

Chutzpah on Review

BY HERB FOX

We all know the maxim about pounding the law, the facts and, if necessary, the table. Here, where none of those worked for local developer, **David Grotenhuis**, in his property tax dispute with Santa Barbara County, he pounded one more thing: chutzpah. Unfortunately for Grotenhuis, however, the Court of Appeal wasn't impressed, and said so in a recently published opinion that described his legal theories as "far-fetched."

The facts were not in dispute. Grotenhuis purchased a Padaro Lane parcel in 1994 and built his principal residence there. In 1999, he conveyed title to the property to Grotenhuis Investments, Inc. – a corporation of which Grotenhuis is the sole shareholder. Santa Barbara County then granted to Grotenhuis a homeowner's property tax exemption – even though the Revenue and Taxation Code allows such exemptions only for natural persons. In 2002, Grotenhuis conveyed title to himself in order to refinance, after which he reconveyed title back to the corporation.

In 2004, Grotenhuis sold the Padaro Lane property and purchased a replacement property in Montecito. Title to the Montecito property was also taken in the corporation's name, and Grotenhuis signed a back-dated lease to rent the residence from his corporation.

Grotenhuis then filed with the County a claim to transfer the base year value of the Padaro Lane property to the Montecito property, which would entitle him to a \$24,000-a-year reduction on property taxes. Subject to certain conditions, a homeowner over the age of 55 may sell a principal residence that qualifies for a homeowner's property tax exemption (*R&T* §218), purchase a replacement dwelling of equal or lesser value in the same county, and transfer the property tax basis of the principal residence to the replacement dwelling (*R&T* §69.5, (a).)

The County denied the claim because the corporation, not Grotenhuis personally, was the owner of record of both properties. Grotenhuis then appealed to the Appeals Board, offering "imaginary deeds" that purported to show that he was entitled to the base-year value transfer, even though he was legally a tenant and not the owner of the

properties. When the Appeals Board denied his claim, Grotenhuis filed a tax refund complaint with the Superior Court.

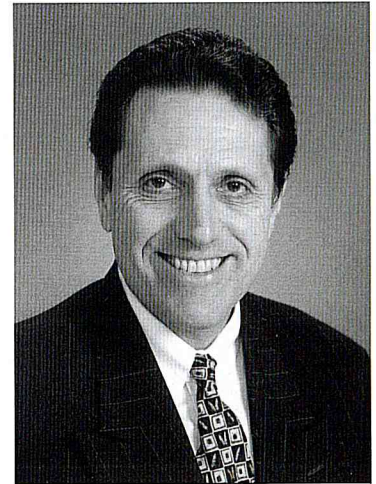
The Superior Court, **Judge Denise DeBellefeuille** presiding, granted the tax refund claim, finding that Grotenhuis was the "alter ego" of his corporation and entitled to a tax refund, but only if Grotenhuis transferred title from his corporation to himself. The County appealed, and in an opinion written by **Justice Ken Yegan**, reversed.

The Court of Appeal first found that Grotenhuis failed to exhaust his administrative remedies because he, and not his corporation, was an applicant in the administrative proceedings, and a party to the tax refund claim. The Court then found that the trial court erred in relying on an "imaginative" corporate alter ego theory to confer standing. The alter ego doctrine arises when a plaintiff claims that the opposing party is unjustly using a corporate form in derogation of the plaintiff's interests. Here instead, Grotenhuis claimed "that the very corporation he formed should have its veil pierced so that he, as an individual, can obtain a tax advantage.... There is no injustice here. Grotenhuis's tax predicament was self-created by Grotenhuis." Justice Yegan noted that Grotenhuis cited no authority to support his claim that the "corporate alter ego theory may be invoked to gain a tax advantage..."

Noting that Grotenhuis elected the corporate form for business reasons unrelated to tax, Justice Yegan found that he "should not be able to weave in and out of corporate status when it suits the business objective of the day."

Grotenhuis also argued that because the County initially – and mistakenly – granted the exemption, it was estopped from transferring the benefit to the replacement property. The Court of Appeal found, however, that Grotenhuis failed to explain "how this estops the County or why he has a right to transfer the tax mistake to the Montecito property."

Addressing Grotenhuis's argument that the County has a duty to transfer the tax basis as a matter of "equity and fairness," Justice Yegan wrote that such a result would



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You are cordially invited
to attend the enrobing ceremony of

DENISE MOTTER

as Commissioner of the
Superior Court of California
County of Santa Barbara

Friday, June 11, 2010
5:30 p.m.

Solvang Veterans' Memorial Building
1745 Mission Drive
Solvang, California

Reception immediately following

Arthur A. Garcia
Presiding Judge
Superior Court of California
County of Santa Barbara

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be a "tax windfall based on far-fetched estoppel theories that lack evidentiary support." It found that Grotenhuis's "web of complex conveyances between various entities which included leasebacks and imaginary deeds may not be used to secure favorable tax treatment not authorized by statute."

The moral? At the Court of Appeal, chutzpah is no substitute for sound legal theory. ■



Court Furlough Days 2010

June 16, 2010



Real Estate/Land Use Section

Addressing Climate Change under CEQA

Speaker:

Kristen T. Castaños is a partner in the Sacramento office of Stoel Rives LLP. Her practice emphasizes land use, the California Environmental Quality Act, the National Environmental Policy Act, water rights, water quality, the Endangered Species Act (state and federal), municipal law and takings pursuant to the Fifth Amendment.

Details of Topic:

Lead agencies and project proponents have been struggling with how to address climate change impacts associated new projects for several years. In 2007, the California Legislature responded by adopting SB 97, requiring the Resources Agency to adopt new CEQA guidelines for the feasible mitigation of greenhouse gas emissions. Those guidelines were adopted in 2009 and became effective in March of this year. Meanwhile, in April of this year, the First District Court of Appeal issued the first published opinion addressing the adequacy of greenhouse gas analysis in an EIR. This presentation will provide an overview of the new CEQA Guidelines and discuss the implications of this recent decision.

MCLE:

1 hour credit (subject to approval)

Date and Time:

June 10, 2010; 12:00 p.m. – 1:15 p.m.

Place:

University Club - 1332 Santa Barbara Street

Menu Selections:

Cobb Salad: Grilled Chicken, Romaine Hearts, Tomatoes, Blue Cheese, Hard Boiled Egg, Bacon, Red Onion, Avocado, House Vinaigrette

The Kobe Burger: Brie Cheese, Avocado, Bacon, Lettuce, Tomato, Grilled Onions, Toasted Brioche Bun

Grilled Greek Vegetarian Panini: Squash, Zucchini, Red Onion, Eggplant, Pesto, Focaccia Bread

Price:

\$30.00 for SBCBA members- \$35.00 for Non-members

Reservation Deadline:

June 7, 2010, Please RSVP (preferably via e-mail) with menu selection and mail check to:

Bret A. Stone (805) 898-9700

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