

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 Q. ZHENG,) OTA NO. 18114030
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, February 24, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:10 p.m. and concluding at 2:52 p.m. on
Friday, February 24, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ JOSHUA ALDRICH
ALJ TERESA STANLEY

For the Appellant: LINDA SUNG

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

COURTNEY DANIELS
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 7.)
(Department's Exhibits A-D were received at page 7.)

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1 California; Friday, February 24, 2023

2 2:10 p.m.

3
4 JUDGE LONG: We are opening the record in the
5 Appeal of Qing Xin Zheng. The OTA Case Number is
6 18114030. This matter is being held before the Office of
7 Tax Appeals. Today's date is February 24th, 2023, and the
8 time is approximately 2:10 p.m. This hearing is being
9 convened electronically.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. My name is Keith Long,
12 and I will be the lead Administrative Law Judge. Judge
13 Teresa Stanley and Judge Josh Aldrich are the other
14 members of this tax appeals panel. All three judges will
15 meet after the hearing and produce a written decision as
16 equal participants. Although the lead judge conducts the
17 hearing, any judge on this Panel may ask questions or
18 otherwise participate to ensure we have all the
19 information needed to decide this appeal.

20 As a reminder, the Office of Tax Appeals is not a
21 tax court. It is an independent appeals body. The Panel
22 does not engage in ex parte communications with any party.
23 OTA will issue an opinion based on the parties' arguments,
24 the admitted evidence, and the relevant law.

25 For the record, will the parties please state

1 their name and who they represent, starting with
2 Appellant.

3 MS. SUNG: Linda Sung representing Zheng -- Qing
4 Xin Zheng.

5 JUDGE LONG: Thank you.

6 And CDTFA.

7 MS. DANIELS: Courtney Daniels representing
8 CDTFA.

9 MR. BACCHUS: Chad Bacchus also with CDTFA.

10 MR. PARKER: Jason Parker also with CDTFA.

11 JUDGE LONG: Thank you.

12 There's one issue to be heard in this appeal. It
13 is whether Appellant is liable as a successor for the
14 unpaid sales tax liability of Don Day, Inc., doing
15 business as Don Day. At the prehearing conference, it was
16 confirmed that the calculation of the taxable measure was
17 not in dispute.

18 The exhibits for this appeal consist of CDTFA
19 Exhibits A through D. At our prehearing conference,
20 Appellant's stated there were no objections to these
21 exhibits.

22 Can Ms. Sung please confirm that is the still the
23 case?

24 MS. SUNG: Yes, that is the case. Thank you.

25 JUDGE LONG: Thank you. These exhibits are

1 admitted without objection.

2 (Department's Exhibits A-D were received in
3 evidence by the Administrative Law Judge.)

4 After the prehearing conference, Appellant
5 provided a revised exhibit index which identified
6 Exhibit 1, Appeals Bureau supplemental decision with
7 exhibits.

8 Does CDTFA object to Appellant's Exhibit 1?

9 MS. DANIELS: No, we do not object.

10 JUDGE LONG: Thank you.

11 This exhibit is admitted without objection.

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

14 JUDGE LONG: This hearing is expected to last
15 approximately one hour. We'll begin with Appellant's
16 presentation, which -- sorry -- which will take
17 approximately 25 minutes. As noted in the -- and then
18 CDTFA will be provided with approximately 20 minutes to
19 make their presentation. Finally, we'll allow for 5
20 minutes for a final statement from Appellant and any
21 closing remarks from CDTFA.

22 Does any question -- does anyone have any
23 questions before we move on to the opening presentation?

24 Ms. Sung, do you have any questions?

25 MS. SUNG: No questions. Thank you.

1 JUDGE LONG: Thank you.

2 And CDTFA, do you have any questions?

3 MS. DANIELS: No questions at this time. Thank
4 you.

5 JUDGE LONG: Thank you.

6 We are ready to proceed with Appellant's opening
7 presentation. As noted in OTA's minutes and orders
8 document, please include an explanation of whether
9 Appellant rescinded the sales contract, whether there's
10 any evidence of rescission, whether Appellant continued to
11 operate the business after the alleged rescission,
12 including the dates that Appellant continued to operate
13 the business.

14 Ms. Sung, you may begin when you are ready.

15

16 PRESENTATION

17 MS. SUNG: Okay. So in addressing the questions
18 as stated by Judge Long, the Appellant did attempt to
19 rescind the sales contract. I'll just give a little bit
20 of history of this case that the escrow was open on
21 July 10th, of 2015 with a closing date of September the
22 9th, 2015. And when the escrow closed September 9, 2015,
23 the escrow did not submit the request for clearance during
24 that time. It was later submitted in January of 2016.

25 At that time, CDTFA responded to the request for

1 clearance and then sent the letter to the escrow, as well
2 as the Appellant, that there's taxes due for the entire
3 purchase price. So Appellant didn't know what that is,
4 went back to escrow and the seller, and Appellant was
5 reassured that the tax liability would be paid, would be
6 handled. And then that's that.

7 So subsequently a year later in 2017, Appellant
8 received another letter. So Appellant went back again to
9 escrow to -- also the broker as well and the seller and
10 was told that everything is fine. So the Appellant did
11 reach out to the CDTFA. So she visited the Glendale
12 office and spoke to I believe Mr. Moniego [sic], and was
13 assured that CDTFA is working with the seller to get the
14 liabilities settled. And so in April of 2017, Appellant
15 received another notice that this amount is due. That's
16 why she reached out and then went to an attorney.

17 So the attorney reached out, wrote a letter to
18 the seller. Because at that point the seller just stopped
19 answering calls, texts, and was not reachable anymore. So
20 in January -- it was January 2017 was the last time the
21 Appellant was able to talk to the seller and was reassured
22 that the seller would handle it. So the attorney wrote
23 the letter dated in May of 2017 and didn't hear any
24 response from the seller.

25 So the attorney advised the Appellant that in

1 order to pursue a contract decision, have to take the
2 seller to court, and it would -- court cost would range
3 anywhere from \$40,000 to \$50,000, and it would require --
4 he would require a \$20,000 retainer to start off. So the
5 Appellant does not have the money to pursue the legal
6 action. So Appellant continues to reach out and try to
7 contact the seller to no avail. And so she wasn't able to
8 get the contract rescinded and get the money back. So
9 that's what happened.

10 And in regards to the Appellant -- whether
11 Appellant continued to operate the business after the
12 alleged rescission, and the answer is yes. The Appellant
13 paid the seller \$230,000 and have to fight this successor
14 liability and has no way of getting the money back. So
15 the only way that she can continue on is to operate the
16 business. So that's in addressing that question.

17 Do you have any question for me regarding that,
18 or should I just continue?

19 JUDGE LONG: I don't have any questions at the
20 moment. Just go ahead and continue would be great. Thank
21 you.

22 MS. SUNG: Okay. There was another bullet point
23 that I think you wanted to know. The escrow company added
24 a disclaimer clause. So in the document that -- the
25 November 4, 2019, the supplemental decision under

1 Exhibit 7, page 5, that was the initial escrow
2 instruction. So on there, it has a section named "The
3 Taxes." And it says, "Unless specifically instructed in
4 this escrow, escrow holder is not to be concerned with any
5 unpaid beverage, unemployment, social security, personal
6 property, or retail sales tax, or sales tax on fixtures
7 and equipment, et cetera, being sold, or any other tax or
8 contributions or any unpaid salaries or wages, even though
9 buyer may be personally liable for payment thereof. If
10 directed to make any such payment, same may or may not
11 constitute full or final payment thereof."

12 So there's one section there that the Appellant
13 was unaware of, and she stated that there's no way that
14 she would agree to an unknown liability. This type of
15 liability, it could be \$1 or it could be millions. So
16 there's no way that she would agree to it if she knew.
17 And then subsequently there was a -- an amendment to the
18 escrow instruction. That's dated September 10, 2015, and
19 this is under the same supplemental decision Exhibit 8,
20 page 2.

21 So that's Section 12 of the amended escrow
22 instruction where it says, "Withhold seller's proceeds
23 until released from Board of Equalization at EDD." So it
24 was instructed that the -- or the seller instructed escrow
25 to withhold \$11,500 from the proceeds. And at the end of

1 that paragraph it says, "In the event that the funds
2 require to obtain the aforementioned releases prove to be
3 more than the funds held by escrow holder, seller shall,
4 if necessary, deposit sufficient funds into escrow to
5 obtain the releases."

6 So again, that escrow did not submit the request
7 for the release immediately or prior to the close of
8 escrow. Escrow supposedly closed on September 9th of
9 2015. The CDTFA did not receive the request until January
10 of 2016, even though that request was dated September 9th,
11 2015. Okay. So that's the answer to that question.

12 Shall I just continue on? Do you have any
13 questions so far? No?

14 JUDGE LONG: No. I and my Panel members will
15 reserve our questions until you're done. You can go ahead
16 with your presentation.

17 MS. SUNG: Okay. All right.

18 So in the Appeals, Appeals Officer Chen has
19 several -- raised several issues about regarding the
20 rescission of the contract so -- and cited a couple of
21 cases. So two citations that was mentioned in the
22 decision, it says -- the citation 490.0220, 490.0080, it
23 says that, "Even if petitioner validly rescinded the
24 contract the sale from the business from, the seller to
25 the petitioner on September 9th still remains a sale for

1 sale and use tax purposes," and cited these citations and
2 a couple of cases.

3 So the citation that -- the 490.0220, provides
4 that in the event that a contract rescission, the goods
5 remain taxable if the seller retains a portion of the
6 purchase price. And the second one, citation 490.0080, it
7 says, "Rescission stands but the sales taxes are
8 applicable to the extent of the portion of the sales price
9 that was not refunded." Okay. So both of these, it's our
10 position that we don't believe that it's applicable to the
11 successor liability, so the sale of goods, if the goods
12 were retained, so then sales tax is applicable.

13 And -- but we don't believe that it's applicable
14 to successor liability. In fact, that the next case it
15 says Long versus Newlin. It says -- it's regarding
16 partnership. The Court ruled that the creditor has a
17 valid claim against the partnership, and the partners of
18 the partnership are liable for the claim because that's
19 how the partnership is legally structured. And the
20 dispute between the partners have no bearing on the
21 liability against the partnership. That's the case of
22 Long versus Newlin.

23 And the second case that's cited was Scollan
24 versus Government Employment Insurance Company. It says
25 that, "The Court cited that the policy affords no

1 protection unless at the time of the accident that the --
2 that he was driving the vehicle." So in other words,
3 whoever is driving the vehicle at the time is liable.

4 So both of these cases are not really applicable
5 to the instant case here. But the Court did affirm the
6 rescission. It is whether or not the applicable party
7 that's, during the accident, who was driving behind the
8 wheel. That's the decision where the insurance who has
9 the bearing on the insurance. And Appeals argue that the
10 petition did not have sufficient -- did not sufficiently
11 establish the grounds for rescission. That's another one.

12 We believe that we have -- so first of all, the
13 escrow company asserted the fact that they just merely
14 follow the instructions provided in Section 12 to withhold
15 \$11,500, but the escrow company delayed four months in
16 submitting the request. Whether deliberate or negligent,
17 they breached their duty. So the fact remains that the
18 CDTFA did not receive the request until January, four
19 months after the escrow closed. And the original -- so
20 Section 12 requested escrow withhold \$11,500.

21 When the CDTFA initially responded with
22 instructing the escrow to withhold -- to pay the entire
23 amount, \$230,000, which is the sales price. Subsequently
24 the CDTFA amended the -- or revised the amount down to
25 \$43,682. So I believe the CDTFA conducted an audit. So

1 in the auditor's report, the auditor indicated that, "Per
2 review posted on yelp.com, the restaurant was operating
3 during September of 2015. Taxpayer reported zero dollars
4 in sales for all of 2015. Therefore, an average audit
5 sales was computed and applied to 2015."

6 So the seller was operating the restaurant from
7 January through September '15 but reported zero sales. So
8 that can -- that demonstrates the intent of the seller to
9 defraud the CDTFA as well as the buyer. Okay. The seller
10 knowingly did not file a correct sales tax return. It has
11 sales. They didn't report it, and they only instructed
12 escrow company to withhold \$11,500.

13 The seller's average quarterly sales tax is
14 \$11,000. So based on quarterly, \$11,000 times three
15 quarters, the seller knew that he would owe at least
16 \$33,000 in sales tax plus penalties and interest but
17 instructed escrow to only withhold \$11,500. That's intent
18 to defraud.

19 And finally, so the elements of fraudulent
20 misrepresentation, it's a lie about a present or past
21 fact, which the seller did lie about that he owes the tax
22 and didn't disclose it, and the representation was
23 material. It replaces a role in the decision making. So,
24 again, if the seller disclose to the buyer that, hey, I
25 didn't file at least three quarters of tax returns

1 correctly and I may owe \$33,000 plus penalties and
2 interest, it would affect the decision of the buyer.

3 And so -- and the misrepresentation was relied
4 upon. Obviously, if the buyer knew about this, the buyer
5 would not agree to the price. So the buyer relied upon
6 that \$230,000 would be the deal and everything should be
7 cleared without any additional liability. So note that
8 the seller disclosed -- not just instructed the \$11,500,
9 the seller also disclosed other liabilities which was paid
10 off from the proceeds.

11 So the seller -- and those are -- like UCC
12 filings are typical for escrow to do the search because
13 there were furniture and fixtures and property involved in
14 the sale, but just deliberately withheld this information
15 on the taxes, you know, would file incorrectly. And the
16 11,500 would most definitely -- would definitely not be
17 sufficient to cover the tax liability. So the seller
18 acted with intent and to defraud in this transaction.

19 So therefore, we believe that the Appellant has
20 demonstrated all the elements necessary to rescind the
21 contract. So there's no sale of purchase of the
22 restaurant under a contract because there's no -- the
23 contract should be rescinded and invalid.

24 Let's see. And I believe that concludes my --
25 that concludes my presentation. Thank you.

1 JUDGE LONG: Thank you. I just have a question
2 before I turn to my Co-panelists. I just wanted to
3 verify. I understand that your position is that there was
4 rescission as a result of actual and constructive fraud.
5 But is there any -- do you have any legal support for when
6 a person can -- for the proposition that a person can
7 rescind a contract but, you know, maintain possession and
8 control of the business?

9 MS. SUNG: Well, in this case, the Appellant was
10 not able to complete the rescission because the other side
11 was nonresponsive. The person just disappeared. So the
12 Appellant is already a victim of fraud who put up
13 \$230,000, and then there's no way of getting that money
14 back. So Appellant was not able to complete the
15 rescission because the other side was not responding.

16 JUDGE LONG: Okay. Thank you. I don't have any
17 further questions.

18 I just want to turn to my Co-panelists now to see
19 if they have any questions.

20 Judge Stanley, do you have any questions?

21 JUDGE STANLEY: No, I don't. Thank you.

22 JUDGE LONG: Judge Aldrich, do you have any
23 questions?

24 JUDGE ALDRICH: I do have a brief question. So
25 the escrow document that you were referring to that was

1 not sent until January, you don't have a dispute as to the
2 fact that it was sent January 11th, 2016. I see there's a
3 fax time stamp on that, and you think that's correct?

4 MS. SUNG: You mean, the request for tax
5 clearance?

6 JUDGE ALDRICH: Yeah, exactly. That's what I was
7 referring to.

8 MS. SUNG: Yes. January was when the escrow
9 company sent to the CDTFA, and the CDTFA did acknowledge
10 receiving that on that date.

11 JUDGE ALDRICH: Okay. And -- all right. And I
12 may have a question for CDTFA about that later. But I'm
13 going to turn it back over to Judge Long. Thank you.

14 MS. SUNG: Thank you.

15 JUDGE LONG: Thank you. I.

16 Think we're ready to turn to CDTFA's
17 presentation.

18 CDTFA, you may begin whenever you're ready.

19 MS. DANIELS: Thank you.

20

21 PRESENTATION

22 MS. DANIELS: Good afternoon.

23 As you are aware, we are here to determine
24 whether Appellant is liable as a successor Don Day, Inc.,
25 hereinafter referred to as the business. On July 10th,

1 2015, Appellant executed escrow instructions to Time
2 Escrow, Inc., hereinafter referred to as the escrow
3 company, indicating that Appellant agreed to purchase the
4 business for a total consideration of \$230,000 subject to
5 certain contingencies, including the contingency that
6 Appellant obtain a new lease. And this is available at
7 Exhibit A-1.

8 A bill of sale dated the same day indicates that
9 the business's equipment, fixtures, furniture, goodwill,
10 trade name, lease, and leasehold were transferred to
11 Appellant. And that's available at Exhibit A-1, page 8.
12 On September 9th, 2015, the seller and Appellant executed
13 amended escrow instructions indicating that all of the
14 contingencies were met, and that the escrow company was
15 authorized to close the sale. And that's Exhibit A-2.

16 The amended escrow instructions also instructed
17 the escrow company to withhold \$11,500 of the sales
18 proceeds at the close of escrow until certain tax
19 clearance certificates, as described in Section 12
20 therein, were furnished, including a tax clearance
21 certificate from CDTFA. Section 12 of the amended escrow
22 instructions further indicate that if seller failed to
23 furnish the tax clearance certificate from CDTFA within
24 60 days of the closing, and if the escrow company
25 thereafter received a demand for payment from CDTFA, that

1 the escrow company is authorized and instructed to pay
2 such demand pro rata with other demands for payments from
3 any other tax agencies.

4 The next day, on September 10th, 2015, the sale
5 closed for a total consideration of \$230,000, which was
6 memorialized in a closing statement issued by the escrow
7 company. And that's available at Exhibit A-2, page 4.
8 Four months after the closing, the escrow company
9 requested CDTFA to issue a tax clearance certificate with
10 respect to the business's sale by fax, which was dated
11 January 11th, 2016. And that's our Exhibit A-3, page 1.

12 On January 25th, 2016, the Department issued a
13 response informing the parties that a total amount of
14 \$230,000 was due at that time with respect to the
15 operation of the business prior to the September 10, 2015,
16 closing. And that's Exhibit A-3, page 2. So this amount
17 was calculated based on the sale of the business. The
18 Department subsequently conducted a closeout audit of the
19 business.

20 The report of field audit, dated November 17th,
21 2016, disclose the following deficiency measures: First,
22 \$20,000 for an unreported sale of fixtures and equipment;
23 second, \$335,752 for additional taxable sales based on an
24 average audited sales; and third, \$129,609 for additional
25 taxable sales based on a projection of credit card sales.

1 This resulted in a tax liability of \$43,682.67.

2 On April 14th, 2017, the Department issued a
3 notice of successor liability to Appellant in the amount
4 of \$44,812.95, which included the aforementioned tax for
5 the period October 1st, 2013, through September 8th, 2015,
6 with interest and penalties. And that's available at
7 Exhibit C. A payment of \$11,500 was made towards the
8 liability resulting in a balance of \$32,182.67 in owed
9 taxes.

10 Revenue & Taxation Code Section 6811 provides
11 that if any person liable for any amount under the sales
12 and use tax law sells out his business or stock of goods
13 or quits the business, his successors or assigns shall
14 withhold sufficient of the purchase price to cover such
15 amounts until the former owner produces a receipt from the
16 Department showing that the amount has been paid or a
17 certificate stating that no amount is due.

18 Further, subdivision (a) of Section 6812 provides
19 that if the purchaser fails to withhold from the purchase
20 price as required, he or she becomes personally liable for
21 the payment of the amount required to be withheld by him
22 or her to the extent of the purchase price valued in
23 money. The liability of the successor extends to amounts
24 incurred with reference to the operation of the business
25 by the -- sorry -- predecessor or any former owner,

1 including the sale thereof, even though not then
2 determined against him or her. And this includes taxes,
3 interest, and penalties. And that's Regulation
4 Section 1702 subdivision(b).

5 Under regulation 1702(c), a purchaser can be
6 released from an obligation to withhold from the purchase
7 price, if the purchaser obtains a clearance certificate
8 from CDTFA stating that no taxes, interest, or penalties
9 are due from a predecessor. The purchaser will also be
10 released if the purchaser makes a written request to the
11 Department for a clearance certificate and the Department
12 does not issue the clearance certificate or mail to the
13 purchaser a notice of the amount of the tax, interest, and
14 penalties that must be paid as a condition of issuing the
15 clearance certificate within 60 days of the latest of the
16 following dates:

17 First, the date the Department receives a request
18 from the purchaser for the clearance; second, the date of
19 the sale of the business or stock of goods; or third, the
20 date the former owner's records are made available for
21 audit. And that's Tax Code Section 6812 subdivisions (b)
22 and (c), also Regulation Section 1702 subdivision (c).

23 Here, there is no evidence of Appellant
24 submitting a tax clearance request with the Department
25 with respect to the September 10th, 2015, sale, other than

1 the aforementioned request submitted by the escrow company
2 that was submitted to the Department by fax on
3 January 11th, 2016. There is also no evidence of the
4 Department ever issuing a tax clearance certificate with
5 respect to the September 10th, 2015, sale.

6 As such, Appellant is liable as a successor
7 because she purchased the business and all of its assets
8 on September 10th, 2015, and a tax clearance certificate
9 was not issued regarding the sale. Appellant contends
10 that she is not liable because the sale was rescinded due
11 to fraud. However, Appellant has not provided any
12 evidence of fraud or that a rescission, in fact, occurred.
13 In fact, Appellant's attorney has stated here today that a
14 rescission did not occur and that Appellant is still the
15 owner of the business and has continued to operate the
16 business since the closing.

17 And under the laws of California, rescission
18 requires the purchased assets to be restored to the
19 seller. And that's Wong v. Stoler, a 2015 case available
20 at 237 Cal.App.4th 1375. However, even if Appellant had
21 shown fraud and a legal right to rescind the contract, the
22 sale of the business to Appellant on September 10th, 2015,
23 still remains a sale for sales and use tax purposes.

24 See business tax law guide annotation 490.0220
25 and 490.0080, each indicating that the sale of business is

1 recognized as a sale for sales tax purposes even when the
2 sales contract is thereafter rescinded. You can see also
3 Business Tax and Law Guide annotations 49 or 490.0080
4 finding that the sale of property under original agreement
5 between seller and the buyer was taxable, even if the
6 original agreement was subsequently rescinded.

7 In other words, even if a rescission of a
8 contract in this matter occurred, it does not change the
9 fact that the business was sold to Appellant under a
10 contract on September 10th, 2015, and the Appellant is
11 thus liable to its tax liabilities as a successor. This
12 conclusion is supported by California case law. As
13 discussed in the supplemental decision at Exhibit A, page
14 9, in the case of Long v. Newlin, the Appellate Court
15 found that although a party to a contract of partnership
16 thereafter allegedly rescinded the partnership contract,
17 such rescission would not be grounds to excuse the
18 rescinding partner from his liability to creditors of the
19 co-partnership which the partnership incurred before the
20 alleged rescission.

21 This conclusion is also supported by the
22 3rd District Court of Appeal's decision in Scollan, which
23 is discussed in the supplemental decision at Exhibit B,
24 page 6. In Scollan a seller sold a buyer a vehicle which
25 the buyer then operated while involved in an accident.

1 And although the buyer validly rescinded the contract for
2 the sale after the accident, the Court of Appeals
3 nevertheless found that the seller did not own the vehicle
4 at the time of the accident and thus, was liable as a
5 successor.

6 In conclusion. The foregoing shows that
7 Appellant is liable as a successor for the business's tax
8 liabilities regardless of whether she could or, in fact,
9 did rescind the purchase agreement. Although we are
10 sympathetic to Appellant's situation, Appellant has not
11 provided a basis that would allow the Department or this
12 panel to grant Appellant's request for relief from her
13 successor liability. As such, we ask that Appellant's
14 appeal be denied.

15 Thank you.

16 JUDGE LONG: Thank you.

17 I'll just turn to my Co-panelists to see if they
18 have any questions for CDTFA?

19 JUDGE STANLEY: No, I do not. Thank you.

20 JUDGE LONG: Judge Aldrich, do you have any
21 questions for CDTFA?

22 JUDGE ALDRICH: Hi. This is Judge Aldrich. No
23 questions. Thank you.

24 JUDGE LONG: Okay. Thank you.

25 I think we are ready to turn Appellant's closing

1 statement.

2 Ms. Sung, you have 5 minutes, and you may begin
3 when you are ready.

4

5 CLOSING STATEMENT

6 MS. SUNG: This is Linda Sung again.

7 So our position remains that the contract was
8 rescinded to the fact that buyer or the Appellant reached
9 out to the seller and requested to rescind the contract.
10 The seller was nonresponsive and -- but the contract
11 remains invalid due to fraud. The fact that the seller
12 did not respond, there's nothing that the Appellant can do
13 in pursuing the contract rescission.

14 Even if the Appellant pursue the seller in court,
15 the first thing -- the first challenge would be serving
16 the seller, finding the seller. Locating and serving the
17 seller the court papers would be challenge because the
18 seller simply just disappeared and never resurfaced again.
19 The Appellant did make an effort to try to locate the
20 seller but was unable to. The agent represented both the
21 seller and the buyer, and the agent also was unable to
22 locate the seller. So there's just no way to complete the
23 rescission and, therefore, the Appellant had to continue
24 and operate the restaurant.

25 The cases cited by the Appeals and also CDTF, it

1 affirms that the sale, whatever that was retained, the
2 goods, was retained by the seller or the buyer. That
3 portion would remain for sales tax purposes, but it's not
4 for successor liability. In this case, the sales tax was
5 incurred or received by the seller. So in that rationale
6 the seller remains liable, not the successor.

7 So that is our position that just based on the
8 case that was cited by CDTFA here and also by Appeals, the
9 case that it was just cited the Scollan case, the minor
10 was the one that purchased the car and tried to rescind
11 the contract. And then so while driving it was involved
12 in an accident but even -- and then rescinded the contract
13 afterwards. So at the time of the accident, the minor was
14 the driver behind the wheel and, therefore, liable on the
15 claim even though the contract was rescinded after.

16 So based on that -- so at the time when the sales
17 tax was incurred and received, it was by the seller. So
18 seller should be responsible for the sales tax that he
19 collected and not the successor in this case. If the
20 Panel would apply that case to this instant case. So
21 again, our position is that the contract was rescinded due
22 to fraud, and there's no contract and, therefore, there's
23 no sales transactions.

24 The Appellant is a victim of fraud, just handed
25 \$230,000 to the seller and wasn't able to get the money

1 back. And that's our position.

2 Thank you.

3 JUDGE LONG: Thank you.

4 Before we turn to CDTFA's final remarks, I
5 believe Judge Stanley has a question for CDTFA.

6 JUDGE STANLEY: Yes. Thank you. This is
7 Judge Stanley.

8 I would like to ask CDTFA to please clarify as
9 Ms. Sung said, whether CDTFA's holding the buyer liable
10 instead of the seller, or CDTFA's position is that they
11 can hold them both liable.

12 MS. DANIELS: It is CDTFA's position that they
13 can both be held liable.

14 JUDGE STANLEY: Thank you.

15 JUDGE LONG: Thank you, Judge Stanley.

16 I'd just like to turn to CDTFA for their final
17 remarks.

18 CDTFA, you may begin when you're ready.

19 MS. SUNG: I'm sorry. Can I have a question?

20 JUDGE LONG: You can ask me a question. However,
21 during the hearing you can't ask CDTFA questions. If you
22 have a question and you'd like to direct it to me, I can
23 ask. CDTFA may be able to clarify based on your question.

24 MS. SUNG: Well, it's kind of a follow-up
25 question to Judge Stanley that I am unaware that the CDTFA

1 ever pursued against the seller for the tax due.

2 JUDGE LONG: I understand. In this case, we're
3 only really discussing purchaser's liability. However,
4 I'm going to allow CDTFA to choose whether they want to
5 clarify that, whether they have also pursued the seller,
6 in their final remarks. Okay.

7 MS. SUNG: Thank you.

8 JUDGE LONG: CDTFA, you may begin when you're
9 ready.

10 MS. DANIELS: Thank you. I'd like to first
11 address your question. I am not privy to what the
12 Department does with other people, parties, and
13 businesses. I'm only given information pertaining to the
14 specific cases which I'm assigned, which is this case
15 against Appellant. So I unfortunately cannot speak to any
16 actions that the Department has taken outside of this
17 case.

18 MS. SUNG: Thank you.

19

20 CLOSING STATEMENT

21 MS. DANIELS: And as far as closing remarks, we
22 would just state that the cases speak for themselves. We
23 believe that they accurately represent the Department's
24 position. And further, it's clear that no rescission was,
25 in fact, executed in this situation as Appellant has

1 remained in possession of the business and has continued
2 to run the business since the sale.

3 Thank you for your time.

4 JUDGE LONG: Thank you.

5 I believe we're ready to conclude the hearing.

6 Are my Co-panelists ready to close this appeal?

7 Judge Stanley?

8 JUDGE STANLEY: Yes.

9 JUDGE LONG: Judge Aldrich?

10 JUDGE ALDRICH: Yes. Thanks.

11 JUDGE LONG: Excellent. Then this case is
12 submitted on today, Friday, February 24th, 2023. The
13 record is now closed.

14 I want to thank everyone for coming in today.
15 The Judges will meet and decide your case later on. We
16 will send you a written opinion of our decision within
17 100 days after the record is closed, which is today.

18 Today's hearing in the Appeal of Qing Xin Zheng
19 is now adjourned. This concludes today's hearings.

20 (Proceedings adjourned at 2:52 p.m.)

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

I have hereunto subscribed my name this 13th day
of March, 2023.

ERNALYN M. ALONZO
HEARING REPORTER