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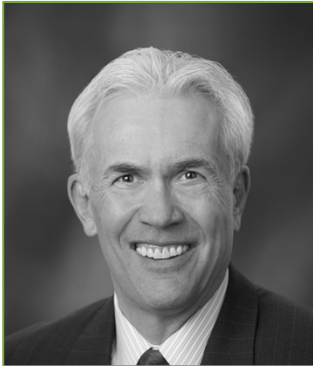
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# A LANDMARK COURT DECISION

- ▶ Sam Sharp
  - ▶ D.A. Davidson
  - ▶ Steve Erickson
  - ▶ Boulder Creek Neighborhoods
  - ▶ Rick Kron
  - ▶ Spencer Fane LLP
  - ▶ Dee Wisor
  - ▶ Butler Snow LLP
- 


# JUST THE FACTS

- ▶ *Landmark Towers Association, Inc. v. UMB Bank, N.A.*, 2016 COA 61, 14CA2099, 14CA2463, April 21, 2016.
- ▶ Marin Metropolitan District formed to finance infrastructure for development in Greenwood Village.
  - European Village.
- ▶ Developer included adjacent Landmark Towers condo project to make numbers work.


# JUST THE FACTS

- ▶ To qualify electors for the District organizational and TABOR election, developer entered into purchase and sale contracts with 6 individuals.
  - The contracts were for the purchase of an undivided 1/20th interest in a 10 x 10 foot parcel.
  - The contracts obligated the organizers to pay taxes on the parcel.
- ▶ Developer entered into purchase and sale contracts (which did not obligate the buyers to pay taxes until closing) for the sale of condos with about 130 buyers.

# JUST THE FACTS

- ▶ On November 6, 2007, election was held.
    - The 6 voters approved the organization of the District, the initial board of directors and the issuance of debt and the levy of taxes.
  - ▶ No notice of the District or the election was provided to the contract purchasers of the condos.
    - TABOR requires notice of election to be mailed to all electors.
  - ▶ The closings of the sale of the condos occurred after the election.
- 

# JUST THE FACTS

- ▶ In 2008, the District issued \$30,485,000 of bonds.
  - ▶ About \$8,000,000 was initially released for use by the District but a portion of the proceeds were misused by the Developer.
  - ▶ The condos received no benefit from the bond issue.
- 



# JUST THE FACTS

- ▶ The condo owners association brought an action to recover taxes paid during the last four years and to enjoin the levy of future taxes.
- ▶ Judge Marshall in Arapahoe County ruled that the taxes levied by the District on the condos were illegal since the property was not benefitted by the bond issue.
  - *Myles Salt Company v. Board of Commissioners of the Iberia & St. Mary Drainage District*, 239 U.S. 478, 36 S.Ct. 204(1916)

- “Hard cases, it has frequently been observed, are apt to introduce bad law.”
  - Judge Robert Rolfe in the case of *Winterbottom v Wright* 20 Meeson & Welsby 109 (Exchequer of Pleas [England] 1842).


# THE HOLDINGS

- ▶ The contracts which the developer entered into with the 6 individuals to qualify them to vote at the election were sham contracts and thus insufficient to qualify them to vote.
  - the parcel size was so small as to not have any beneficial use;
  - the obligation to pay taxes was illusory since the contracts waived any right to seek specific performance or to seek damages;
  - the organizers agreed that no one would have to pay taxes;

# THE HOLDINGS

- ▶ The contracts which the developer entered into with the 6 individuals to qualify them to vote at the election were sham contracts and thus insufficient to qualify them to vote.
  - none of the organizers paid the down payment;
  - none of the organizers paid property taxes; and
  - none of the contracts were recorded.
    - Are most purchase and sale contracts recorded?

# THE HOLDINGS

- ▶ The contracts with the 130 condo purchasers qualified them to vote because the property taxes for the year were pro rated at closing.
  - ▶ The election was not validly held because ineligible voters participated and the constitutionally required notice of the election was not given to the condo purchasers.
- 

# THE HOLDINGS

- ▶ Statutes of limitation in 1-11-213(4) and 11-57-212, C.R.S. did not bar action.
  - COA held this was a substantive TABOR violation which could not be barred.
- ▶ Even if statute of limitations applied, COA held the doctrine of equitable tolling would allow Landmark's claims to proceed.

*Marin Metro. Dist. v. Landmark Towers Ass'n, Inc.*, 2014 COA 40, 13CA0211, 13CA0751

- ▶ Another division of COA held it was precluded from setting aside the order for creation of the District by 32-1-305(7).
  - If an order is entered declaring the special district organized, such order shall be deemed final, and no appeal or other remedy shall lie therefrom.
  - AG could bring *quo warranto* action within 30 days.