


STATE BOARD OF EQUALIZATION

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October 20, 1993

BURTON W. OLIVER
Executive Director

Ms. P--- S---
 XX --- ---
 ---, CA XXXXX

Re: Liens on Residence to Be Sold
 Account Nos. SR -- XX-XXXXXX
 SR -- XX-XXXXXX

Dear Ms. S---:

The Honorable Brad Sherman has requested that this office respond to your letter to him dated September 22, 1993. In your letter, you requested Mr. Sherman's assistance in convincing the Board's staff that your 50 percent interest in a residence should not be subject to the Board's liens.

Your ex-husband, D--- C---, conducted a business beginning in 1985. After the Board conducted an audit, two determinations were issued against him on July 31, 1990. One determination was issued for the period from July 1, 1985 to September 30, 1988, and the second determination was issued for the period from October 1, 1988 to October 6, 1989. The total amount of the determinations was \$277,721.28.

You were married to Mr. C--- on August 18, 1979 and were separated on February 8, 1988. In the Marital Settlement Agreement which was incorporated into the judgment of dissolution of your marriage, it is stated that you shall have "sole use, possession and control" of the residence through October 6, 1991. The agreement further provided that, unless the parties "make contrary arrangements", the property would be listed for sale after October 7, 1991. You and Mr. C--- would each receive 50 percent of the net proceeds of the sale. The Judgment of Dissolution was entered on January 29, 1990.

On June 14, 1990, an Interspousal Transfer Grant Deed was recorded granting Mr. C---'s interest in the residence to you for no consideration. The Deed was signed on May 25, 1990. Mr. C--- had been presented with the findings of the audit of his business on May 8, 1990.

The Board recorded a nominee lien on July 29, 1991 against the property in which it was stated that you were the nominee of D--- C---.

A nominee lien is an instrument that is recorded against property to allege that the property is held by another, the "nominee", for the benefit and use of the debtor taxpayer. Civil Code section 3439.04 provides that:

"A transfer made or obligation incurred by the debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

"(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

"(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, the debtor:

"(1) Was engaged or was about to engage in business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due."

Civil Code Section 6439.06 provides that a transfer of real property is made "when the transfer is so far perfected that a good faith purchaser of the asset ... cannot acquire an interest in the asset that is superior to the interest of the transferee." (Civ. Code § 3439.06(a)(1).)

The Legislative Committee comment pertaining to this section states that "[p]erfection typically is effected by notice-filing recordation or delivery of unequivocal possession."

There was no requirement in the Marital Settlement Agreement that Mr. C--- transfer his interest in the property to you prior to its intended sale occurring after October 7, 1991. The transfer of Mr. C---'s interest in the property to you over five months after the judgment of dissolution became final and shortly after he was advised of his tax liability must be deemed to be solely for the purpose of preventing the Board's liens from attaching to the property. The nominee lien was properly filed against the property.

Civil Code Section 5120.110(a) provides:

"Except as otherwise provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse

has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.”

Civil Code Section 5120.110(c) provides:

“For purposes of this section, ‘during marriage’ shall not include the period during which the spouses are living separate and apart prior to a judgment for dissolution of marriage or a judgment for legal separation.”

The residence in question is community property (the court has ordered its sale with the net proceeds divided between the parties). The residence was not awarded as either party’s separate property.

A creditor may execute on undivided community property pending its division. (See In re Marriage of Schenck (1991) 228 Cal.App.3d 1474, fn 1.)

Any proceeds of the sale of the property must satisfy the Board’s liens to the extent of Mr. C---’s tax liability accruing up to the date of separation (February 8, 1988) before any proceeds of the sale can be paid to Mr. C--- or to you.

If you have any questions, please contact this office.

Very truly yours,

Thomas Cooke
Staff Counsel

TJC:plh