Legal Events in Real Estate

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Special points of interest:

- Vicarious Liability for Corporate Owners/Officers Under FHA
- Commercial Landlord May Accept Rent and Evict Tenant
- Landlord May Acquire Liability to Install Safety Features
- Escrow Agent Has Duty to Disclose Information to Principal
- Residential Seller Limited to 3% in Liquidated Damage Recovery

Brokerage Owners and Officers Liable for Employee Fair Housing Violations

Under corporation law, owners and officers of a corporation typically have no personal liability for the wrongdoing of the corporation's employees. That principle of non-liability does not apply, however, to employee violations of the Fair Housing Act.

In *Holley v. Crank*, 258 F.3d 1127 (9th Cir. 2001), a mixed race couple visited a realty office and inquired about homes in a particular price range. The realtor showed them only homes that exceeded their spending limit. Later, on their own, the prospective purchasers found a home in their price range in a new home development. The builder told them their offer seemed fair, but that it would have to go through the realty office with which they had previously dealt. The agent thereafter told the purchasers he did not think their proposed deposit was sufficient to hold the home for the period of time it would take them to sell their existing home. The purchasers declined to increase their offer and the broker never presented it to the builder.

When the builder inquired about the potential for an offer from the purchasers, the agent referred to them with racial invectives and told him he did not want to deal with them. The builder ultimately sold the home for about $20,000 less than the purchasers had offered.

Alleging fair housing violations, the purchasers and the builder sued the brokerage *and* its owner and president. Because Housing and Urban Development regulations provide that "[a] complaint may also be filed against any person who directs or controls, *or has the right to direct or control, the conduct of another* person," and because the duty to obey anti-racial discrimination under the FHA is non-delegable, the Ninth Circuit Court of Appeal held that "a corporation and its officers may be held liable for their failure to ensure the corporation's compliance with the FHA, whether or not the officers directed or authorized the particular discriminatory acts that occurred."

Partial Rent Payment no Bar to Eviction in Commercial Tenancy

A residential landlord that accepts rent after expiration of a 3-day notice waives eviction. Under §1161.1 of the Code of Civil Procedure, a commercial landlord may accept partial payment and still evict the tenant so long as the landlord provides *prior* notice to the tenant that acceptance of rent does not constitute a waiver of the right to recover possession of the property.

In *Woodman Partners v. Sofa U Love*, 94 Cal.App.4th 766 (2001), the court found the following provision in the lease constituted adequate prior notice: "[T]he acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted."

Duty of Landlord To Provide Safe Premises

A residential landlord who agrees to make a safety-related repair may create liability for himself if he fails to make the repair or the repair is inadequate. In *White v. Contreras*, 95 Cal. App.4th 137 (2002), tenant asked the landlord several times to replace the screen in a bedroom window, and the landlord agreed to do so but never did. Tenant's three year old son fell from the open window 25 feet to the

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Escrow Officer Has Duty to Disclose Material Facts to Principal

Whenever an escrow officer obtains information in the course of an escrow agency and the information is relevant to the subject matter of that agency, the officer must disclose the information to his or her principal. *In re Marriage of Cloney*, 91 Cal. App.4th 429 (2001).

In *Cloney*, which arose out of the dissolution of a marriage, the wife obtained a judgment against her former husband, James Michael Cloney. The wife recorded the judgment, but before she did so the former husband conveyed title to his home to his new wife and himself as Mike Cloney.

After the wife recorded the judgment, her former husband entered into a contract to sell his home. He signed the relevant documentation at the offices of the escrow officer, who asked to see his identification.

The escrow officer noticed that the former husband's driver's license identified him as "James Michael Cloney," while he held title as "Mike Cloney." Because of the difference in the names, she asked him to sign all of the documentation and her notary book as "Mike Cloney," but she never reported the discrepancy to anyone. Title insurance issued with no reference to the judgment lien and escrow closed without any payment to the wife.

The court found that "an undisputedly valid judgment lien recorded against a judgment debtor under one name does impart constructive notice of the lien to a subsequent purchaser to whom the same judgment debtor sells real property under a different name, where while acting within the course and scope of his or her agency the purchaser's escrow agent gains actual knowledge of *both* of the names used by the seller." Accordingly, the purchaser's interest in the property was subject to the wife's judgment lien.

Seller Cannot Increase Liquidated Damage Recovery With Option

"Whether any particular document is . . . an 'option' or an 'agreement of sale' depends on the nature and terms of the document . . . ."

Under §1675 of the Civil Code, a residential seller entitled to liquidated damages as a result of a buyer's breach is limited to 3% of the purchase price. The seller cannot avoid that limitation by characterizing the transaction as an option.

In *Allen v. Smith*, 94 Cal. App.4th 1270 (2002), purchaser, using a standard C.A.R. Residential Purchase Agreement, made an offer in the amount of $1,775,000 with a deposit of $20,000 to be increased to 3%, or $53,250, on release of contingencies. Using a standard C.A.R. counter-offer form, the parties agreed to a "total deposit of $100,000 to be released to seller as *non refundable purchase option monies*."

When purchaser failed to complete the transaction, she sought a refund under §1675 of a portion of her $100,000 deposit because it exceeded 3% of the purchase price.

Seller argued the agreement was an option and §1675 did not apply, but the court disagreed. As it explained, "[w]hether any particular document is . . . an 'option' or an 'agreement of sale' depends on the nature and terms of the document and the obligation of the parties, regardless of how the parties may label or identify the document." The court ordered that seller refund the purchaser.

Duty of Landlord (continued)

ground. He sustained serious injuries that left him physically and mentally disabled.

While the court refused to require a landlord to install screens or other protective devices to protect against this type of catastrophe, it held that a landlord who agrees but fails to do so may be liable to an injured child.

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