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Legal Update

NEW CALIFORNIA CASE HOLDS BUYER'S AGENT OWES NO DUTY TO SELLER TO ADVISE ON VALUE OF PROPERTY

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In Greif v. Sanin, the elderly seller of a 10-acre parcel of vacant land tried to back out once he realized that he had sold for less than the fair market value (he claimed the fair market value was $3,000,000.00 whereas the sale price was $330,000.00). The buyer sued for specific performance. The seller cross complained for rescission and sued the buyer's real estate agent for negligence. The theory that the seller advanced against the buyer's agent was that the buyer's agent owed him an obligation to advise him that he was selling his property well below market. The 87-year-old seller claimed that he suffered from a variety of illnesses and essentially was incompetent which cost him to sign his contract without realizing that it was at a price well below market. The seller claimed that the circumstances of the signing of the purchase agreement including his health and cognitive issues impaired his ability to read and understand the purchase agreement which should have been apparent to both the buyer and the buyer's agent. Specifically, he claimed they took advantage of his health condition and cognitive impairment by having him sign the purchase agreement without affording him inadequate opportunity to review it or a consult with his lawyers. Before trial, the trial court dismissed the buyer's broker. After a month-long court trial, the judge found in favor of the buyer, granting specific performance forcing the sale of the property.

On appeal, the seller argued that although the buyer's agent did not represent him, he owed him a duty of fairness, honesty and good faith which required him to alert him that he was selling the property at well below its fair market value. He also claimed that the buyer's agent was liable for drafting the contract including a purchase price which was lower than the seller wanted, failing to obtain the seller's informed consent before paying a commission, and failing to disclose to the seller that he had a right to review the purchase agreement with an independent advisor. The seller pointed to California Civil Code sections which only applied in the sale of residential real property so the Court felt that was not applicable.

Notwithstanding he still argued that under common law, even a non-fiduciary broker owed the seller the obligation to warn him about the low purchase price. The Court then did an analysis under the case of Biakanja v. Irving (1958) 49 Cal. 2d 647, 650, which has a six-factor test to determine if a duty was owed and found that there was no duty owed by the buyer's agent to the seller. The Court rejected this, concluding that the buyer's agent did not owe a duty to the seller "to raise the gross discrepancy between the true value of the property and the purchase price stated in the purchase agreement." The Court also noted that the purchase agreement had stated a price and therefore was not hidden from the seller who simply could have seen the purchase price written thereon. The Court recognized that buyer's agents do owe duties of care to third parties, but felt in this situation that the agent did not. The Court also felt that a seller should have relevant information concerning the value of his or her property, and certainly could have retained his own broker to advise him as to determination of the sale price and overseeing the drafting of the contract to assure that it was in compliance with the intention of the seller.

No Rescission Based On Unilateral Mistake

The Court also rejected the seller's rescission claim based on unilateral mistake finding that the buyer did not cause the seller to have a mistaken belief which would be required for rescission under that theory. The Court also noted that there was a dispute as to the value of the property where the appraisers involved in the case found it was worth less than a million dollars. As such, the Court found the adequacy of consideration was sufficient (One of the defenses to specific performance is inadequate consideration**).**

No Defense That Title Was Held By An LLC But The Seller Signed As An Individual.

The Court further rejected the seller's argument that he did not hold title to the property when it was sold because it had been transferred to the seller's LLC for the benefit of his grandchildren. The Court felt that even though the seller transferred title to the LLC before the sale, the seller and his LLC held "equitable title based on holding contractual power to enter into binding contracts…" on behalf of the LLC. Thus, the Court felt where a party holds the equitable title to realty and has the power to "call for" legal title, it is established that specific performance is available, citing Walgren v. Dolan (1990) 226 Cal.App.3d 572, 576. (The Walgren case involved a trust but the Court felt the same rationale would apply to the LLC where its sole member had control over selling the property).

Unreasonable Failure To Release A Deposit Gives Rise To A Conversion Claim

Finally, another significant issue that came up in this case is whether a party who wrongfully refuses to release a deposit from Escrow can be liable for conversion. Under these facts, where the buyer's funds were held for almost two years before the seller released that (despite claiming that he was not obligated to sell the property) the Court found that the seller was guilty of conversion which was the "wrongful exercise of dominion over property of another." Thus, the Court found that conversion damages were available.

The significance of this point is that there are many situations where a buyer and seller disagree after a deal is canceled as to who is entitled to the deposit. If the seller wrongfully fails to release the deposit, then under this case, he/she could be liable for conversion including consequential damages and punitive damages. This should make sellers think twice before taking unreasonable positions in connection with deposit disputes.

It is interesting to note that the dissent in this case felt that there should have been no conversion damages because in the event that the sale had gone through, the seller would have been entitled to that money and therefore the fact that it remained in Escrow should not have been a basis for conversion. The majority disagreed, finding that since "the parties should be placed in the same position as if the contract had been performed" it does not preclude awarding the buyer conversion damages for wrongfully tying up the buyer's Escrow deposit for two years. The conversion damages were essentially the interest at the legal rate that would have been earned on this money.

Finally, the seller argued that the buyer should not have been awarded $776,000.00 in attorney's fees because it did not properly comply with the mediation requirement in the purchase contract. The Court however cited the mediation provision of the vacant land purchase agreement which has an exception to the mediation requirement regarding the filing of a court action to enable the recording of a Notice of Pending Action.

This is normally something that does happen with respect to a specific performance lawsuit and therefore the Court felt that the buyer's failure to mediate prior to filing the lawsuit did not violate the mediation provision. The Court also noted that before filing the lawsuit, the buyer's lawyer did request mediation and that the parties engaged in mediation approximately two months after the complaint was filed.

Conclusion

The take aways from this case are that: 1. if a broker only represents a buyer (even though he/she is getting paid a commission in the deal, there is no duty to advise the seller on the value of the property (had the broker also acted as the listing agent with fiduciary duties owing to the seller, a duty would be owed; 2. that even if a trust or LLC owns the subject property and the seller signs as an individual the court can still enforce the contract against the trust or LLC; 3. seller's need to be cautious in unreasonably failing to release deposits once a deal cancels or they may be liable for conversion; and 4. filing a specific performance action to record a Lis Pendens before demanding mediation will not preclude the award of attorney's fees.