

2023 Real Property Law Health & Wellness Retreat



March 24-26, 2023
Fairmont Sonoma Mission Inn
Sonoma, CA

2022 CASE LAW UPDATE

Neil Kalin, Esq., Assistant General Counsel, California Association of REALTORS
Elizabeth A. Blair, Esq., Principal, Blair Law

AGENDA

- COVID-19 Insurance Claims
- Real Estate Brokers
- Residential Landlord-Tenant
- Commercial Landlord-Tenant
- Premises Liability
- Short-Term Rentals
- Mortgages
- Easements
- Contractors
- Fair Housing / Websites
- And one more case....



COVID-19 INSURANCE CLAIMS

- Another Planet v. Vigilant Ins. Co. 56 F.4th 730 USCA, Ninth Circuit (12/28/22) (CA Supr. Ct. S277893, Certification Granted 3/1/23)
 - 9th Circuit asked CA Supreme Ct. whether presence of COVID-19 constitutes direct physical loss or damage (“DPLOD”)
- Musso & Frank Grill Co. v. Mitsui Sumitomo Ins. Co. 77 Cal.App.5th 753 (2nd Dist., Div. 1)
 - Virus exclusion clause. C-19 does not cause DPLOD to allow recovery of business losses. Insurer demurrer sustained.
- Marina Pacific Hotel & Suites, LLC v. Fireman’s Fund Ins. 81 Cal.App.5th 96 (2nd Dist., Div. 7)
 - Claim that COVID-19 alters property which is a DPLOD for income loss and remediation under policy survives demurrer.



COVID-19 INSURANCE CLAIMS (cont...)

- Amy's Kitchen v. Fireman's Fund Ins. Co. 83 Cal.App.5th 1062 (1st Dist., Div. 4)
 - Claim under communicable disease clause for costs to clean, disinfect and test facilities can be amended to survive demurrer.
- Shusha Inc. v. Century National Ins. Co. 87 Cal.App.5th 250 (2nd Dist., Div. 7)
 - Claim that C-19 causes DPLOD to property for business income loss survives demurrer
- Best Rest Motel v. Sequoia Ins. 2023 WL 2198660 (Ct. Appeal, 4th District, Div. 1) (2/24/23)
 - Business loss under DPLOD clause not applicable because business shut down anyway due to stay at home orders



REAL ESTATE BROKERS

- Whitlach v. Premier Valley, Inc. 86 Cal.App.5th 673
 - Real estate salesperson is by statute an independent contractor and not employee
- Greif v. Sanin 74 Cal.App.5th 412
 - Buyer exclusive agent does not owe duty to unrepresented seller to disclose value of property
- Holt v. Brock 85 Cal.App.5th 611
 - Court-appointed broker in partition action entitled to quasi-judicial immunity for alleged breach of duty



LANDLORD-TENANT (RESIDENTIAL)

- Ballinger v. City of Oakland 24 F.4th 1287 (USCA Ninth Circuit)
 - Requirement that LL pay T relocation fees for owner move-in eviction not unconstitutional taking
- Hirschfield v. Cohen 82 Cal.App.,5th 648
 - New SFR not exempt from rent control under Costa Hawkins if rented within 5 years after Ellis Act removal
- 2710 Sutter Ventures LLC v. Millis 82 Cal.App.5th 842
 - Local law requiring LL to give notice of relocation assistance does not violate Ellis Act



LANDLORD-TENANT (RESIDENTIAL)

- Group XIII v. Stockman 85 Cal.App.5th Supp 1 (L.A. Superior Ct. Appellate Division)
 - Successor LL must strictly comply with contact notice to T or T has defense to unlawful detainer
- Cameron v. Las Orchidias Properties, LLC 82 Cal.App.5th 481
 - LL failure to re-rent to former T after Ellis eviction subject LL to non-economic and punitive damages
- Seviour-Iloff v. LaPaille 80 Cal.App.5th 427 (Review granted, S275848, but allowed case to be cited)
 - On-site manager sues for wages. Officer of LL found individually liable. Liquidated damages applicable.

LANDLORD-TENANT (COMMERCIAL)



- JJD-HOV Elk Grove v. Jo-Ann Stores, LLC 80 Cal.App.5th 409 (Review granted 10/12/22, S275843, case may be cited)
 - Lease provision allowing shopping center T right to pay substituted rent if LL does not maintain anchor tenants or certain percentage of occupancy is not penalty clause
- Tufeld Corp. v. Beverly Hills Gateway, L.P. 86 Cal.App.5th 12
 - Ground lease, as extended, beyond 99 years is only void beyond the 99-year period



PREMISES LIABILITY

- Hoffmann v. Young 13 Cal.5th 1257
 - Recreational use immunity (RUI) applies unless invited onto property by owner or agent of owner
- Rucker v. WINCAL LLC 74 Cal.App.5th 883
 - Owner owes no duty (RUI) to jogger who goes on street to avoid homeless encampment on property
- Mayes v. La Sierra University 73 Cal.App.5th 686
 - No assumption of risk to injured ball game spectator if college could take reasonable precautions
- Nunez v. City of Redondo Beach 81 Cal.App.5th 749
 - City not liable for trip over defect in sidewalk of less than one inch which is trivial as a matter of law

PREMISES LIABILITY



- Fajardo v. Dailey 85 Cal.App.5th 221
 - No defense sum pmt based on triviality for trip and fall on sidewalk where material issue of height differential exists
- Joshi v. Fitness International, LLC 80 Cal.App.5th 814
 - Fitness club not liable for injury in sauna where no evidence club aware of defect (light burned out)
- Montes v. YMCA of Glendale, CA 81 Cal.App.5th 1134
 - Building owner not liable for roof fall of T who was drunk and high and no notice of previous access
- Ramirez v. PK 1 Plaza 580 SC LP 85 Cal.App.5th 252
 - Privette doctrine does not apply to injury of contractor hired by T to remove sign on LL property

SHORT TERM RENTALS



- Protect Our Neighborhoods v. City of Palm Springs 73 Cal.Ap.5th 667
 - City entitled to legislative deference in its allowance of short term rentals based on municipal code definition of “customarily incident to” use of SFRs
- Hobbs v. City of Pacific Grove 85 Cal.App.5th 311
 - Ordinance limiting number of short term rentals valid and did not violate owner’s due process rights

MORTGAGES



- Honchariw v. FJM Private Mortgage Fund, LLC 83 Cal.App.5th 893
 - Late payment fee in loan for 9.99% interest on loan balance is an unlawful liq. damage clause (CC 1671)
- Sheen v. Wells Fargo Bank, N.A. 12 Cal.5th 905
 - Bank which properly foreclosed owed no tort duty to borrower to respond to inquiries for modification

EASEMENTS



- Romero v. Shih 78 Cal.App.5th 326 Review granted 8/10/22, S275023; SCOTUS Cert denied 1/17/23
 - No exclusive implied easement. Court equitable power allows for an equitable easement
- Canyon Vineyard Estates I LLC v. DeJoria 78 Cal.App.5th 995
 - Deed from prior owner created valid conservation easement. Conservation easement did not merge with title to the property as that would defeat purpose of conservation intent
- Tariwala v. Mack 84 Cal.App.5th 807
 - Access easement did not merge when title subject to deed of trust, and merger would prejudice third party



CONTRACTORS

- Kim v TWA Construction, Inc. 78 Cal.App.5th 808
 - Contractor cannot collect for tree removal work performed by unlicensed sub-contractor
- Panterra GP, Inc. v Sup. Court 74 Cal.App.5th 697
 - Licensed general partner can sue for work performed if contract mistakenly in name of unlicensed LP



FAIR HOUSING / WEBSITES

- Martinez v Cot'n Wash 81 Cal.App.5th 1026
 - Website not public accommodation under ADA if no connection to any physical space

AND ONE MORE CASE.... Attorneys Beware

- Jenkins v. Brandt-Hawley 86 Cal.App.5th 1357
 - Mal. prosecution against attorney and firm survives anti-SLAPP motion if underlying claim brought without probable cause and for improper purpose (malice)



A List of Cases Discussed

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Panterra GP, Inc. v Sup. Court	74 Cal.App.5 th 697
Martinez v Cot'n Wash	81 Cal.App.5 th 1026
Jenkins v. Brandt-Hawley	86 Cal.App.5 th 1357

CONTACT INFORMATION

Neil Kalin, Esq.
Assistant General Counsel
California Association of REALTORS
neilk@car.org
(213) 739-8341

Elizabeth A. Blair, Esq.
Principal
Blair Law
elizabeth@elizabethblairlaw.com
(707) 346-7921

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**THANK YOU
FOR JOINING US!**