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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.

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Dismissed! Do Not Pass Go, Do Not Collect \$200

When an ex-employee of our client brought an **unlawful termination lawsuit**, we formulated an aggressive strategy from the very beginning, sending a message that we had no intention of paying the plaintiff to “go away.”

After fighting with another employee, the at-will plaintiff was let go by the employer. In response, the employee filed a lawsuit against the employer (a Limited Liability Company) and the two founders of the LLC.

Plaintiff alleged unlawful termination in violation of public policy, unlawful termination in violation of Califor-

nia Labor Code §2929, unpaid wages, and waiting time penalties in violation of Labor Code §203.

Plaintiff alleged that the other employee had started the fight and that the employer had really fired him in retaliation for a wage garnishment order served on the business by his ex-wife.

While contesting service on two of the three defendants, we also served extensive discovery on plaintiff. From our investigation we established that the employee had multiple wage garnishment orders from more than one ex-wife/girlfriend for more than one

child.

We demanded dismissal of the individual defendants in light of the fact that they were not the employer. We also reserved our right to seek sanctions and pursue a malicious prosecution action against both plaintiff and his counsel for legally frivolous claims against the individuals.

Shortly thereafter plaintiff dismissed his complaint in its entirety. The client was pleased that our aggressive stance right out of the box led to a quick and economical resolution of the case.



New Law: Recent Decisions of the Appellate Courts

Managers of limited liability companies, while statutorily immune from personal liability based solely on their status as managers, are not immune if they have participated in tortious or criminal conduct while performing managerial duties. **People v. Pacific Landmark** (May 31, 2005; Cal. Court of Appeals)

Where broker acted as agent of buyer and seller, and agent, buyer, and seller agreed in writing to arbitrate all disputes among them, fact that agent was not a signatory to purchase agreement did not preclude it from invoking right to arbitration of dispute arising thereunder. Orders compelling arbitration are not appealable, and where court granted

seller’s petition to compel arbitration of buyers’ claims against seller, but denied broker’s petition to compel arbitration of buyers’ claims against it, order granting seller’s petition did not become appealable as “ancillary” to appealable order denying broker’s petition. **Westra v. Marcus & Millichap Real Estate Investment Brokerage**

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What our Opponents Are Saying:

"Dear Mr. Wagenseller: I have your latest piece of spiteful sophistry...Your attitude of attack and castigation throughout this case...has only served to solidify my client's resolve to press forward ...Clearly you stoop to conquer."

Letter from Opposing Counsel right before the California Court of Appeals affirmed the granting of our Motion to Dismiss and an award of attorneys fees of \$150,000 against his client.



Legal Nuts & Bolts: Judicial Estoppel

What is it? Judicial estoppel is a legal doctrine invoked by the court to prevent a party from gaining an advantage in litigation by asserting one position before a court and then taking a clearly inconsistent position later, either in the same litigation or in different litigation. The doctrine is designed to prevent a litigant from playing 'fast and loose' with the court and seeks to protect the integrity of the judicial system.

How Does It Work? Raised in a motion or at trial, judicial estoppel can be used to bar either the entire action or certain claims based on a party's fraud upon the court. Moreover, even if a judge is unwilling to invoke the bar of judicial estoppel, the motion will educate the judge about a party's lack of integrity and

deception.

An Example. In a recent attorney malpractice case, we came across a plaintiff who had claimed in a recent bankruptcy filing to have no interest in any businesses. Yet, in our case, he sued his lawyer for \$2.4 million for the 'loss' of his business. It was evident that the plaintiff was playing both sides of the fence. In the Bankruptcy Court he sought to jilt his creditors by disclaiming any interest in any business. Yet, in Civil Court he sought to collect \$2.4 million for the loss of his business. Prior to trial, we moved the court to hear the judicial estoppel affirmative defense in a court trial prior to summoning a jury. Plaintiff dropped his claim for the \$2.4 million and the case was later settled on favorable terms on

the first day of trial.

Practice Pointers: Investigate your opponent. Discovery of the inconsistent positions taken by plaintiff in bankruptcy proceedings and elsewhere were only found after intensive investigation of the plaintiff. We searched the court dockets for all litigation involving plaintiff, including any filings in the Bankruptcy Court. In discovery we requested all legal filings, bankruptcy petitions and deposition transcripts by plaintiff. Although plaintiff did not produce any, we followed up with other sources, including the courts. At trial we were prepared to destroy the plaintiff's credibility with his own words and filings under oath in other courts.



New Law (continued from page 1)

Company, Inc. (April 27, 2005; Cal. Court of Appeals)

Agins v. City of Tiburon, in which U.S. Supreme Court declared that government regulation of private property affects a taking if it "does not substantially advance government interests," does not apply to a regulation that does not constitute a physical taking of property, so district court

erred in ruling, solely on that basis, that state law limiting rents charged by oil companies to lessees of company-owned service stations was a taking under Fifth Amendment.

Lingle v. Chevron U.S.A., Inc. (May 23, 2005; U.S. Supreme Court).

Restrictive covenant providing that no "tree, shrub, or other landscaping [shall] be

planted or any structures erected that may at present or in the future obstruct the view from any other lot," when read in context of CC&Rs as a whole, was not limited to landscaping and prohibited erection of new dwelling that would block neighbors' ocean view. **Zabrucky v. McAdams** (May 18, 2005; Cal. Court of Appeals).

Message from Laine Wagenseller...

We are excited at the results we have achieved for our clients in the first half of 2005 and we appreciate everyone who has contributed to our success.

If you have been by the office you may have had the opportunity to meet Lisa Smith, who is responsible for running the office, or Mary Marshall, who is in the charge of the finances and bookkeeping. Attorney Rachel

Heald has ably assisted with the legal work.

Of course, it is our clients and friends who are the key to the business and we are proud to represent a wide variety of successful businesses, individuals, corporations, investors and others who trust us to get them the best results possible.

We are also thankful for those

of you who have referred others to us. Our expertise in real estate and business related matters has helped us fight for great results in an efficient and cost-effective way.

If you have anything that we can help you with, please feel free to call the office.

Laine



In the Works: What We Are Working On.

► We recently successfully negotiated a 4,350 square foot lease with the Thomas Property Group in their City National Plaza project for our client, **Weiland Brewery Restaurant**. The latest Weiland Brewery will open at the location in late 2005. The original Weiland Brewery, which features a wide selection of American cuisine and a full bar, is located in Little Tokyo at 1st and Alameda.

► We have filed suit against a St. Louis freight forwarding company on behalf of our client for over \$80,000 in back rent

owed on leased warehouse space near LAX.

► We are pursuing a default judgment on behalf of a business park against a telecommunications firm who abandoned their leased space prior to the expiration of their lease.

► We are helping a Chicago based client with the sale of vacant land in Palm Springs.

► In a neighbor dispute, we represent the former owner of a home in the Hollywood Hills whose downhill neighbor has sued our client and two subse-

quent owners for negligence, trespass, nuisance, and intentional infliction of emotional harm. The neighbors are upset over construction noises and debris.

► We have been retained to go after a hedge fund manager who is refusing to return \$76,000 of his investor's retirement money.

► We have helped our clients with various leases, purchases and sale agreements, co-tenancy agreements, indemnity agreements and the review of other contracts.

...we are proud to represent a wide variety of successful businesses, individuals, corporations, investors and others who trust us to get them the best results possible...

Sidelines...

"Don't run from your weaknesses. Your worst facts are generally your opponent's greatest strength—especially if you run from them. Whenever possible, bring them up first. Pull the teeth of your adversary's arguments and cross [exam]. If you admit, embrace and explain your bad facts, you reduce their impact. If you can't go first, don't be defensive about them. Be

ready with a powerful and direct response. Ignoring bad facts is never an option. Moreover, openly discussing your weaknesses sends a signal of strength to the jury. If you are willing to admit your client's mistakes, jurors assume your case must be strong.

The Trial Lawyer, What it Takes to Win by David Berg

"Only those who risk going too far can possibly know how far one can go."

T.S. Eliot

"A consistent man believes in destiny, a capricious man in chance."

Benjamin Disraeli





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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...

▪ Laine Wagenseller recently attended “**California Real Property Practice**” in downtown Los Angeles, a two day seminar focusing on real estate purchase and sales, development, construction, leasing, financing and remedies.

▪ Mr. Wagenseller was in Durham, N.C. for Reunion Weekend at **Duke University** in April, where he was a presenter at the President’s State of the University Address.

▪ On December 2 in downtown Los Angeles and December 8 in San Diego, Laine Wagenseller will be a panelist at a real estate seminar entitled “**Real Estate Development from Beginning to End.**” This one day seminar

will address site selection and acquisition issues, title insurance, development approvals and entitlements, among other topics.

Mr. Wagenseller will speak on preventing litigation in a development project and how to deal with lawsuits when they arise. He will address partnership dissolutions, lender disputes, and construction disputes. He will also speak on setting up contracts to address dispute resolution in the future and strategies for dealing with lawsuits, including budgeting and cost benefit analyses of various lawsuits.

▪ Mr. Wagenseller attended the Central City Association’s **Downtown Housing Forum** on June 16, which showcased many

of the new housing developments in downtown.

▪ **Our Practice:**

Business Disputes, including partnership dissolution, investor claims, Directors and Officers liability, business fraud and insurance claims.

Breach of Contract, including breach of lease, breach of guaranty, breach of purchase and sale agreement and breach of promissory note.

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

Business Counseling, including contract formation and review.

