



Wagenseller Law Firm

Real Estate Development and Law Newsletter



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Wagenseller Law Firm

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Real Estate Litigation

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Winning... Victories In Court

In a string of victories, we won a real estate litigation case on appeal in the California Court of Appeals and won a partnership dispute during trial in Orange County Superior Court.

Victory: Affirmed on Appeal

In litigation over a \$20 million townhome development, the plaintiffs recorded a lis pendens on the property. While a lis pendens is theoretically meant only to put others on notice of a pending lawsuit affecting title to or possession of a piece of property, practically speaking it prevents an owner from selling or refinancing the property. A lis pendens is often recorded for leverage in settlement discussions.

We asked the trial court to remove the lis pendens (in legalese, expunge it). The trial court granted our motion and the plaintiff quickly sought appellate review of that ruling.

The plaintiffs claimed in its appeal that the trial 'abused its discretion' in hearing our motion on an expedited basis, 'abused its discretion' in denying plaintiff the opportunity to

conduct discovery before ruling, and 'abused its discretion' in expunging the lis pendens. The appellate court asked us to brief the issues.

We argued in our opposition that an amended escrow instruction modified the purchase and sale agreement to instead provide for a marketing fee. Therefore plaintiff's claim was for a marketing fee and not for title to the property. We

also pointed out that the court did not act in an arbitrary or capricious way in moving up the hearing date on the motion, especially in light of a notice of foreclosure from the



construction lender. Lastly, we pointed out that plaintiff's claim did not affect title to the property and therefore could not support a lis pendens which would tie up our client's property.

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Preliminary Injunctions: Stopping Waste

What is a Preliminary Injunction?

A Preliminary Injunction is an order by the court intended to enjoin (i.e., stop) some act by one of the parties that is causing immediate injury to the other party. A preliminary injunction is permitted when it appears that the commission or continuance of some act during the litigation would produce waste or irreparable injury to a party to the action.

Preliminary Injunctions In Partnership Disputes

In a partnership dispute, a preliminary injunction should be issued to prevent "irreparable

injury" to the partnership assets to assure that the partnership assets remain intact pending an accounting and a final hearing on the merits. A preliminary injunction is proper to enjoin a partner from obtaining funds to which he is not entitled.

Another ground for issuing a preliminary injunction is when it appears during the litigation that a party to the action is doing some act in violation of the rights of another party to the action which would tend to render the judgment ineffectual. When it appears that wrongful acts, which have been completely

performed, are likely to be repeated or continued, a preliminary injunction can be issued to stop those wrongful acts.

An injunction should be granted where compensation would not afford adequate relief and where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. In considering the "adequacy" of damages as a remedy, the court may consider whether the party against whom the judgment is sought is able to respond in damages, i.e., if the defendant is shown to be insolvent, a monetary judgment may

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Landlord Advice: The Trouble With Tenants

We handle many cases on behalf of our landlord clients pursuing tenants who have left the premises in shambles. While we have been very successful chasing down these tenants, here are some tips on how to prepare yourself for potential litigation against a tenant.

1. Take Photographs

Once the tenant leaves, take photographs of the premises. A picture is worth a thousand words. In a recent case the tenant argued that he left the warehouse and office space in the condition it was in originally except for ordinary wear and tear. Rather than argue with opposing counsel, we sent him the color photographs of the graffiti

painted all over the interior walls, the weeds growing in the parking lot and the damaged roll down door, among other things. We are now talking settlement.

2. Schedule A Walk Through With The Tenant

Don't wait until the tenant has left to look into the condition of the property. Identify your concerns right away and ask the tenant to repair them before they return the premises to you.

3. Save A Copy Of The Tenant's Rent Check

If your disputes goes to litigation and you need to collect, having the tenant's bank account number and branch information will make it easier to collect any

judgment.

4. Print Out All Of Your Email With The Tenant

When you first meet with your attorney, have your tenant file in good order, including a copy of the lease and all correspondence with the tenant. Oftentimes communication is through email, which does not always get printed and filed. Do a search on your computer and put it all in your file. It is important that you give your attorney all of the communications you have had with the tenant so that the lawyer can do a full analysis of your situation.

Michelle



Winning... Victory In Court (continued)

The Court of Appeals denied the plaintiff's appeal and the lis pendens was expunged from the property.

Victory: Case Dismissed In Trial

Laine Wagenseller and Michelle Strassburg also recently went to trial in Orange County Superior Court on behalf of a business owner engaged in a partnership fight. After the second day of trial, the other side dismissed their entire action and agreed to walk away.

Our clients were being sued for partnership dissolution and accounting, involuntary dissolution of corporation, fraud and Racketeer Influence and Corrupt Organizations Act [RICO] violations.

The plaintiff, a disenchanted partner, claimed he was ousted from the partnership and that our client was involved in pervasive fraud, criminal theft, extortion and mismanagement of corporate funds.

We were successful in getting the claims against the corporation dismissed on the first day of trial. We then challenged the plaintiff's standing to bring the partnership actions based on the requirements of the Corporations Code.



After plaintiff's testimony was severely cut short by our evidentiary objections, plaintiff reconsidered his lawsuit overnight and dismissed our clients the next day.



Preliminary Injunctions: Stopping Waste

be inadequate.

For example, we are handling a partnership dispute in which a minority partner has seized the bank account and is wrongfully collecting rents from the building's tenants. The minority partner is paying himself, his family members and even his attorney money from the partnership account without the authorization of the other partners. We are seeking an injunction to stop this partner from representing to the tenants that he is the property manager and to stop collecting

the rents.

In deciding whether to issue a preliminary injunction, a trial court also weighs two interrelated factors: (1) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm the defendant is likely to suffer if the preliminary injunction is issued; and (2) whether there is a reasonable probability that the plaintiff will prevail on the merits at trial.

Practice Pointers: Proving Your Case

Because a preliminary injunction is often brought at the outset of the case and because it requires that you show the probability of prevailing, you must put your case together immediately. In some cases this is difficult since no discovery has been conducted, no documents have been collected and no depositions have been taken. However, winning a preliminary injunction can also help resolve your case early in the litigation.

Message from Laine Wagenseller..

Author Earl Nightingale tells a story of a man who went to his empty fireplace and said, “Give me heat and I’ll give you wood.” But, of course, you must give before reaping rewards.

In *The Power of Giving* it asks “How can you find happiness? It all comes back to giving. If you want to have happiness, you need to give happiness. If you want wealth, you need to give wealth. If you want love, you need to give love. For it is only in giving that you receive. Giving enriches your life with meaning, fulfillment, and happiness. It allows

you to unleash your potential and create breakthroughs. In fact, it is a privilege to give. So give of your time, your knowledge, your wisdom, your wealth, and your love—and experience the power and beauty of giving.”

Our focus this month is raising money for inner-city kids to go to the YMCA’s summer camp. We hope that you can give to this great cause and experience the happiness of sharing our abundance.

Laine



In The Works: Cases We Are Working On

- In March we were in trial in Pasadena in a **Quiet Title** action involving two new homes.
- We have filed suit on behalf of the purchaser of a strip mall for **fraud** against the sellers who misrepresented the monthly income of the center.
- We have sued a **minority partner in an industrial warehouse** who is depositing partnership funds in his personal bank account and failing to properly manage the property. We are also seeking a **preliminary in-**

junction against this partner.

- We have been hired by the majority shareholder in a software technology corporation. He is being sued by two minority shareholders for **diverting corporate money**.
- A property owner has retained us to go to trial in a case where the property manager’s improper repair led to a leak and resulting mold.
- We are pursuing a **retail center tenant** in bankruptcy court for fraud after she, among other

things, rented out the entire center to NBC for filming by representing herself as the owner. She then pocketed the money.

- We have been hired by a **national internet** provider to help the company with a lease dispute over a data center.
- An architectural firm has hired us to collect unpaid invoices relating to a **\$130 million retail condominium building** in the fashion district.

Our Vision:

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

Ronald Reagan And The End of the Cold War

“Increasingly, Reagan rebelled against the forces and ideas that had made the Cold War seem endless and intractable. From 1986 to 1988, Reagan was increasingly at odds over Soviet policy with three separate but overlapping constituencies, each of which had played a powerful role in influencing American policy during the Cold War. The first of these was the political right, that is, the same American conservatives who had supported Reagan from the beginning of his political career through his early years in the White House. Magazines such as *National Review* and columnists such as George

Will despised Reagan’s unfolding diplomacy with Gorbachev.

The second constituency opposing Reagan was made up of the so-called realists, the group of officials who had teamed up to run foreign policy during the Nixon and Ford administrations, including Nixon, Henry Kissinger, and Brent Scowcroft. During the 1970s, this group had battled with conservatives (including Reagan himself) as they pursued détente with the Soviet Union. Yet in the mid-1980s, they, together with the conservatives, opposed the efforts by Reagan and his secretary of

state, George P. Shultz, to reduce the arsenals of missiles and nuclear weapons that had been at the heart of America’s military strategy throughout the Cold War.

Third, leading American intelligence and defense officials also disputed Reagan’s view of Gorbachev. They argued that the Soviet leadership was not changing as much as Reagan and Shultz believed, and that Gorbachev represented merely a new face for the same old Soviet foreign policies.”

—**The Rebellion of Ronald Reagan, A History of the End of the Cold War** by James Mann





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The information in this newsletter is not intended to serve as legal advice or as a guarantee, warranty or prediction regarding the outcome of any particular legal matter. You should not rely on this newsletter for legal advice without first consulting a qualified attorney.

News and Happenings...



• Laine Wagenseller and Michelle Strassburg recently attended the Rotary Club (LA5) luncheon for retired **Supreme Court Justice Sandra Day O'Connor**.

• Wagenseller Law Firm held its **2nd Annual Cocktail Party** at Café Pinot in downtown Los Angeles. Tim O'Brien of the Personal Branding Group spoke about the power of personal branding. We also raised over \$5,000 for the downtown Ketchum YMCA to send kids to camp this summer. See inside on how to contribute.

• On May 6th USC's Marshall Partners had **Ed Roski of Majestic Realty** speak about his plans to bring a NFL team to Los Angeles, which Laine Wagenseller attended. Mr. Roski presented his plans for a stadium on property he owns in the City of Industry.

• Wagenseller Law Firm sponsored a table at the **YMCA's Good Friday Breakfast** on April 10th. The speaker was Robert Lawton, the President of Loyola Marymount University.

• Laine Wagenseller attended a luncheon with **Meg Whitman**, a candidate for Governor of California. Ms. Whitman talked about her candidacy and answered questions about her positions.

• In early March Laine Wagenseller traveled to Atlanta to watch the **Duke University Blue Devils** win the ACC Tournament.

• Mr. Wagenseller was a panelist at the Continuing Education of the Bar's **Fundamentals of Commercial Real Property Practice** on May 29th.

What Do We Do?

Real Estate Litigation

Breach of Contract
Breach of Lease
Specific Performance
Partnership Disputes
Ownership Disputes/Quiet Title
Partition
Neighbor Disputes
Commercial Landlord/Tenant
Boundary Disputes

Business Litigation

Partnership Disputes
Corporate Dissolution
Breach of Contract
Business Fraud

Real Estate Law

Commercial Leases
Purchase and Sale Agreements
Contract Review