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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

INTERNATIONAL BUSINESS  
PROPERTIES et al.,

Plaintiffs and Appellants,

v.

CITY OF CATHEDRAL CITY et al.,

Defendants and Respondents.

E052279

(Super.Ct.No. INC091089)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Randall Donald White,  
Judge. Affirmed.

Law Offices of Lorraine Howell and Lorraine Howell for Plaintiffs and  
Appellants.

Green, de Bortnowsky & Quintanilla, Charles R. Green, Joan Stevens Smyth, and  
Randall Nakashima for Defendants and Respondents.

Plaintiffs International Business Properties (IBP) and Arthur G. Lawrence appeal  
from a judgment of dismissal entered in favor of defendants City of Cathedral City

(City), Cathedral City Redevelopment Agency, and Cathedral City Community Services District (CSD) (collectively, defendants) following an order sustaining without leave to amend defendants' demurrer to plaintiffs' second amended complaint (SAC). The trial court sustained the demurrer on the ground that the SAC was barred by the doctrine of res judicata. Reviewing the matter de novo, we conclude that the plaintiffs have failed to state facts sufficient to constitute a cause of action on other grounds. Accordingly, we affirm the judgment.

## I. FACTUAL SUMMARY

### A. *Background*<sup>1</sup>

Plaintiffs owned interests in six unimproved parcels located within the city limits of the City. The City, through the CSD, imposed special assessments against the parcels. None of the assessments ever conferred any benefit upon the subject parcels. The assessments were imposed without a two-thirds majority vote. According to plaintiffs, the assessments did not comply with, and were not exempt from, the requirements of article XIII A (Proposition 13) or article XIII D (Proposition 218) of the California Constitution.

In 1997, two neighboring property owners of undeveloped land similar to plaintiffs' parcels, along with the Howard Jarvis Taxpayers Association, sued the City

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<sup>1</sup> Our factual summary is based on the properly pleaded allegations of the SAC and matters that may be judicially noticed; we do not consider as true plaintiffs' contentions, deductions, or conclusions of fact or law. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

alleging that the assessments were void (the 1997 Jarvis action). The 1997 Jarvis action was settled by agreement pursuant to which the City agreed to hold an election to validate the assessments; if the election returned the requisite majority vote, the plaintiffs in that action would not be assessed again until they developed their land; if the election failed, the City would continue to collect the assessments until June 30, 2000.<sup>2</sup>

Plaintiffs (in this action) were unaware of the 1997 Jarvis action or the settlement agreement resolving that action.

In November 1999, the City held an election to attempt to validate the assessments. The election failed and, according to plaintiffs, “the void assessments which were *void ab initio* did not become valid.” Prior to December 2006, plaintiffs were unaware of the election.

The City and CSD continued to levy the assessments until June 30, 2000, when the CSD was dissolved.

Plaintiffs disputed the validity of the assessments and refused to pay them. The County of Riverside (County), which collected the property taxes for the City, refused to accept payment of the ad valorem property taxes on the parcels without also receiving payment for the assessments.

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<sup>2</sup> In opposing the defendants’ demurrer, plaintiffs requested judicial notice of the settlement agreement in the 1997 action. The agreement provides that the City will conduct an election to enact “a special tax to replace the current CSD levy.” The election is to take place in November 1999. “If the measure passes by the necessary two-thirds vote, the replacement special tax will commence on July 1, 2000. The City may continue to collect . . . its current CSD levy until June 30, 2000. The current CSD levy shall cease to be collected as of June 30 in the year 2000.”

In 2004, plaintiffs brought an action (the 2004 action) against the City and the County challenging the validity of the assessments under article XIII D of the California Constitution (Proposition 218). According to the first amended complaint in the 2004 action (the 2004 FAC), the “CSD tax” could be levied only on property upon which an improvement had been erected or installed and a benefit conferred by the City. Plaintiffs alleged that no such improvement had been erected or installed and no benefit was conferred upon the property. Plaintiffs sought: to enjoin the City from foreclosing the subject parcels pursuant to a tax sale of the parcels; a declaration that the CSD tax violated Proposition 218; a peremptory writ of mandate commanding defendants to comply with Proposition 218 by withdrawing all levies imposed on the parcels; and other appropriate relief, including ordering refunds on CSD levies already collected.

The City demurred to the 2004 FAC on the ground, among others, that it was barred by a statute of limitations. The court sustained the demurrer and dismissed the 2004 action on the basis that it was “barred by the statute of limitations pursuant to Revenue and Taxation Code [sections] 4807-4808.”<sup>3</sup>

According to plaintiffs, during the course of the demurrer to the 2004 FAC, the City fraudulently concealed from them and the court the facts that the assessments had been challenged as void in the 1997 Jarvis action, the City attempted to validate the assessments in the 1999 election, and the election failed.

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<sup>3</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

In 2005, IBP entered into an agreement with the County pursuant to which the County agreed to accept the ad valorem property taxes separate from the disputed CSD assessments. Plaintiffs then brought the ad valorem property taxes current. However, the County refused to credit plaintiffs with the ad valorem tax payments; instead, it held the funds in a holding account awaiting receipt of payment of the void assessments. The parcels thus remained in default and subject to a tax sale by the City.

On November 7, 2005, the Riverside County Tax Collector held a sale of the six parcels, which was forced by the City's collection of the assessments. The Cathedral City Redevelopment Agency purchased three of the six parcels.

In early 2006, plaintiffs brought an adversary action in the United States Bankruptcy Court against the City and others for breach of contract, fraud, and other causes of action arising from the November tax sale of the parcels (the 2006 action). Plaintiffs alleged that the defendants in that action (including the City and the County) breached a contract by, inter alia, selling the property at the November 7, 2005, tax sale.

During the course of discovery in the 2006 action, plaintiffs learned of the 1997 Jarvis action, the 1999 election that failed to validate the CSD assessments, and the 2000 dissolution of the CSD.<sup>4</sup>

Plaintiffs filed the current action in November 2008.<sup>5</sup> They assert 10 causes of action described as follows: (1) Declaratory Relief to Declare Void the Assessments

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<sup>4</sup> Plaintiffs and defendants both request that we take judicial notice of certain documents filed in the 2006 action. Plaintiffs also request judicial notice of the register of actions in the 1997 Jarvis action. We grant both requests.

Levied by the Cathedral City Community Services District; (2) Declaratory Relief to Declare Void the Judgment Entered in the 2004 Action; (3) Declaratory Relief to Declare that the Defendants Are Holding Plaintiffs' Funds and Title; (4) To Set Aside the Judgment Entered on the 2004 Action as Obtained by Extrinsic Fraud; (5) For Repayment to Plaintiffs of Assessments and Other Funds Wrongfully Collected; (6) Lack of Due Process; (7) Violation of Fifth Amendment of the United States Constitution; (8) Equitable Estoppel; (9) Unjust Enrichment; and (10) Damages.

*B. Demurrer and Motion to Strike*

Defendants filed a general demurrer to the SAC on the ground it failed to state facts sufficient to constitute a cause of action. Specifically, defendants asserted: (1) the action is barred by the doctrines of res judicata and collateral estoppel; (2) plaintiffs failed to exhaust their administrative remedies by paying the underlying assessments; (3) another action is pending before the Ninth Circuit Court of Appeals; (4) plaintiffs failed to comply with the Tort Claims Act; and (5) plaintiffs failed to name an indispensable party.

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*[footnote continued from previous page]*

<sup>5</sup> It is not clear from our record when this action was originally filed. Our clerk's transcript is provided by the clerk of the Riverside County Superior Court and includes the register of actions for that court. This action, however, was commenced in the Los Angeles County Superior Court and subsequently transferred to the Riverside County Superior Court after the filing of the first amended complaint. Neither the original complaint nor the Los Angeles court's register of actions is included in our record on appeal. In their briefs on appeal, however, each of the parties represent that the action was commenced in November 2008.

Defendants also filed a motion to strike the second, third, fourth, sixth, seventh, eighth, and tenth causes of action on the ground they were improperly added to the first amended complaint absent leave to amend the complaint.

Following a hearing, the court sustained the demurrer without leave to amend and, alternatively, granted the motion to strike the second, third, fourth, sixth, seventh, eighth, and tenth causes of action. In a revised judgment, the court stated that the demurrer was sustained because the SAC was barred by the doctrine of res judicata as a result of the judgment in the 2004 action.

## II. ANALYSIS

### A. *Standard of Review*

“On appeal from an order of dismissal after an order sustaining a demurrer, the standard of review is de novo: we exercise our independent judgment about whether the complaint states a cause of action as a matter of law. [Citation.] First, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. Next, we treat the demurrer as admitting all material facts properly pleaded. Then we determine whether the complaint states facts sufficient to constitute a cause of action. [Citations.] [¶] We do not, however, assume the truth of contentions, deductions, or conclusions of law. [Citation.] If a complaint is insufficient on any ground specified in a demurrer, the order sustaining the demurrer must be upheld even though the particular ground upon which the court sustained it may be untenable. [Citation.]” (*Stearn v.*

*County of San Bernardino* (2009) 170 Cal.App.4th 434, 439-440 [Fourth Dist., Div. Two].)

B. *First Cause of Action for Declaratory Relief as to Legality of Assessments*

In their first cause of action, plaintiffs seek declarations that the CSD assessments are unconstitutional and void *ab initio* under Propositions 13 and 218. A nearly identical claim was asserted in the 2004 action, which the trial court ruled was barred by the statute of limitations in section 4808. Regardless of whether the court’s ruling on the 2004 action has res judicata or collateral estoppel effect on the present claim, plaintiffs’ first cause of action is plainly barred by section 4808.<sup>6</sup>

To place section 4808 in context, we first take note of section 4807, which provides that “[n]o injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected.” This means that “any legal action . . . seeking ‘prepayment adjudication that would effectively prevent the collection of a tax [is] barred.’ [Citation.]” (*Riverside County Community Facilities Dist. v. Bainbridge* 17 (1999) 77 Cal.App.4th 644, 661.)

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<sup>6</sup> Plaintiffs devote almost their entire brief to the argument that the present action is not barred by res judicata. Indeed, there is authority for the proposition that a judgment based upon a statute of limitations is not a decision on the merits and will not have res judicata effect on a subsequent action. (See, e.g., *Koch v. Rodlin Enterprises* (1990) 223 Cal.App.3d 1591, 1596; *Mid-Century Ins. Co. v. Superior Court* (2006) 138 Cal.App.4th 769, 776-777; cf. *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77 [judgment based on laches is not a judgment on the merits for purposes of res judicata].) We are not, however, limited to the trial court’s rationale. (See *Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, 426.)

“The fundamental idea of . . . section 4807, is that you first must pay your taxes—even if the amount you paid was higher than the law required—and *then* sue for a refund. You don’t get to seek any injunction against paying them in the first place. The theory is that revenue collection should continue during litigation so that the government can continue to operate.” (*Bunker v. County of Orange* (2002) 103 Cal.App.4th 542, 555; see also *Sherman v. Quinn* (1948) 31 Cal.2d 661, 665.)

Notwithstanding section 4807, section 4808 allows a taxpayer to seek declaratory relief that “locally assessed property taxes have been illegally or unconstitutionally assessed or collected or are to be so assessed or collected.” (§ 4808; see 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, § 298, p. 437.) However, this is available only when the tax has been assessed or collected as the direct result of a change in administrative regulations or statutory or constitutional law that became effective within the 12-month period preceding the filing of the complaint. (§ 4808; *Howard Jarvis Taxpayers Assn. v. County of Orange* (2003) 110 Cal.App.4th 1375, 1388.) The availability of this statute is further limited by a narrow statute of limitations: An action seeking such declaratory relief must be commenced within 30 days after the delinquency date of the property tax bill. (§ 4808.) Moreover, the taxpayer challenging the tax is still not permitted “to postpone payment of property taxes pending the decision of the court.” (*Ibid.*)

Section 4808 precludes the plaintiffs’ first cause of action in two ways. First, the action challenges the validity of the assessments under laws that became effective prior to

the 12-month period preceding the filing of the complaint. The plaintiffs allege the assessments are invalid under Propositions 13 and 218. The most recent of these constitutional amendments, Proposition 218, was enacted in 1996, 12 years before the present action commenced in November 2008. Even if the change in law is the City's 1999 election, the lawsuit is still nine years too late.

Second, the action was not filed within 30 days after the delinquency date of any challenged tax bill. Indeed, it appears from the SAC that the City discontinued the assessments in June 2000—eight years before this action was filed. Accordingly, the first cause of action for declaratory relief is barred by applicable statutes of limitations.

Plaintiffs assert that because the assessments were void *ab initio*, “there cannot be a statute of limitations against a void item.” If they mean by this that there cannot be a statute of limitations barring an action challenging an allegedly void assessment as unconstitutional, they are wrong; there can be and is. Section 4808 places a 30-day limit on such actions and it bars plaintiffs' first cause of action.

During oral argument, plaintiffs placed heavily reliance on *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809 (*La Habra*), a case not mentioned in their briefs or in their written request to present additional authorities filed one week before argument. In *La Habra*, the plaintiffs sought, among other relief, a declaration that a utility users tax was illegal. (*Id.* at p. 813.) It was undisputed that the three-year statute of limitations of Code of Civil Procedure section 338, subdivision (a), applied because the “action is one ‘upon a liability created by statute,’ . . .” (*La Habra*,

*supra*, at p. 815.) The court held that the action accrues, and the statute of limitations begins to run, each time the tax is collected. (*Id.* at pp. 812, 821.)

*La Habra* has no application here. The tax in *La Habra* was a “utility users tax,” described by the court as “a general tax on its residents.” (*La Habra, supra*, 25 Cal.4th at pp. 812-813.) Unlike the present case, the plaintiffs in *La Habra* were not challenging the legality of a *property* tax. Because section 4808 applies only to actions challenging “locally assessed property taxes [that] have been illegally or unconstitutionally assessed or collected or are to be so assessed or collected” (§ 4808), that statute was irrelevant to the challenge to the utility users tax in *La Habra*. Thus, section 4808 was not asserted by the defendant city in *La Habra* and not mentioned in the court’s opinion. That case simply has no bearing on the applicability of section 4808 and is inapposite to the present case.

### C. *Second Cause of Action for Declaratory Relief*

In the second cause of action for declaratory relief, plaintiffs sought a declaration that: (1) the judgment in the 2004 action, which was based on the statute of limitations, is void; (2) sections 4807 and 4808 did not apply to the 2004 action because the assessments at issue were void *ab initio*; (3) there is no statute of limitations applicable in the 2004 action; and (4) the judgment of dismissal in the 2004 action is not *res judicata* to the present action.

The claim that the judgment in the 2004 action is void appears to be based primarily upon the assertion that the prior judgment was obtained by extrinsic fraud.

Specifically, plaintiffs assert that the City fraudulently concealed from them and the court the 1997 Jarvis action, the 1999 election, and the dissolution of the CSD in 2000.

Extrinsic fraud justifying setting aside a prior judgment “occurs when a party is deprived of his opportunity to present his claim or defense to the court, where he was kept in ignorance or in some other manner fraudulently prevented from fully participating in the proceeding. [Citation.] Examples of extrinsic fraud are: . . . failure to give notice of the action to the other party, [and] convincing the other party not to obtain counsel because the matter will not proceed (and it does proceed). [Citation.]’ [Citation.]” (*Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 315; see generally 8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 225, pp. 832-833.)

The one case cited by plaintiffs on appeal for this argument, *Cicone v. URS Corp.* (1986) 183 Cal.App.3d 194, does not involve an attack on a prior judgment for extrinsic fraud. Other than setting forth general principles regarding fraud, it has no application here.

The concealment of the facts alleged by plaintiffs did not deprive plaintiffs of any opportunity to present their claims in the 2004 action or from otherwise fully participating in the proceeding. Moreover, it does not appear to us that the City had any duty to inform plaintiffs of the 1997 Jarvis action, the 1999 election, or the dissolution of the CSD. The Jarvis action involved other parties, the issues raised were never adjudicated, and it was concluded by a settlement agreement in which the parties agreed

that it “shall not constitute or be construed to be an admission by any of the Parties or as evidencing or indicating in any degree an admission of the truth or correctness of any claims or defenses in the litigation by any Party.” The results of the 1999 election and the dissolution of the CSD in 2000 are facts that might have had a bearing on the 2004 action if it was not barred by sections 4807 and 4808. But these statutes did preclude the 2004 action, and we see no basis for finding a duty by the City to volunteer such information prior to or during the proceedings on the demurrer to the 2004 action.

Because plaintiffs have failed to state facts sufficient to justify voiding the judgment in the 2004 action based on extrinsic fraud, they are not entitled to a judicial declaration to that effect.

The second and third judicial declarations sought in the second cause of action—that sections 4807 and 4808 did not apply to the 2004 action because the assessments at issue were void *ab initio*, and that there is no statute of limitations applicable in the 2004 action—are meritless for the reasons discussed in the preceding part: Claiming that the assessments were void *ab initio* does not provide plaintiffs with a means to avoid the limits on declaratory relief actions set forth in section 4808.

The fourth judicial declaration sought in the second cause of action—that the judgment of dismissal in the 2004 action is not *res judicata* to the present action—is not a cause of action; it is an argument asserted in response to the anticipated defense of *res judicata*.

*D. Third Cause of Action for Declaratory Relief That Defendants are Holding Plaintiffs' Funds and Title*

In the third cause of action, plaintiffs sought a declaration that: (1) the money held by defendants as a result of the November 2005 tax sale of plaintiffs' property is held for the benefit of plaintiffs; and (2) title to the three parcels held by defendants are held for the plaintiffs' benefit. The claim is based on the allegations the City and CSD "wrongfully forced a tax sale" of their parcels "to wrongfully collect approximately \$75,000 in void assessment payments," and that they had "no obligation to pay void assessments . . . ." Apparently, the alleged wrongful nature of the sale and the lack of an obligation to pay are based on the allegations that the assessments were illegal and unconstitutional.

As set forth above, section 4808 bars actions seeking declaratory relief that a property tax has been illegally or unconstitutionally assessed or collected unless the deadlines set forth in that statute are met. Because this third cause of action seeks, in essence, a declaration that the assessments underlying the 2005 tax sale was illegal and unconstitutional, it is barred.

*E. Fourth Cause of Action to Set Aside the 2004 Judgment as Obtained by Extrinsic Fraud*

In addition to seeking declaratory relief that the 2004 judgment was void on the ground of extrinsic fraud in their second cause of action, plaintiffs assert a separate, fourth cause of action for an order setting aside the 2004 judgment for the same reason.

Our analysis of the second cause of action applies equally here. In short, the alleged acts of concealment by the City do not constitute extrinsic fraud as to the judgment in the 2004 action. Therefore, the demurrer to plaintiffs' fourth cause of action was properly sustained.

*F. Fifth Cause of Action for Repayment of Assessments and Other Funds Wrongfully Collected*

In the fifth cause of action, plaintiffs sought repayment of "all assessment funds wrongfully collected" or "the excess funds received by the Riverside County Tax Collector as a result of the tax sale," plus interest. In their opening brief on appeal, plaintiffs explain that they "are in a position to recover payment of the assessments under [section] 5096, which permits an action for refund of the assessments if collected illegally or miscalculated."

Under section 5096, a taxpayer may obtain a refund of taxes paid if (among other grounds) the taxes were erroneously or illegally collected or illegally assessed or levied. (§ 5096.) There are at least two problems with plaintiffs' claim under this statute. First, section 5096 provides for a refund of "taxes paid";<sup>7</sup> yet plaintiffs allege that they "at all times disputed the validity of said wrongfully-levied void assessments upon [their

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<sup>7</sup> "Taxes," for purposes of section 5096, "includes assessments collected at the same time and in the same manner as county taxes." (§ 4801; *Hanjin Internat. Corp. v. Los Angeles County Metropolitan Transportation Authority* (2003) 110 Cal.App.4th 1109, 1112-1113.) There is no dispute in this case that the assessments challenged by plaintiffs are taxes for purposes of section 5096. (See former Gov. Code, § 61758, Stats. 1995, ch. 1746, § 3, p. 3227 [community service district "taxes . . . shall be collected at the same time and in the same manner as county taxes"].)

parcels], and *refused to pay said void assessments.*” (Italics added.) Clearly, plaintiffs are not entitled to a refund of an assessment they never paid.

Plaintiffs attempt to get around this problem by asserting that they “paid the assessments with their property when their property was sold . . . at the tax sale on November 7, 2005.” They offer no citation to support this theory. It is contrary to the statutory scheme for the payment of property taxes.

Property taxes “may be paid in legal tender or in money receivable in payment of taxes by the United States.” (§ 2502.) The tax collector may accept payment made by negotiable paper, such as a bank check or money order, credit card, or electronic fund transfer of funds. (§§ 2503.2, 2505, 2511.1.) There is no provision for making payment of taxes with, as the plaintiffs’ put it, the property.

Moreover, by the time the sale of tax-defaulted property takes place, the time within which the taxes may be paid has long passed. Taxes on real property are due in two parts, on November 1 of the year in which they are levied and February 1 of the following year. (§§ 2605, 2606.) If unpaid, they become delinquent after the close of business on December 10 and April 10, respectively. (§§ 2617, 2618.) Delinquent taxes may be paid no later than June 30. (§ 3437; 9 Witkin, Summary of Cal. Law, *supra*, Taxation, § 261, p. 393.) Thereafter, the property is declared tax-defaulted and the amount due “cannot be paid.” (*Ferreira v. County of El Dorado* (1990) 222 Cal.App.3d 788, 791; see §§ 3437, 3438.) Although the defaulting owner can thereafter redeem the property by paying a sum equal to the defaulted taxes, delinquent penalties and costs,

redemption penalties, and a redemption fee (§§ 4101, 4102), the time for payment of the taxes, as such, has expired (§ 3437). The tax sale of unredeemed, tax-defaulted property takes place at least five years later. (§ 3691, subd. (a).) The tax sale is thus a consequence of the *failure* to pay taxes; it is not a method of paying them.

The plaintiffs' second problem with their claim for a refund under section 5096 is that they have failed to allege the exhaustion of administrative remedies. (See *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1308 [a prerequisite to filing an action to obtain a refund requires the taxpayer to first exhaust his or her administrative remedies].) These include the filing of an administrative refund claim pursuant to section 5097. (*Steinhart v. County of Los Angeles, supra*, at pp. 1307-1308.) The refund claim must be verified by the person who paid the tax and (except in situations not relevant here) filed within four years after the payment was made. (§ 5097.) An action for a refund may not be commenced or maintained by a taxpayer unless the refund claim was filed. (§ 5142, subd. (a); *Georgiev v. County of Santa Clara* (2007) 151 Cal.App.4th 1428, 1435.) Indeed, the failure to file a refund claim within the four-year period deprives a court of jurisdiction to consider the issue. (*JPMorgan Chase Bank, N.A. v. City and County of San Francisco* (2009) 174 Cal.App.4th 1201, 1210; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 35-36.)

Plaintiffs' failure to exhaust administrative remedies is the lead argument asserted by defendants in their brief on appeal. In response, plaintiffs offer a single, conclusionary sentence: "Nor is there any question that [plaintiffs] have exhausted their

administrative remedies by having paid the assessments through the sale of their property, very much under protest.” As explained above, plaintiffs did not pay the assessment when the property was sold. Even if they did, a payment by tax sale does not constitute a claim for a refund or otherwise exhaust their administrative remedies.

For the foregoing reasons, plaintiffs’ fifth cause of action fails to state facts sufficient to constitute a cause of action.

#### G. *Sixth Cause of Action for Lack of Due Process*

In the sixth cause of action for “Lack of Due Process,” plaintiffs alleged the defendants never gave them notice “of the intention to have the [CSD] or any other agency of the City assess Plaintiffs’ undeveloped, land-locked, wilderness-state [parcels]. Nor did Plaintiffs or any of them ever have an opportunity to be heard on the matter of validity of Defendants’ intended or actual and repeated assessments which, as alleged herein, were void *ab initio*.” They further allege that, because of the lack of due process, defendants’ acts “are unlawful and without force or authority and must be set aside.” They request that the court “find that Defendants’ acts . . . were carried out against Plaintiffs under a lack of due process, not hav[ing] given Plaintiffs notice or a right to be heard with regard to its [CSD] assessments which were void *ab initio*.”

Plaintiffs did not squarely address this cause of action in their arguments to the trial court or in their briefs on appeal. Nevertheless, it is clear from the allegations and the related prayer for relief that plaintiffs seek a judicial declaration that the CSD assessments are unconstitutional. As explained above, such a claim can only be made

within a narrow time frame that has long passed. (See § 4808.) Although due process may be implicated if plaintiffs never received notice of the assessments or the tax sale (see, e.g., *Mennonite Bd. of Missions v. Adams* (1983) 462 U.S. 791, 798-800; *Banas v. Transamerica Title Ins. Co.* (1982) 133 Cal.App.3d 845, 848-852 [Fourth Dist., Div. Two]), that is not the case here. Significantly, plaintiffs do not allege that they never received notice of the actual CSD assessments on their property. Indeed, they aver that “at all times [they] disputed the validity of said wrongfully-levied void assessments upon Plaintiffs’ Subject Parcels, and refused to pay said void assessments.” Their knowledge of the assessments is further apparent from the allegation that the County refused to accept their payment of the ad valorem property taxes unless it also received payment for the assessments. The claim thus does not appear to be based upon lack of notice of the assessments or their levy against the parcels, but rather on the alleged lack of an opportunity to be heard as to the validity of the assessments.

The law governing the assessment and collection of property taxes provide taxpayers with a constitutionally adequate opportunity to challenge such actions. An action seeking declaratory relief as to the illegality or constitutionality of the assessments under section 4808 was plainly available to plaintiffs—they simply failed to seek such relief within the time required by that statute. Plaintiffs also had the opportunity to challenge the validity of the assessments by paying them and seeking a refund. (§ 5096.) They offer no argument that such remedies are inconsistent with due process or any

explanation as to why they did not pursue them. Because plaintiffs failed to state sufficient facts to support their due process claim, this claim fails.

H. *Seventh Cause of Action for a Taking of Property Without Just Compensation Under the Fifth Amendment to the United States Constitution*

In their seventh cause of action, plaintiffs allege defendants took the parcels “without just compensation, having purchased three of them at their own forced tax sale on November 7, 2005.” By doing so, they allege, defendants violated the takings clause of the Fifth Amendment to the United States Constitution.

As with their due process claim, plaintiffs do not present any argument or legal authority in support of their takings claim. Indeed, there is contrary authority. (See, e.g., *Chapman v. Zobelein* (1912) 19 Cal.App. 132, 134-135 [validity of tax deed upheld against takings clause and other constitutional challenges to tax sale]; see also *Jones v. Flowers* (2006) 547 U.S. 220, 234 [“People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property”].) The claim is without merit.

I. *Eighth Cause of Action for Equitable Estoppel*

In their eighth cause of action for equitable estoppel plaintiffs allege that defendants are estopped from raising res judicata as a defense to the present action because of their fraudulent concealment and misrepresentation of material facts in the 2004 action. This purported claim is essentially an argument as to why res judicata is not

a defense to the present action. No argument or authority is offered in support of this claim and we know of no basis for finding that it constitutes a cause of action.

*J. Ninth Cause of Action for Unjust Enrichment*

In the ninth cause of action, plaintiffs aver that defendants will be unjustly enriched if they are permitted to keep the funds received as a result of the tax sale and title to the parcels bought by defendant Cathedral City Redevelopment Agency. The only apparent basis for this claim is that the assessments that ultimately led to the tax sale were allegedly void. The problems with this premise—the failure to exhaust administrative remedies and to file an action within the limitations period—are discussed above. Plaintiffs cannot avoid these procedural requirements by claiming unjust enrichment.

*K. Tenth Cause of Action for Damages*

Finally, in the tenth cause of action, plaintiffs incorporate all preceding allegations and seek damages for the financial loss from the sale of their property, “attorney fees, court costs, and emotional trauma” resulting from defendants’ actions. The wrongful acts include “levying void assessments” on the parcels, concealing essential and material facts from plaintiffs, obtaining the judgment of the 2004 action based on fraudulent concealment of facts, “forcing a tax sale” of the parcels and purchasing three of them “at fire sale prices,” and attempting to collect assessments that defendants knew were not valid.

The alleged facts do not, under the circumstances alleged in the SAC, state a cause of action. As discussed above, the remedy for the levying of an illegal assessment is to

pay the assessment, seek a refund by pursuing the statutorily required administrative remedies, and then, if necessary, filing an action for a refund. (See generally 9 Witkin, Summary of Cal. Law, *supra*, Taxation, § 285, pp. 416-419.) Plaintiffs never paid the assessments and, if they did, failed to file a claim for a refund. The alleged concealment of “essential and material facts” during the 2004 litigation is also addressed above—in the discussion regarding the second cause of action; the allegations do not support a cause of action. Finally, the allegations of forcing a tax sale and purchasing parcels at fire sale prices do not, without more, support a claim for relief.

Moreover, as a claim for damages against local public entities, plaintiffs were required to comply with the Government Claims Act (Gov. Code, § 900 et seq.) by presenting a claim to the public entity no later than one year after the cause of action accrued (see Gov. Code, §§ 905, 911.2, subd. (a)). Except in circumstances not applicable here, “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented” and such claim has been acted upon, or deemed rejected, by the entity. (Gov. Code, § 945.4.) Facts demonstrating or excusing compliance with the act must be alleged in the complaint. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1243.) “Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action.” (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209.) Here, plaintiffs do not allege facts establishing or

excusing compliance with the Government Claims Act and make no mention of the requirement in their briefs on appeal. The time for making such a claim has expired. The claim for damages is thus barred by the Government Claims Act.

*L. Conclusion*

Even if the assessments on plaintiffs' parcels were levied in violation of Proposition 13 or Proposition 218, plaintiffs were required to comply with the procedural prerequisites for relief. They could have sought a judicial declaration of the assessments' illegality within the time provided for in section 4808, but did not. They could also have paid the disputed assessments and sought a refund in the manner provided for by law, but refused to do so. They cannot make an end-run around these requirements by characterizing the tax sale as a payment of the assessments or asserting theories of unjust enrichment or damages. To the extent a claim for damages could be asserted, it is barred by the plaintiffs' failure to comply with the Government Claims Act.

Reading the SAC as a whole and treating the demurrer as admitting all material facts properly pleaded, we conclude that the SAC fails to state facts sufficient to constitute a cause of action.<sup>8</sup>

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<sup>8</sup> At oral argument, plaintiffs indicated for the first time that they would like to amend their complaint to add claims for violation of federal constitutional rights, including the right to substantive due process, pursuant to Title 42 United States Code section 1983. If we assume that plaintiffs are not too late in making this request, they failed to explain or support the request.

III. DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.