

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
A. GOZUKARA,) OTA NO. 19085195
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, July 21, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 90703, commencing at 10:06 a.m.
and concluding at 11:10 a.m. on Monday,
July 21, 2020, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ DANIEL CHO

Panel Members: ALJ NGUYEN DANG
ALJ ANDREW WONG

For the Appellant: CATHERINE GOZUKARA
DANIEL J. COOPER
STEVEN SOYLEMEZ

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: JOSEPH BONIWELL
MONICA SILVA
JASON PARKER

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I N D E X

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(Appellant's Exhibits were received at page)
(Department's Exhibits were received at)

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1 Cerritos, California; Tuesday, July 21, 2020

2 10:06 a.m.

3

4 JUDGE CHO: Let's go on the record.

5 This is the appeal of Agop Gozukara, OTA Case
6 Number 19085195. Today is July 21st, 2020, and the time
7 is approximately 10:06 a.m. This hearing was originally
8 scheduled for Cerritos, California. However, due to the
9 ongoing health concerns, we're holding this hearing
10 electronically with the agreement of all the parties.

11 My name is Daniel Cho, and I'll be the lead
12 administrative law judge for this appeal. With me are
13 administrative law judges Nguyen Dang and Andrew Wong.

14 Can the parties please introduce and identify
15 yourselves for the record, beginning with Appellant.

16 MR. SOYLEMEZ: Catherine Gozukara.

17 MS. GOZUKARA: Catherine Gozukara.

18 MR. SOYLEMEZ: Steven Soylemez.

19 MR. COOPER: Daniel Cooper representing the
20 Appellant.

21 JUDGE CHO: Thank you.

22 And Department.

23 MR. BONIWELL: Hi. For the Department my name is
24 Joseph Boniwell. And with me today is Monica Silva and
25 Jason Parker.

1 JUDGE CHO: Thank you.

2 The issues in this appeal are twofold: One,
3 whether the Office of Tax Appeals has jurisdiction over
4 this appeal; and two, whether Appellant is entitled to a
5 refund.

6 With respect to the evidentiary record, CDTFA has
7 provided Exhibits A through D, and Appellant has not
8 objected to these exhibits. Therefore, these exhibits are
9 entered into the record.

10 (Department's Exhibits #A-D were received in
11 evidence by the Administrative Law Judge.)

12 Appellant has submitted Exhibit 1, and CDTFA has
13 not objected to this exhibit. Therefore, this exhibit is
14 entered into the record.

15 (Appellant's Exhibit 1 was received in
16 evidence by the Administrative Law Judge.)

17 There are two stipulations that we are putting
18 into the record today. One, at all relevant times,
19 Ms. Gozukara was not liable for any unpaid sales or use
20 taxes administered by Respondent. Two, Mr. Gozukara is
21 personally liable for the unpaid taxes of Urban Automotive
22 Group, LLC, in the amount of \$79,833 in tax, plus accrued
23 interest, and penalties of \$7,983.30.

24 With respect to the presentation, Mr. Cooper
25 you'll be going first with your opening.

1 But before I do that, Mr. Soylemez, I believe
2 you'll be acting as an interpreter for part of this
3 proceeding; is that correct?

4 MR. SOYLEMEZ: Correct.

5 JUDGE CHO: Then I'll put you under oath as an
6 interpreter. And then afterwards I'll put both of you
7 under oath as witnesses. So first, Mr. Soylemez, would
8 you mind raising your right hand. Thank you.

9

10 STEVEN SOYLEMEZ,

11 The French interpreter herein, was first duly sworn by the
12 Administrative Law Judge to interpret the following
13 proceedings to the best of his ability:

14

15 JUDGE CHO: Thank you. Put your hand down now.

16 And now for Ms. Gozukara, would you mind raising
17 your right hand.

18 MS. GOZUKARA: Yes.

19 JUDGE CHO: Okay.

20

21 CATHERINE GOZUKARA,

22 produced as a witness, and having been first duly sworn by
23 the Administrative Law Judge, was examined and testified
24 as follows:

25 ///

1 JUDGE CHO: Thank you. If at any time you don't
2 understand what's going on, Ms. Gozukara, please ask us to
3 stop and have Mr. Soylemez translate for you.

4 MS. GOZUKARA: Yes.

5 JUDGE CHO: Thank you.

6 And now, Mr. Soylemez, would you mind raising
7 your right hand one more time. So now you'll be taking
8 the oath as a witness.

9

10 STEVEN SOYLEMEZ,
11 produced as a witness, and having been first duly sworn by
12 the Administrative Law Judge, was examined and testified
13 as follows:

14

15 MR. SOYLEMEZ: Yes.

16 JUDGE CHO: Thank you very much.

17 Okay. Mr. Cooper, the floor is all yours.

18 MR. COOPER: Do you want to start with the
19 jurisdictional issue first?

20 JUDGE CHO: It is up to you on how you wish to
21 proceed with your presentation. You can do your opening
22 and then examine the witnesses, if you'd like. Or you can
23 just skip to the jurisdictional issue. I will leave that
24 completely up to your discretion at this point in time.

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OPENING STATEMENT

MR. COOPER: Well, with regards to the judicial issue -- excuse me -- jurisdictional issues, in the event that the Appellant does not prevail at this hearing, I have recommended that we seek judicial review. And in order to do that, we have to exhaust our administrative remedies.

So the concept of exhaustion is administration -- administrative remedy is a fundamental -- is fundamental to administrative law. The courts require the person to seek relief at the administrative level before resorting to the judicial way. Exhaustion require it gives the administration -- the administrative agency the opportunity to correct his own errors. Judicial remedy will be denied if the party fails to exhaust administrative remedy in the matter before this panel this morning.

The Office of Tax Appeals is the final step in the exhausting of the administrative remedy, if the Office of Tax Appeals does not have jurisdiction after my client exhausts administrative remedy. Therefore, we believe that the Office of Tax Appeals does have jurisdiction in this matter to allow the Appellant to seek judicial remedy that's necessary.

That's what I have to say about that issue.

1 the business and all tax liabilities associated with the
2 business to Catherine -- I mean to the Appellant's
3 ex-husband.

4 The Respondent has stipulated that the Appellant
5 is not responsible for the sales taxes and has stipulated
6 that the Appellant's ex-husband is personally liable for
7 the delinquent sales and use tax. The Appellant and her
8 ex-husband recorded an Interspousal Transfer Deed prepared
9 by her and the attorney who handled the divorce.

10 The Interspousal Transfer Deed documented the
11 following: First, it documented that the Newport Beach
12 property was transferred to a family trust and that
13 effective as of the declaration that Catherine's
14 ex-husband did not have an ownership interest in the
15 property when the Respondent lien was recorded on 8/11
16 because he was not beneficiary of the trust.

17 Under California law the transfer of Appellant's
18 sole and separate property was transferred, not transmuted
19 and the joint ownership should be paid as successor in
20 interest to her ex-husband, and the Newport Beach property
21 remain Appellant's sole and separate property after the
22 transfer.

23 Testimony will show that numerous creditors were
24 removed from the current Title Report when the property
25 was sold, at least based on the recognition of the

1 Interspousal Transfer Deed, and that the Newport Beach was
2 the sole and separate property due to the court order of
3 the Appellant.

4 Secondly, that there was a transfer to a former
5 spouse in connection with the dissolution of marriage.
6 The Interspousal Transfer Deed states that on Exhibit 8,
7 and we will show that when we go through the exhibit.
8 Under California Civil Code 1213, the Interspousal
9 Transfer Deed is constructive notice to Respondent that
10 there was a transfer of real property with a former spouse
11 in connection with the decree of dissolution of marriage.

12 In a decision that was entered previously, one of
13 the arguments was that the Department did not have notice
14 that there was a transfer. And our argument and our
15 position is that the county -- I mean the Department is
16 presumed to have noticed because that was what the
17 Interspousal Transfer Deed state. The Respondent's tax
18 lien was recorded in 2011. The Appellant will testify
19 that prior to Respondent's filing of the tax lien, she had
20 no idea that the business or that her ex-husband owed any
21 delinquent taxes.

22 And under Government Code 1710, the State Tax
23 Lien is not valid against a successor in interest without
24 knowledge of the lien. Appellant never received any
25 notice of a lien. Appellant was never notified by her

1 husband that there was a tax lien. And she discovered the
2 lien when the clean Title Report was obtained and
3 disclosed on the current Title Report, that the State had
4 a tax lien attached to the Newport Beach property.

5 In conclusion, the denial of Appellant's claim
6 for refund should be set aside and her claim for refund be
7 granted based upon the Newport Beach property was
8 Appellant's sole and separate property. Appellant was not
9 liable for the sales and use tax at issue. The
10 Appellant's ex-husband is personally liable. Appellant
11 had no knowledge of the tax lien. And under California
12 law, the recording of the Interspousal deed in 2009 placed
13 the Department under constructive notice. And since she
14 had no knowledge of the tax lien, the tax lien is invalid.

15 Appellant's ex-husband is liable for the
16 delinquent sales and use tax from Respondent when the tax
17 lien was recorded. Appellant's ex-husband had no interest
18 in the property. Superior court granted her the Newport
19 Beach property as here sole and separate property, and,
20 therefore, the lien is unenforceable against the
21 Appellant. Thank you.

22 The first witness I would like to call would be
23 the Appellant, Catherine Gozukara. And, Catherine, I
24 believe you've already been sworn in; is that correct?

25 Hello?

1 MR. SOYLEMEZ: Mr. Cooper, we cannot hear you
2 very good.

3 MR. COOPER: Did anybody hear my presentation?

4 MR. SOYLEMEZ: I did. Now we hear much better.

5 MR. COOPER: Okay.

6

7

DIRECT EXAMINATION

8 BY MR. COOPER:

9 Q Ms. Gozukara, do you mind if I call you
10 Catherine?

11 A Yes.

12 Q Do you mind if I call you Catherine?

13 A Yes.

14 Q You don't mind?

15 A Yeah.

16 MR. SOYLEMEZ: You can call her Catherine.

17 MS. GOZUKARA: Yes. Catherine.

18 BY MR. COOPER:

19 Q Are you concurrent currently married?

20 A No.

21 Q Okay. Have you been married?

22 A Yes.

23 Q And who were you married to?

24 A Agop Gozukara.

25 Q Okay. And any children from this marriage?

1 A I have two children Michael Gozukara and an Ana
2 Gozukara.

3 Q Okay. How hold were your children when the -- at
4 the time of the separation?

5 A 11 years old.

6 Q One was 11 years old?

7 A Yes.

8 Q What about the other child?

9 A Yes. 11 years old.

10 Q And what about the other child?

11 A Is Michael.

12 Q How old was he?

13 A 21.

14 Q Okay. Very good. And when did you file for
15 dissolution of marriage? When was -- when did you file
16 for dissolution of marriage?

17 A Dissolution married?

18 Q Yeah. Marriage, yeah. Was it 2008?

19 A Is -- is May 2008.

20 Q Okay. That's fine. And was a judgment of
21 dissolution entered?

22 A Is in November 19, 2008.

23 Q Okay. And did the Court order a division of the
24 marital property?

25 A Yes.

1 Q And what did the court order say?

2 A My house for me and the dealership to my
3 husband -- ex-husband.

4 Q Yeah. So, basically, the court, at the
5 conclusion of the dissolution of marriage, you wound up
6 with the Newport Beach property; is that correct?

7 A Yes.

8 Q And he wound up with the business; correct?

9 A The business is for my house -- I'm sorry -- for
10 my husband -- for my ex-husband.

11 Q Yeah. And the tax liabilities and -- and debts
12 associated with the business; is that correct?

13 A Yes.

14 Q Okay. And did you have anything to do with the
15 business --

16 A No.

17 Q -- while it was operating?

18 A No.

19 Q Did you receive any financial gain from that?

20 A No.

21 Q Okay. And my understanding is that you had a
22 damage -- damage awarded because of an accident?

23 A Yes.

24 Q And -- and that's basically what you were living
25 on; is that correct?

1 A Yes.

2 Q And did you and your husband file an Interspousal
3 transfer to -- Interspousal Transfer Deed?

4 A Yes.

5 Q Okay. Would you please turn to Exhibit A?

6 A It's a grant deed.

7 Q Item number A, Interspousal Transfer Deed.

8 A Oh, yeah. Okay.

9 Q Okay. And have you seen this document before?

10 A Yes.

11 Q Okay. And that's you and your husband's
12 signature; right?

13 A Yes.

14 Q Okay. And who prepared this document?

15 A My divorce lawyer, Amy Neshanian.

16 Q Okay. And when was it recorded?

17 A November 19, 2008.

18 Q Okay. I believe it was March 11, 2009. If you
19 look at the upper right-hand corner, it says
20 "March 11, 2009".

21 A Oh, yeah. Oh, I'm sorry. Yeah. Okay.

22 Q That's all right. Do you have any idea why this
23 was transferred to the family trust?

24 A I don't know.

25 Q Okay. When the Interspousal Transfer Deed was

1 signed, were you intending to transfer an interest in the
2 Newport Beach property to your ex-husband?

3 A Never.

4 Q Okay. Was it your understanding that it's your
5 sole and separate property; correct?

6 A Yeah, before I sell my house.

7 Q Okay. Would you -- on that Interspousal Transfer
8 Deed, will you please read that box that's checked on the
9 page there?

10 A Okay. It's a transfer spouse or former spouse in
11 the property statement limit to this decree this
12 dissolution of married of legal separation.

13 Q Okay. So, basically, that document states that
14 this Interspousal Transfer Deed was recorded because this
15 is a transfer to a spouse or former spouse in connection
16 with a property settlement agreement or a decree of
17 dissolution of marriage. And this is prepared by your
18 divorce attorney; correct?

19 A Yes.

20 Q Okay. Who was aware that the Newport Beach
21 property was your sole and separate property; correct?

22 A Yes.

23 Q Okay. Now please turn to Exhibit 5 of the
24 Appellant's exhibits. Exhibit Number 5 is the grant deed.

25 A Yeah, it's the grant deed.

1 Q And this was recorded in May 7th of 2015?

2 A Yes, May 7, 2015.

3 Q Right. And according to this, you and your
4 husband signed it as trustee of the family trust
5 transferred to you as an unmarried woman; is that correct?

6 A Yes.

7 Q Okay. And do you know what the purpose of this
8 grant deed was -- purpose of the deed? Do you know what
9 the purpose of the grant deed was?

10 A Excuse me. I need to French. Because my house
11 for me, the dealership to my husband. Yeah.

12 Q Okay. So, basically, this was to transfer it out
13 of the trust to you as a sole and separate property; is
14 that correct?

15 A I don't know.

16 Q Okay. Well, according to the deed, you are the
17 sole own owner of the property, effective -- well,
18 effective when the transfer deed was -- effective when the
19 court order was issued and now this is basically to
20 justify that. Did you sell the Newport Beach property?

21 A Yes.

22 Q And did escrow close in 2018?

23 A Is generally, 23, 2018.

24 Q Okay. And were you aware that there was a State
25 Tax Lien prior to the sale of the property?

1 A No.

2 Q Okay. Did you ever receive any correspondence
3 from the State of California indicating that there was a
4 lien?

5 A No.

6 Q Okay. If you received any mail addressed to your
7 ex-husband, did you open any of that mail?

8 A No.

9 Q Okay. Did you forward it to him?

10 A No.

11 Q Did you receive any mail addressed to your
12 husband after the divorce?

13 A Oh, after the divorce, yes.

14 Q And what did you do with anything that you
15 received addressed to your husband?

16 A I used to open and took --

17 Q Did you forwarded --

18 MR. SOYLEMEZ: Can I translate for her,
19 Ms. Cooper?

20 MR. COOPER: Yes, please.

21 MR. SOYLEMEZ: She said he wasn't living with me.
22 At that time I told him that he has a mail or tax problem.
23 I'm not sure.

24 BY MR. COOPER:

25 Q Okay. So your ex-husband did not live with you

1 after the divorce; is that correct?

2 A No, never.

3 Q Okay. Did he ever tell you that he owed the
4 State of California money for delinquent taxes?

5 A Oh, no, no, no. Never. No.

6 JUDGE CHO: Real quick, I'm sorry. Just to
7 remind Mr. Soylemez, when you act as an interpreter,
8 please only interpret the question and the response.

9 MR. SOYLEMEZ: Okay.

10 JUDGE CHO: Thank you.

11 BY MR. COOPER:

12 Q Ms. Gozukara --

13 A Yes.

14 Q -- when you sold the property, did you receive
15 all of the sales proceeds from the sale of the property?

16 A No.

17 Q What happened to a portion of the sales proceeds?
18 Was -- was the lien paid off? Was the tax lien paid off?

19 A No.

20 Q Okay. When -- when you sold the property, you
21 wound up -- you paid off all the debts, and you wound up
22 with some cash. Did you receive all of the cash or did
23 some of that cash go to the State of California?

24 A No.

25 Q Well --

1 MR. SOYLEMEZ: I can translate for her. She
2 didn't get it.

3 MR. COOPER: Okay.

4 MR. SOYLEMEZ: Yes.

5 THE WITNESS: For sale my house yes, because I
6 can't sell my house.

7 BY MR. COOPER:

8 Q Do you know how much went to the State of
9 California?

10 A Is \$141,000.

11 Q Actually, that's correct. All right. So is it
12 your testimony that you were not accurate in the business
13 of your husband; is that correct?

14 A No.

15 Q Did you deprive any financial gain from the
16 business?

17 A No.

18 Q Prior to the sale of the Newport Beach property,
19 you were not aware that the business was audited by the
20 State Board of Equalization?

21 A Excuse me. Can I have French?

22 THE WITNESS: After, yes. Yeah.

23 BY MR. COOPER:

24 Q Were you aware that the business -- you're not
25 aware that the business owed delinquent taxes; correct?

1 You're not aware that there were any business taxes owed?

2 A Before sell my house, yes, I don't know.

3 MR. COOPER: Okay. All right. I have no further
4 questions. Okay.

5 JUDGE CHO: All right. Thank you, Mr. Cooper.

6 Department do you have any cross-examining
7 questions for the witness?

8 MR. BONIWELL: No, we don't. Thank you.

9 JUDGE CHO: Thank you.

10 Panel members, do you have any questions for the
11 witness. Judge Dang? I'm sorry. Judge Dang, you're
12 still on mute.

13 JUDGE DANG: This is Judge Dang. I do not have
14 any questions.

15 JUDGE CHO: Thank you.

16 Judge Wong, do you have any questions?

17 JUDGE WONG: Hi. This is Judge Wong. I just had
18 one question. Was there any thought given to recording
19 the judgment of dissolution or the stipulated judgment
20 that was attached to it?

21 JUDGE CHO: I believe, Mr. Soylemez, you may need
22 to translate that question for the witness.

23 MR. SOYLEMEZ: Could you repeat again, please?

24 Judge Wong: This is Judge Wong. Sure. I was
25 just wondering whether there was any thought given to

1 recording the judgement of dissolution or the stipulated
2 judgment that was attached to it. That was a document in,
3 I believe, late 2000 -- November 2009 or 2008. Sorry.
4 November 19th, 2008, that gave the property to Appellant.
5 Was there any thought to recording that?

6 MR. SOYLEMEZ: Is that question for me or for
7 her? Should I translate for her? I don't know she would
8 know the answer to that question.

9 JUDGE WONG: Well, let's --

10 THE WITNESS: I don't know.

11 JUDGE WONG: This is Judge Wong. Okay. Thank
12 you. I have no further questions.

13 JUDGE CHO: Thank you. And thank you for
14 reminding me. This is Judge Cho. I should also be
15 introducing myself before I speak.

16 So the floor goes back to you, Mr. Cooper.

17 MR. COOPER: All right. Let me -- I would like
18 to call Steven Soylemez as a witness.

19

20 DIRECT EXAMINATION

21 BY MR. COOPER:

22 Q Mr. Soylemez, do you mind if I call you Steven?

23 A Go ahead, Mr. Cooper.

24 Q Okay. Would you please introduce yourself Mr. --
25 Steven?

1 A My name is Steven Soylemez.

2 Q Okay. And what is your occupation?

3 A I'm a licensed real estate agent.

4 Q And what agency do you work for?

5 A I work currently for Villa Home Incorporated in
6 Long Beach, California.

7 Q Okay. And what is your relationship to Catherine
8 Gozukara, the Appellant?

9 A I met Catherine and her ex-husband in 2002. I
10 sold 16 -- no 1416 Galaxy Road in Newport Beach to them.

11 Q So you've known Catherine and her husband since
12 2002; is that correct?

13 A Correct.

14 Q Were you aware that Catherine and her husband
15 were divorced in 2008?

16 A Yes.

17 Q And is it your understanding that the court
18 awarded the Newport Beach property to her as a sole and
19 separate property?

20 A Yes.

21 Q And were you involved in the subject and sale of
22 the Newport Beach property?

23 A I was.

24 Q And in connection with the sale of the property,
25 was a clear Title Report obtained?

1 A Correct.

2 Q And did you assist in removing certain clearances
3 or lien attached or shown on the report?

4 A Well, approximately there were at that time I
5 think was 18 to 19 of occurrences recorded against the
6 property. And I personally went to Title Company -- First
7 American Title Company, and they requested to have a
8 divorce document. And I went to the courthouse, actually,
9 got a divorce paper to the title draft -- the title agent,
10 actually. And her name is Debbie Talganato at First
11 American Title, and they removed most of them.

12 Q Okay. Would you please turn to the Respondent's
13 Exhibit A and attached to that is their Exhibit 8? And
14 turn to page -- I'm sorry. It's Exhibit 2, Title Report.
15 Turn to page -- do you have the Title Report there?

16 A Page what?

17 Q Let's go to page 4 starting with Number 12. That
18 appears to be some sort of attachment dealing with Urban
19 Automotive Group, LLC; is that correct?

20 A Correct.

21 Q And you had that removed showing that Urban
22 Automotive Group had no interest in the --

23 A Correct.

24 Q Correct?

25 A Correct.

1 Q Go to Item 13 which shows the debtor as Agop
2 Gozukara. You had that removed; is that correct?

3 A Correct.

4 Q And you went to Number 14. Here, again, that was
5 another judgment against Catherine's ex-husband. And you
6 had that removed; is that correct?

7 A Correct.

8 Q And Number 15, you had that removed?

9 A Correct.

10 Q And number -- the next page, Number 16, this was
11 a certified copy of judgment --

12 A That's been paid.

13 Q That was paid?

14 A Yeah.

15 Q Okay. And then Number 17?

16 A That was not paid.

17 Q That was removed; correct?

18 A Correct.

19 Q Okay.

20 JUDGE CHO: Real quick. This is Judge Cho. This
21 might be a good time to interject something. Mr.
22 Soylemez, please remember to wait until the question is
23 complete and then respond. This way there's no crosstalk.
24 Thank you.

25 BY MR. COOPER:

1 Q Did you address with the title company the State
2 Tax Lien that was addressed to -- the debtor was
3 Catherine's ex-husband?

4 A Could you ask me the question again, please?

5 Q Did you address the State Tax Lien for \$79,000
6 for the back use -- sales and use taxes with the title
7 company?

8 A Of course I did.

9 Q Did you ever try to get that removed?

10 A I try to get this removed. And, initially, the
11 title rep said yes. But afterwards they said, "Well we
12 don't want to have to be sued by the State of California."
13 So thus, they didn't remove it.

14 Q Okay. And you assist the Appellant or Catherine
15 in attempting to resolve that lien with the State of
16 California?

17 A Correct. After that we applied for Franchise Tax
18 Board in Irvine, actually. Me and Catherine went there.
19 We have applied for that to be removed, and this was the
20 direction of title company. They sent us there. They
21 said they are the one who should remove it. Just show the
22 divorce paper. They should remove it.

23 Q And that was the Board of Equalization not the
24 Franchise Tax Board; correct?

25 A Yeah. I'm sorry. Board of Equalization in

1 Irvine, Yvonne Carmen.

2 Q All right. When did you become aware of the
3 Board of Equalization tax lien?

4 A When first time we pull out the preliminary Title
5 Report.

6 Q And did you discuss that with Catherine?

7 A I did discuss with her, yes.

8 Q Yeah. And did she indicate to you that she was
9 not aware of it?

10 A She did tell me she's not aware of it, and she's
11 not responsible for it.

12 Q Okay. And, therefore, I believe you contacted
13 me; is that correct?

14 A Afterwards, yes, we have contacted you.

15 Q Yeah. All right. And were you involved in
16 selling the Newport Beach property?

17 A Yes, I did.

18 Q Okay. And at that time I believe you and I
19 discussed the tax lien; is that correct?

20 A Correct. We did.

21 Q Remember what I told you?

22 A Yes. You told me to pay, and then we will --
23 afterward we will open a case with the State -- Board of
24 Equalization.

25 Q Do you know how much was -- out of the sales

1 proceeds went to the State of California?

2 A \$141,293 and some cents, I believe.

3 MR. COOPER: Okay. All right. Well, thank you
4 very much, Steven. I have no further questions.

5 JUDGE CHO: This is Judge Cho. Thank you.

6 Department, do you have any questions for the
7 witness?

8 MR. BONIWELL: Hi. This is Joe Boniwell with the
9 Department, and we don't have any questions for the
10 witness. Thank you.

11 JUDGE CHO: Thank you very much.

12 Panel members, do you have any questions for the
13 witness, starting with Judge Dang?

14 JUDGE DANG: This is Judge Dang. I do not have
15 any questions for the witness.

16 JUDGE CHO: Thank you. This is Judge Cho.

17 Judge Wong, do you have any questions for the
18 witness?

19 Judge Wong: This is Judge Wong. No questions.

20 JUDGE CHO: This is judge Cho. Thank you.

21 All right. Mr. Cooper, I believe that sums up
22 your witness testimony. Do you think you can finish your
23 presentation in the next 10 minutes or so?

24 MR. COOPER: Well, did you wish -- you are not
25 going to hear the other side?

1 JUDGE CHO: The Department will go after you're
2 done with your presentation, and you'll be given five
3 minutes on rebuttal.

4 MR. COOPER: Okay. So what do you want? Do you
5 want my closing statement then?

6 JUDGE CHO: Sure. But not your complete -- well,
7 do you want to skip your presentation right now then and
8 let the Department go and give their final closing?

9 MR. COOPER: Yes, I would.

10 JUDGE CHO: Great. In that case, Department, now
11 is the time to do your presentation. Thank you.

12 MR. BONIWELL: Thank you.

13

14 PRESENTATION

15 MR. BONIWELL: This is Joe Boniwell for the
16 Department of Tax and Fee Administration.

17 On the first issue, which is whether the Office
18 of Tax Appeals has jurisdiction over this appeal, we were
19 asked to review Regulation 30104(d), which states the
20 Office of Tax Appeals does not have jurisdiction to hear
21 whether the Appellant is entitled to a remedy for the
22 Department's actual or alleged violation of any
23 substantive or procedural right, unless the violation
24 effects the adequacy of a notice, the validity of an
25 action from which a timely appeal was made, or the amount

1 at issue in this appeal.

2 So insofar as the Office of Tax Appeals
3 determines that none of these applicable exemptions under
4 Reg 30104(b) apply to this appeal, it's the Department's
5 position that the Office of Tax Appeals does not have
6 jurisdiction to hear this matter. We would note, however,
7 that in the matter of the appeal of Ray J. Ponek and Mary
8 Ellen Ponek, OTA Case Number 18011900, decision issued
9 September 10th, 2019, the Office of Tax Appeals considered
10 whether it had jurisdiction to consider the propriety of
11 the Department levy and whether it was proper.

12 In that case, the Office of Tax Appeals
13 determined that based on Regulation 30104(d), it did not
14 have jurisdiction to consider the Appellant's intentions
15 concerning the validity of the Department levy.

16 In the event that the Office of Tax Appeals does
17 determine it has jurisdiction over this appeal, the
18 Department maintains its position that Appellant is not
19 entitled to a refund. As discussed by Mr. Cooper on
20 January 24th, 2018, the Department received payment of
21 \$141,763.95 from an escrow account containing proceeds
22 from the Appellant's sale of real property located at 1614
23 Galaxy Drive, Newport Beach, California. And we're
24 referring to this property as the Newport Beach property.

25 And the escrow demand letter with this amount is

1 Exhibit 4 of Department's Exhibit A. And the escrow check
2 that the Department received for that amount is Exhibit 5
3 of Department's Exhibit A. So at the time of the sale,
4 the property had a State lien attached to it for
5 Mr. Gozukara's unpaid liabilities of \$79,833 in tax plus
6 accrued interest and penalties of \$7,983.

7 The unpaid liabilities were imposed against
8 Mr. Gozukara in a December 15th, 2010, Notice of
9 Determination, Department's Exhibit A, based on him being
10 a responsible person for liabilities that were
11 self-assessed by Urban Automotive Group, LLC, for the
12 period of January 1, 2008, through March 31st, 2008. And
13 Appellant is now seeking a refund of that amount after
14 payment and offers several arguments attempting to
15 undermine the validity of the Department's fees, and its
16 subsequent collection.

17 So to start, there's no dispute as to the
18 validity of the Department's State Tax Lien against
19 Mr. Gozukara. Pursuant to Revenue and Taxation Code
20 6757(a), if any person fails to pay any sales and use tax
21 obligation at the time it becomes due and payable, the
22 amount thereof becomes an effected enforceable State Tax
23 Lien.

24 And at the prehearing conference, the parties
25 stipulated that Mr. Gozukara is personally liable for the

1 unpaid liabilities of Urban Automotive Group, LLC.
2 Mr. Gozukara failed to pay his liability at the time it
3 became due and payable on January 14th, 2011. Therefore,
4 on January 14th, 2011, the State Tax Lien automatically
5 attached to all real property and rights to real property
6 belonging to Mr. Gozukara and located in the State of
7 California, and that the Department's real property lien
8 is Department's Exhibit C.

9 The Department later recorded its lien in the
10 County Recorder's Office of Orange County on
11 August 12th, 2011. The recording stamp is on Department's
12 Exhibit C. And it's relevant here, the lien attached to
13 all of Mr. Gozukara's real property and rights to real
14 property in Orange County, including his rights to the
15 Newport Beach property.

16 And this is supported by the April 28th, 2015,
17 Title Report that's in evidence as Exhibit 2 of
18 Department's Exhibit A. The Title Report indicates that
19 on June 4th, 2007, Appellant and Mr. Gozukara had rights
20 to the Newport Beach property as joint tenants, and the
21 Title Report shows no changes to Mr. Gozukara's rights in
22 the Newport Beach property prior to the Department
23 recording its lien.

24 As such, when the Department recorded its lien on
25 August 12th, 2011, it properly attached to Mr. Gozukara's

1 interest in the Newport Beach property as reflected in the
2 Title Report. Despite this, Appellant argues, based on
3 various documents that I'll discuss, that when the
4 Department recorded its lien, it did not attach to
5 Mr. Gozukara's interest in the Newport Beach property
6 because at the time the lien was recorded, Mr. Gozukara
7 did not have an interest in the property.

8 So starting with the judgment of dissolution,
9 this is Department's Exhibit 7 of Exhibit A. It's -- with
10 regard to the dissolution, Appellant contends that
11 pursuant to the judgment she held title to the Newport
12 Beach property as her sole and separate property. As a
13 result of the divorce, Appellant asserts that Mr. Gozukara
14 had no interest in the property to which the Department's
15 lien couldn't attach.

16 And the dissolution of Appellant and
17 Mr. Gozukara's marriage includes the stipulated judgment
18 that was discussed that doesn't award the Appellant the
19 Newport Beach property. The judgment was entered on
20 November 19th, 2008. However, it was never recorded and a
21 grant deed transferring the property to Appellant, which
22 is Exhibit 9 of Department's Exhibit A, was not executed
23 until February 25th, 2015, several years after the
24 Department recorded its lien.

25 As discussed in the Appeals Bureau decision,

1 California Case Law indicated that a divorce decree that
2 is not recorded is not effective against the third party
3 without notice. The proposition is consistent with
4 California Civil Code Section 1217 states, that an
5 unrecorded instrument is valid as to parties thereto and
6 those who have no notice thereof. And California Civil
7 Code Section 1214 withstands to the proposition that every
8 conveyance of real property must be recorded to be valid
9 against the subsequent purchaser. California Family Code
10 Section 852 further makes clear that unrecorded
11 transmutations of real property are not effective as to
12 third parties without notice.

13 So Appellant's argument effectively is that the
14 judgment of dissolution transmuted the Newport Beach
15 property from community property to Appellant's separate
16 property and vested complete title in Appellant. However,
17 because the judgment was not recorded and because the
18 judgment was a third party without notice of the judgment,
19 any conveyance of real property contained in the judgement
20 was not effective as to the Department when it recorded
21 its lien.

22 The grant deed that transferred title to the
23 Appellant was not executed until February 25th, 2015, and
24 it was recorded on May 7th, 2015; both dates being
25 well-past the date that the Department recorded its lien

1 on August 12th, 2011. So when the Department recorded its
2 lien without notice or knowledge of the Appellant and
3 Mr. Gozukara's dissolution, the lien attached to
4 Mr. Gozukara's interest in the Newport Beach property,
5 notwithstanding the judgment.

6 So turning to the Interspousal Transfer Deed,
7 Appellant makes several arguments that this document
8 prevented the Department's lien from attaching to the
9 Newport Beach property. The Interspousal Transfer Deed is
10 Exhibit 8 of Department's Exhibit A. As discussed by
11 Mr. Cooper, the Interspousal Transfer Deed was executed on
12 March 4, 2009. It was recorded in Orange County on
13 March 11th, 2009.

14 There's a box that's checked on the document that
15 states it is a, quote, "Transfer to spouse or former
16 spouse in connection with a property settlement agreement
17 or decree of dissolution of a marriage or legal
18 separation," end quote. And the granting language on the
19 Interspousal Transfer Deed reads, quote, "Grantors: Agop
20 Gozukara and Catherine Gozukara, husband and wife as joint
21 tenants hereby grant to Agop Gozukara and Catherine
22 Gozukara, trustees of the Agop Gozukara and Catherine
23 Gozukara family trust the following described real
24 property in the County of Orange, State of California,"
25 end quote.

1 And it continues on to describe the legal
2 description of the Newport Beach property. But basis of
3 Appellant's first argument with regard to the Interspousal
4 Transfer Deed appears to assume that prior to the
5 Interspousal Transfer Deed being executed, Mr. Gozukara
6 did not have any interest in the Newport Beach property
7 because the judgment of dissolution awarded the property
8 to Appellant. As just discussed, the judgment was not
9 effective as to the Department.

10 However, based on that incorrect assumption,
11 Appellant argues that by transferring the property into
12 the family trust, Mr. Gozukara did not gain any interest
13 in the property. As I just read, the granting language of
14 the Interspousal Transfer Deed states that Mr. Gozukara
15 and Appellant both transferred their interest as joint
16 tenants in the Newport Beach property to themselves as
17 trustees of their family trust. Appellant has not
18 provided a copy of the family trust.

19 And the granting language on the Interspousal
20 Transfer Deed, we know that Mr. Gozukara and Appellant are
21 trustees of the family trust. And from the
22 February 25th, 2015, granting, Exhibit 9 of Department's
23 Exhibit A, it states that the conveyances from the family
24 trust to Appellant, and that it's a conveyance, quote,
25 "Into or out of his/her revocable trust," end quote.

1 In California when properties transfer into a
2 revocable trust, the settlor or trust creator, remains the
3 owner of the property. So given the evidence that's
4 available to us, even after the transfer as described in
5 the Interspousal Transfer Deed, Mr. Gozukara and Appellant
6 still both held legal title to the property as trustees,
7 creating a presumption they both still own beneficial
8 title.

9 And this is consistent with the April 28, 2013,
10 Title Report which shows that Mr. Gozukara and Appellant
11 both held joint tenant interest in the Newport Beach
12 property from at least June 4th, 2007, through
13 August 12th, 2011, before and after the recording of this
14 Interspousal Transfer Deed. As such, the Department's
15 lien properly attached to Mr. Gozukara's interest in the
16 Newport Beach property.

17 Alternately, Appellant asserts that the
18 Interspousal Transfer Deed was intended to fulfill the
19 terms of the dissolution; namely, to transfer the real
20 property to Appellant. But regardless of the intent, as
21 just discussed, the evidence demonstrates to the effect of
22 the deed -- excuse me -- the Interspousal Transfer Deed
23 was to transfer the property from Appellant and
24 Mr. Gozukara as joint tenants to Appellant and
25 Mr. Gozukara as trustees of the family trust.

1 While the box that is checked on the Interspousal
2 Transfer Deed concerns a transfer to a spouse or former
3 spouse and it suggests the transfer to one person, it's
4 the only box that concerns a transfer in connection with a
5 property settlement agreement. And it appears to be the
6 most relevant box to the Appellant and Mr. Gozukara's
7 transfer, the granting language which is entered by the
8 executing parties clearly states that the transfer from a
9 husband and wife as joint tenants to the family trust.

10 And Appellant and Mr. Gozukara acknowledged the
11 effectiveness of this granting language when they
12 subsequently executed the February 25th, 2015, Grant Deed,
13 which transfers the Newport Beach property out of the
14 family trust and to Appellant. The evidence shows that
15 the Interspousal Transfer Deed did not have the effect of
16 fulfilling the terms of the dissolution and did not
17 transfer the Newport Beach property solely to Appellant.

18 The final argument I'll address with regard to
19 the Interspousal Transfer Deed is that the Appellant
20 asserts that the Department had constructive notice of the
21 Interspousal Transfer Deed. And as a result, the
22 Department should be charged with some kind of actual
23 notice of the judgement of dissolution that awarded the
24 Newport Beach property to Appellant.

25 Appellant is correct that the Department had

1 constructive notice of the Interspousal Transfer Deed
2 because it was recorded on March 11th, 2009, which is
3 prior to the Department recording its tax lien in Orange
4 County on August 12th, 2011. However, pursuant to
5 California Civil Code Section 1213, every recorded
6 conveyance of real property is constructive notice of the
7 contents of that recorded conveyance to subsequent
8 incumbrance.

9 Insofar as the Interspousal Transfer Deed is a
10 reported conveyance of real property, the Department can
11 only charge with constructive notice of its contents; the
12 contents of the Interspousal Transfer Deed states that if
13 the transfer from Appellant and Mr. Gozukara as joint
14 tenants to Appellant and Mr. Gozukara as trustees of the
15 family trust, and this is consistent with subsequent
16 recorded filings. When the Department recorded its lien
17 subsequent to the Interspousal Transfer Deed, it attached
18 to Mr. Gozukara's continued interest in the Newport Beach
19 property.

20 The Interspousal Transfer Deed had no impact on
21 the propriety of the Department's lien. It did not effect
22 to read a transfer of the Newport Beach Property to
23 Appellant. At most, it can be read to a transfer of the
24 Newport Beach property from Appellant and Mr. Gozukara as
25 joint tenants, to Appellant and Mr. Gozukara as trustees

1 of the family trust. That being the case, at the time the
2 Department recorded its lien on August 12, 2011,
3 Mr. Gozukara held interest in the Newport Beach property,
4 to which the Department's lien properly attached.

5 Finally, I just want to address the grant deed.
6 The grant deed was recorded, as I said before, on
7 February 25th, 2015, and recorded it on May 7th, 2015,
8 that expresses a declaration and a change of the ownership
9 of the Newport Beach property to Appellant's sole and
10 separate property. But we agreed that the grant deed
11 transfer of the property is solely to Appellant. However,
12 the grant deed was recorded too late. The Department's
13 lien was recorded over three years prior and, as such, it
14 did not invalidate or have any effect on the Department's
15 lien.

16 The totality of the evidence demonstrates that on
17 August 12th, 2011, the Department properly recorded its
18 lien against Appellant and Mr. Gozukara's real property in
19 Orange County, including his interest in the Newport Beach
20 property. No proceeding or intervening or succeeding
21 actions invalidated or otherwise alter the propriety of
22 the Department's lien against Mr. Gozukara's real property
23 interests. The Department subsequently released its lien
24 while it was still effective, and the escrow payment was
25 made using the proceeds of the sale of the Newport Beach

1 property attributable to Mr. Gozukara's rights in the
2 property.

3 So based on the foregoing, if the Office of Tax
4 Appeals determines it has jurisdiction over this matter,
5 the Department requests the claim for refund should be
6 denied.

7 Thank you.

8 JUDGE CHO: This is Judge Cho. Thank you very
9 much, Department.

10 Panel members, do you have any questions,
11 beginning with Judge Dang?

12 JUDGE DANG: This is Judge Dang. My question is
13 for the Department. I agree with the Department's
14 position that California is a race-notice jurisdiction.
15 Insofar as the language of Civil Code Section 1214, I
16 believe it appears to apply only to mortgagee's,
17 purchasers for value, as well as judgment creditors.

18 My question, therefore, is on what basis does the
19 Department have any authority for us to treat the
20 Department's statutory lien arising under Government Code
21 Section 7170 as in the same manner as one of these
22 enumerated items, either of judgment purchase for value or
23 mortgage?

24 MR. BONIWELL: Well, I think the Department's
25 position on that is that Section 1214 when it comes to

1 mortgagees, it doesn't just specifically mean a
2 traditional mortgage that is executed when you purchase
3 the property as much as it can encompass a broader range
4 of subsequent encumbrances and the Department be a
5 subsequent encumbrance.

6 JUDGE DANG: Thank you. I'd like to point out a
7 United States verse -- I'm sorry -- a United States
8 Supreme Court decision. It's U.S. v Gilbert. The
9 citation is 345 US 361. It may relate here in that the
10 United States Supreme Court found in that case that a
11 local city tax lien -- the city was not a judgment
12 creditor within the meaning of a somewhat similarly worded
13 statute because a judgment required some type of court
14 action. If you would like a moment to review that and
15 respond if you'd like, please do so.

16 MR. BONIWELL: I would just, you know, in
17 response to that I would say that we are asserting that we
18 would be considered a judgment creditor in the instance
19 that we would have a judgment against the taxpayer in this
20 matter. We -- we didn't. Just like a mortgage holder
21 does not have a judgment and a right or interest in
22 property. That's is our equivalency here.

23 JUDGE DANG: I'm sorry. I just want to clarify.
24 You're saying the State's taxing is equivalent to a
25 mortgage in this instance?

1 MR. BONIWELL: The equivalency I'm trying to make
2 is that when I say we're a subsequent encumbrancer, I --
3 I'm not comparing us to a judgment creditor as what
4 appears to be in this similar court tax case, which is a
5 supreme court case which I have not read and am not
6 familiar with. But on first blush, I would say that I
7 wouldn't compare us to a judgment creditor if I'm going to
8 distinguish us from this case. And I would compare our
9 status of an encumbrancer to that of a mortgagee who has a
10 right arises outside of a judgment.

11 JUDGE DANG: Thank you. And is the Department
12 aware of an authority interpreting Section 1214 to
13 encompass all encumbrances as opposed to those
14 specifically enumerated by statute?

15 MR. BONIWELL: Don't have that before me.

16 JUDGE DANG: Thank you. I have no further
17 questions.

18 JUDGE CHO: This is Judge Cho. Thank you.

19 Judge Wong, do you have any questions?

20 Judge Wong: This is Judge Wong. No questions.

21 Thank you.

22 JUDGE CHO: This is Judge Cho. I don't have any
23 questions either. So at this point in time, Mr. Cooper,
24 you have 10 minutes for your final closing statement.

25 ///

1 CLOSING STATEMENT

2 MR. COOPER: Well, the bottom line here, I
3 believe, is that the Appellant was awarded the property as
4 her sole and separate property. And there was a superior
5 court order of that. The Department has stipulated that
6 the delinquent tax liabilities -- she's not responsible
7 for the delinquent tax liabilities.

8 The Department has also asserted that Catherine's
9 ex-husband is responsible for the deficient tax
10 liability -- the delinquent tax liability. But there is a
11 court case, a 1918 court case that says, "A divorce decree
12 is sufficient to invest complete legal right to real party
13 and a party thereto." And that's Carr v. Carr (1918) 39
14 Cal.App. 53. The court may determine a decree that a
15 party is the owner of the real party and need not require
16 a deed to transfer title.

17 So it is the Appellant's position that the court
18 granted her title. My understanding of the recorded
19 statute is to place the world on notice that the property
20 has been transferred to successor on record. However, as
21 the Judge indicated, we don't believe failure to record
22 doesn't mean that the property was not transferred to
23 Catherine because the court order specifically stated that
24 it was.

25 The transfer to the trust, as I have indicated

1 before, does not transmute sole and separate property to
2 the joint interest in the property. Catherine testified
3 that it was not her intent to give her ex-husband any
4 interest in the property.

5 Steven testified that when there was discovered a
6 number of liens associated with the ex-husband, that the
7 title company removed all of those liens because they
8 agreed that the property was owned by the Appellant. And
9 the only one that they would not remove would be the State
10 tax liability because they were concerned about the State
11 suing them. So it appears that the title company removed
12 liens that were associated with the ex-husband because he
13 had no interest in the property.

14 So as we've indicated before and during the
15 testimony and the exhibits and the Respondent's
16 stipulation and hearing the testimony of the witnesses,
17 it's clear that the Newport Beach property was a sole and
18 separate property by court order effective 2008. As
19 stipulated, Appellant was not liable of those taxes. And
20 as stipulated, her ex-husband was responsible.

21 The Department has not addressed the issue with
22 regards to Appellant's knowledge of the tax lien,
23 specifically, the Code Section states that -- Code
24 Section 1213 -- well, let's see. Let's find that. Yeah.
25 With regards to Government Code 7170, it specifically

1 states that tax lien attaches to all property and rights
2 to property, belonging to the taxpayer and located in this
3 state -- however, a tax lien is not valid as to a
4 successor in interest, which Catherine is, of the
5 taxpayer, the ex-husband, without knowledge of the lien.

6 And the Appellant has testified that she was not
7 aware of the lien, never received any notice from the
8 State of the lien, and she found about the lien when they
9 pulled the Title Report to sell the property. So under
10 Government Code 7170, it's clear that the tax lien is
11 invalid. And looking at this as a matter of fairness, it
12 certainly seems to me like the Department and the
13 Respondent is relying on a lot of technicality to get
14 money out of someone who is an innocent spouse who is not
15 aware of the lien, not aware of the technicalities of the
16 transfer deed or the grant deed and things like that, but
17 she relied on her divorce attorney.

18 So, therefore, it just seems under common sense
19 that the Department is seeking \$141,000 from an individual
20 who does not -- who owns the property as her sole and
21 separate property by court decree, who notified the public
22 as to a transfer deed if there was a transfer, which means
23 the spouse with regards to that. And -- and I don't know.

24 It just seems to me that, first of all, it's
25 unfair. First of all the Department is not -- I don't

1 think the law supports the Department's policy, and I
2 think that -- I think to deny the claim for refund and not
3 set aside the denial would be unfair, not supported by any
4 evidences, not supported by law and, therefore, the
5 decision should be set aside and the claim for refund
6 should be granted.

7 Thank you.

8 JUDGE CHO: This is Judge Cho. Thank you very
9 much, Mr. Cooper.

10 Before we finish up, panel members, do you have
11 any final questions for either party? Judge Dang?

12 JUDGE DANG: This is Judge Dang. I have no
13 further questions.

14 JUDGE CHO: Judge Wong, any questions?

15 Judge Wong: This is Judge Wong. No further
16 questions.

17 JUDGE CHO: Great. And I have no further
18 questions either.

19 So this concludes the hearing. The panel will
20 meet and decide the case based on the documents and
21 testimony presented today. We'll issue our written
22 decision no later than 100 days from today. This case is
23 submitted, and the record is now closed.

24 (Proceedings adjourned at 11:10)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 31st day of July, 2020.

ERNALYN M. ALONZO
HEARING REPORTER