



Wagenseller Law Firm

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Wagenseller Law Firm

- Full Service Business and Real Estate Litigation Law Firm
- Excellent Service in an efficient and cost-effective way
- Proven trial experience
- Results oriented
- Call us at (213) 996-8338 for any of your legal needs.

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Announcing... Wagenseller Law Firm

We are pleased to announce the opening of Wagenseller Law Firm at our new offices in downtown Los Angeles.

Wagenseller Law Firm handles all types of business and real estate litigation as well as business counseling.

From our new offices in the Gas Company Tower in downtown Los Angeles, WLF provides excellent service in an efficient and cost-effective way.

We welcome your inquiries as well as your referrals.

OUR PRACTICE

We handle a variety of cases, including

- **Business Disputes**, including partnership dissolution, investor claims, Directors and Officers

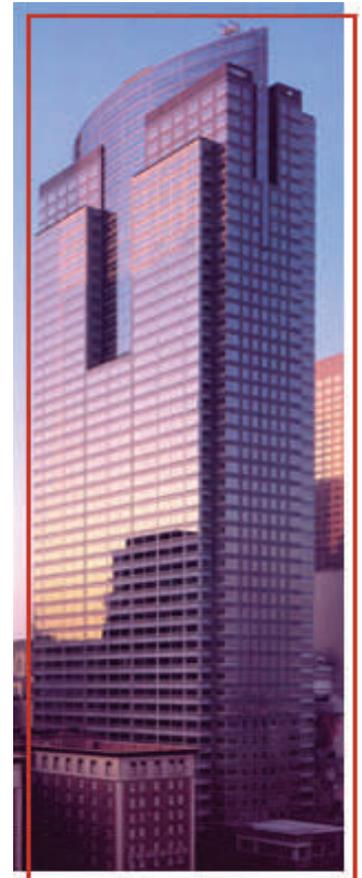
liability, business fraud, and insurance claims, among others.

- **Breach of Contract**, including breach of lease, breach of guaranty, breach of purchase and sale agreement and breach of promissory note, among others.

- **Real Property Disputes**, including disputed ownership, quiet title, boundary disputes, construction disputes, commercial landlord/tenant disputes, and real estate development litigation, among others.

- **Business Counseling**, including review of business acquisitions, drafting and review of contracts, and consultation regarding potential legal problems.

We look forward to serving you!



Court of Appeals Victory! Affirmed in Full.

Laine Wagenseller recently argued before the **California Court of Appeals** on behalf of an Orange County law firm which had been sued for legal malpractice arising out of a childhood molestation case.

Through aggressive representation, Mr. Wagenseller was successful in getting plaintiff's case dismissed prior to trial. The trial court also

awarded \$156,000 in attorneys fees and costs to the law firm.

The plaintiff appealed the trial court's decision but, in a unanimous decision, the Court of Appeals affirmed the dismissal.

Using California Code of Civil Procedure Section 1030, the law firm asked that plaintiff, who lived in Oregon, be ordered

to post a bond of \$117,000 in order to continue prosecuting her case. Section 1030 allows a defendant to ask an out-of-state plaintiff to post a bond in order to secure an award of costs and attorneys fees. The defendant must show a reasonable possibility of prevailing.

After two hearings, Mr. Wagenseller was able to show that defendants had a reason-

Continues on Page 2



‘A smart approach to dispute resolution will take into account the amount at issue compared to the value of the claim as a whole.’

Q & A with Laine T. Wagenseller

Laine T. Wagenseller has over ten years of experience in business and real estate law and litigation.

What differentiates Wagenseller Law Firm from other law firms?

WLF is committed to working closely with the client to come up with solutions that achieve the client’s objectives in an efficient and cost-effective manner. We are very proud of our excellent personal service and aggressive representation.

What can a first time client expect from WLF?

We will listen to the client’s situation and jointly formulate a strategy for reaching the optimum solution. We will outline a

strategy for winning and set forth a budget and timeline to give the client an outline of how the case will proceed. We will identify the client’s strengths and most powerful bargaining tools. We will also explain the legal tools which can help a client fortify his or her position throughout the process.

Why is a budget important?

A cost/benefit analysis of your claim is one of the most important but most overlooked facets of your dispute due diligence. It is no secret that attorneys fees can pile up quickly and, in many disputes, can easily surpass the value of the item in dispute. A smart approach to dispute resolution will take into account the

amount at issue compared to the value of the claim as a whole. Moreover, a budget will prevent surprises and misunderstandings as the case progresses.

How does WLF bill for its services?

Most cases are billed on a straight hourly rate. Clients are asked to put up a retainer at the beginning of the case. The amount of the retainer may vary depending on the specifics of the dispute. Bills are sent out each month and payment is requested upon receipt. Select cases may be billed on a flat fee or contingency basis. Please consult with the office for more information.

Victory in the Court of Appeals (Continued from Page 1)

able possibility of prevailing on the statute of limitations. The motion was granted and the court ordered plaintiff to post the bond. Plaintiff failed to post the bond and Mr. Wagenseller moved *ex parte* for mandatory dismissal. Mr. Wagenseller’s application was granted and the case was dismissed.

In a separate motion, Mr.

Wagenseller had also obtained discovery sanctions against plaintiff, precluding her from introducing any medical evidence or testimony at the time of trial. The Court of Appeal noted that this sanction “**dealt a functional death-blow to her case...**” and “**virtually assure[d] [the law firm] would prevail at trial.**”

The Court of Appeals dismissed plaintiff’s claims that the law firm defendant had not demonstrated a ‘reasonable possibility’ of prevailing at trial. In a unanimous decision, the Court of Appeals upheld the trial court’s decision and affirmed the dismissal of plaintiff’s case.

Real Estate Litigation Seminar

On December 15, Laine Wagenseller was a speaker at a day long seminar on “**Real Estate Litigation in California.**” Mr. Wagenseller addressed the litigation process as it relates to real estate disputes, including the cost/benefit analysis of the claim, strategies for winning, identifying your leverage and how to use it, the pros and cons

of arbitration and other alternative dispute resolution mechanisms, and what makes for an effective and engaging trial presentation. He addressed the application of the statute of frauds, use of *lis pendens* and the concept of estoppel, among other things.

Attendees learned the legal tools used in real estate litiga-

tion, how to formulate an effective strategy to resolve real estate disputes and how to understand and evaluate the legal elements of real estate cases.

The Seminar was held at the Wilshire Grand Hotel & Centre in downtown Los Angeles. For more information on future seminars, contact the office.



Profile: Laine T. Wagenseller

Laine T. Wagenseller has over ten years of experience in business and real estate litigation. In his practice he represents owners, developers, investors, tenants, partnerships, companies and others in all types of commercial and real estate litigation. In addition, he represents financial institutions, lenders, corporations, and professionals, including attorneys, real estate brokers and insur-

ance brokers.

Mr. Wagenseller is licensed to practice in all California courts, the United States District Court and the Ninth Circuit Court of Appeals. He is a graduate of Duke University (A.B. degree) and the University of Southern California Law Center (J.D. degree). In addition he clerked in the Los Angeles Superior Court and completed the

National Institute for Trial Advocacy Mock Trial program. Mr. Wagenseller serves as a judge *pro tem* in the Los Angeles Superior Court.

He is a member of the Southern California Development Forum, the Westside Urban Forum and the Santa Monica Bar Association. He can be reached at (213) 996-8338.



Writ of Attachment: Show Me The Money!

One of the most powerful tools in pursuing a tenant, guarantor or other defendant who owes you money is the writ of attachment. A writ of attachment is a pre-judgment remedy that allows you to preserve an asset (property, bank account or other asset) at the beginning of a case so that the defendant does not sell, waste or otherwise dispose of the asset prior to the end of the case. In effect, it is a way of making sure that the defendant does not sell off all of his assets before you can get your judgment.

A Writ of Attachment is authorized by California Code of Civil Procedure Section 483.010 and may be issued in an action on a claim for money based on contract where the total amount of the claim is readily ascertainable and exceeds \$500. If the action is against a defendant who is a

natural person (rather than a corporation or other legal entity), an attachment may only be issued if it arises out of the conduct by the defendant of a trade, business or profession. The party applying for a writ must show that its claim has 'probable validity' where 'it is more likely than not that the plaintiff will obtain a judgment against the defendant on the claim.

Once issued, an attachment on property is recorded, thereby preventing the defendant from selling the asset or taking out all of the equity. An attachment on a bank account prevents the defendant from withdrawing the amount attached.

While a Writ of Attachment is a good way to ensure the preservation of assets, its primary value comes in prompting a defendant to pay his debts or otherwise settle the claim.

After all, an attachment on a business' bank account can be devastating. The writ can be a powerful tool in hitting the defendant fast and hard at the outset of the case in order to force a quick and favorable settlement.

In a breach of guarantee case against individual guarantors, a writ can only be sought in cases where the guarantors are engaged in the conduct of a trade, business or profession. In the case of an individual who guarantees his closely held corporation, the court will look to the degree of the individual's involvement in the affairs of the primary obligor. In many cases the guarantor is guaranteeing his own small business and therefore is intricately involved in running the business. A writ is appropriate in such a case.

PRACTICE POINTER:

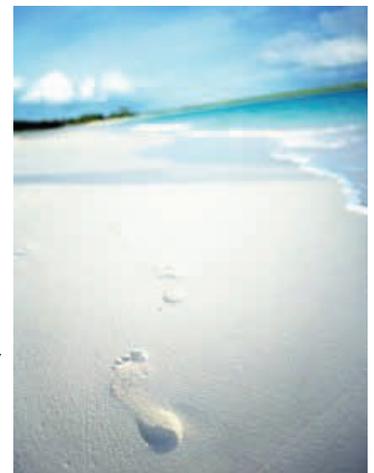
Because a writ of attachment is heard on a noticed motion (meaning the motion will not be heard until at least 16 court days after serving it on the other party), the plaintiff's attorney should apply *ex parte* (on an emergency basis) for a temporary restraining order to preserve the status quo until the day of the hearing.

Sidelines...

"Successful entrepreneurs maintain their excitement by constantly going after new projects and bigger opportunities. They keep raising their level of

expectation and are never satisfied with routine business that requires no challenge or ingenuity. They thrive on taking new risks and the possibility

that they might hit a massive home run. And the uncertainty makes it even more appealing! -The Power of Focus by Canfield, Hansen and Hewitt.





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Results Oriented Legal Services

Wagenseller Law Firm is a full-service business and real estate law firm. Materials contained in this newsletter are for general information purposes and to permit you to learn more about the services that Wagenseller Law Firm offers its clients. These materials are not intended to constitute legal advice relating to any specific matter and do not create an attorney-client relationship. Please consult Wagenseller Law Firm for legal advice regarding specific matters of concern.

News and Happenings...

- Mr. Wagenseller argued and won before the **California Court of Appeals** on November 19. Mr. Wagenseller brought a motion to compel an out of state plaintiff in a professional liability case to post a bond of \$117,000. The plaintiff was unable to post the bond and the case was dismissed. Plaintiff appealed the dismissal. (See Page 1).
 - Mr. Wagenseller was a speaker on **Real Estate Litigation in California** on December 15 in downtown Los Angeles. See page 2 for more information.
 - Mr. Wagenseller was recently in Washington, D.C. for depositions in a case involving an alleged **real estate development partnership** that went awry.
 - Mr. Wagenseller attended **Duke University's Volunteer Leadership Conference** in Durham, North Carolina, a conference held for Duke alumni active in volunteering for the university.
 - Mr. Wagenseller was a guest at the recent swearing-in ceremony of **Los Angeles County Supervisor Michael Antonovich**, held at the Los Angeles Arboretum.
 - On January 29 and 30, Mr. Wagenseller will be attending the **California Judges' Association's Civil Litigation 2005** weekend in San Diego.
- "The best time to plant a tree was twenty years ago. The second best time is now."***
- Chinese Proverb

Wagenseller Law Firm
thanks our clients and
friends for contributing to
our success. We look
forward to continuing to
provide quality, cost-
efficient legal work in
2005.

*If you are not on our mailing list, but
would like to be, please contact the
office*

