the economic interests can be revoked or taken away. (*APAM Br.*, p. 11.)

The premise of this assertion is false. In fact, the law requires that if an amendment will be made to corporate articles that negatively impacts a class of stock in designated ways, including eliminating the economic interest in the stock, that change must be approved by the outstanding shares of the impacted stock “whether or not such class is entitled to vote....” (*Corp. Code*, § 903, subd. (a).) As such, contrary to APAM’s argument, there is nothing contingent about non-voting stock. It has the same economic rights as voting stock, and those rights cannot be unilaterally eliminated.⁵ The comparison to contingent trusts is

ch. 1349 § 1.5; Stats 1981 ch. 615 § 1 and ch. 1141 § 2; Stats 1982 ch. 911 § 1, and ch. 1465 § 4.5; Stats 1984 ch. 1010 § 1; Stats 1985 ch. 186 § 4; Stats 1996 ch. 388 § 2 and ch. 1087 § 9.5; Stats 2002 ch. 775 § 1; Stats 2005 ch. 416 § 2; Stats 2006 ch. 364 § 1.1; Stats 2007 ch. 555 § 2; Stats 2014 ch. 71 § 159; Stats 2019 ch. 685 § 1.

⁵ The corporate articles for the corporation at issue in this case states that except for voting rights, “the Voting Common Stock and the

inapplicable, and does not serve as a reason to diverge from the plain language of the statute.

B. Under well-settled statutory interpretation principles, “stock” means both voting and non-voting stock in section 62(a).

CSAC and CAA agree with Assessor that under well-settled statutory interpretation principles, there is no ambiguity in the statute, and its plain meaning of “stock” is intended to be all stock – voting and non-voting. These interpretation principles are detailed throughout the Assessor’s brief, but in sum:

- **Plain Meaning Rule**: The language in the statute should be given its ordinary, everyday meaning unless the statute itself gives the word a specialized meaning. (*Californians Against Waste v. Department of Conservation* (2002) 104 Cal.App.4th 317, 321.) Here, the term “stock” is not qualified in any way in section 62(a)(2), and thus the common understanding of all classes of stock – voting and non-voting – should prevail.
- **Different Terms in the Same Statutory Scheme Are Presumed to Have Different Meanings**: Courts are required to ascribe different meanings to different words used in the same statutory scheme. (*Regents of University of California v. Superior Court* (2013) 220

Nonvoting Common Stock shall be equal in all other respects including, but not limited to, dividend and liquidation rights.” (Administrative Record at 176.)

Cal.App.4th 549, 565.) As noted above, Chapter 2 of Part 0.5 of Division 1 of the Revenue and Taxation Code (§§ 60-69.5) includes numerous provisions that use the words “voting stock.” By contrast, section 62(a)(2) uses the term “stock.” Under this canon of statutory interpretation, these two different terms must be given two different meanings.

- **Omission of a Word or Phrase is Evidence of Different Intent:**
“Where a statute referring to one subject contains a critical word or phrase, omission of that word or phrase from a similar statute on the same subject generally shows a different legislative intent.” (*City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 309.) Here, where “voting stock” is used in various provisions in Chapter 2, but “stock” is used in section 62(a)(2), the court should interpret that to mean the Legislature had a different intent in section 62(a)(2) when it omitted the word “voting.”
- **Statutes Are Interpreted to Avoid Surplusage:** “It is an established rule of statutory construction that we must ‘presume[] that every word, phrase and provision used in a statute was intended to have some meaning and to perform some useful office, and a construction making some words surplusage is to be avoided.’” (*Roland v. Superior Court* (2004) 124 Cal.App.4th 154, 164, quoting *California Sch. Employees Assn. v. Oroville Union High Sch. Dist.*

(1990) 220 Cal. App. 3d 289, 294.) If “stock” also means “voting stock,” then the term “voting” is meaningless and unnecessary in those parts of the statute in which it appears, which weighs against such an interpretation.

- **Statutes Should Be Interpreted to Avoid Absurd Results:** “Even unambiguous statutes must be construed to avoid absurd results which do not advance the legislative purpose.” (*Upland Police Officers Assn. v. City of Upland* (2003) 111 Cal.App.4th 1294, 1304.) Here, the plain language version of the statute is reasonable, and it is Appellant’s interpretation that would lead to absurd results, including the unintended consequences outlined in Assessor’s brief at pages 24-27.
- **Exemptions to Taxes Are Narrowly Construed:** “While taxing statutes are to be construed in favor of the taxpayer, exemptions are to be narrowly construed in favor of the state. Other cases state that statutory exemptions from taxation are to be strictly construed against the taxpayer. As a corollary to these rules, doubt about the applicability of an exemption is resolved against that exemption. Finally, the taxpayer bears the burden of showing that he clearly comes within the exemption.” (*Alpha Therapeutic Corp. v. County of Los Angeles* (1986) 179 Cal.App.3d 265, 270 (citations omitted).)

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All of these rules taken together favor the interpretation of “stock” as including both voting and non-voting stock.

Appellant does not refute that these principles apply, or argue that the application of these principles yields an interpretation other than that presented by Assessor. Rather, Appellant cites to other inapplicable code sections that specifically define stock to mean “voting stock,” and asserts that such meaning should be presumed in section 62(a)(2) as well. But this argument is contrary to all of the statutory interpretation principles outlined above, and in fact only bolsters Assessor’s argument that the Legislature is very capable of specifying when voting stock should be considered. It did not do so in section 62(a)(2).

C. No extrinsic evidence cited to this Court supports reading the term “stock” in section 62(a)(2) to mean only voting stock.

Reference to extrinsic evidence is unnecessary because the statute is unambiguous when properly interpreted. (*Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 621 [where statute is unambiguous on its face, courts need not consult extrinsic sources].) Nevertheless, Appellant proffers examples of State Board of Equalization letters and the Assessors’ Handbook in support of its position. None of the examples provided, however, specifically address the facts of this case. Rather, as the trial court noted, the authorities either address the issue of corporate control rather than ownership of real property (Trial Ct Stmt of Decision, p. 16), or

they discuss examples where transferees and transferors both have voting stock. They are silent on what should occur when there is both voting and non-voting stock involved. (Trial Ct Stmt of Decision, p. 14.)

Assessor notes in detail why each reference in the Opening Brief is either irrelevant because it relates to corporate control, or is not instructive because the examples only analyze situations in which all parties have voting stock. (Assessor Reply Br., pp. 40-47.) Appellant refutes this in its Reply Brief, asserting that the State Board's October 30, 2009 legal opinion⁶ addresses both voting and non-voting stock. (Appellant Reply Br., pp. 18-19). But this is patently untrue. In fact, the October 30, 2009 letter makes reference to class B stock, which it describes as voting stock. But the letter never mentions class A stock, nor addresses whether class A is voting or nonvoting. Class A could just as easily have been stock that was previously cancelled, or just a different class of stock that also had voting rights. Appellant only assumes the letter is referencing class A as non-voting stock, but the letter itself never specifies whether class A is voting or non-voting, and provides no analysis to suggest that non-voting stock is not considered when determining proportionality for purposes of section 62(a)(2).

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⁶ For reference, this letter is available online at: https://www.boe.ca.gov/proptaxes/pdf/220_0067.pdf.

Thus, there is no extrinsic evidence that directly guides this Court to a conclusion that “stock” in section 62(a)(2) means only voting stock. To the contrary, Property Tax Rule 462.180 provides evidence that proportional interests in section 62 are determined by *economic interests* in an entity (which is a characteristic of both voting and non-voting stock) and not *control rights* (which is a characteristic of voting stock only). (Cal. Code Regs., tit. 18, § 462.180, subd. (d)(4) [examples 9 and 10].) The trial court properly concluded that Board of Equalization letters and opinions can be relevant in interpretation of property tax assessment statutes. However, because the letters and opinions provided in this case lack any explanation as to what happens when there is both voting and non-voting stock and fail to “show any consideration of the instant issue,” they do not present any reasoning to support Appellant’s argument. (Trial Ct Stmt of Decision, pp. 14-15.)

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IV. CONCLUSION

For all of these reasons, Amici Curiae respectfully request that this Court affirm the trial court ruling and find in favor of Respondent Jeffrey Prang.

Dated: July 20, 2020

Respectfully submitted,

/s/

By _____
Jennifer B. Henning, SBN 193915

Attorney for Amici Curiae
California State Association of Counties
and California Assessors Association

**CERTIFICATION OF COMPLIANCE WITH
CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 2,710 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of July, 2020 in Sacramento, California.

Respectfully submitted,

/s/

By: _____
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