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PERSPECTIVE

## Saving the Japanese YWCA building

By Ben Riley

In December 1999, I was sitting in my office at Cooley when our associate (now 1st District Court of Appeal Justice) Tracie Brown came by and asked if the firm and I would be interested in substituting in as counsel in a high-profile, pro bono, trust case. Although for many years, most of my practice had been in intellectual property litigation, I also had an active caseload representing major charities in trust litigation. When Tracie told me the case involved the Alien Land Laws from the early 20th century and trust language from the 1920s, I was hooked! Next to the law, history has always been a passion of mine. Cooley fully supported Tracie and me as we devoted much of the next two years to this amazing case.

### Could the YWCA Building Be Sold?

In 1996, the San Francisco Chapter of the YWCA decided to sell the building located at 1830 Sutter Street, in San Francisco's Japantown. The building, completed in 1932, had been designed by famed-architect Julia Morgan and served as a clubhouse for the Japanese YWCA, which was then a separate institution. In the spring of 1942, Japanese-Americans were forced to "relocate" to internment camps throughout the western United States. Gradually with their return to San Francisco after World War II, the Japanese-Americans reclaimed some of their land in San Francisco. By 1996, the 1830 Sutter building was rented by a child care facility,



Photo courtesy of Ben Riley

Nihonmachi Little Friends, serving the Japantown community.

When the San Francisco YWCA put 1830 Sutter up for sale, the local Japanese-American community immediately organized against it. Grandmothers remembered baking cookies and cakes with *their* grandmothers in the 1920s to raise money for buying the property and ultimately constructing Julia Morgan's beautiful building. The local community did not believe the SF YWCA had the right to sell the building away from the local community.

The Japanese-American community has always been active in San Francisco political and cultural projects. Just 15 years

before, community lawyers led by Dale Minami and Don Tamaki represented Fred Korematsu in proceedings before Judge Marilyn Hall Patel of the Northern District of California whereby the court overturned Mr. Korematsu's conviction for refusing to comply with the 1942 exclusionary order. The community solicited attorneys Don Tamaki, Karen Kai and Bob Rusky to examine the San Francisco YWCA's right to sell 1830 Sutter. McCutchen Doyle was recruited to assist the effort, but the San Francisco YWCA successfully disqualified the firm based on prior unrelated work. Cooley — led by Tracie Brown, Beatrice Mejia and me — was asked to take on the case.

### YWCA Minutes From the 1920s Establish the Trust

Prior to our involvement, a local historian, Al Gordon, assisted by the lawyers had found minutes from the San Francisco YWCA in the 1920s containing language that, we believed, created a trust over the property at 1830 Sutter Street in favor of the Japanese-American women and girls of San Francisco. Alien Land Laws enacted by California in 1913 and 1920, along with related court decisions, had the effect of precluding first-generation Japanese-Americans from holding title to real property. Trying to circumvent these laws, YWCA board minutes from 1920 reflected that the "white" YWCA had authorized the local Japanese YWCA to raise funds toward the purchase of property for a clubhouse in Japantown.

These minutes stated that if the Japanese-American local community were able to raise the money and purchase property, title would be held by the "white" YWCA "in trust for the Japanese YWCA." The property at 1830 Sutter Street was purchased in 1921, with funds raised entirely by the local community. The YWCA minutes reflected that "if this property is sold or any income derived from it other than Japanese Y.W.C.A. uses, the funds shall be applied to Christian work for Japanese women and girls in San Francisco." Finally, when the building was completed in 1932, a 20-year retrospective paper confirmed that the building "belongs not only to [the Japanese Y.W.C.A.] but also to the Japanese community in general."

## The San Francisco YWCA's Defenses

The first issue facing the legal team was standing: Who could bring this 75-year-old trust case? Research showed that the original Japanese YWCA was established in 1912 by a federation of Christian churches serving the local community, the Soko Bukai. In 1997, the remaining churches from that federation authorized the trust lawsuit against the YWCA with the Soko Bukai as the plaintiff, representing the interests of the Japanese women and girls and the Japantown community in the 1830 Sutter building. The San Francisco YWCA demurred based on standing, but Judge (later Justice) Laurence Kay overruled the demurrer, finding that the remaining member-churches of the Soko Bukai had standing to assert the breach of trust claims.

Next the San Francisco YWCA brought a motion for summary judgment, claiming in essence that after World War II the separate Japanese and Chinese YWCAs were consolidated under the main YWCA ownership and direction. According to the San Francisco YWCA, it was the successor to and full owner of any interests held in the 1830 Japanese YWCA building. Judge Kay again rejected the San Francisco YWCA's arguments, finding that the words of trust in the YWCA's own minutes from the 1920s raised material issues of disputed facts concerning the trust interests of Japanese-American women and girls of San Francisco in the Japanese YWCA building. Retired San Francisco Judge William Cahill kindly offered his time pro bono to mediate the case, but no resolution resulted.

In the summer and fall of 2001, we were hard at work building our case and responding to massive discovery propounded by the San Francisco YWCA. The YWCA took over 40 depositions, including of elderly women and men who remembered the build-

ing campaign in the 1920s. Ultimately, we were preparing for a Spring 2002 trial before Judge Lilian Sing.

Returning from a deposition in Los Angeles, I was reading over one of our pieces of evidence: the Abiko Diaries. So began one of the most remarkable moments in my career.

### The Abiko Diaries

Mrs. Yonako Abiko, one of the first leaders of the Japanese-American women in San Francisco, was a renowned diarist, detailing much of the life of the Issei and Nisei in San Francisco. Mrs. Abiko's diaries are studied by historians in both Japan and California, and reside at UCLA.

Our expert, the late UCLA Historian Yuji Ichioka, happened to be working with a visiting Japanese cultural scholar, Eriko Yamamoto, who was studying the Abiko diaries which were written almost entirely in Japanese. In her studies, Professor Yamamoto came across entries regarding the Japanese YWCA and immediately told Professor Ichioka about them who in turned told us. Professor Yamamoto painstakingly identified and translated all of Mrs. Abiko's entries about the Japanese YWCA, from 20 years of diaries. Reading the excerpted entries on the plane, I knew I had to see them in person.

I met Professor Yamamoto at the UCLA Special Collections Library. I looked at the Japanese characters and something immediately jumped out at me: English words! One day prior to the San Francisco YWCA board meeting in 1920 where the YWCA promised to hold the 1830 Sutter property in trust, Mrs. Abiko had visited with a prominent San Francisco lawyer, Guy Calden, who assisted Japanese-Americans in guarding their title to real property. In this and other diary entries — interspersed among her Japanese characters — Mrs. Abiko wrote “y.w.c.a. trust meeting” and “local trustee.” These

were legal words Mrs. Abiko learned, in English, from attorney Calden, and they were so important that she wrote them down in English in her otherwise Japanese diary. I literally shivered when I read those English words: Mrs. Abiko was talking directly to me, 80 years later!

As we prepared for trial, we realized that before every key board meeting of the “white” YWCA in 1920 and 1921 where the Japanese YWCA was discussed, Mrs. Abiko had a diary entry the day before or the same day corroborating the trust promises to the Japanese women and girls of San Francisco. The juxtaposition of the YWCA's minutes and the corresponding Abiko diary entries would be the cornerstone of our proof at trial, buttressed by the testimony of Professors Ichioka and Yamamoto.

### Resolution

Recognizing the explosive power of the Abiko diaries, the San Francisco YWCA sought a one-year trial continuance to make their own translation of the diaries. We opposed the motion. Meanwhile, we agreed to one last mediation session, this time before the late Superior Court Judge Herbert Donaldson. Judge Donaldson masterfully brought all parties to the table, and with the assistance of insurance monies, the San Francisco YWCA agreed to sell the property at 1830 Sutter Street and the adjacent lot to the Nihonmachi Little Friends childcare organization. We were thrilled: the property would remain in service of the local Japanese-American community, particularly its women and children. To ensure this service in perpetuity, Nihonmachi Little Friends agreed to a deed restriction on the property — similar to what the San Francisco YWCA promised in 1921 — that if the property is sold, it will continue to be used for service to the local Japanese-American community.

The conclusion to this case

reminds me of the adage “doing well by doing good.” Tracie Brown and I were privileged to lead a great trial team, working with committed and important San Francisco lawyers and community members, and invoking critical (and shameful) California history to accomplish what Mrs. Abiko and the Japanese-American women put in motion 80 years before. I am still in awe of this opportunity and experience, especially the voice of Mrs. Abiko in my head at UCLA! My kids remind me that this case was the only one “important enough” to get me interviewed on TV and radio. This pro bono case for the Soko Bukai helped hone my trust chops and now — after years of IP litigation — my largest case happens to be ... a trust case. And recently, the State of California approved the nomination of the Japanese YWCA building to the National Register of Historic Places. Perhaps most cool, Justice Brown's daughter attended Nihonmachi Little Friends preschool and participates in an afterschool program at 1830 Sutter Street — thanks to Mrs. Abiko, a 1920s lawyer named Calden, and the vigilant and inspiring grandmothers of San Francisco's Japantown! ■

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