



## Wagenseller Law Firm

555 West Fifth Street  
31st Floor  
Los Angeles, California 90013

Tel: (213) 996-8338  
Fax: (213) 996-8339  
www.wagensellerlaw.com  
ltw@wagensellerlaw.com

Volume 3, Issue 2

Summer 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

## Playing Hardball: WLF to Seize Defendants' Assets

Shortly before trial, a judge granted our client's application for a Writ of Attachment, allowing us to begin seizing our opponent's property .

After months of litigation between our client and two nation-wide mortgage lenders that refused to pay their bills, lead counsel Laine T. Wagenseller brought an application in the Los Angeles Superior Court requesting the issuance of Writs of Attachment against each defendant.

After a lengthy hearing, the court found our client had a probability of prevailing and issued the writs in a total amount exceeding \$200,000.

The Writs of Attachment allow our client to begin "attaching" or freezing the defendant's real and personal property in preparation for the likelihood that our client will

prevail in its claim for hundreds of thousands of dollars in unpaid fees.

Since the defendant mortgage companies dealt in the financing and transfer of real property, freezing and attaching their assets would have interfered dramatically in their business pursuits. Ultimately, this threat of attachment proved to be the wake-up call that spurred the defendants to meet our client's settlement demands.

**The Lawsuit:** Our client in this matter was a family-owned mobile notary service that provided services nationwide to, among others, two subprime mortgage lenders. As lenders, the defendants would offer mortgage loans and property financing to homeowners. In order to finalize these loans, they would require that their borrowers sign and



have notarized certain loan documents, a process for which they secured the services of our client.

As the California housing boom of recent years slowed, however, so did the defendants' payments to our client. After attempting numerous times to secure payment on hundreds of unpaid invoices, our client retained Wagenseller Law Firm to pursue litigation against their much larger and increasingly defiant opponent.

## Inside this issue:

**Playing Hardball: WLF to Seize Defendants' Assets** 1

**Attorney Robert Wargo joins WLF** 1

**A 'Travesty' of Justice: Deposing a Corporation** 2

**In the Works: What We Are Working On** 3

**Sidelines:** 3

**News and Happenings** 4



## Attorney Robert Wargo Joins Wagenseller Law Firm

We are pleased to announce that Attorney **Robert P. Wargo** has joined WLF. Many clients have already had the opportunity to work with Rob and we are honored to have his litigation expertise and experience.

As a specialist in real estate and business litigation, Mr. Wargo's clients include business and real estate owners, entrepreneurs, and corporations.

Mr. Wargo was instrumental in our recent writ of attachment

victory, described above. In addition, he advises business entities and their principals on various areas of their business, including the review and creation of contracts.

Mr. Wargo also practices estate planning and probate law, including the representation of parties in contested estate matters.

After graduating from UCLA School of Law, Annenberg School for Communication at

the University of Southern California (M.A. in Communications), and Duke University (B.A. in Mathematics), Mr. Wargo was an account executive in entertainment public relations.

He has been practicing law for over twelve years and serves as a judge pro tem with the Los Angeles Superior Court.

Please welcome Rob. You can reach him at (213) 996-8338 or at rpw@wagensellerlaw.com.



### - LEGAL UPDATE - CA Court of Appeals

*In ruling on a motion to enforce a settlement in a disputed real estate transaction, the trial court had the authority to impose a new closing date for the real estate transaction where the closing date had passed by the time motion was heard; to order purchaser to sign a purchase agreement that included a revised counteroffer; and to award costs to seller where purchaser's behavior delayed the transaction's closing.*

Osumi v. Sutton  
filed June 12, 2007  
2007 SOS 3093  
(Second Dist., Div. Six)



## A 'Travesty' of Justice: Deposing a Corporation

One of the attorney's main tools in discovering information is the pre-trial deposition – where, outside of court, the attorney asks a witness questions and the testimony is recorded and presented to the court at a later date. But when the litigant is not a person at all, but a corporation, it becomes more difficult to ascertain who from that corporation has the information needed.

According to California's Code of Civil Procedure (which governs litigation procedure), a party can ask the corporation to produce at deposition the person 'most qualified' regarding the issues in the case.

The corporation has an obligation to designate and produce the officers, directors, managing agents or employees 'most qualified' to testify on its behalf. The corporation's witness must testify to the extent of any information known or reasonably available to the corporation. CCP §2025.230.

In some instances the corporation may not have any current employees who know about issues which may have taken place years ago. In that case the corporation must still designate someone to testify and that designee must find out the information from those who do or find the

information from among the corporation's books and records.

Many corporations will attempt to stymie discovery by producing a witness who cannot answer the questions asked. Typically the witness has simply not prepared thoroughly for the deposition. In other instances the witness will claim that no one in the corporation knows the answers, even though those answers may be in the books and records of the corporation.

But, again, the corporation has a duty to look into the matters identified in the Notice of Deposition. Moreover, California also imposes a statutory time limit on the corporate deponent so that the investigation must be conducted and completed by the time of the deposition.

"One of the principal purposes of the Discovery Act...is to enable a party to obtain evidence in the control of his adversary in order to further the efficient, economical disposition of cases according to right and justice on the merits." McGinty v. Sup. Ct. (1994) 26 Cal.App.4th 204, 210.

In a recent victory, WLF brought a motion against a corporate defendant after the corporate witness claimed igno-

rance in deposition. However, citing these California statutes, we insisted that 'when a party conducts comprehensive discovery' (as we had), 'the other party cannot play 'hide the ball.' Andrews v. Foster Wheeler LLC (2006) 138 Cal.App.4th 96.

Rather than answering our questions, the witness for the corporation that we were suing simply repeated that the corporation was "actively researching" and "investigating" the allegations of our lawsuit but that she could not provide us with any details.

We filed a motion to bring this to the attention of the court and asked that the defendant be sanctioned for its conduct. We argued that, if allowed, any defendant could sandbag the other party at trial by refusing to answer questions in deposition and then claiming to conclude their investigation the day before trial. The court, after reviewing our motion, called the defendant's behavior 'outrageous' and a 'travesty,' granting our motion to compel a further deposition and sanctioning the defendant \$4,000. The court also, at our request, ordered the corporation to produce another witness who could answer our questions.

## Playing Hardball (Cont'd From Page 1)

We filed suit in Los Angeles Superior Court to recover what was owed.

**The Arguments:** The defendants never challenged our client's assertion that they were owed over two hundred thousand dollars in principal. Instead, they argued that they did not have the ability, time or manpower to investigate the unpaid invoices. To this claim our client sent out Requests for Admissions, which, in part, asked the mortgage companies to admit the amounts owing by each branch. They again refused to admit to or deny our

charges and provided no evidence to contradict the boxes of invoices, cancelled checks and nearly six gigabytes of computer data evidencing the work our client performed on their behalf.

**The Negotiations:** Settlement negotiations stalled as the defendants refused to offer more than pennies on the dollar. They claimed imminent bankruptcy and pointed to the collapse of the subprime mortgage industry in the hope that our client would give in.

Instead, our strategy was to press the defendants on all fronts—comprehensive discovery, demands for electronic discovery, depositions and the writs of attachment. Playing on the assumption that the squeaky wheel gets the oil, our strategy succeeded when, after we won two back-to-back victories in court, the defendants agreed to pay the full amount demanded by our client.

**We are pleased to have won this victory for our client.**

## Message from Laine Wagenseller...

I was listening to a sermon recently about living your life as a blessing to others. Our joy in life comes from doing things for others—living to give rather than living to get.

I know that lawyers are not the first people you think of when you are envisioning blessings. And I know that many of our clients are not happy to have to hire a lawyer in the first place.

But in many respects our practice at Wagenseller Law Firm is centered on helping our

clients with their challenges and disputes. We are fortunate to be able to use our expertise and experience to fight for our clients on a daily basis.

While sometimes we are proud to exalt our legal achievements in court, our victories are only a part of helping real life people to reach their goals.

In helping others reach their goals, we have been blessed to reach our goals—a growing real estate law firm and a successful practice. We are thank-

ful to our clients and friends who have made this possible. We also want to share our good fortune with others. We recently funded two summer camp scholarships through the YMCA of Metropolitan Los Angeles so that two kids can attend camp in the mountains this summer.

We are all somebody's miracle. Look for that person. Look for that opportunity to do good.

*Laine*



## In The Works: Real Estate Expertise

- We have been retained by a franchisee who was served with a Notice of Default and Termination by the Franchisor arising from a shopping center lease dispute. We are also reviewing another lease for the client's new location in Thousand Oaks.
- A shopping center developer and owner has hired us to respond to a claim that a new tenant's food offerings violate an exclusive use provision granted to another tenant in the shopping center.
- We recently helped our client, a housing and hotel devel-

oper and owner, form an operating entity to purchase and develop a hotel in Arizona.

- When a neighbor began vandalizing a homeowner's property and then filed suit relating to a boundary dispute, the homeowners asked us to step in to defend them.

- We successfully resolved a mechanic's lien claim against our client, a developer of a condominium project in Pasadena.

- We have filed suit on behalf of a security company against a homeowner's association after the association breached their

security contract and surreptitiously hired another security company.

- We continue to represent an architectural firm in a lawsuit by a consultant arising out of the development of a lifestyle center in Texas.

- An industrial business park in Inglewood brought us in to pursue tenants who breached their lease and moved out.

- We successfully settled a partition lawsuit between warring owners over ownership of an apartment building.

## The Fishing Is Best Where the Fewest Go...

It's lonely at the top. 99% of people in the world are convinced they are incapable of achieving great things, so they aim for the mediocre. The level of competition is thus fiercest for "realistic" goals, paradoxically making them the most time and energy consuming. It is easier to raise \$10 million than it is \$1 million. It is easier to pick up the one perfect 10 in the bar than the five 8s.

If you are insecure, guess what? The rest of the world

is too. Do not overestimate the competition and underestimate yourself. You are better than you think.

Unreasonable and unrealistic goals are easier to achieve for yet another reason. Having an unusually large goal is an adrenaline infusion that provides the endurance to overcome the inevitable trials and tribulations that go along with any goal. Realistic goals, goals restricted to the average ambition level, are uninspiring

and will only fuel you through the first or second problem, at which point you throw in the towel. If the potential payoff is mediocre or average, so is your effort.

The fishing is best where the fewest go, and the collective insecurity of the world makes it easy for people to hit home runs while everyone else is aiming for base hits.

—*The 4 Hour Work Week*, Timothy Ferriss (2007)

*Our Vision:  
To be the preeminent  
boutique real estate  
law firm in Los  
Angeles*



Robert and J.J. Wagenseller  
with their girlfriends



## Wagenseller Law Firm

555 West Fifth Street

31st Floor

Los Angeles, California 90013

Tel: (213) 996-8338

Fax: (213) 996-8339

www.wagensellerlaw.com    ltw@wagensellerlaw.com

### *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...*

- On May 22, Mr. Wagenseller delivered a seminar on structuring the ideal real estate transaction and dealing with real estate disputes as part of a day-long **Real Estate From A to Z** program geared toward real estate professionals.
- Mr. Wagenseller was a guest at presidential candidate **Rudy Giuliani's** birthday dinner and celebration May 30 at the Beverly Hilton.
- Mr. Wagenseller and Mr. Wargo, both Directors of the **Duke Club of Southern California**, attended a dinner at the Beverly Hilton with Duke University President Richard Brodhead.
- Mr. Wagenseller was also able to see the **Duke lacrosse** team play in a tournament in San Diego in mid-March.
- Recently, Mr. Wagenseller completed the Urban Land Institute's 4-Day **Advanced Commercial Real Estate Development** course. This course for real estate developers included site visits to four new developments in the Los Angeles area, including 2000 Avenue of the Stars, L.A. Live, 5900 Wilshire Blvd. and Symantec's Corporate Pointe headquarters. Steve Bram of **George Smith Partners** also spoke on investment analysis and finance.
- In August Mr. Wagenseller will be speaking at a real estate industry seminar entitled **California Real Estate Development**.
- Mr. Wargo took a much-deserved vacation to Maui, Hawaii before starting at WLF while Mr. Wagenseller was able to get away for skiing in Colorado in March.
- The Asian Business League held its annual **Real Estate Conference** on June 5, which Mr. Wagenseller attended.
- Mr. Wagenseller's article on **"Acquiring and Financing Hotels"** will soon be published by the L.A. County Bar Association's Real Property Review. The article arose out of the USC/County Bar Annual Crocker Symposium on Real Estate Law and Business.
- WLF was pleased to sponsor a table at the YMCA's annual **Good Friday Breakfast** featuring retired three star Admiral David Brewer III, the new head of LAUSD.

