

## **Unusual Types of Real Estate Lawsuits**

By Dale Alberstone, Esq.

Typical lawsuits involving real estate disputes are those for breach of contract, breach of escrow instructions, breach of leases, unlawful detainers and fraud by a seller. There are, however, other unusual types of causes of action which are not frequently discussed. For this month's column, I thought it would be interesting to review six of those uncommon types of suits.

### **Use and Occupancy**

When a landlord-tenant relationship exists, the tenant is required to pay rent in exchange for the possession of the premises. If the money is not paid, the landlord may bring an action against the tenant to recover the rent.

Sometimes the person in possession is not a tenant, but is instead a trespasser. This may arise in a residential or commercial setting following the signature on a lease by the proposed tenant, but not a signature on the lease by the proposed landlord. If the landlord refuses to sign the lease, but the proposed tenant moves into possession anyway (for example, the property manager or real estate broker gives the tenant a key to view the unit pending consummation of the transaction), the occupant is not a tenant, and, therefore, owes no rent. Rather, he is considered a trespasser who is liable for the reasonable value of the use and occupancy of the premises.

The property owner who brings suit for use and occupancy of his property need only prove his ownership of the land, occupation of the land by the person in possession, and the reasonable value of the use of the property during the period of occupation. (Herond v. Bonsall, 60 Cal. 152; Meyer v. Parobrek, 119 CA2d 509) Thus, even though the occupant is not a tenant, and does not owe rent, he nevertheless owes the reasonable value for his use and occupancy of the unit.

### **Breach of a Grant Deed**

The two most common types of deeds used in California are quitclaim deeds and grant deeds. Quitclaim deeds contain no warranties. They only transfer to the grantee the title then possessed by the grantor, if any. If the grantor does not possess title, then the quitclaim deed does not operate as a conveyance. Quitclaim deeds are most frequently used when property is the separate property of a spouse. The other spouse might sign a quitclaim deed to renounce any ownership in the property. Lenders often require the non-owner spouse to execute a quitclaim deed even though no warranty is implied or expressed.

On the other hand, a grant deed contains two, and some would say three, warranties: First, the grantor warrants that prior to the time of the conveyance, the grantor did not convey the property to anyone else. Second, the grantor might implicitly warrant that he owns the property that he is conveying to the grantee. Whether or not this second warranty exists is unclear under law. Third, the grantor warrants that as of the time of the conveyance, there are no encumbrances against the property which were placed on the property, or allowed to be placed on the property, by the grantor. (Civil Code Sections 1107-1113)

It is the third warranty that is generally the one creating conflicts. If grantor conveys the

property to a buyer subject to an existing first deed of trust, the grant deed should specifically state that fact. Similarly, if the grantor previously gave an adjoining neighbor an easement across any portion of the grantor's property, the existence of the easement (as an exception to the warranty) should be referenced in the grant deed. If such encumbrances are not referenced in the grant deed, the grantor will be in breach of the third warranty. The grantee might then recover compensatory damages against the grantor.

### **Reformation of Leases**

One of the most frequent problems to occur with leases, particularly those not on preprinted forms, or those which have typed addendums, is mistakenly using the word "lessor" when the parties mean to state "lessee," or vice versa. For example, in long term leases, the lessee is often required to make necessary repairs to the building. If, by mistake, the lessor (who usually is responsible for the draftsmanship of the lease) mistakenly states that the "lessor" is to make repairs, a conflict may arise. Upon discovery of the typographical error, the lessor would request the lessee to initial a correction to the lease. If the lessee refuses, the landlord may bring a judicial action for "Reformation".

Reformation is a lawsuit which requests the court to correct a mistake in the lease or other contract. Although it applies to all types of written agreements, it is most common in the context of leases, because it is so easy to inadvertently type "lessee" when the parties mean "lessor," or vice versa. In the form "Rental Agreement and/or Lease" which is distributed by AOA, we use the words "OWNER" and "RESIDENT". The reason should be obvious. It is more difficult to confuse those terms than if the words "lessor" and "lessee" were used. In non-AOA leases, parties would be wise to use "landlord" and "tenant" rather than "lessor" and "lessee."

Another common scenario where reformation may be necessary involves dates. From time to time, contracts may specify the wrong year, such as for the expiration date of a lease. If one of the parties refuses to initial the correction, the other party may seek the court's assistance by a reformation action.

### **Civil Conspiracy**

Civil conspiracy is a legal doctrine that imposes liability on persons who, although not actually committing the wrong themselves, share with the wrongdoer a common plan or design in its perpetration. By participation in a civil conspiracy, a co-conspirator effectively adopts as his or her own torts those of the actual wrongdoer. In this way, a co-conspirator incurs liability equal to that of the wrongdoer. Civil conspiracy is a theory of joint liability whereby all who cooperate in another's wrong may be held liable.

Standing alone, a conspiracy does no harm and engenders no liability. It only comes into play by the commission of an actual wrong. A bare agreement among two persons to harm a third person does not give rise to liability unless and until the acts are actually performed pursuant to the agreement.

In a landlord-tenant context, if two tenants conspire to spray graffiti on the owner's building, or conspire to otherwise damage the property, both tenants would be liable to the owner, and not just the tenant who commits the wrong.

### **Assignment Orders**

This type of proceeding is rarely used, but should be kept in mind because it can be powerful

when applicable. If a landlord obtains a judgment against a tenant for money damages (such as for breach of a lease), it is often uncollectible because the tenant has limited or exempt assets. However, if the tenant at some future time obtains a judgment of his own against some new lessor (or any third party), the landlord may file a creditor's suit against the subsequent lessor so as to compel the lessor to pay the landlord directly rather than to pay the tenant. (C.C.P. Section 708.210). In this fashion, the money owed to the tenant will be paid directly to the landlord, though not ever received by the tenant directly. Effectively, it is a levy on the asset of the tenant (i.e. the judgment), even though the tenant has yet to receive the money.

### **Unfair Business Practices**

“Unfair Business Practices” is quickly becoming a mainstream cause of action augmenting traditional claims in litigation. In general, UBP is defined as “anything that can properly be called a business practice and that at the same time is forbidden by law.” (Bank of the West v. Superior, Court 2 Cal.4<sup>th</sup> 1254) Just about any unlawful method by which one operates an apartment building or conducts a business can give rise to a UBP lawsuit by the injured party.

A now common example involving UBP is a suit brought by a resident manager against an owner for unpaid or insufficient wages. As you know from my January article each year for the past seven years, a resident manager is entitled to be paid wages by the owner or the management company for the services he provides. Free rent to the manager may not be credited against the wages owed unless the manager has signed a written agreement which provides for that credit. Attorneys representing managers are now suing owners and management companies not only for unpaid wages, but for compensation on the basis of unfair business practices. Among other things, a cause of action for UBP increases the number of past years for which wages can be collected from either one year or three years (Gov't. Code Section 12960(d) and C.C.P. §338(a)) to four years (B & P Section 17208). Thus, merely by changing the name of the cause of action from “Damages for Unpaid Wages” to “Unfair Business Practices,” a manager may extend the statute of limitations by one or three years.

### **Conclusion**

If a landlord or property owner believes that he has been wronged, there is usually some theory available for redress, even if it is not widely known. Our law is founded on just and equitable principles, arising from the maxim: "For every wrong there is a remedy."

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*Mr. Alberstone has been awarded an AV rating from Martindale-Hubbell. An AV rating, registered through Reed Elsevier, reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.*

*The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.*

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