



The First District Court of Appeal held that a single deed conveying four or fewer contiguous lots can qualify for a presumption of legality under section 66412.6(a) of the Subdivision Map Act so long as the lots are separately described (including by reference to an antiquated subdivision map) and all other requirements of section 66412.6(a) are satisfied. Specifically, the court rejected the City of Oakland's argument that the lot in question must have been separately conveyed as a single lot to have been lawfully established. *Crescent Trust v. City of Oakland*, 90 Cal. App. 5th 805 (2023).



Fox Oakland Theater, 1807 Telegraph Ave, Oakland, CA

The lot at issue, Lot 18, was first depicted on the Map of San Antonio filed with the County Recorder's Office in 1854 and recorded in 1869. At that time, no state or local law existed "regulating divisions of land creating fewer than five parcels." Crescent Trust acquired Lot 18, along with Lot 17 and part of Lot 16, in 2015 by a single conveyance. Although several other lots' boundaries had been adjusted over time through various conveyances, Lot 18 remained as depicted on the 1854 Map of San Antonio.

Crescent Trust subsequently applied for a certificate of compliance for Lot 18, which the City denied on the ground that Lot 18 had been merged with several of its surrounding lots in 1933. Crescent Trust filed a petition for writ of mandate. The City opposed the writ petition, not on the theory that Lot 18 had been lost through merger, but on the ground that Lot 18 was never formally divided because it was depicted on an antiquated subdivision map and had never been lawfully created or separately conveyed as an individual lot. The City relied on *Gardner v. County of Sonoma*, 29 Cal. 4th 990 (2003), which held that "the recordation of a subdivision map...without something more (such as a conveyance), could not and did not work a legal subdivision of the property."

Under Government Code section 66412.6(a), any parcel created prior to March 4, 1972, is presumed to have been lawfully created if (1) the parcel resulted from a division of land creating fewer than five parcels and (2) at the time of such creation, there was no local ordinance which regulated divisions of land resulting in fewer than five parcels. The Court of Appeal rejected the City's argument that *Gardner* required Lot 18 to be separately and individually conveyed from the surrounding lands to enjoy section 66412.6(a)'s presumption of legality.

In contrasting the Supreme Court of California's decision in *Gardner* to the present case, the Court of Appeal stressed that, (1) the Supreme Court's holding there rested on a factual predicate not presented here: the *Gardner* lots had never been separately conveyed *or separately described* in a grant deed; and (2) the *Gardner* court did not consider section 66412.6(a), concluding that any argument based on that statute had been waived. Thus, the Court of Appeal reasoned, the City here relied on a "single-lot-only constraint on conveyances that the high court did not, in fact, impose." Although Lot 18 was conveyed alongside contiguous properties, Lot 18 was "'separately described' in every conveyance of fewer than five lots." This "was wholly consistent with the law then, and now," under which multiple, separately described lots can be transferred by way of a single conveyance, such as a grant deed. Accordingly, Lot 18 was lawfully subdivided and entitled to a presumption of legality under section 66412.6(a).

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