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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FRANK MAYER et al., Plaintiffs and Respondents, v. L & B REAL ESTATE, Defendant and Appellant.	B180540 (Los Angeles County Super. Ct. No. BC283231)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara A. Meiers, Judge. Reversed.

Ezer, Williamson & Brown and Mitchel J. Ezer for Defendant and Appellant.

Steven W. Weinshenk and Edward Ovetsky for Plaintiffs and Respondents.

This appeal arises out of a quiet title action by plaintiffs and respondents Frank and Josie Mayer to restore their joint ownership of a commercial property that was sold by defendant Los Angeles County Treasurer and Tax Collector ("Tax Collector")[1] to defendant and appellant L & B Real Estate ("L&B") for unpaid property taxes. The trial court ruled that the Tax Collector gave constitutionally defective notice of the tax delinquency and the tax sale, and that it and L&B were estopped from relying on the one-year statute of limitations that would have otherwise barred the Mayer's action. Accordingly, it quieted title in favor of the Mayers, and enjoined and restrained L&B from asserting any interest in, or collecting any rent for, the subject property. The trial court credited L&B for its $25,753.52 tax auction payment, plus its $803.81 property tax payment, but offset that amount against the $43,200 that L&B had received in rental payments, leaving $17,446.48 due to the Mayers.[2] Finally, the trial court found that the Mayers made a timely claim for the $18,278.87 in excess proceeds from the tax sale and ordered that the Tax Collector pay that money to the Mayers.[3]

We reverse the judgment. As the undisputed facts show, the Mayers had constructive and actual notice of the tax sale, providing them with ample time to comply with the one-year limitations period. As such, we do not reach the question of whether the Tax Collector satisfied its due process obligations regarding presale notice.

STATEMENT OF FACTS

On December 16, 1991, the Mayers bought the subject property ("Parcel 44"), which was part and parcel of a larger commercial property located on 2601 South La

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[1] The Tax Collector is not a party to this appeal.

[2] The parties entered into a stipulation whereby L&B paid the $17,446.48 award to the Mayers without waiving its appellate rights.

[3] The parties do not contest this aspect of the trial court's judgment.

Brea Avenue (the "La Brea property"), receiving title to the entire property as joint tenants. The La Brea property was originally comprised of three lots. Lot numbers 508 and 509 together comprised Assessor's Parcel Number (APN) 5049 013 047 ("Parcel 47"). Parcel 44 (APN 5049 013 044), the subject of the quiet title action, comprised the balance of the La Brea property. In 1989, Parcels 47 and 44 were owned by Henry S. and Chong I. Moon, who conveyed them together as a single property to Bastian Development. The La Brea property was then conveyed to Norman and Armand Gabay, and from the Gabays to the Mayers in 1991.

At the time of the Mayer's acquisition, the La Brea property was leased to an auto parts store that used the entire property to conduct its business. The store itself was located on Parcel 47, with the adjacent Parcel 44—a triangular-shaped island—used as a driveway and for signage. The auto parts store became the Mayers' tenant and paid them monthly rent.

The Mayers received annual property tax bills, which they timely paid. However, unbeknownst to the Mayers, those bills were exclusively for Parcel 47. The Los Angeles County Assessor had failed to recognize that the Moons had consolidated Parcels 44 and 47, and that the La Brea property had eventually been conveyed to the Mayers in its entirety, even though all those transactions had been duly recorded. More specifically, as of 1991 (and until October 28, 2001, when the error was finally corrected), the Assessor's records mistakenly reflected that the Moons owned Parcel 44, and that only Parcel 47 was owned by the Mayers. As a result, because the Tax Collector used the Assessor's records for purposes of property tax assessment, the tax bills for Parcel 47 went to the Mayers, while the bills for Parcel 44 went to the Moons.

Not surprisingly, the Tax Collector received no payment on the Parcel 44 tax bill for fiscal year 1992-1993, and the Mayers received no notices of delinquency or default. On July 19, 1998, in preparation for a potential tax sale, however, a delinquency notice

recorded as to that property.[4] In 2001, in the course of preparing to send out the annual tax sale auction notices, the Tax Collector discovered that Parcel 44's owner of record, according to official property records, differed from that of the named assessees. That discrepancy, referred to as an Assessor's Title Difference or "ATD," caused the Tax Collector to investigate. In the course of that investigation, the Tax Collector discovered its error. A title report on April 2001 informed the Tax Collector that the Moons had been erroneously designated as the assessees.

Nevertheless, the Tax Collector made no effort to inform the Mayers of the error. From the Tax Collector's perspective, the outstanding tax delinquency for Parcel 44 warranted a tax sale, regardless of whether tax bills or delinquency notices had been received by the property owner. Further, the tax sale could proceed as long as all persons having an interest in the property were given statutory notice of the sale and an opportunity to redeem.

Accordingly, rather than pull Parcel 44 from the list of properties to be sold at auction, the Tax Collector sent the Mayers an "Official Notice of Auction" on approximately June 20, 2001, referencing the subject property as APN 5049 013 044, with the description, "POR OF VAC ST ADJ LOT 509 TR NO 1446 ON E." The notice informed the Mayers that they "may have an interest in the property," which was to be auctioned on August 6 or 7 of that year. The assessee was identified as Henry and Chong Moon. The notice gave the Mayers two options: If they had no interest in the property, they were to write "WRONG PARTY, RETURN TO SENDER" on the envelope and send it back. If they did have an interest, they could prevent the proposed sale by redeeming the property according to the schedule on the notice. However, the right of redemption would terminate at 5:00 p.m. on the last business day before the auction.

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[4] The recorded Notice of Power to Sell Tax-Defaulted Property indicated $231.74 in delinquent taxes related to the fiscal year 1992-1993, and that the subject property was assessed to the Moons. It described the property by Assessor's Parcel Number (APN) 5049 013 044 and, "POR OF VAC ST ADJ LOT 509 TR NO 1446 ON E."

The notice's reverse side contained a statement of "RIGHTS OF PARTIES OF INTEREST AFTER SALE." For one year after the sale, a non-redeeming party could make a claim for the sale proceeds exceeding the assessment liens and costs. The reverse side also instructed that if the recipients had "any questions concerning redemption, the proposed sale or the property, or your right to claim excess proceeds," they could visit or write to the Secured Property Tax Division of the County Treasurer and Tax Collector.

The Mayers compared the APN in the notice with that on their tax bills for the La Brea property and found they were different—5049 013 044 for the property in the notice and 5049 013 047 for the property on the tax bills. They had not heard of the identified assessees, the Moons. Mrs. Mayer compared the notice's property description with that on the deed to the La Brea property and found they did not match. The deed's description was more than a page long and neither referenced La Brea Boulevard nor included Parcel 44's APN.[5]

Seeking assistance, Mr. Mayer called the Assessor's office to find out the address of the property referenced in the notice, but was told they did not know.[6] Concluding the notice concerned a different property and had been sent to him in error, Mr. Mayer "followed the instructions" in the notice and mailed it back.

On approximately November 2, 2001, the Mayers received a Notice of Excess Proceeds from the Tax Collector, notifying them that the property designated APN 5049 013 044 had been sold at auction on August 6, 2001, and that the deed to the purchaser had been recorded on October 15, 2001. For the first time, the Mayers were designated as the assessees. They were given one year to apply for the auction's excess proceeds. Finally, the notice identified Deputy Tax Collector Zella Scott as the person to contact with any questions.

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5 We note, however, that the descriptions in both documents contained the same tract number—1446—and the same lot number—509.

6 Mr. Mayer could not recall whether he called the Assessor or the Tax Collector. The reasonable inference from the record is that he called the former.

Fearing that a portion of the La Brea property had been sold, Mr. Mayer went to the Assessor's Van Nuys office,[7] where he was shown microfiche of the official maps, indicating that his fears their property had been sold were justified. The Mayers were next referred to the Assessor's Inglewood office, before being told to go to the Tax Collector's office in downtown Los Angeles.

On January 29, 2002, the Mayers met with Ms. Scott from the Tax Collectors office and complained that their property had apparently been sold for delinquent taxes, although they had never received any notice or tax bills. As Ms. Scott noted in writing, the Mayers said "they never received notice of delinquency on this parcel. This parcel is adjacent to property which they felt taxes were included." Ms. Scott told them to contact Martha Duran, the Treasurer's Assistant Operations Chief, Tax Defaulted Land Unit, to contest the sale.

They arranged to meet with Ms. Duran in February of 2002. After giving her the same explanation he had previously given to Ms. Scott, Mr. Mayer asked Ms. Duran what he could "do about it?" She told him to send her a letter stating his case, to which she would respond in writing. The Mayers did so in a letter dated February 11, 2002. In her reply, dated four days later, Ms. Duran informed the Mayers that the Tax Collector would not reinstate them as owners of Parcel 44. There was "no legal basis to cancel the sale" because the Mayers had been given proper notice of the impending tax sale by the June 20, 2001 Notice of Auction, which Mr. Mayer had signed and returned. Ms. Duran closed by urging the Mayers to submit a claim for the excess proceeds.

In response, the Mayers met again with Ms. Duran. As reflected in her letter of April 16, 2002, Ms. Duran took the same position as before. The sale was valid and would not be cancelled because the Mayers had been given adequate notice by the Notice of Auction and the subsequent Excess Proceeds Notice.[8] Again, Ms. Duran urged the

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[7] See footnote 3, *ante*.

[8] Although we do not reach this issue, we note that position was not devoid of support. "[T]he Legislature under . . . [Revenue and Taxation Code] section 3701 . . .

Mayers to apply for the excess proceeds. She did not inform them of the option of filing a lawsuit to contest the sale, or of the one-year limitations period for doing so. Nor did she advise them to retain counsel. She would have done so if the Mayers said they wanted to "appeal" the Tax Collector's determination, or if the issue had "come up" in their conversation.

The Mayers contacted their title insurer concerning the propriety of the tax sale. The insurer informed the Mayers that it could not help them; the property had been sold legally.

L&B—the purchaser—did not contact the Mayers during the year following the sale. Nor did any county official. The first time they realized that an adverse interest was being actively asserted against their property was when their tenant, Auto Zone, informed them L&B claimed to be the owner of a portion of the La Brea property and was therefore entitled to a portion of the rental proceeds. Specifically, on September 7, 2002, L&B had notified Auto Zone that it was the owner of Parcel 44 and wanted to negotiate a lease agreement. As a result, Auto Zone deducted $1,800 from the monthly lease payment to the Mayers, which it paid to L&B.

The Mayers filed the underlying quiet title action on October 11, 2002. When asked why he did not take legal action after being informed that the property had been sold and the Tax Collector deemed the sale valid, Mr. Mayer explained that he did not realize he had a remedy; he "trusted in the government."

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made it clear that any failure on the part of the tax collector to ascertain the last known address of the assessee would not affect the validity of the sale." (*Philbrick v. Huff* (1976) 60 Cal.App.3d 633, 648-649; but see *Bank of America v. Giant Inland Empire R.V. Center, Inc.* (2000) 78 Cal.App.4th 1267, 1275-1276 [holding hold that county's sole reliance on a lot book report, which would not provide notice of documents recorded after the creation of a lien, neither constituted a reasonable effort to obtain the "last known mailing address of parties of interest" under section 3701, nor satisfied due process requirements].)

DISCUSSION

The trial court's erroneous legal decision on the statute of limitations issue was obviously driven by the Tax Collector's cavalier attitude regarding the Mayers' predicament. It seems probable that if the Tax Collector had admitted its error to the Mayers, they would not have lost their property. Nevertheless, L&B neither colluded with the Tax Collector nor misled the Mayers in any respect. Rather, L&B relied on its statutory rights under the Revenue and Taxation Code to take the property as a bona fide purchaser, while the Mayers neglected their reciprocal statutory rights. While it may be tempting to apply principles of equity to restore the Mayers' property, a "court's inherent equitable power may not be exercised in a manner inconsistent with the legislative intent underlying a statute." (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 131, fn. 14.) As the trial court's findings of equitable tolling and estoppel contravened the clear application of the applicable one-year limitations period and were directly contrary to the Legislature's unambiguous intent that a tax sale deed convey title free and clear of all encumbrances, we reverse.

"A tax sale proceeding is wholly a creature of statute." (*Craland, Inc. v. State of California* (1989) 214 Cal.App.3d 1400, 1403; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 40.) It follows that there are no common law remedies for defects in tax sale proceedings. (*Van Petten v. County of San Diego* (1995) 38 Cal.App.4th 43, 46, 51; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) § 11:148, pp. 389-393.) The Revenue and Taxation Code provides: "Except as against actual fraud, the [tax] deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." (Rev. & Tax. Code, § 3711.)[9] In the absence of specified

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[9] Unless otherwise specified, all statutory references shall be to the Revenue and Taxation Code.

exceptions that do not apply here, a tax deed "conveys title to the purchaser free of all encumbrances of any kind existing before the sale." (§ 3712.)

Section 3711's presumption of regularity is rebuttable as to the jurisdictional issue of compliance with due process. (*Philbrick v. Huff* (1976) 60 Cal.App.3d 633, 648-649; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) § 11:148, pp. 389-390.) However, such actions are subject to a one-year limitations period: "A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced within one year after the date of execution of the tax collector's deed. . . ." (§ 3725.) It is undisputed that the tax deed from the Tax Collector to L&B for Parcel 44 was executed on August 6, 2001,[10] and that the Mayer's quiet title action was filed over a month after the limitations period expired.

The trial court initially and erroneously found that the one-year statute did not run against the Mayers because they were non-delinquent owners "in undisturbed possession of a tax sold property." That finding was contrary to our Supreme Court's holding and rationale in *Kaufman v. Gross & Co.* (1979) 23 Cal.3d 750 (*Kaufman*). In *Kaufman*, the court acknowledged the general rule that a reasonable statutory limitations period is enforceable as to jurisdictional defects in tax sale proceedings that arise from a failure of notice "even if such defect be constitutional in stature." (*Id.* at p. 755.) At the same time, the *Kaufman* court recognized a narrow exception to that general proposition where the party against whom the statute is raised is "an owner in 'undisturbed possession' at the time of such proceedings." (*Ibid.*)

The *Kaufman* court proceeded to delineate a clear, pragmatic rationale for determining whether an owner was in "undisturbed possession" for purposes of avoiding the statute of limitations. Merely being an owner in actual possession of the subject property would not suffice. Rather, the statute of limitations should be inapplicable "'as to owners who because of their possession could not be assumed to have actual knowledge of claims of adverse interest by persons not in possession.' [Citation.]"

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10 It was recorded on October 15, 2001.

(*Kaufman, supra,* 23 Cal.3d at pp. 755-756.) That is, the "undisturbed possession" exception applies to situations "involving an owner in possession lacking any reasonable means of alerting himself to the tax proceedings affecting his property." (*Id.* at p. 759.)

Kaufman concerned the application of section 6571, the analogous limitations period governing challenges to a street lighting assessment. There, at the time plaintiff Kaufman obtained the subject property, he had constructive notice of the tax delinquency, which had been recorded 15 months prior to Kaufman's acquisition of the property. In addition, as a purchaser of real property, he was charged with the duty of examining the public records to ascertain that no one has acquired title adverse to him. (*Atkins v. Kessler* (1979) 97 Cal.App.3d 784, 790, citing *Kaufman, supra,* 23 Cal.3d at p. 757.)

Regardless of whether the Mayers had constitutionally adequate presale notice or whether they should be charged with constructive notice of the recorded tax lien on October 15, 2001, they had actual notice of the tax sale when they received the Tax Collector's notice of excess proceeds on approximately November 2, 2001, within three months of the limitation period's triggering event—execution of the Tax Collector's deed at the time of the sale to L&B on August 6, 2001.[11] The Mayers admitted that they knew Parcel 44 had been sold when they viewed the Assessor's maps shortly after receiving the notice. That understanding was confirmed through their subsequent meetings with the Tax Collector in February and April 2001, and by their own title insurance company shortly thereafter. In the almost six months following that, the Mayers did nothing to regain title. If constructive notice of clouded title and a duty to inquire was sufficient to disqualify the petitioner in *Kaufman* from relying on the "undisturbed possession"

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[11] As such, our holding is not inconsistent with *Atkins v. Kessler, supra,* 97 Cal.App.3d 784. In *Atkins*, not only did the tax-defaulted owners receive no notice of any tax delinquency, but the six-month limitations period expired before the Atkins received notice of the issuance of the tax deed divesting them of their ownership interest. (*Id.* at p. 789.)

exception, then actual notice that their property had been sold to, and a tax deed recorded in favor of, a third party must have sufficed as to the Mayers.

The trial court erroneously reasoned that *Kaufman*'s precedential value was undercut by the fact that it was issued under the prior statutory regime, whereby tax-delinquent property was initially sold to the state by operation of law, triggering a five-year redemption period before the property would be deeded to the state, conveying absolute title. Following the statutory revisions in 1984, the prior two-stage procedure was replaced with the current one, permitting sales to private persons by auction. (9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 259-264, pp. 391-397.) While the trial court correctly noted that *Kaufman* applied to a "deed to the state," not a tax deed to a third party purchaser, we perceive no reason why the *Kaufman* holding should not be at least as effective under the current statutory regime. The *Kaufman* rationale—that the statute should be inapplicable only to owners in possession who could not be assumed to have actual knowledge of adverse claims—applies equally whether the triggering event was a deed conveying absolute title to the state or a deed conveying such title to a third person.[12]

It appears that the trial court believed that a property owner's claims concerning constitutionally defective notice pertain to the state agency, not the third party purchaser. Indeed, the trial court even expressed doubt whether any statute of limitations applied "to attacks on the state's own claim to 'title' based on a 'default' to the state where the defects in the state['s] title" are premised on a failure to comply with presale notification requirements. However, given the current tax sale procedures, where the tax sale vests title in the third party purchaser, we can discern no purpose for any such statute, much

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12 The trial court's reliance on *Alma Investment Co. v. Krausse* (1953) 117 Cal.App.2d 740 was misplaced. Far from addressing "similar facts" to those in *Kaufman*, in *Alma*, none of the divested parties received any notice of the tax deficiencies or the tax sales until after the tax purchasers brought the underlying quiet title action. At that time, the limitations period had already expired. (*Alma Investment Co. v. Krausse, supra,* 117 Cal.App.2d at pp. 742-743.) The same is true of *Atkins v. Kessler, supra*, 97 Cal.App.3d 784, 789.

less any application to this litigation and L&B's rights. Section 3725's limitations period applies to any action, such as this one, alleging an invalidity or irregularity of any tax sale proceeding. As it is triggered by the "execution of the tax collector's deed," the remedy must apply to the holder of that deed—here, L&B as the third party purchaser.

Nor was the trial court justified in applying the equitable tolling doctrine such that the one-year limitations period would run from the date the Mayers received actual notice that Parcel 44 had been sold. "Equitable tolling is a judge-made doctrine 'which operates independently of the literal wording of the Code of Civil Procedure' to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness. [Citations.]" (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370.) It applies "in carefully considered situations to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice." (*Ibid.*) "'As with other general equitable principles, application of the equitable tolling doctrine requires a balancing of the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the . . . limitations statute.'" (*Id.* at p. 371, quoting *Addison v. State of California* (1978) 21 Cal.3d 313, 321.)

Here, contrary to the governing provisions of the Revenue and Tax Code, the trial court assumed a formal and practical identity of interests between the Tax Collector and the purchaser for value, L&B. Far from that being the case, section 3711 ensured L&B that its tax deed would provide "conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed." In addition, section 3712 ensured L&B that the tax deed would "convey[] title . . . free of all encumbrances of any kind existing before the sale." It is obvious that sections 3711 and 3712 would be rendered illusory—and the clear legislative intent animating those provisions, along with section 3725's limitations period, would be frustrated—if all tax sale purchasers took their interest subject to the prospect of revived claims for "alleged invalidit[ies] and irregularit[ies]" occurring during the proceedings leading up to a tax sale. (§ 3725.)

Certainly, there is no evidence in the record that L&B knew anything about the manner in which the Tax Collector gave (or failed to give) notice to the Mayers. As such, equitable relief was not necessary to prevent an unjust technical forfeiture, where the defendant would suffer no prejudice. Nor was it necessary to ensure fundamental practicality and fairness. To the contrary, as a bona fide purchaser for value, L&B's post-sale interest in Parcel 44 was substantial and untainted.

Neither *Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382 ("*Lerner*") nor *Roper v. Smith* (1919) 45 Cal.App. 302 ("*Roper*"), both relied upon by the trial court, support the notion that L&B was "in privity" with the Tax Collector for estoppel purposes, merely by virtue of being "successors in interest" through the tax sale. The determination as to whether a party is in privity "requires careful examination into the circumstances of each case. Although privity is a concept not readily susceptible of uniform definition, the concept has been expanded to refer to 'such an identification in interest of one person with another as to represent the same legal rights . . . .' [Citations.]" (*Rinaldi v. Workers' Comp. Appeals Bd.* (1988) 199 Cal.App.3d 217, 224.)

In *Lerner*, it was the state and local boards of education that were found to be in privity with regard to the plaintiff's attempts to seek reinstatement as a teacher. After initially rejecting Lerner's claim, the state board subsequently changed positions and reinstated his teaching credential—but after the three-year limitations period had expired. The local board, however, refused to reinstate Lerner, and successfully relied in the trial court on a statute of limitations defense. The Supreme Court in *Lerner* reversed and held that in an action to compel a public official to do his duty after the statutory period has passed, a complying official may be bound by a noncomplying official's waiver of the statute of limitations. (*Lerner, supra,* 59 Cal.2d at pp. 397-399.)

As *Lerner* explained: "Not only does the city board here serve as an agency of the state [citation] but also, at the time of the restoration of Lerner's credential the city board occupied a totally dependent and subordinate position to the state board, basing its decisions entirely upon the state board's revocation of the credential and its consequent legal obligation to discharge Lerner. In this case the requisite identity in legal right binds

together both the state and city boards; the waiver of the state board, and the estoppel against the state board thus extend to the city board." (*Lerner, supra*, 59 Cal.2d at pp. 398-399.) It would be hard to imagine a less apt analogy than that between subordinate governmental agencies acting in concert, on the one hand, and a private party who buys property at a public auction from a government agency, on the other.

The *Roper* decision is, if anything, even less availing to the Mayers. While the court invoked the "general rule as to estoppel . . . that it affects the immediate parties to the transaction and their privies," it did so in an entirely different context. (*Roper*, *supra*, 45 Cal.App. at p. 306.) There, the plaintiff, the assignee of an obligation secured by a mortgage, had sued to foreclose upon that obligation after the limitations period had expired. However, the defendant debtors had previously entered into an agreement with the original mortgagee to forebear on foreclosing. The *Roper* court recognized the general rule that "where a party has been induced by the debtor to forbear suit until his right of action is barred by the statute, the latter will be estopped to say that the action is brought too late." (*Id.* at p. 305.) It was therefore but a short, logical step to hold that a debtor who is estopped to set up the defense of the statute of limitations as against a mortgagee is also estopped as against an assignee. (*Id.* at p. 306.) Of course, there can be no logical application of that holding to this case—L&B was not a party to the proceedings leading up to the tax sale and was not in privity with the Tax Collector.

Moreover, one of the "inherent limitations on an otherwise valid estoppel" occurs where "there is still ample time to take action within the statutory period after the circumstances inducing delay have ceased to operate." (*Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 716, citing *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445-446.) As shown above, the Mayers had more than five months to file their action even after the Tax Collector made it clear that the sale would not be revoked.

Finally, for similar reasons, the trial court erred in applying the doctrine of equitable estoppel to L&B. "The required elements for an equitable estoppel are: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must

intend his or her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to his or her injury." (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1785; see *Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1048; *Wolitarsky v. Blue Cross of California* (1997) 53 Cal.App.4th 338, 345.)

The trial court did not consider these elements and the undisputed facts show they could not have been satisfied. Again, there was no evidence that L&B knew or had reason to know about any deficiencies in the Tax Collector's efforts to give presale notice to the Mayers, much less that L&B colluded with the Tax Collector in any manner. At most, L&B relied on the statute of limitations by refraining from more actively asserting its ownership interest until the one-year period of repose elapsed. But even if L&B intended such legally permissible silence to "lull" the Mayers into sleeping on their right to bring the underlying action, the trial court had no legal basis for equating such inaction with an affirmative attempt to mislead for estoppel purposes.

The trial court's reliance on *Lackner v. LaCroix* (1979) 25 Cal.3d 747 ("*Lackner*") as support for its finding that L&B acted unjustly is misplaced. *Lackner* held that because an underlying successful statute of limitations defense to a malpractice action did not reflect on the merits of the malpractice action, it would not be considered a favorable termination for purposes of a subsequent malicious prosecution action. To do so would violate the principle that a limitations statute may be used only as a "shield," and not as a "sword"—that "'it can only be set up as a defense to suit . . . and cannot be invoked affirmatively . . . as the foundation of a right.' [Citation.]" (*Id.* at p. 752.) Here, of course, L&B did not file the quiet title action. Rather, it invoked section 3725 as a shield by asserting it as a defense to the Mayer's action.

To the extent that the trial court relied on *Lackner* as support for a supposed obligation on L&B's part to make an affirmative claim of ownership (beyond that of purchasing the property at a public auction) so that the Mayers would have an additional incentive to bring their action before the statute expired, we note that the portion of the

Lackner opinion on which the trial court relied stands for the opposite proposition. In fact, it is clear that our Supreme Court was relying on a United States Supreme Court opinion to explain why the policy concerns behind statutes of limitations necessarily placed the onus on potential claimants like the Mayers to bring their actions in a timely fashion: "'"Statutes of limitations . . . are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim [like the Mayers] it is unjust not to put the adversary [like L&B] on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them."'" (*Lackner, supra,* 25 Cal.3d at p. 751, quoting *Order of R.R. Telegraphers v. Railway Exp. Agency* (1944) 321 U.S. 342, 348-349.) As the *Lackner* court made clear, the policy concerns underlying statutes of limitations are wholly independent of the merits of the underlying action. (*Lackner, supra,* 25 Cal.3d at pp. 751-752.)

In any event, the Mayers could not satisfy the third element of equitable estoppel. They were not ignorant of the "true state of facts." Rather, they knew that their property had been sold and that the tax deed had been recorded. They also knew that the Tax Collector had not given them any pre-sale notice of any tax deficiency or what they believed was adequate notice of the impending tax sale.

In sum, the Mayers had actual notice of every fact necessary to bring their quiet title action, and ample time to do so, before the one-year limitations period expired. Accordingly, we reverse. Nothing in our decision is meant to justify or condone the Tax Collector's actions. The overriding fact, however, is that L&B was not in privity with the Tax Collector, and whatever defalcations can be attributed to the governmental agency, they cannot be imputed to L&B by law or equity.

DISPOSITION

The judgment is reversed. The parties are to bear their own costs on appeal.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.