

Digest: Bonander v. Town of Tiburon

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Opinion by Kennard, J., expressing the unanimous view of the court.

Issue

When a property owner brings a lawsuit that contests an individual assessment levied under the Municipal Improvement Act of 1913¹ by challenging the assessment for failing to comply with article XIII D of the California Constitution,² must the property owner comply with the requirements governing validation proceedings brought under California Code of Civil Procedure sections 860 through 870.5?

Facts

Several property owners in the Town of Tiburon in Marin County, California petitioned the city council to create an assessment district in order to install underground utility wires carrying electricity, telephone, and other cable services, replacing overhead wires and poles.³

Subsequently, an engineer submitted a report that identified the new underground electrical, telephone, and cable facilities as the special benefit that would potentially be gained by property owners of the 221 parcels located in the proposed district.⁴ To determine the special benefit conferred on each affected property owner, the report assigned points based on three categories: (1) aesthetic benefit from removal of poles and overhead wires, (2) improved safety, and (3) greater service reliability.⁵

The city council sent notices of a public hearing and voting ballots to the owners of the affected parcels and 71 percent of the affected property owners voted in favor of the project.⁶ The Town then ordered and received a final engineer's report, and, based on

¹ See CAL. STS. & HIGH CODE §§ 10000–10706 (West 2005).

² CAL. CONST. art. XIII D, § 4.

³ *Bonander v. Town of Tiburon*, 208 P.3d 146, 148 (Cal. 2009).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

that report, the city council voted unanimously to approve the project and the assessments.⁷

Plaintiffs are affected property owners who filed a lawsuit asking the court for declaratory and injunctive relief by alleging that the assessment violated article XIII D of the state Constitution because the apportionment method used by the district resulted in assessments against plaintiffs' parcels that exceeded the special benefit those parcels would receive.⁸ According to plaintiffs, their property would receive no aesthetic benefit at all and little, if any, safety benefit, because the utility poles and overhead wires would remain even after the project was completed.⁹

Plaintiffs then served the summons and complaint on the city council, but they did not serve the owners of the other affected parcels within the district.¹⁰ The city council answered the complaint, alleging that plaintiffs' claims were barred as untimely under Streets and Highways Code section 10400 and, that plaintiffs had failed to publish notice in a local newspaper or file proof of publication within 60 days of the complaint's filing date, as required by California Code of Civil Procedure sections 861 and 863.¹¹

Plaintiffs then applied for an order amending the caption on their summons to include "all interested persons," in an attempt to bring the summons into compliance with Code of Civil Procedure section 863.¹² The trial court granted plaintiffs' application and plaintiffs thereafter published the amended summons in a local newspaper, once per week, for four successive weeks.¹³ Plaintiffs finally filed proof of publication of the amended summons 85 days after the original complaint was filed.¹⁴

As a result, the city council filed a motion to dismiss the lawsuit because plaintiffs had failed to comply with Code of Civil Procedure sections 861, 861.1, and 863, which require that the summons—in actions governed by those sections—be directed to "all persons interested" and that proof of publication must be

⁷ *Id.*

⁸ *Id.* at 148–49.

⁹ *Id.* at 149.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

filed within “60 days from the filing of the complaint.”¹⁵ Plaintiffs missed the statutory deadline by 25 days.¹⁶

The trial court ruled on the motion and ordered dismissal of the complaint because the plaintiffs’ action was a validation proceeding “subject to special statutory procedures codified in . . . [the] Code of Civil Procedure.”¹⁷ The trial court’s ruling was based on the fact that plaintiffs had failed to file proof of service by publication within the requisite 60 days from the filing of the complaint, and because they had failed to show good cause for their delay.¹⁸ The California Court of Appeal affirmed the trial court’s ruling.¹⁹

Analysis

The California Supreme Court relied heavily on the intent of the legislature when it enacted and amended the various statutes at issue in this case and on the historical treatment of similar cases.²⁰ The main point of contention for the court was the distinction between property owners *contesting* a proposed assessment and city government officials or contractors seeking to *validate* the proposed assessments.²¹ The court started by reviewing the history of such actions and cited several instances where property owners successfully contested the validity of similar assessments.²² The court noted that, historically, property owners could petition the superior court for a writ of review in order to contest the validity of the proceedings that led to the assessment.²³ The court also cited other cases where property owners brought actions for declaratory or injunctive relief.²⁴ In addition, the court cited several instances where property owners could challenge the validity of an assessment as a defense in an action brought to enforce the assessment.²⁵ Finally, the court noted that there have been several cases where the “legislative act authorizing formation of the assessment

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 149–50.

¹⁹ *Id.* at 150.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* (citing *Miller & Lux v. Bd. of Supervisors*, 208 P. 304 (Cal. 1922); *Imperial Water Co. v. Supervisors*, 120 P. 780 (Cal. 1912); *Peterson v. Bd. of Supervisors*, 225 P. 28 (Cal. 1924)).

²⁴ *Id.* (citing *Imperial Land Co. v. Imperial Irrigation Dist.*, 161 P. 116 (Cal. 1916); *Imperial Land Co. v. Imperial Irrigation Dist.*, 161 P. 113 (Cal. 1916); *Southwick v. Santa Barbara*, 109 P. 610 (Cal. 1910)).

²⁵ *Id.* (citing *Swamp Land etc. Dist. 341 v. Blumenberg*, 106 P. 392 (Cal. 1909); *Reclamation Dist. 531 v. Phillips*, 41 P. 335 (Cal. 1895)).

district expressly conferred on property owners the right to bring actions challenging their individual assessments.”²⁶

The court then proceeded to review the history and evolution of the statutes implicated by this lawsuit. First, the court looked at the Improvement Act of 1911 which allowed city governments to undertake street improvement projects and to fund those projects by issuing municipal bonds.²⁷ Next, the court looked at a critical component of its analysis, the Municipal Improvement Act of 1913 which allowed cities to construct water, electric, gas, lighting and other infrastructure projects funded primarily by special assessments on those properties that would benefit from the projects.²⁸ The court then noted that in 1937 the California State Legislature amended the Improvement Act of 1911 to allow city governments and contractors hired to work on projects funded through the Improvement Act of 1911 to file validating actions which would “determine the validity of” the proposed projects and the requisite assessments imposed in order to fund those projects.²⁹

The court followed the progression of these two legislative acts to their modern day iterations. Of importance, the court noted that the legislature amended Streets and Highways Code section 10601 in 1961 by reaffirming the fact that only local city governments or a contractor could bring a validation lawsuit and that “the action authorized by [section 10601] shall not be brought by any person other than the legislative body or the contractor.”³⁰ The court explained that the legislature intended this amendment as a way of expressing clear intent to limit validation actions to those brought by local city governments or contractors in order to test the veracity of their proposed assessments before the work on the project(s) started.³¹

However, the court went on to point out an important distinction underlying this analysis. First, Streets and Highways Code section 10601 was intended to govern validation actions which were distinct both in nature and in outcome from the contest action at the heart of this particular lawsuit.³² The court stated that lawsuits to “contest assessments continue to be governed solely by [Streets and Highways Code] section 10400, as they have been since 1913, and therefore they are not subject

²⁶ *Id.* at 151.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 152–53.

³¹ *Id.* at 153.

³² *Id.*

to the general validation procedure, and in particular they are not subject to the requirement of newspaper publication.”³³ As a result, the court concluded that—unlike actions under section 10601 which are intended to validate an assessment and are primarily driven by a desire to enforce the assessments—actions under section 10400 emanate from a desire to *invalidate* the assessment and are motivated by an entirely divergent goal, the property owner’s desire to avoid having to pay what he or she considers a non-beneficial assessment forced upon the property.³⁴

The court also concluded that publication of the summons in a newspaper was not required under California Code of Civil Procedure sections 860 through 870.5 because those sections were intended to govern validation actions where notice to all the affected parties was required in order to give each affected property owner an opportunity to challenge the validity of the proposed assessment.³⁵ In addition, the court stated that the 60-day time limitation similarly did not apply in contest actions because this time limitation was a function of the same sections of the Code of Civil Procedure that govern general validation actions initiated by city governments or private contractors.³⁶

Holding

The court held that the general validation procedure found in California Code of Civil Procedure sections 860 through 870.5 do not apply when the property owners are contesting individual assessments levied under the Municipal Improvement Act of 1913.³⁷ As a result, the court ordered both the California Court of Appeal and the trial court to reverse their respective judgments.³⁸

Legal Significance

This decision retains the rights of California property owners to challenge the imposition of special assessments on their property. The decision is important in several ways. The court’s high degree of deference to the intent of the state legislature implies that the court feels this is an area of law where regulatory power should be reserved to the legislature. However, the case is also important because the court delineates a carefully crafted decision that upholds the protection of property

³³ *Id.*

³⁴ *Id.* at 154.

³⁵ *Id.* at 154–55.

³⁶ *Id.*

³⁷ *Id.* at 155.

³⁸ *Id.*

owners while maintaining deference to the legislature, and while retaining the ability of local city governments and contractors to utilize the validating procedures when enacting special assessments for infrastructure and other important public works projects.