

The Not So “Common” Costs

A major real estate investment group (“Investor”) is the owner of one of the largest office properties in Orange County, California. The surrounding retail space, parking structure and expansive surface parking lot is owned by a partnership between the Investor and a major developer (“Developer”), and is managed through a Reciprocal Easement Agreement (“REA”). Under the REA the Investor absorbs a vast majority of the common area expenses, including insurance and taxes, for the parking facilities.

The Investor questioned the Developer’s allocation of the common area expenses and received a less-than-satisfactory response. In addition, the Investor had reason to believe that the Developer had received significant property tax refunds that had not been credited to the Investor. The developer was unresponsive to the Investor’s requests for property tax refund data, and the working relationship between the parties deteriorated to one of communicating only through counsel. Ultimately, a suit was filed.

Schulze Haynes Loevenguth & Co. was retained by the Investor to perform an analysis, as allowed for in the REA, of the common area costs, with a particular focus on property taxes. The period in question covered ten years.

Property tax refunds had been received by the Developer over a multi-year period and withheld from our client.

Our analysis, which included a detailed review of the Tax Collector’s records for the period in question, revealed that:

- Common area costs had indeed been over-allocated to our client for an extended period of time.
- Significant property tax refunds had been received by the Developer without corresponding credit or payment to our client.
- The land area occupied by tenants other than our client had been miscalculated, resulting in an ongoing overcharge of common area costs to our client.

We prepared and submitted a report detailing our findings. Negotiations between the parties failed to produce any progress toward a settlement, and the case moved toward trial.

Schulze Haynes Loevenguth & Co. provided deposition testimony regarding the results of our analysis.

Result: On the eve of trial, the case settled, with our client receiving credit for all amounts that our analysis had indicated they were owed.

Schulze Haynes Loevenguth & Co.

660 South Figueroa Street, Suite 1280 • Los Angeles, California 90017

(213) 627-8280 • Fax (213) 627-8301

www.schulzehaynes.com

