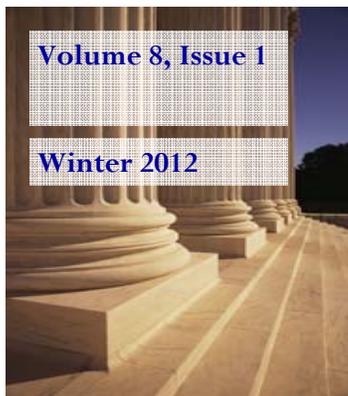




Wagenseller Law Firm

Real Estate and Business Litigation Newsletter



Volume 8, Issue 1

Winter 2012

Wagenseller Law Firm

(213) 996-8338

Real Estate Litigation
Business Litigation
Leasing and Contracts

www.wagensellerlaw.com



2011: The Year In Review

2011 was a busy year for our real estate litigation, corporate shareholder/partnership litigation and leasing practice.

Corporate Litigation: We helped several clients negotiate separations from their business partners (both corporate shareholders and partners).

Partition: A number of clients were either plaintiffs or defendants in partition lawsuits with their co-owners over apartment buildings and other properties. Many of our partition clients are in litigation with their family members.

Real Estate Purchases and Specific Performance: We have been working on (and continue to work on) a specific performance claim on behalf of our cli-

ent, an industrial building tenant, who exercised its option to purchase but, due to a co-owner dispute among the sellers, has been unable to close the purchase.

Fraudulent Conveyance: We are defending a client in a fraudulent conveyance lawsuit by a plaintiff trying to enforce a judgment.

Collections: We filed suit on behalf of a company seeking to collect on unpaid invoices against a British company.

Neighbor Boundary Disputes: We represented a number of clients with boundary disputes with their neighbors.

Unfair Competition: Our client was sued for unfair competition, intentional interference

with contractual relations, false advertising, defamation and other causes of action in a business dispute between two industry competitors.

Resulting Trust: We represented a property owner in a lawsuit by her daughter claiming an interest in our client's Beverly Hills apartment building.

Commercial Leasing: We reviewed and negotiated a number of leases for office space, industrial buildings (AIR leases) and retail shopping spaces.

As we start 2012 our goal remains the same: To be the preeminent boutique real estate law firm in Los Angeles.

Inside this issue:

2011: The Year In Review	1
Property Co-Owners and Partition Lawsuits	1
Breach of Contract Lawsuits	2
Message from Laine T. Wagenseller	3
In the Works:	3
Personal Effectiveness: Focus on the "Vital Few"	3



Property Co-Owners and Partition Lawsuits

Los Angeles real estate attorneys often deal with partition lawsuits where co-owners of real property decide they cannot be co-owners anymore. Oftentimes the co-owners are family members—brothers and sisters, parents and children. Sometimes they are old friends or just merely investors. If the parties are unable to agree on how to split up the property or their partnership, the solution is a partition lawsuit. Here are the basics on how a partition lawsuit will proceed in court.

One party will have to initiate the lawsuit—the plaintiff. The plaintiff will file a verified complaint for partition. Verified means that the plaintiff is attesting that the complaint is true and correct. The plaintiff's attorney will need to file and record a lis pendens with the County recorder showing that there is a dispute over the ownership of the property.

The first issue to determine in the litigation is the ownership interests of the co-owners. Notice that the first issue is not usually whether a

party has a right to partition. Unless there is a valid waiver, almost every co-owner has an absolute right to partition. Moreover, the ownership interests of the parties are not usually in dispute either. A brother and a sister may have inherited equal ownership shares in an apartment building. While they may argue about everything else in life, their ownership share of 50% each has usually been determined.

To advance to the next stage of the litigation, the



Breach of Contract Lawsuits

Breach of contract lawsuits are the most common business litigation cause of action in California. Breach of contract encompasses a variety of different scenarios: **partnership disputes, breach of lease** and other real estate litigation, **sales transactions, promissory notes** and collections, and any situation where two or more parties have reached an agreement, either orally or in writing.

Every breach of contract lawsuit has to establish the following elements: (1) a contract, (2) plaintiff's performance of his or her obligations under the contract or an excuse as to why plaintiff did not perform, (3) defendant's breach of the contract, and (4) plaintiff's damage arising from the breach of contract.

A contract can come in different forms. Oftentimes businesses carry on their transactions with written contracts. However, parties may enter into oral contracts. The law can also imply a contract. This is usually the case when there is no express writing but the parties are engaging in a pattern of conduct which evidence an agreement. For example,

where one party performs work and the other party begins paying for that work, a court may imply a contractual relationship between the parties even though there is no express written or oral contract.



The second element of a breach of contract lawsuit is that the plaintiff performed her or her obligations under the contract or has an excuse as to why he or she did not. The idea behind this requirement is that you cannot sue another for breach of contract if you did not perform your obligations under the contract.

In California the third element of a breach of contract cause of action is the other party's breach. Breach most often includes a failure to pay monies owed, but can take other forms as well. In real estate litigation a tenant may breach a lease, for example, by failing to maintain property insurance, by failing to maintain

the property as required by the lease, or failing to follow the rules and regulations.

In other business litigation contexts, breaches of contract can be almost anything agreed to by the parties that one party has failed to perform. Manufactured goods that are defective or late, a partner that fails to perform his obligations to the other partners, a construction project that is improperly built—all of these can be breaches of the agreement between two or more parties.

Lastly, a breach of contract does not create a viable legal cause of action unless the other party is somehow damaged by it. Usually the breach causes damage, such as an invoice that is unpaid, a rented space that is unusable or even profits that are lost due to some act. Depending on the circumstances, a breach of contract action can lead to an award of damages, an injunction (to prevent an ongoing wrong) and even specific performance. Specific performance, often used in real estate litigation, is where the court will order the sale or the purchase of the property rather than just awarding monetary damages.



Property Co-Owners and Partition Lawsuits (Cont'd)

parties can then seek an interlocutory judgment. An interlocutory judgment will find that the plaintiff is entitled to partition, will determine the ownership interests of the parties and will order that the property be partitioned.

The next question is the manner of partition. Will the property be sold or divided up among the parties? While the court will first seek to divide a property if possible, partition cases usually involve the sale of the property. When three siblings own a warehouse, for example, the property cannot be divided up into three parts so partition by sale is the solution. Of course, if the property involves multiple parcels the court can divide them up among the parties.

The interlocutory judgment will usually appoint a referee to oversee the sale and also to conduct an accounting. To accomplish these tasks, the referee will hire an auction house or broker to conduct the sale. The referee will also hire an accountant to go over the books and determine any accounting issues. Keep in mind that all of these people will have to be paid and their pay will come out of the proceeds of the sale.

Upon the sale of the property, the referee will report to the court. The report will include all of the details of the sale (price, terms, etc.) and accounting. A party or the referee will move the court to confirm the sale and the court will have a hearing, where it will examine the report. The parties can challenge the

report and a responsible bidder can even make a higher bid at the hearing. The court will then usually confirm the sale, the accounting and allocate any costs.

Most partition lawsuits can be resolved without going through this whole process, either through mediation or some other settlement procedure. However, it is good to know how a partition lawsuit will proceed if the parties cannot reach a settlement. It is also good to know the process so that you and your attorney can estimate the costs of the process and work that into your cost-benefit analysis of litigation versus settlement.

Message from Laine Wagenseller..

I am excited for 2012! 2011 was our best year yet and we are looking to capitalize on that momentum this year.

We are committed to providing our clients with excellent service in our specialized areas of real estate and business law and litigation. We have put into place systems that will help us dramatically elevate the level of service we provide.

The majority of our work comes from referrals from you and our other friends. As we begin the

year, let me know how we can help you, your colleagues and your friends with their real estate and litigation needs. We appreciate the many referrals we receive. Our ideal referral is a company or individual facing litigation who needs the help of an experienced trial attorney.

Let me also know how we can work together to build our businesses and grow our circles of influence.

Laine



We were pleased to host a lunch at Café Pinot for Tuusime Samuel, who is a law student in Uganda. Attendees were Ju Lee, Lisa Machii (Law Offices of Lisa Machii), Laine, Yale Yang (our Office Manager), Linda Eng (Travers Realty), Matthew Yu (Law Office of Matthew C. Yu) Anthony Bourg (Bank of the West) and Peter Paik (Nextage Capital Advisors).



Laine has joined the Board of Directors of the Rotary Club of Los Angeles (LA5).

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

Personal Effectiveness: Focus on the “Vital Few”

It's not about working harder or smarter or more efficiently. Top producers work more effectively. Working effectively means you're focused on the “vital few” activities and you're completing those activities the right way.

About 75 years ago, steel magnate Charles Schwab, the first president of U.S. Steel and the founder of Bethlehem Steel, was looking for a way to be more efficient. As the story goes, he met Ivy Lee, a consultant, who told him this simple idea and told Schwab to follow it religiously for 30 days. Schwab followed the idea and by the end of the 30 days was blown away by the results.

This was the idea: Every evening before you leave work, write down the six most important activities you have to accomplish the next day in order of priority and leave the list on your desk. Begin the next day working on item #1 and work your way sequentially through the list, making sure you do not move on to the next item until the current item is completed.

It's a deceptively simple concept to understand, yet it's frustratingly difficult for people to implement. The end-of-the-day rush gets in the way, you're late for dinner, the kids have a ball game—you know the drill. It's easy to let it slip.

Prioritizing your “six most important” list is critical. Begin your day by working on the number one item. You may end up spending your whole day working on that item and, if so, should take comfort in knowing that you were focused on the single most important activity for the day.

By spending these few minutes each day before you leave the office, your subconscious mind will absorb the list overnight, and you'll start the next day focused and ready to tackle the day's activities.

—from **Tested in the Trenches** by Carson and Sanduski





Wagenseller Law Firm

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

Tel: (213) 996-8338

Fax: (213) 996-8339

www.wagensellerlaw.com

Laine T. Wagenseller

(213) 996-8338

ltw@wagensellerlaw.com

Yale Yang (Legal Assistant)

(213) 996-8351

assistant@wagensellerlaw.com



Real Estate Litigation Business Litigation

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.

Wagenseller Law Firm News and Happenings...

- Laine Wagenseller has joined the Board of Directors of the **Rotary Club of Los Angeles (LA5)**.
- Watch for the **Boy Scouts of America** Los Angeles Council **Business Leaders Breakfast** on March 15 with Gary Sinise. Laine is on the organizing committee. Laine also attended the Boy Scouts Character Counts Dinner with Bud Selig at the Bonventure Hotel.
- Duke University Professor Dan Ariely (bestselling author of Predictably Irrational) and Duke President Richard Brodhead came to the Beverly Hills Hotel for **the Duke Idea**, which Laine attended.
- Republican presidential candidate **Mitt Romney** was also in town for a dinner at the Beverly Hills Hotel. Laine was pleased to attend the event.
- Laine traveled to Dallas for the **Cotton Bowl**, where the Arkansas Razorbacks beat the Kansas State Wildcats 29-16 in Cowboys Stadium.
- Lieutenant Governor Gavin Newsom spoke at the **Los Angeles Business Council** Holiday Party at the home of Andrew Jameson and Nadine Watt, which Laine attended.
- Laine will be headed to the **Federalist Society** Annual Western Conference at the Reagan Library on the 28th. The keynote exchange will be the Hon. Alex

Kozinski and Hon. Stephen Reinhardt, both of the 9th Circuit Court of Appeals. (Let me know if you would like to attend).

Are you social?

Friend "Wagenseller Law Firm" on Facebook and connect with Laine Wagenseller on LinkedIn.



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 Litigation
Breach of Contract
Business Fraud

Real Estate Law

Commercial Leases
Purchase and Sale Agreements