

MEMORANDUM
FROM THE OFFICE
OF COUNTY COUNSEL

TO: Honorable Board of Supervisors
FROM: Brian Wirtz, Deputy County Counsel 
DATE: June 18, 2013
RE: Request to Reject Petition for Rescission of Sale of Tax-Defaulted Property

ACTION REQUESTED/RECOMMENDED: It is requested that your Board reject a petition submitted by Mr. Patrick Hodges, on behalf of Wesley Holdings Limited ("former owner"), seeking rescission of the tax default sale of real property located at 5125 Grosvenor Circle, Granite Bay, California (APN 460-020-013). This property was sold at a public auction on October 3, 2012 by the Placer County Treasurer-Tax Collector.

BACKGROUND: Secured real property becomes subject to the Tax Collector's power to sell 5 years from the date declared tax defaulted. Before the sale, the Tax Collector is required to notify the owner, and any other parties of interest, of the Tax Collector's power and intent to sell the property for nonpayment of taxes. The R&T further allows an owner or party of interest to redeem the property prior to the sale by paying past due taxes, interest, and penalties. On June 19, 2012, your Board passed Resolution 2012-142 approving a tax-defaulted land sale that included this parcel. Prior to the tax sale, the owner was provided with all legally required notices and information, and the owner discussed the pending sale with the Treasurer-Tax Collector prior to the tax sale date. The property was not redeemed, and on October 3, 2012, the Treasurer-Tax Collector sold the property at public auction.

R&T Section 3701 provides that the sale may be rescinded in some circumstances by the Board of Supervisors with the written consent of the county legal advisor and the purchaser of the property. If the purchaser does not consent to rescission, the Board of Supervisors conducts a hearing prior to making a decision. The statute does not provide for a hearing unless the rescission is recommended by the County Counsel's Office and the purchaser objects.

The purchaser of the property (the current owner) filed an unlawful detainer action in Superior Court against the former owner to compel him to vacate the premises (Call v. Hodges, Placer County Superior Court Case No. MCV-58029), and on May 24, 2013, signed a conditional settlement agreement, which is attached. In that agreement, the former owner (Hodges) stipulated to the fact that the sale of the property "was duly conducted in accordance with law and the plaintiff's [new owner's] title was duly perfected" (See paragraph 1.a. on the second page of the attached Settlement Agreement). In short, Mr. Hodges, in that separate legal action, appears to admit that the tax sale was conducted properly.

In light of the above, the County Counsel's Office recommends the Board of Supervisors reject the petition for rescission, as no irregularities in the sale were found, and the petition to rescind does not contain any specific allegations of impropriety in the tax sale process.

FISCAL IMPACT: There is no fiscal impact to the County from the recommended action.

Attachments: (1) Petition to Rescind; (2) Settlement Agreement, Case No. MCV-58029

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Patrick J. Hodges

May 15, 2013

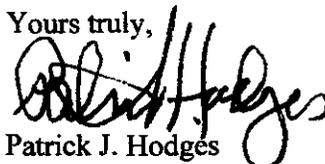
RECEIVED
MAY 20 2013
CLERK OF THE
BOARD OF SUPERVISORS

Placer County Board of Supervisors
Ms. Ann Holman
Clerk of the Board
175 Fulweiler Avenue
Auburn, CA 96603

Dear Sirs of Madams,

Petitioner Patrick J. Hodges respectfully requests that the Placer County Board of Supervisors accept the attached **Petition to Rescind the Sale of a Tax Deed**, and schedule a hearing in which this matter may be heard and considered by the Supervisors. Petitioner discussed the efficacy of the tax-sale with the Placer County Treasurer-Tax Collector and Kirk Uhler, Supervisor of District 4, before the Property was sold; and with Linda Brown, who is the Field Representative for Supervisor Uhler, after the Property was sold.

Yours truly,



Patrick J. Hodges

CC: Brian Wirtz, Deputy County Counsel
Attachments [1]

TO THE BOARD OF SUPERVISORS, COUNTY OF PLACER, CALIFORNIA
PETITION TO RESCIND THE SALE OF A TAX DEED
(Pursuant to Revenue and Taxation Code §3731)

Patrick J. Hodges (the "Petitioner"), is sixty-eight years of age, and the Managing General Partner of Wesley Holdings Limited (hereinafter "WHL"). Petitioner hereby request that the Placer County Board of Supervisors (the "Supervisors"): (i) find that the real property, with the Legal Description set forth below (hereinafter the "Property"), should not have been sold by the Placer County Treasurer-Tax Collector as Item 26 in a Tax-Defaulted Land Sale that took place on October 3, 2012 (the "Tax-Sale"); and that (ii) the Supervisors therefore rescind the Tax Sale of the Property and the Tax Deed recorded on December 5, 2012.

Legal Description of Placer County Parcel Number APN: 460-020-013-000
LOT 47, AS SHOWN ON THE "PLAT OF TRACT NO. 620, GROSVENOR
DOWNS UNIT NO. I", FILED FOR RECORD DECEMBER 3, 1987, IN
BOOK "P" OF MAPS, AT PAGE 40, RECORDS OF SAID COUNTY, AND
AS MODIFIED BY CERTIFICATE OF CORRECTION, RECORDED
NOVEMBER 1, 1988, IN BOOK 3509, PAGE 389.

Background.

Petitioner formed WHL for family estate planning purposes on August 29, 2000. Petitioner thereafter invested more than \$810,000 of his own funds in WHL, and with no real estate loans, so that WHL could purchase the Property on December 12, 2001 and make certain improvements to the Property. In consideration for Petitioner's investments, WHL granted Petitioner an Agreement for Equitable Servitude that touches and concerns the Property (the "Servitude" as set forth in the first Attachment).

Petitioner believes, and therefore asserts that, the Tax Sale was irregular because of facts and circumstances that include, but may not be limited to, the following considerations:

1. The Property has been Petitioner's only residence since it was purchased by WHL on December 12, 2001 (please see the second Attachment which is a Declaration of Julie Pitel);
2. Petitioner has consistently lived in, and made business offices for multi-state companies on, the Property and maintained the premises from his own funds as set forth in the Servitude;
3. The person who purchased a Tax Deed to the Property in the Tax Sale should have, but did not, know that the Property was and is encumbered by the Servitude;

4. Petitioner is and was protected from property tax default by the Property Tax Assistance for Senior Citizens, Blind or Disabled Persons Act, and subsequent legislation; and
5. Before the Tax Sale of the Property, Petitioner met with (i) the Placer County Treasurer - Tax Collector in her offices in Auburn, California and was told that she held the belief that WHL was an investment company, and that Petitioner had not and did not live on the Property; and (ii) Supervisor Kirk Uhler who could find no pertinent reason to suspend or delay the Tax Sale.

Petitioner alleges that to the best of his information and belief: (i) the Property has not been transferred or conveyed by the Purchaser to a bona fide (subsequent) purchaser for value; and (ii) The Property has not become subject to a bona fide encumbrance for value that was reordered or entered into subsequent to the recordation of the Tax Deed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated May 15, 2013

Petitioner *Patrick J. Hodges*
Patrick J. Hodges

AGREEMENT FOR EQUITABLE SERVITUDE

This AGREEMENT FOR EQUITABLE SERVITUDE is made and entered into on this 12th day of December 2001 by and between Wesley Holdings Limited, a General Partnership (hereinafter "WHL"), and Patrick J. Hodges, an individual (hereinafter "HODGES"). WHL and Hodges may hereinafter be referred to as a "Party" or the "Parties".

RECITALS

WHEREAS WHL wishes to purchase real property that bears a California Assessor's Parcel Number of 460-020-013-000, and a street address of 5125 Grosvenor Circle, Granite Bay, California 95746 (hereinafter the "Grosvenor Property"); and

WHEREAS HODGES wishes to make an investment in WHL so that WHL may purchase the Grosvenor Property.

WITNESSETH

In consideration for the foregoing Recitals, and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT shall mean this Agreement for Equitable Servitude.

HODGES hereby agrees to transfer \$600,310.23 of his personal funds (the "Grosvenor Investment") to a Chicago Title Company escrow account on December 12, 2001.

WHL agrees to use the Grosvenor Investment to purchase and thereby take good title to the Grosvenor Property in a Chicago Title escrow closing on December 12, 2001.

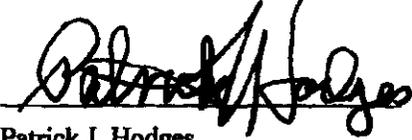
WHL and HODGES agree that HODGES may from time to time make addition investments in WHL for the purpose of improving the Grosvenor Property, and for payment of taxes and other costs of ownership of the Grosvenor Property.

In consideration for the Grosvenor Investment, and such other investments as HODGES may make under this AGREEMENT, WHL hereby grants HODGES, his heirs, assigns and successors, the express right to live in the dwelling and on the land of the Grosvenor Property.

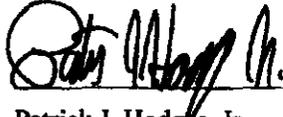
It is the intent of the Parties that the benefits of the equitable servitude established in this AGREEMENT include, but may not be limited to, the following: (i) the servitude is a covenant that touches and concerns the Grosvenor Property land; (ii) the servitude shall be enforceable against any assignee of or successor to WHL in its ownership of the Grosvenor Property; and (iii) the benefits granted HODGES hereunder shall remain in full force for perpetuity without regard to his willingness or ability to provide additional cash investments into WHL, pay any taxes, or provide for other of costs of ownership of the Grosvenor Property. It is the intent of the Parties that WHL bear the responsibility for taxes and other costs for the Grosvenor Property.

IN WITNESS WHEREOF, this AGREEMENT FOR EQUITABLE SERVITUDE has been entered into and executed as of the date first set forth above.

WESLEY HOLDINGS LIMITED



Patrick J. Hodges
In his capacity as an individual



Patrick J. Hodges, Jr.
Partner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

CASE NO. MCV 58029 CASE NAME: Garrett Cell v Patrick Hodges

Plaintiff / Petitioner present not present Represented by attorney Robert Surlain
Defendant / Respondent present not present Represented by attorney NONE

THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

Refer to attached Settlement Agreement,
incorporated herein by this reference.
The Settlement Agreement is titled
"Agreement For Entry of Judgment and
Writ of Possession"

FILED
Superior Court of California
County of Placer
MAY 24 2013
Jake Charters
Executive Officer & Clerk
By: S. Festerow, Deputy

Matter continued to _____ in department _____ at _____
Rayson Attorney for plaintiff / petitioner

Attorney for defendant / respondent

SIGNATURE OF PARTIES

We have read the entire stipulation and agreement. We understand it fully and request the Court to make our stipulation and agreement an order of the court. We understand that willful failure to comply with the provisions of this order will be a contempt of court and may be punished by fine and imprisonment. We waive all further notice of this order.

Garrett Cell
Plaintiff / petitioner

Patrick Hodges, Managing GP WHL
Defendant / respondent

IT IS SO ORDERED this 24th day of May, 2013

[Signature]
Judge of the Superior Court

Agreement For Entry of Judgment and Writ of Possession

Garrett Call (plaintiff), Patrick
Hodges (defendant) and Wesley Holdings
Limited, (WHL) agree as follows:

1. Plaintiff, defendant and WHL stipulate to entry of judgment in the action in the form attached hereto ^{as Exhibit 1} and the issuance of a writ of possession against defendant and WHL restoring possession of the property described in the complaint to π . In support of the judgment, plaintiff, defendant and WHL agree to the following facts:

- a. The property described in the complaint was sold at a tax sale to ~~plaintiff~~ that was duly conducted in accordance with law and plaintiff's title was duly perfected.

- b. Defendant was served with a three day notice on March 26, 2013^{24/8}

and the three days of notice expired
on March 29, 2013

c. Defendant remain in possession
of the ~~same~~ property.

2. The parties agree entry of judgment
^{shall} ~~may~~ be stayed until such time
as the Placer County Board of Supervisors
acts upon defendant's application
to rescind the tax sale. In the
event the Board of Supervisors
denies defendant's application, then
upon filing a certified copy of the
denial order a judgment
and Writ of possession may be
immediately entered. In the
event the Board of Supervisors
approves defendant's application,
then this action shall be
dismissed and each party shall
be responsible for his own attorney's
fees and costs.

3. If a judgment is entered, the judgment
shall include hold over
damages beginning on March 29, 2013 249
0.2

and continuing until the date of entry of judgment at the daily rate of \$95.00, plus costs ~~as proven by a~~ costs → in the amount of \$525.00

4. Hodges (defendant) and WHL agree that plaintiff may recover his damages and ~~costs~~ ^{attorney's fees} costs by from any excess sale proceeds payable to defendant or WHL by Placer County, once the excess sales proceeds are released by Placer County. Defendant and WHL agree not to contest the claim filed by plaintiff to such damages and costs, and to fully consent to such payment.

5. The parties ~~agree~~ further agree to entry of a Statement of Decision in the form of Exhibit 2, attached.

6. This agreement is enforceable in accordance with Code of Civil Procedure Section 664.6 and the court retains jurisdiction to do so.

7. WHL agrees all partners of WHL, including Patrick Hodges Jr will vacate possession of the property under the judgment and the Writ may name such partners as debtors

8. Defendant and WHL will leave the property in a clean and orderly condition, free of debris, trash, garbage and all personal belongings.

Dated: May 24, 2013

James Lee

Garrett Call

Patrick Hodges

Patrick Hodges

Patrick Hodges

Wesley Holdings Ltd.

by Patrick Hodges
Managing General Partner

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): ROBERT F. SINCLAIR (State Bar # 79193) SINCLAIR WILSON BALDO & CHAMBERLAIN 2390 Professional Drive Roseville, CA 95661 TELEPHONE NO.: (916) 783-5281 FAX NO. (Optional): (916) 783-5232 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): GARRETT M. CALL, Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER STREET ADDRESS: 10820 Justice Center Drive MAILING ADDRESS: P. O. Box 619072 CITY AND ZIP CODE: Roseville 95678 BRANCH NAME:	
PLAINTIFF: GARRETT M. CALL DEFENDANT: PATRICK HODGES, et al.	
JUDGMENT—UNLAWFUL DETAINER <input type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input checked="" type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> Possession Only <input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER: <div style="text-align: center; font-size: 1.2em;">MCV-58029</div>

JUDGMENT

1. **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
 - e. **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).

2. **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time): **May 24, 2013 -- 8:30 a.m.**
 before (name of judicial officer):

 - b. Appearances by:

<input checked="" type="checkbox"/> Plaintiff (name each): GARRETT M. CALL	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) Robert F. Sinclair (2)
<input type="checkbox"/> Continued on Attachment 2b (form MC-025). <input checked="" type="checkbox"/> Defendant (name each): PATRICK HODGES	<input type="checkbox"/> Defendant's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 2b (form MC-025).	

 - c. Defendant did not appear at trial. Defendant was properly served with notice of trial.

 - d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

Ex 1

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PLAINTIFF: GARRETT M. CALL	CASE NUMBER:
DEFENDANT: PATRICK HODGES, et al.	MCV-58029

JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

3. **Parties.** Judgment is

- a. for plaintiff (name each):
GARRETT M. CALL
and against defendant (name each):
PATRICK HODGES
 Continued on Attachment 3a (form MC-025).
- b. for defendant (name each):

4. Plaintiff Defendant is entitled to possession of the premises located at (street address, apartment, city, and county):
5125 Grosvenor Circle, Granite Bay, Placer County, California 95746

5. Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

6. **Amount and terms of judgment**

a. Defendant named in item 3a above must pay plaintiff on the complaint:

(1)	<input type="checkbox"/> Past-due rent	\$	
(2)	<input checked="" type="checkbox"/> Holdover damages	\$	5,320.00
(3)	<input type="checkbox"/> Attorney fees	\$	
(4)	<input checked="" type="checkbox"/> Costs	\$	525.00
(5)	<input type="checkbox"/> Other (specify):	\$	
(6) TOTAL JUDGMENT		\$	5,845.00

b. Plaintiff is to receive nothing from defendant named in item 3b.
 Defendant named in item 3b is to recover costs: \$
 and attorney fees: \$

Pursuant to Settlement Agreement - To be inserted at time of entry of Judgment.

c. The rental agreement is canceled. The lease is forfeited.

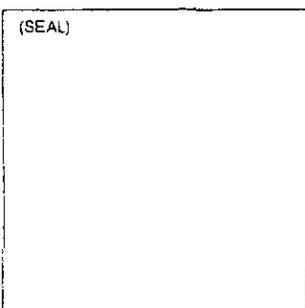
7. **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in Judgment—Unlawful Detainer Attachment (form UD-110S), which is attached.

8. **Other (specify):**

Continued on Attachment 8 (form MC-025).

Date: _____
JUDICIAL OFFICER

Date: Clerk, by _____, Deputy



CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date: _____

Clerk, by _____, Deputy

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1 SINCLAIR WILSON
BALDO & CHAMBERLAIN
2 ROBERT F. SINCLAIR (SBN-79193)
JOHN M. SINCLAIR (SBN-146322)
3 2390 Professional Drive
Roseville, CA 95661
4 Telephone: (916) 783-5281
Facsimile: (916) 783-5232

5 Attorneys for Plaintiff
6 GARRETT M. CALL

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF PLACER

11
12 GARRETT M. CALL,

13 Plaintiffs,

14 v.

15 PATRICK HODGES; and DOES 1
through 25, inclusive,

16 Defendants.
17

CASE NO. MCV-58029

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STATEMENT OF DECISION

18 This matter came on regularly for trial before the court, sitting without a jury, on
19 May 24, 2013, the Honorable Michael W. Jones, judge presiding. Plaintiff was
20 personally present and represented by his attorney of record, Sinclair Wilson Baldo &
21 Chamberlain, by Robert F. Sinclair. Defendant was personally present, but not
22 represented by counsel. The parties presented evidence in support of the allegations
23 stated in the pleadings, after the receipt of which the matter was submitted for decision.
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Exhibit 2

1 Plaintiff timely requested a Statement of Decision pursuant to Code of Civil
2 Procedure section 632. Pursuant to said request, the court enters the following
3 Statement of Decision:

4 1. Plaintiff, Garrett M. Call, acquired ownership of the real property and
5 improvements commonly described as 5125 Grosvenor Circle, Granite Bay, Placer
6 County, California, ("Property") by execution and delivery of a Tax Deed To Purchaser
7 Of Tax Defaulted Property ("Tax Deed") executed by Jenine Windeshausen, Tax
8 Collector of the County of Placer, on December 5, 2012, and recorded on December 5,
9 2012 as Document no. 2012-0116455-00 in the official records of Placer County. The
10 Property is more particularly described on Exhibit 1 to this Statement of Decision, which
11 is incorporated herein by this reference.

12 2. The official actions of the County of Placer prior to delivery of the Tax
13 Deed, including but not limited to the declarations of default in the payment of taxes,
14 the notification of amounts necessary to redeem the Property, the notification of the date
15 and time of sale and the conduct of the sale procedures were all duly performed and
16 properly conducted in accordance with all applicable provisions of California law.

17 3. The Tax Deed was duly recorded and plaintiff's ownership of the Property
18 has been duly perfected.

19 4. After plaintiff's title to the Property was duly perfected, defendant was in
20 possession of the Property.

21 5. Defendant was served with a Three Day Notice To Quit ("Three Day
22 Notice") on March 26, 2013. The Three Day Notice complied with the requirements of
23 California law, including the provisions of Code of Civil Procedure section 1161a.

24 6. Defendant failed to vacate and surrender possession of the Property
25 within the period specified in the Three Day Notice.

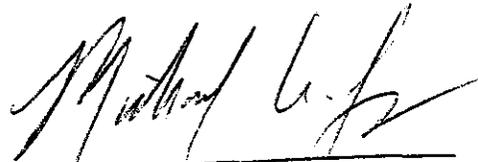
EXHIBIT 1

5125 Grosvenor Circle
Granite Bay, CA 95746

LOT 47, AS SHOWN ON THE "PLAT OF TRACT NO. 620, GROSVENOR
DOWNS UNIT NO. 1", FILED FOR RECORD DECEMBER 3, 1987, IN BOOK "P"
OF MAPS, AT PAGE 40, RECORDS OF SAID COUNTY, AND AS MODIFIED BY
CERTIFICATE OF CORRECTION, RECORDED NOVEMBER 1, 1988, IN BOOK
3509, PAGE 389.

Assessor's Parcel No: 460-020-013-000

May 24, 2013



Placer Superior Court
Judge MICHAEL W. TONET