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Volume 3, Issue 3

Fall 2007

Wagenseller Law Firm

- Full Service Business and Real Estate 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.
- www.wagensellerlaw.com

Partnership Disputes: 4 Tips in Litigation

Much of the litigation we handle arises not from outside parties but from a deterioration in relationships among partners in real estate or other ventures. Partnership dissolutions, whether they arise out of formal partnership agreements, LLC Operating Agreements or other simply informal working relationships, can be the most bitter of lawsuits. Here are some basic considerations relating to partnership litigation.

1. An Ounce of Prevention...

While it may only take a handshake to get into a partnership, it can take years of litigation and hundreds of thousands of dollars to get out. The lesson: spend

more time getting into the relationship by setting out each other's expectations and, more importantly, what happens when or if the relationship goes sour.

In real estate deals, partners often form Limited Liability Companies through which they will operate their businesses. These agreements should include provisions as to what is expected of each member, how the members will deal with a dispute later on down the road and how a member can leave the Company.

2. Accounting

Most partnership dissolutions, including partition actions and other co-owner

disputes, revolve around money. While ownership may be an issue, money is often the driving force behind the litigation. Whether the matter is in litigation or about to go to litigation, the parties should consider agreeing on a mechanism and a person or company who can conduct an accounting right up front. If properties are involved, the parties should agree to have the properties appraised (and agree that they will both accept the outcome of an appraisal by a mutually agreed upon appraiser). Disputes are easier to resolve if a neutral third party has gone through the numbers and the partners know what they are fighting over.

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Three Years of Success: A Look Back



As we approach our third year of Wagenseller Law Firm, we are reminded of the successes which have helped us become a leading real estate litigation boutique in Los Angeles. From our inception we have focused on our

specialty: real estate litigation. We have built up a clientele of real estate developers, investors and owners, all of whom depend on us to not only provide legal analysis but to solve their problems. Here are some of the victories we have won over the last three years:

Chasing Sub-Prime Lenders. Through aggressive representation on behalf of a national mobile notary company, we were able to force a six figure settlement against

two of the nation's leading sub-prime mortgage lenders.

Summary Judgment Granted! We won a motion for summary judgment on our complaint for specific performance against a Landlord/Warehouse owner after the owner refused to sell the property to our client, the tenant, pursuant to an option to purchase in the tenant's lease.

Court of Appeals Victory! Representing a leading law

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- LEGAL UPDATE -

Trial court erred in applying anti-SLAPP statute to suit resulting from private real estate transactions, to which the alleged petitioning activity — applying for and receiving development permits from city — was merely incidental.

Wang v. Wal-Mart Real Estate Business Trust, filed July 25, 2007, Fourth Dist., Div. 1 (2007 SOS 4575)



Partnership Disputes: 4 Tips (cont'd)

3. Mediation

Partnership litigation is acrimonious, lengthy and expensive. If possible, the parties should agree to mediation before a third party neutral mediator. The money spent on mediation will be quickly dwarfed by the money spent on litigation and is money well spent.

4. Fiduciary Duties

Partners owe each other fiduciary duties. Fiduciaries are

held to a higher standard of conduct—one of good faith, honesty and loyalty. A fiduciary must avoid self-dealing or conflicts of interest. A breach of fiduciary duty can arise when a fiduciary embezzles money or takes for himself business opportunities that should have been offered to the partnership. It may involve creating a business that competes with the partnership. Even in litigation the

partners owe each other duties that control how they deal with partnership income or partnership property. Beware of self-help remedies which may constitute a breach of your fiduciary duty.

Partners who are considering entering into a partnership or breaking out of one should consult an attorney early and often. The benefits of knowledgeable advice are priceless.

Success: Helping Our Clients Win... (cont'd)

firm against a former client, we got the case dismissed summarily. Mr. Wagenseller appeared before the California Court of Appeals, where, after his argument, the dismissal was affirmed and the client was awarded \$156,000 in attorneys fees.

Stipulated Judgment! We pursued a St. Louis freight forwarding company for back rent owed and attorneys fees on behalf of a multi-tenant warehouse owner client. We entered into a Stipulated Judgment with the company in which the company agreed to pay the entire debt of over \$80,000 over the course of a year. As a part of our agreement, if the company defaulted at any time, we could ask the court for judgment in our favor without a trial. The company ended up paying the full amount and our client was saved the expense of trial.

Another Case Dismissed! In representing one co-owner of an apartment building against the other, we were successful in getting the entire case dis-

missed.

The plaintiff sued our client, alleging an oral contract in which the plaintiff owned the entire building. We challenged the complaint by demurrer, arguing that the case should not proceed because plaintiff's allegations of an oral contract were barred by the statute of frauds, that the alleged slander of title was legally insufficient and that plaintiff could not support a claim for breach of confidential relationship.

After plaintiff was given three chances to fix her complaint, the court dismissed the case for good. We followed up by getting a judgment against the plaintiff for the costs incurred in defending the lawsuit.

Motion to Set Aside Judgment Denied! We were brought in on behalf of our client, a wheel manufacturer in Orange County, to fight an attempt to overturn a \$1 million judgment against a retailer.

The defendant argued that he was protected by a bankruptcy stay, that he was never properly served, and that the judgment was obtained through fraud.

Our investigation showed that the bankruptcy court had refused to discharge the retailer's debts based on the retailer having hidden assets from the court, having destroyed and falsified records, and having diverted money out of the country.

We opposed the retailer's motion to set aside the default judgment and the court sided with us, denying the motion. The denial of the motion saved our client from having to reopen the case and going to trial.

These courtroom successes are just examples of our mission: results-oriented legal services. Our success comes from results that help our clients meet their business goals. Let us know how we can help you reach your goals.

Message from Laine Wagenseller...

I recently sat down with a very successful real estate investor who has hundreds of millions of real estate investments throughout the country and asked him how he got started.

I was intrigued by his story of the \$10,000 deal that started him off (“more than I made in a year as a lawyer”) and his strategies for success that he uses even now.

And I was thankful for his selflessness in sitting down

with me on a Thursday evening and sharing his story and advice. (And for the inscription he wrote in his book which he gave me: “Laine, Let’s do a deal together.”)

I recently set a goal for myself this quarter of “being a connector.”

I am fortunate in my business to meet with leaders in real estate development, investment, politics and charity. We all have goals we are working on achieving and expertise

and stories we can share. I realize that there are hundreds of other stories that I would like to hear. More importantly, I can help my colleagues and friends by matching those stories with other colleagues and friends who would also gain from that expertise.

I am looking forward to the things we can accomplish from connecting with each other.

Laine



In The Works: Case We Are Working On

- Our client, a real estate developer, has hired us to represent them in a partnership dispute over the purchase of several parcels of urban infill property for a mixed use development.
- We have been retained to pursue a contractor whose shoddy and slow work is delaying the completion of a \$7 million construction project involving 51 townhome units.
- We have been hired to help a restaurateur in leasing a new location in a mixed-use (commercial and residential)

building in Pasadena, including preparing a lease, guaranty, and work letter.

- We recently settled on favorable terms a lawsuit for personal injury filed against our restaurant and bar client.

- We have been retained by an employee staffing company in an indemnity claim for over \$230,000 relating to alleged professional negligence. We have refused to offer any money in settlement based on the plaintiff’s lack of damages. We demanded dismissal and they have agreed.

- We are currently in the discovery phase of our lawsuit on behalf of a security company against a Homeowners Association client who breached the three year security contract. The damages in that case exceed \$350,000.

- Trial is nearing on a claim against our client, an attorney and real estate developer, over the purchase and construction of two homes in Pasadena.

- We continue to represent several clients with neighbor disputes involving fences, hedges and boundary lines.

Our Vision:

To be the preeminent boutique real estate law firm in Los Angeles

Notes on Public Speaking

First, be not afraid. Whatever your fears about writing and speaking, the bad things you imagine are not likely to happen. And if they do, you’ll survive. Every great speaker in history has flopped somewhere along the way, most of them more than once. So relax. It’s only a speech.

Think logically about the case you’re making, and

make it. Imagine your speech reduced to a headline—it will keep you focused.

Your style shouldn’t be taller than you are.

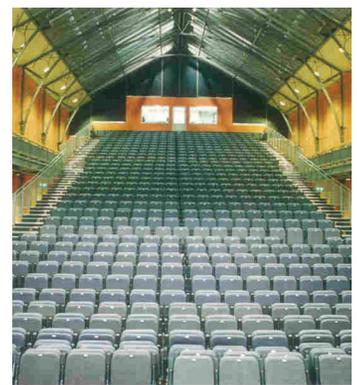
Don’t try to move people by manipulating them with phony emotionalism or faux poetry. Stick with the logic—the case you are making, the problem you are outlining, the

remedy you believe in and support.

Use humor when you can. Why? Because it makes people laugh. No one ever left a speech saying, ‘I hated the way she made me laugh out loud.’

Practice.

Excerpted from “Simply Speaking: by Peggy Noonan, speechwriter to Ronald Reagan.





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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 has joined the **USC Marshall Partners**, a support group for the Marshall School of Business.
- Mr. Wagenseller attended a luncheon with Scott Romney and Senator Jim Tallent in support of **Mitt Romney for President**.
- Bob Barr, former Congressman from Georgia, spoke on the overcriminalization of America at a recent **Federalist Society** luncheon which Mr. Wagenseller attended.
- Mr. Wagenseller will be in North Carolina in mid-October attending the **Coach K Leadership Conference** before flying to Chicago for the USC/Notre Dame football game.
- Look for Mr. Wagenseller's article on **Rights of First Refusal** in the September newsletter from Stewart Title.
- The Duke women's volleyball team came to SC's Galen Center to play USC, losing in overtime in the fifth game. Mr. Wagenseller (and a large Duke contingent) cheered on the Duke players.
- Mr. Wagenseller played in the **Asian Business League's** annual golf tournament at Industry Hills, but refuses to disclose his score.
- Thank you to everyone who attended the **Evening With Nelson Rising**, Chairman of the Grand Avenue Project, at the Regency Club. Mr. Wagenseller organized the evening and attendees heard about one of downtown's biggest real estate projects.
- Welcome to **Jason Lee**, who has joined Wagenseller Law Firm as our office manager. Jason graduated from USC and has taken over the day to day operations of the firm.
- We are also pleased to welcome **Taylor Kessel**, who is joining us on September 24 as an associate attorney. Taylor specializes in real estate litigation.
- Mr. Wagenseller recently served as the foreman on a jury in the criminal courts.
- Thank you to everyone who has referred business to us. We appreciate the recommendations of our clients and friends. We look forward to helping you with all of your real estate disputes.

