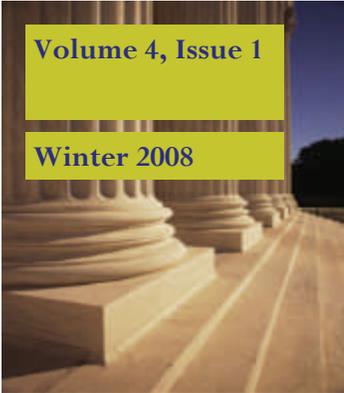




Wagenseller Law Firm

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 4, Issue 1

Winter 2008

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



Selling Partnership Property:

"I'm Authorized! Trust Me!"

Issue: When involved in the sale of commercial property owned by a partnership, how can you ensure that the contracts (including the purchase agreement and the listing agreement) will be legally binding on all of the partners and safe from one (or all) partner's change(s) of heart.

Short Answer: Secure the written authorization of all the partners or co-owners on both the listing agreement and the purchase agreement. Another option is to get a written agreement, signed by the other partners, granting one partner the right to enter into the listing agreement and sell the property on the other partners' behalves.

Recent California appellate case: Elias Real Estate, LLC v.

Po-Tsung Tseng [2007 SOS 6363 (Oct. 25, 2007)]

Background: While one brother (Arthur) signed listing agreement and purchase agreement and assured broker and buyer that he was authorized by his brothers, he later backed out, saying that they no longer wanted to sell the property.

Buyer's Position: The buyer sued for specific performance, arguing that, although Arthur's authorization was not in writing, the sale was still within his scope of authority in running the business.

Seller's Position: The Statute of Frauds prevents enforcement of the contract.

Legal Analysis: While oral contracts are enforceable generally, the statute of frauds prohibits them for contracts to buy or sell real property or, by extension, agreements to authorize an agent to buy or sell real property on a principal's behalf. Arthur did not deny at trial that he had represented that he was authorized to sell the property.

The buyer tried to trump the statute of frauds with partnership law. Typically the act of every partner which is in the course of the usual business of the partnership binds the partnership. The court noted a prior case in which 'a partner of a partnership in the business of

(continued p. 2)

Inside this issue:

| | |
|---|---|
| Selling Partnership Property: Trust Me! | 1 |
| Family Ownership Disputes: A Cautionary Tale | 1 |
| Message from Laine T. Wagenseller | 3 |
| In the Works: What We Are Working On | 3 |
| Sidelines: Intense Focus | 3 |
| News and Happenings | 4 |



Family Ownership Disputes: A Cautionary Tale

This is a cautionary tale about family ownership disputes. The names have been changed to protect the innocent, although no one in this story is particularly innocent. The facts are all true. No one could make up a story like this. There, but for the grace of God, goes anyone who owns property as a tenant in common with their sister, their brother, their aunt or some other family member.

This is the story of two sisters, each in their mid-50s. That is to say, grown-up, mature adults.

Let's call them Mary and Barbara. Back in 1996 the two sisters joined together and bought a five unit multi-family building. The two sisters would each live in a unit while renting out the other units.

Saving money on attorneys, the sisters did not have a written agreement. Barbara had a bankruptcy on her record while Mary received government assistance. Therefore neither one put their name on the title. A family friend and Mary's son held title as co-tenants. The

sisters did not have a written agreement with the friend or the son either.

Later, the son transferred his half ownership interest to his aunt (Barbara) and her name was then placed on title.

However, trouble was brewing between the sisters (for reasons unknown) and Barbara ended up filing a lawsuit against her sister. In the lawsuit Barbara claimed that she owned the entire property, that her sister had no claim of ownership, and that her (continued p. 2)





- WELCOME -

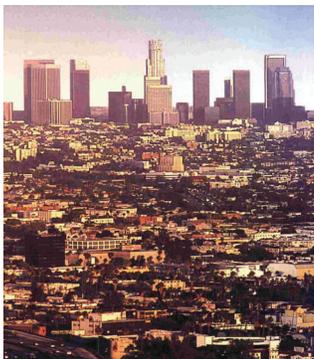
WLF welcomes Michelle K. Strassburg as a new attorney.

Michelle joins us from one of Southern California's largest commercial landlords, where she was **Director of Leasing and Corporate Counsel**.

Prior to that, Ms. Strassburg was a litigation associate at a **local real estate law firm** and an extern for Judge Wallace A. Tashima of the **United States Court of Appeals** for the 9th Circuit.

Prior to law school, Ms. Strassburg was a consultant with Arthur Andersen and Willamette Management Company.

Ms. Strassburg's real estate expertise is a welcome addition to our team.



I'm Authorized! Trust Me!

holding unimproved real property for appreciation and resale acts within the usual course of the partnership business when he agrees to sell the partnership's real property assets.'

In this case, however, the court noted that the brothers were not in the business of holding real property for appreciation and resale, but rather that they were in the business of importing and

distributing clothes. Therefore Arthur needed the written authorization of his brothers in order to sell the warehouse, an act outside the usual scope of their business.

Outcome: Without their signatures, the contract could not bind the brothers and the sale was invalid. The trial court's order for specific performance was reversed on appeal.

Lessons Learned: Trust, but verify. The failure to get a simple written authorization at the onset of the representation or when signing the purchase agreement not only made the buyer's purchase agreement unenforceable but also engulfed these parties in three years of litigation and appeals. The broker not only lost the sale but became a defendant in a negligence lawsuit. An ounce of prevention once again beats out a pound of cure.



Family Ownership Disputes (cont'd)

sister was breaching an oral contract between them by failing to convey the property to her. The complaint asked the court to find that Barbara was the sole owner of the property.

Mary's attorney called Barbara's attorney and suggested that the parties and their attorneys all sit down to discuss the matter. Mary's attorney pointed out that the property was owned fifty/fifty and that the parties should agree to split half of the expenses and half of the income.

The attorney outlined the two possible outcomes of this dispute: (1) the sisters could agree to split everything now and settle the case quickly and inexpensively, or (2) they could engage in two years of litigation after which the court would split everything, but only after subtracting the costs of a referee, an accountant, an appraiser and perhaps a broker. And last but not least, the attorneys would have to be paid for their two years of work.

This being a family dispute, the sisters did not agree to settle and the litigation began. Mary's attorney challenged the complaint not once, but three times, until the court finally dismissed the complaint. A legal concept called the

statute of frauds prohibits oral contracts to convey real property in most situations, including this one. Mary won a judgment against Barbara for her costs in defending the litigation.

Barbara tried again. This time she filed a lawsuit for partition—a request that the court determine their separate interests in the property, order the property sold and divvy up the proceeds. In her action Barbara asked for an accounting of the money each sister had put into the property. Barbara wanted to examine all of the income and expenses from the property and hired a bookkeeper to investigate.

Mary retaliated with a malicious prosecution action against Barbara, based on the first lawsuit which had been dismissed. Mary also filed a wage garnishment against Barbara to collect on her earlier judgment.

The court ordered mediation between the parties. A mediator appointed by the court scheduled a mediation but Barbara and her attorney cancelled at the last minute.

Eventually Barbara agreed to sell her interest in the property if the sisters could agree on an acceptable appraiser and Barbara would be reimbursed for the money she put into the property. The sisters proceeded with the appraisal. Once the appraisal was finished, Barbara changed her mind and refused to sell. Barbara now insisted on buying out Mary.

Unfortunately there is no happy ending to this story. Mary and Barbara have still not agreed on a settlement. Two of the three lawsuits are still pending. The attorneys are still billing. And, unless the sisters agree to a mutually agreeable buy-out price, the court will proceed to refer this matter to a referee.

The referee will hire his own appraiser and his own bookkeeper or accountant, all at the sisters' expense. Like a divorce, the sisters will end up spending much of their gain in the property on lawyers, brokers and accountants. And while both sisters wanted to end up with the property, neither may end up with it.

Message from Laine Wagenseller...

I recently attended the 2007 Coach K Leadership Conference at Duke University's Fuqua School of Business.

All of the CEOs who spoke at this conference had a vision of where they wanted their team to go and where they personally wanted to go.

They noted that their vision involved taking risks and moving out of their comfort zone to enlarge their horizons. They sought to think in breakthrough terms, not incremental steps.

Each leader had clear, easily identifiable goals and those goals were communicated to everyone on their team and repeated often.

Each leader had a system for measuring their progress and keeping score. What gets measured gets done.

We are using the same system at Wagenseller Law Firm.

Our vision is to be the preeminent boutique real estate litigation firm in Los Angeles and we have set goals to reach that vision.

We also use this method with each case we handle. With the client we formulate where we want to end up and set in action a plan to achieve our goal. We communicate our progress to our client at every turn and keep score to make sure we are achieving our goals.

Thank you to everyone who made 2007 such a successful year and we look forward to helping you achieve your goals in 2008.

Laine



Laine Wagenseller with Coach Mike Krzyzewski

In The Works: Cases We Are Working On

- We were recently hired by a start-up tech company to negotiate their lease for 15,000 square feet of **industrial space** in the City of Azusa.
- We have filed a lawsuit against a **general contractor** who abandoned the job.
- After mediation our architect clients were able to settle a dispute involving a signage consultant, the architects and

the real estate developer over work done on a **life-style center** in Texas.

- We successfully negotiated a settlement between two neighboring property owners over a **disputed boundary line** and physical encroachments.
- We continue to fight a quiet title action relating to a **development project** in Pasadena. Trial is set for March.

- We were successful in getting a **contractor's bond** paid to our client in a lawsuit involving a home construction dispute in which the contractor sued our client and we counter-sued for damages.
- We continue to represent a construction company in disputes with a developer over the **development of townhomes** in Pasadena.

Our Vision:

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

Intense Focus: The Linchpin In Your Pursuit of Excellence

Big can be great, but only if you narrowly focus your business on the simple issues that make big happen in a great way. The bigger you want your business to be, the narrower your focus will need to be on what matters.

In the end, the size of the business or staff isn't really your main concern—the focus is.

I want to suggest five simple steps that can lead you to great focus and open up a world of possibilities in your business and your life: (1) Create a personal plan and make process your focus; (2) Time block to get your focus; (3) Get accountability to keep your focus; (4) Make sure your environment supports your focus; and (5) Keep your energy to maintain your focus.

Focus is really the linchpin in your pursuit of excellence. Intense focus on Big Models and Big Dreams will pull you up through smaller goals to your highest achievements possible. You end up living larger, achieving the most you could achieve, and becoming the best you could become.

-'The Millionaire Real Estate Agent' by Gary Keller





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...

- Mr. Wagenseller's article, **'The Write Stuff'**, appears in the January/February edition of **Commercial Investment Real Estate**, the magazine of the **CCIM Institute**. The article deals with the *Elias Real Estate* case highlighted in this newsletter.
- **"The Five Steps To Prosecute A Specific Performance Lawsuit"** by Laine Wagenseller was published in the November 2007 issue of **50+ Builder**.
- After Christmas Mr. Wagenseller spent two weeks hiking and rafting in Northern **Thailand** and kayaking and camping outside of Phuket, site of 2004's devastating tsunami.
- Mr. Wagenseller attended **"Investing in the Downturn: Where Are Professional Real Estate Investors Directing Their Capital Today?"** on November 28, in which five panelists offered insight into this year's real estate market. Mr. Wagenseller, Jan Brzeski of Standard Capital LLC and Scott Denham from CIM Group hosted the panelists for dinner afterwards at the Napa Valley Grille.
- **USC Marshall Partners** hosted an evening with Gary Cypres at his sports memorabilia museum in downtown Los Angeles, which Mr. Wagenseller at-

tended. Mr. Wagenseller has joined the Board of Directors of the West Los Angeles Marshall Partners.

- See inside for information on the **Coach K Leadership Conference**, which Mr. Wagenseller attended at Duke University this Fall. While at Duke Mr. Wagenseller also attended a lecture by **Jay Sekulow**, a noted Supreme Court litigator specializing in religious issues, on the current U.S. Supreme Court. He stopped by South Bend, IN on the way home to watch the Trojans beat Notre Dame in football.

Read Mr. Wagenseller's editorial entitled **"Zone My Love Handles Away, L.A."** in the **Los Angeles Times** at www.wagensellerlaw.com/articles.

- Mr. Wagenseller attended a cocktail party for **Mitt Romney** at the home of Geoff Palmer where Governor Romney spoke about his presidential bid.

