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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

PATRICK O. BENT, Plaintiff and Appellant, v. THE LOS ANGELES COUNTY ASSESSMENT APPEALS BOARD et al., Defendants and Respondents.	B270835 (Los Angeles County Super. Ct. No. BS140900)

APPEAL from an order of the Superior Court of Los Angeles County. Mary Strobel, Judge. Reversed and remanded with directions.

Law Office of Simone K. Easum and Simone K. Easum for Plaintiff and Appellant.

Mary C. Wickham, County Counsel and Albert Ramseyer, Principal Deputy County Counsel for Defendants and Respondents.

Patrick O. Bent (Bent) appeals from the trial court's order denying his motion for attorney fees pursuant to Code of Civil Procedure section 1021.5[1] and Government Code section 800. Bent contends he should be awarded attorney fees for enforcing Revenue and Taxation Code section 51.5, subdivision (a).[2] Because the trial court abused its discretion, we reverse and remand for new determinations under section 1021.5 and Government Code section 800.[3]

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] Revenue and Taxation Code section 51.5, subdivision (a) provides: "Notwithstanding any other provision of the law, any error or omission in the determination of a base year value pursuant to paragraph (2) of subdivision (a) of Section 110.1, including the failure to establish that base year value, which does not involve the exercise of an assessor's judgment as to value, shall be corrected in any assessment year in which the error or omission is discovered."

[3] Bent also contends he is entitled to attorney fees under the equitable substantial benefit doctrine. As we discuss in part III of the Discussion, *post*, that issue has been forfeited because it was not properly presented to the trial court, and the trial court did not issue a ruling on that doctrine.

FACTS[4]

"In his petition for writ relief and complaint for declaratory relief, Bent alleged: Bent and Evans Sechrest (Sechrest) were each 50 percent partners in a general partnership that, inter alia, owned two properties in Venice, one in Vernon and one in North Hollywood. Sechrest died on February 12, 2008, and devised his partnership interest to Bent. Eventually, pursuant to a probate court order, Bent received a transfer of 100 percent of the partnership's properties. [John Noguez (Noguez)] issued notices that the properties in Vernon and North Hollywood were being reassessed on the grounds that there had been a change in ownership in 2008. Subsequently, Bent filed appeals with the [Los Angeles County Assessment Appeals Board (Board)] and claimed that the properties should not have been reassessed because, under Revenue and Taxation Code section 64, subdivision (c)(2), there is no change in ownership of real property held by a partnership when one partner acquires all of the remaining ownership interests in that partnership. The Board, however, concluded that Bent's tax appeals were untimely and denied them on that basis.

"Bent alleged that the Board erred because the tax appeals were timely filed within the one-year statute of limitations, or because the limitations periods relied upon by the Board were unconstitutional.

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[4] In writing the statement of facts, we have borrowed from our statement of facts in *Bent v. County of Los Angeles Assessment Appeals Board* (June 3, 2014, B249257) nonpublished opinion (*Bent I*).

"In the prayer for relief, Bent requested a peremptory writ of mandate directing the Board to hear his tax appeals on the merits. Also, Bent requested the following declarations: the Board has the equitable power to hear the tax appeals on the merits; Noguez committed assessor error pursuant to section 1603, subdivision (c) when he found that a change in ownership occurred on February 12, 2008; Noguez's assessor error triggered the one-year statute of limitations set forth in section 1603, subdivision (c), making the tax appeals timely; because Noguez engaged in criminal activities in the assessor's office that interfered with his ability to proceed according to the law, he is deemed to have committed assessor error under section 1603, subdivision (c); if section 1603, subdivision (c) does not apply to save Bent's tax appeals, then that statute is unconstitutionally vague; and section 1605, subdivision (d) is unconstitutional on its face and as applied.

"The County demurred. The trial court sustained the demurrer without leave to amend. It reasoned, inter alia, that a tax refund action was Bent's exclusive remedy and therefore a petition for writ of mandate could not be used to challenge the merits of the Board's assessment decision. In addition, the trial court explained that the requests for declaratory relief were barred because Bent had adequate remedies at law through the filing of a tax refund action." (*Bent I, supra,* B249257, at pp. 3–4, fns. omitted.)

Bent appealed.

In *Bent I*, we affirmed as to declaratory relief. As to the petition for writ relief, we reversed and remanded for further proceedings. We held that under *Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948 (*Sunrise*), "a trial court can

reverse a finding by an assessment appeals board that a tax appeal was untimely and compel it to decide change in ownership issues." (*Bent I, supra,* B249257, p. 2)

In part, we stated: "The County argues that *Sunrise* is problematic because it is inconsistent with the constitutional directive that refund actions are to be conducted in accordance with a statutorily prescribed process. Tacitly, the County suggests that we should eschew *Sunrise* as precedent. We fail to see any conflict between *Sunrise*, the California Constitution and the statutory scheme. All *Sunrise* permits is writ relief compelling an assessment appeals board to decide an appeal. A decision on the merits by an assessment appeals board is part of the process contemplated by the Legislature, and the process is exalted by *Sunrise*, not defeated. Rounding out our analysis, we make a policy observation: appeals boards should decide assessment challenges and refund claims before the courts get involved. Undoubtedly, assessment appeals boards will resolve some cases in a manner that eliminates the necessity of tax refund actions, which will alleviate court dockets." (*Bent I, supra,* B249257, pp. 7–8)

On June 6, 2015, the trial court[5] granted Bent's petition for writ of mandate and entered a judgment instructing the Board to set aside its decision finding that Bent's challenge to the change in ownership determination was untimely, and to hear Bent's tax appeals on the merits. In its ruling, the trial court explained: Revenue and Taxation Code section 51.5, subdivision (a) applies in this case, so Bent's challenge to the change in ownership determination could be brought at any time. In

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[5] The petition was heard by Judge Luis A. Lavin.

support of this conclusion, the trial court cited *Sunrise*. The trial court also found that Bent's applications were filed within the period allowed by Revenue and Taxation Code section 1603, subdivisions (a)-(b), and noted that "[t]he Board's Assessment Appeals Manual . . . provides that '[a]n applicant may file an application to correct a base year value resulting from an erroneous change in ownership determination, not involving an assessor's judgment of value, if the assessor declines to make the correction pursuant to [Revenue and Taxation Code section 51, subdivision (a)]. Such an application must be filed during the regular filing period July 2 through September 15.' . . . Here, [Bent] submitted his applications between July 6 and July 8, 2011. . . . Importantly, [the County] do[es] not point to any other date on which the applications were filed to support their claim that the applications were untimely."

Subsequently, the Board denied Bent's tax appeals on the merits.

Bent filed a motion for $153,281.25 in attorney fees under section 1021.5, and for $7,500 in attorney fees under Government Code section 800.[6] The trial court denied the motion.[7]

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[6] The motion was heard by Judge Mary Strobel.

[7] The notice of motion referred to the "substantial benefit doctrine," but Bent did not argue the equitable substantial benefit doctrine in his memorandum of points and authorities, or in his reply brief, and he did not cite any law regarding that doctrine. The trial court ruled on the request for attorney fees under section 1021.5 and Government Code section 800, but it did not rule on the equitable substantial benefit doctrine. Neither the parties nor the trial court referenced that doctrine at the hearing. Bent did not request a ruling on the doctrine after

This timely appeal followed.

DISCUSSION[8]

A trial court's determination regarding the legal basis for an attorney fee award is reviewed de novo. (*Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1258.) If a trial court properly applies the law, its denial of a motion for attorney fees is reviewed under the abuse of discretion standard of review. (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 82.) "A trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand. [Citations.]" (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 85.)

I. Section 1021.5.

Section 1021.5 provides: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to

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seeing the tentative ruling, which became the final ruling. The only time Bent has asserted the doctrine in a cognizable way is on appeal.

[8] This opinion refers to "significant benefit" under section 1021.5 and a "substantial benefit" under the equitable substantial benefit doctrine. For purposes of this opinion, we need not determine whether the benefit referred to by section 1021.5 and the equitable substantial benefit doctrine are equivalent.

make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

According to Bent, the trial court did not apply the correct law and we must reverse the denial of section 1021.5 attorney fees.

A. The Trial Court's Ruling.

1. *Enforcement of an Important Right Affecting the Public Interest*.

With respect to whether Bent's action resulted in the enforcement of an important right affecting the public interest, the trial court's minute order stated: "The primary issue in this case was whether [Bent's] applications were timely field. Judge Lavin relied on precedent—the 1997 case of [*Sunrise*]—for the proposition that a nonjudgmental error concerning a change in ownership determination may be brought at any time. Judge Lavin's decision does not apply to any persons other than [Bent] and it was based on the specific facts of this case. This decision has not been appealed and has not resulted in published legal precedent. The *Sunrise* case had already decided the legal rule cited by Judge Lavin. Therefore, [Bent] cannot argue that the instant case resulted in new legal precedent on the application of Revenue and Taxation Code section 51.5[, subdivision] (a). [Citation.]"

The trial court noted that according to Bent, this action "achieved 'the benefit of bringing to light that the [Board] is refusing to apply [Revenue and Taxation Code section 51.5, subdivision (a)] "open ended" statute of limitation period for taxpayers, for non-value judgment [change in ownership] appeals[,]'" and also that superior court judges were "'not correctly administering the law, finding instead that a refund

action in superior court . . . was a taxpayer's only available legal avenue post-appeal of a non-value judgment, [change in ownership] re-assessment.' [Citation.]" In rejoinder, the trial court stated: "These arguments are unpersuasive. Initially, it is not clear if [Bent's] counsel alerted the Board to the *Sunrise* decision or argued that Revenue and Taxation Code section 51.5[, subdivision] (a) provided an open-ended limitations period in the administrative proceedings. The [trial court] judicially notices that [Bent] did not cite *Sunrise* or section 51.5[, subdivision] (a) in opposition to [the County's] demurrer, or in his Petition [for writ relief]. In fact, in the Petition [for writ relief], [Bent] alleges that a [one] year statute of limitation applied under section 1603[, subdivision (4)(c)], not that his action was timely pursuant to section 51.5 and the *Sunrise* decision. [Citation.] [¶] [Bent] extends the Board's and trial court's decisions on [Bent's] specific case to other persons without any factual basis for doing so. [Bent] has not cited to evidence that [the County] ha[s] a policy of refusing to apply the *Sunrise* decision. Nor did [Bent] so contend in his [petition for writ relief]. . . . . [¶] In fact, in the petition [for writ relief], [Bent] appears to argue that his case is unique and would not set precedent. [Citation.]"

In response to Bent's argument that lawsuits mandating compliance with statutes enforce important public rights, the trial court discounted cases cited by Bent in support of his point because they "were clearly filed and adjudicated to enforce rights affecting large groups of persons. [Citations.]" "Here," stated the trial court in its minute order, Bent "seeks an order pertaining to [his] own tax situation, not vindication of a broader public interest"

In conclusion, the trial court stated that Bent "has not shown that his action enforced an important right affecting the public interest."

2. *Significant Benefit*.

Regarding section 1021.5, subdivision (a), the trial court's minute order stated: "To establish a significant public benefit, [Bent] . . . [argues] that now the 'Board can no longer capriciously violate the law codified in [Revenue and Taxation Code section 51.5, subdivision (a)]. . . . As [previously] discussed . . . , the legal rule cited by Judge Lavin in granting the petition was already established by the *Sunrise* decision. This case involved an application of that decision to the specific facts of [Bent's] case. It did not confer a significant benefit on a large class of persons."

"[Bent] cites to *Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 396 [(*Robinson*)] to argue that 'fees may not be denied merely because the primary effect of the litigation was to benefit the individual rather than the public.' [Citation.] The *Robinson* case cited to the following language from [*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917 (*Woodland Hills*)]: 'Of course, the public always has a significant interest in seeing that legal strictures are properly enforced. . . . [H]owever, the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. We believe rather that the Legislature contemplated that in adjudicating a motion for attorney fees under section 1021.5, a trial court would determine the significance of the benefit, as well as the size of the class receiving the benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.' [Citation.]

"Here, a realistic assessment of the gains which have resulted from the writ [d]ecision shows that the open-ended statute of limitations under the *Sunrise* decision and Revenue and Taxation Code section 51.5[, subdivision] (a) were enforced in favor of [Bent]. As discussed above, those rights were established before this action was filed. Based on the record presented, this case is no different than any other in which a plaintiff enforces an established statutory right to obtain an individual benefit. [¶] To the extent this case may have educated the Board as to the application of *Sunrise* or section 51.5[, subdivision] (a), the [trial court] finds that [Bent's] personal individual stake . . . was the primary motivating factor for the petition [for writ relief]. [Bent] also has not made a sufficient showing that the Board denied his applications as untimely in the face of arguments that *Sunrise* or [Revenue and Taxation Code] section 51.5[, subdivision] (a) apply. [¶] [Bent] has not shown that this case resulted in a substantial public benefit to a large class of persons."

3. *Necessity and Financial Burden of Private Enforcement*.

With respect to section 1021.5, subdivision (a), the minute order stated: "Private enforcement was necessary here to the extent that a public agency would not appeal its own administrative decision. However, as discussed above, this action focuses on [Bent's] specific tax appeal, and not a larger public issue.

"[Bent] argues that the financial burden of private enforcement was great because he already paid the property taxes at issue and was seeking a refund that would bring him back to 'ground zero' financially. . . . This argument is unpersuasive. The prospect of a substantial tax refund is a

financial incentive that could motivate a taxpayer to file suit. Here, the administrative record showed that the newly assessed values of the properties represented an increase of approximately $1,000,000 for the Santa Fe property and more than $700,000 for the Saticoy property. . . . The Petition alleges that [the Board] imposed supplemental and escape assessments[9] for tax years 2007 to 2011 in the total amount of $66,501.47. . . . It stands to reason that [Bent] would pay significantly higher property taxes on a yearly basis as a result of the changed assessment. [Bent] in fact alleges this in his petition. . . .

"Although [Bent] estimates his chance of success in this action as 5 percent or less, he provides no foundation for that statement. . . . In granting the petition, Judge Lavin found that the *Sunrise* decision is controlling. The Court of Appeal also suggested that *Sunrise* is 'directly on point.' . . . These rulings suggest that [Bent] had a strong probability of prevailing on this petition. [Bent] has not provided sufficient information for the Court to assess his likelihood of prevailing on remand before the Board. However, [Bent] himself appears to be proceeding on a belief that he has a reasonable chance of receiving a refund. . . . The evidence and allegations reflect that [Bent] has a substantial financial stake in this action.

"Based on the foregoing, [Bent] is not entitled to attorney fees pursuant to Code of Civil Procedure section 1021.5."

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9 Escape assessments are deficiency assessments that are made retroactively by assessors so that they can remedy omissions or errors in the original assessments of taxable properties. (*Helene Curtis, Inc. v. Assessment Appeals Bd.* (1999) 76 Cal.App.4th 124, 128, fn. 1.)

B. Analysis.

1. *Enforcement of an Important Right Affecting the Public Interest*.

Case law provides that "the broad statutory language . . . indicate[s] that a right need not be constitutional in nature to justify the application of the private attorney general doctrine[.]" (*Woodland Hills*, *supra*, 23 Cal.3d at p. 935.) Important rights "are not necessarily confined to any one subject or field. . . . [T]he private attorney [general] doctrine may find proper application in litigation involving, for example, racial discrimination, the rights of mental patients, legislative reapportionment and . . . environmental protection." (*Id*. at pp. 935–936, fns. omitted.)

"[T]he question whether there was an important public interest at stake merely calls for an examination of the subject matter of the action—i.e., whether the right involved was of sufficient societal importance. [Citation.]" (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1417 (*Beasley*), overruled on other grounds in *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1151.)

A review of the record establishes that the trial court did not recognize and apply the *Beasley* rule. Rather, it inferred from case law that the test is whether a case was filed and adjudicated to enforce rights affecting large groups of people, and whether the case resulted in new legal precedent in a published appellate decision. In other words, the trial court looked at Bent's motive and the result achieved rather than the subject matter of the action. This was an abuse of discretion.[10]

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[10] In its analysis of the first prong, the trial court indicated there was a lack of evidence as to whether Bent argued Revenue and Taxation Code section 51.5, subdivision (a) to the Board.

2. *Significant Benefit*.

To determine whether a lawsuit has conferred a significant benefit on the general public or a large class of persons, the "courts check to see whether the lawsuit initiated by the plaintiff was 'demonstrably influential' in overturning, remedying, or prompting a change in the state of affairs challenged by the lawsuit. [Citations.] . . . As for what constitutes a 'significant benefit,' it 'may be conceptual or doctrinal, and need not be actual and concrete, so long as the public is primarily benefited.' [Citation.]" (*Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region* (2010) 183 Cal.App.4th 350, 363.) Thus, a trial court must assess the significance of the benefit as well as its impact "'from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.' [Citation.] The 'extent of the public benefit need not be great to justify an attorney fee award.' [Citation.]" (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 894.) Section 1021.5 attorney fees can be awarded when a plaintiff sues solely to enforce his own rights. (*Robinson*, *supra*, 202 Cal.App.4th at p. 387 [court found important right and significant benefit to public when plaintiff sued alleging he was

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Also, the trial court stated that Bent did not argue the statute in his petition for writ relief. But the foregoing does not impact the analysis of the importance of the right. Notably, it is apparent from the trial court's ruling that it enforced Revenue and Taxation Code section 51.5, subdivision (a), and further that it enforced the decision in *Sunrise*. Therefore, at least at some point, the gravamen of the petition for writ relief became that statute and case.

terminated from employment in violation of public policy and the Public Safety Officers Procedural Bill of Rights Act].)

The enforcement of an existing right "does not mean that a substantial benefit to the public cannot result. Attorney fees have consistently been awarded for the enforcement of well-defined, existing obligations. [Citations.]" (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 318 (*Press*).) The "declaration of rights in 'landmark' cases would have little meaning if those rights could not be 'enforced' in subsequent litigation. As this court [previously] noted . . . , 'without some mechanism authorizing the award of attorneys fees, private actions to enforce . . . important public policies will as a practical matter frequently be infeasible.' Such a cramped interpretation of section 1021.5 would allow vital constitutional principles to become mere theoretical pronouncements of little practical value to ordinary citizens who cannot afford the price of vindicating those rights." (*Id.* at pp. 318–319.)

"[F]ew tax refund actions will meet the standards of" section 1021.5 regarding the substantial benefit element. (*Apple, Inc. v. Franchise Tax Bd.* (2011) 199 Cal.App.4th 1, 29 (*Apple*).) But fees may be awarded when a trial court's decision results in a large monetary benefit to similarly situated taxpayers. (*Northwest Energetic Services, LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 876 (*Northwest*) [section 1021.5 fees were properly awarded when a case declared a tax statute unconstitutional, and when the benefit of the trial court's decision to taxpayers similarly situated to the plaintiff arguably exceeded $1 billion].)

The question is whether, based on a realistic assessment, this lawsuit changed the status quo. But the trial court

concluded that there was no significant benefit because the rule relied upon by the trial court was already established by the *Sunrise* decision, and the trial court merely applied that rule to the specific facts of Bent's case. In reaching this conclusion, the trial court abused its discretion because it did not recognize and apply the applicable legal considerations. As established by *Press*, a substantial benefit can result from the enforcement of an existing right. Moreover, per *Northwest*, section 1021.5 fees may be appropriate in a tax case which will give similarly situated taxpayers a substantial monetary benefit.

In the second part of its analysis, the trial court concluded that based on a realistic assessment, the only gains were the enforcement of Revenue and Taxation Code section 51.5, subdivision (a) in favor of Bent. Then, the trial court concluded that Bent's individual stake was the primary motivating factor for the petition for writ relief. Last, it concluded that Bent failed to show that the Board denied his applications after being alerted to the relevant rule. But the law establishes that having a personal stake in a case, and being motivated by personal gain, do not disqualify a plaintiff from obtaining section 1021.5 attorney fees.

Undeniably, whether Bent argued the relevant rule to the Board does not change the fact that the Board either ignored the rule or was unaware of the rule when it was first hearing Bent's tax appeals, suggesting that it did not apply the rule as either a policy or practice. Notably, in *Bent I*, the Board essentially urged us to declare Revenue and Taxation Code section 51.5, subdivision (a) unconstitutional, and to disregard *Sunrise*. Thus, presently, it appears that the Board is taking a position that is hostile to existing law. As a practical matter, Bent was forced to

continue litigating his petition for writ relief to defeat the Board's position.

Simply stated, the trial court abused its discretion by assuming Bent's personal stake and motivation barred recovery.

3. *Necessity and Financial Burden of Private Enforcement*.

The purpose of section 1021.5 "is to provide an incentive for "'the plaintiff who acts as a true private attorney general, prosecuting a lawsuit that enforces an important public right and confers a significant benefit, despite the fact that his or her own financial stake in the outcome would not by itself constitute an adequate incentive to litigate." [Citation.]' [Citation.]" (*Apple*, *supra*, 199 Cal.App.4th at p. 29.) A trial court must determine "whether the cost of the claimant's victory transcends his personal interest—that is, whether the burden on the claimant was out of proportion to his individual stake. [Citation.]" (*Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 230 (*Citizens*).)

Below, the trial court recognized that private enforcement was necessary. But the trial court noted that the action focused on the Bent's specific appeal rather than a larger public issue. This was an abuse of discretion given the applicable legal standards. Next, the trial court discounted Bent's financial burden because he had sufficient financial incentive to file suit. The problem is that the trial court did not conduct a proportionality review, as called for by *Citizens*. Consequently, we must conclude that the trial court abused its discretion.

4. *Conclusion.*

Because the trial court abused its discretion, this case must be remanded for a new determination.

II. Government Code section 800.

"In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under [the Government Code] . . . , if it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant if he or she prevails in the civil action may collect from the public entity reasonable attorney's fees, computed at one hundred dollars ($100) per hour, but not to exceed seven thousand five hundred dollars ($7,500), if he or she is personally obligated to pay the fees[.]" (Gov. Code, § 800.)

An award under Government Code section 800 is warranted only "'if the actions of a public entity or official were wholly arbitrary or capricious. The phrase "arbitrary or capricious" encompasses conduct not supported by a fair or substantial reason [citation], a stubborn insistence on following unauthorized conduct [citation], or a bad faith legal dispute [citation]. The determination of whether an action is arbitrary or capricious is essentially one of fact, within the sound discretion of the trial court. [Citation.]'" (*Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal.3d 52, 79 (*Halaco*).)

In rendering a decision, the trial court cited the rule recognized in *Halaco*. It then stated that the Board denied Bent's applications because they were not filed within the 60-day limitations period provided in title 18, California Code of

Regulations section 305, subdivision (d)(4).[11] Next, the trial court adverted to title 18, California Code of Regulations section 305, subdivision (d)(7), which provides: "Except as provided in sections 1603 and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above." The trial court went on to state: "It is not clear if [Bent's] counsel alerted the Board to the *Sunrise* decision in the administrative proceedings. . . . The [trial court] cannot conclude on the record presented that the Board's decision, although contrary to *Sunrise*, was made in bad faith. Thus, [Bent] is not entitled to attorney fees under Government Code section 800."

The trial court did not explain how the Board's conduct was supported by fair and substantial reason. In other words, why was it fair and reasonable for the Board to either ignore Revenue and Taxation Code section 51.5, or be ignorant of its existence? Significantly, the statute was enacted in 1987 and amended in 1990. It is seemingly impossible that this statute escaped the Board's attention for almost three decades. We find it particularly unlikely the Board was not aware of the law given that the statute allows an assessor to pursue escape assessments

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[11] Title 18, California Code of Regulations section 305, subdivision (d)(4) provides: "An application may be filed within 60 days of receipt of a notice of assessment or within 60 days of the mailing of a tax bill, whichever is earlier, when the taxpayer does not receive the notice of assessment described in section 619 of the Revenue and Taxation Code at least 15 calendar days prior to the close of the regular filing period. The application must be filed with an affidavit from the applicant declaring under penalty of perjury that the notice was not timely received."

in any year an error is found. As one court explained, "'[T]he legislative history of the law strongly supports the view that lifting time restrictions on correcting nonjudgmental mistakes [via Revenue and Taxation Code section 51.5] was meant to be a two-way street, benefiting taxpayers and assessors equally.'" (*Kuperman v. San Diego County Assessment Appeals Bd. No. 1* (2006) 137 Cal.App.4th 918, 927.)

In its respondent's brief, the Board does not claim that it was unaware of the Revenue and Taxation Code. Rather, it states, "As the trial court recognized, the Board was seeking to interpret its jurisdiction consistent with law, and the record before the [trial court] did not reflect that the Board was acting in bad faith." The Board points out that attorney fees may not be awarded simply because the administrative entity or official's actions were erroneous. (*American President Lines, Ltd. v. Zolin* (1995) 38 Cal.App.4th 910, 934.) In making this argument, the Board cites to the first sentence of title 18, California Code of Regulations section 305, which provides: "No change in an assessment sought by a person affected shall be made unless the following application procedure is followed." To explain why it is exonerated from following an applicable statute, the Board cites title 18, California Code of Regulations section 1, which provides in part: "The rules in this subchapter govern assessors when assessing [and] county boards of equalization and assessment appeals boards when equalizing[.]" Tacitly, the Board suggests that these two sentences made its decision reasonable. But it offers no explanation for why it reasonably believed these regulations usurped a statute and *Sunrise*.

The California State Board of Equalization publishes the Assessor's Handbook (Handbook). In Chapter 1 of Division 1 on

Property Taxation in the Handbook, there is a summary of Revenue and Taxation Code section 51.5 and the *Sunrise* decision. The Assessment Appeals Manual, which is dated May 2003 and cites the *Sunrise* decision, provides: "An applicant may file an application to correct a base year value resulting from an erroneous change in ownership determination, not involving an assessor's judgment of value, if the assessor declines to make the correction pursuant to [Revenue and Taxation Code] section 51.5. Such an application must be filed during the regular filing period July 2 through September 15 or November 30, whichever is applicable." (Assessment Appeals Manual, p. 31.) Is the Board saying it was unaware of the contents of the Handbook and Assessment Appeals Manual? Or that the Handbook and the Assessment Appeals Manual are incorrect? Or that the Board is entitled to disregard the guidance provided by the California State Board of Equalization? These are the types of questions the trial court should ask before ruling on whether the Board's actions were supported by fair and substantial reason.

We conclude that the trial court abused its discretion.

III. Equitable Substantial Benefit Doctrine.

The equitable substantial benefit doctrine "'permit[s] reimbursement [of attorneys fees] in cases where the litigation has conferred a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among'" the members of that class. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 40, fn. 10. (*Serrano*).) The cost is spread, for example, when a shareholder prevails in a derivative action and recovers attorney fees. The award of attorney fees, in effect, makes "it possible to assess fees

against all of the shareholders through an award against the corporation." (*Mills v. Elec. Auto-Lite Co.* (1970) 396 U.S. 375, 395.) The "existence of an actual fund of money is not a condition precedent." (*Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 203 (*Knoff*).)

According to the Board, Bent did not argue the equitable substantial benefit doctrine below and thereby forfeited it. Bent, on the other hand, contends that he did argue this doctrine at the hearing.

The trial court's tentative ruling analyzed section 1021.5 and Government Code section 800 but not the equitable substantial benefit doctrine. At the hearing, Bent's counsel did not suggest the trial court had failed to rule on one of the asserted grounds for attorney fees. Rather, his counsel said, "Your Honor, in reviewing your tentative, I would just like to take it point by point[.]" She responded to the tentative ruling regarding section 1021.5 and, at one point, stated, "[T]he substantial benefit to a large class of persons is . . . not narrowly construed. As your Honor wrote, it's really not narrowly construed by the courts. Here, the class of taxpayers is huge. It's everyone who dies, as your Honor knows." She repeatedly said the class "does not have to be ascertainable." After that, she argued the necessity and financial burden of private enforcement. At the end, she moved on to Government Code section 800 and said the Board's actions were arbitrary and capricious. She never mentioned the equitable substantial benefit doctrine.

Though Bent's counsel argued substantial benefit, that was only as to section 1021.5. This is apparent because section 1021.5 does not require an ascertainable class but the equitable substantial benefit doctrine does. (*Northwest*, *supra*, 159

Cal.App.4th at p. 876, fn. 19 [in contrast to the equitable substantial benefit doctrine, there "is no statutory requirement that the class be 'readily ascertainable'" for a plaintiff to recover under section 1021.5].) If Bent's counsel had been arguing that doctrine, she would not have said the class does not have to be ascertainable. We therefore conclude that Bent did not argue the equitable substantial benefit doctrine below. We further conclude that Bent forfeited his argument based on that doctrine because points not raised in the trial court will not be considered on appeal. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486.)

Aside from the foregoing, we wish to highlight that Bent's suggestion that his case is similar to *Knoff* misses the mark. In *Knoff*, four taxpayers filed a class action and sought a writ of mandate directing the City and County of San Francisco to make new assessments on properties that had been under assessed as a quid pro quo for bribes made to the assessor. (*Knoff*, *supra*, 1 Cal.App.3d at pp. 190–195.) The taxpayers acted in a representative capacity, and they had standing to sue because they were beneficially interested in compelling the performance of public duties. (*Id.* at p. 198.) The result of the lawsuit was to increase the amount of property taxes collected by the respondent city and county. On appeal, the *Knoff* court held that the trial court properly awarded attorney fees based on its broad equitable powers. (*Id.* at pp. 203–204.) Here, Bent did not file a class action or sue in a representative capacity, and he is not seeking a ruling that will augment public coffers. Moreover, he is not trying to compel public officials to perform their duties in compliance with the law.

Citing *Card v. Community Redevelopment Agency* (1976) 61 Cal.App.3d 570 (*Card*), Bent argues that he did sue in a representative capacity, and therefore he is entitled to attorney fees. *Card* stated, "A taxpayers' suit is by its very nature a representative action. [Citation.] Accordingly, we hold that the award of attorney's fees in this case to plaintiffs' counsel was authorized under the substantial benefit doctrine." (*Id.* at p. 583.) But *Card* is factually distinguishable and therefore fails to provide Bent any assistance. It involved an allegation that a public entity was, in essence, making a gift of public funds. And when *Card* referred to a taxpayer's suit, it was referring to a suit brought pursuant to section 526a, which provides, "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein."[12] Bent did not file a petition for writ

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[12] As one court explained, "a municipal taxpayer seeking to avoid the waste of municipal assets[] falls into the category of a type of claimant long recognized to possess a sufficiently intense interest in his claim to establish his 'standing' to enter the courtroom. Because a successful attack on wrongful municipal spending or disposition of assets in all likelihood may reduce the municipal taxpayer's burden of meeting the expenses of government, the courts do not doubt that a municipal taxpayer will effectively present his claim." (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 159.)

relief under section 526a to prevent waste of or injury to the estate, funds, or other property of a public entity. Rather, he filed a petiton for writ relief to further his challenge of the reassessment of his property, and his pursuit of a tax refund.

DISPOSITION

The order is reversed and remanded for a redetermination of whether Bent is entitled to attorney fees pursuant to section 1021.5 and Government Code section 800.[13] Bent shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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[13] Nothing in this opinion shall be construed as implying that the trial court should award attorney fees. This matter is being remanded solely for the trial court to exercise its discretion in compliance with this opinion.

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.