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Should You Sue In Small Claims Court?



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You have been wronged and have good grounds to file a lawsuit. The only problem is that your claim is not for a very large amount and attorney's fees will consume your potential recovery. What do you do?

You may want to consider Small Claims Court. Small Claims Court is fast, inexpensive and lawsuits are typically tried in less than three months. In Superior Court, lawsuits can take a year or more to get to trial. Attorneys are not permitted in Small Claims Court and this keeps costs down. Individuals have to represent themselves and corporate entities are represented by an authorized officer.

But Small Claims Court is only for smaller claims. In California, \$10,000 is generally considered the maximum amount you can claim in Small Claims Court. "Natural persons" can file for up to \$10,000. Corporations, limited liability companies, and other such "persons" that are not made of flesh and bone are limited to \$5,000. What if your claim is for more than the limit? Here, you have a choice. You can sue in Small

Claims Court up to the limit and waive the excess. Or you can sue in Superior Court.

Once you file a lawsuit in Small Claims Court, you are still required to serve the lawsuit on the defendant. Process servers can accomplish the task for a small fee. While you are not required to do anything between the time you file and the date of the hearing, it is advisable to prepare. You should gather up relevant documents. You should organize your arguments and papers. If you need a witness to testify, you need to make arrangements to get your witness to the court at the appointed time. Effective preparation is essential to presenting your case well and avoiding confusion at the hearing.

At the hearing, you will likely be required to show the other side your materials and you will be encouraged to discuss settlement with the other side. This is a good opportunity for the two sides to settle the dispute. If there is no settlement, the hearing proceeds. Unlike TV, the decision is rarely announced in court but is mailed to each side after the hearing. Either side can then appeal the decision. If appealed, the matter is heard again by a Superior Court judge. The appeal hearing is similar to the original hearing but one notable difference is that attorneys are allowed to represent parties at the appeal hearing.

Success Story



SLG represented a commercial property owner who was sued under the Americans with Disabilities Act because the property did not accommodate people with certain types of physical disabilities. SLG had previously represented the client in leasing the property to commercial tenants. Fortunately, the lease made clear that any such claims would be the responsibility of the tenant – in this case a nationally-recognized drug store. To the client's satisfaction, SLG's attorneys were able to negotiate a resolution whereby the tenant would renovate sections of the property to make them ADA-compliant and would otherwise cover the plaintiff's legal expenses.

The Phantom Trustee—Not A Problem On A Deed of Trust

Those of us involved in real estate loans, debt financing, and loan workouts have sometimes wondered whether a deed of trust can be valid if no trustee is identified. Surprisingly, the issue was never addressed by California courts until the end of 2012! In a decision handed down a few months ago, a California Court of Appeals ruled that the omission of a named trustee on a deed of trust at the time it is executed and recorded does not preclude enforcement of the deed of trust through a foreclosure sale of the secured property.

The facts of the case are straightforward. A real estate loan was made and secured by a deed of trust on the property being purchased. The lender/beneficiary simply omitted naming a trustee. Later, the borrowers defaulted on the loan and a substitution of trustee was recorded naming ReconTrust Company, N.A. as trustee. The lender then assigned its interest to a loan servicer (Arch Bay). As newly appointed trustee, ReconTrust filed the required notices and eventually conducted a trustee's sale at which Arch Bay purchased the property. After the sale, the borrowers filed a lawsuit asserting that the failure to designate a trustee in the original deed of trust was a fatal flaw and precluded any trustee's sale un-

der the deed of trust. See, *Shuster v. BAC Home Loans Servicing, LP, et al.* 211 Cal.App.4th 505 (2012).

The court ruled in favor of the lender/beneficiary, stating that the essential validity of the deed of trust is not affected because a trustee is omitted in the original, recorded version, as long as a trustee is named prior to a foreclosure. The court reasoned that the very limited powers granted to a trustee under a deed of trust – to convey the property at an out of court sale – are insufficient incidents of ownership or control to make the actual naming of a trustee critical to the validity of the document.

Caveat: This decision is strictly limited to deeds of trust and does not apply to any other type of trust.

If you are involved in a real estate loan in California we still advise that the deed of trust contain the name of a trustee, as it avoids the risk that other critical information will accidentally be omitted. However, if the trustee name is for any reason not specified, there no longer is any doubt that the lien remains valid and enforceable.

By: John W. ("Jack") Easterbrook, Esq.

Tax Corner

Gas Tax Increase

On February 28th the Board of Equalization approved a 3.5 cent gas tax increase, effective July 1, 2013. This brings the gas tax rate to 39.5 cents for 2013-2014. This adjustment should produce revenue at the same rate as if Proposition 30 applied to gas sales. (Proposition 30 resulted in a 0.25% state sales tax increase which does not apply to gas sales.) Source: *Spidell's California Taxletter*, Vol. 35.4, April 1, 2013.

Payroll Tax Reporting Changes

The EDD has announced two changes:

First, employers must use "business days" not "banking days" to determine payroll tax deposit due dates.

Second, an employee is considered a rehire if she returns to work for an employer after a separation of at least 60 consecutive days. Employers must report all new and rehired employees to the New Employee Registry within 20 days of starting work. Source: *Spidell's California Taxletter*, Vol. 35.4, April 1, 2013.



Real Estate Professional?

A real estate professional that spends over half of her working hours and at least 750 hours per year materially involved in real estate is exempt from the passive loss rules. These tests are difficult to meet if you also have a job, and the IRS knows it. Since 2007 the IRS has been specifically pulling returns for audit of individuals that claim they are real estate professionals but also have significant W-2 wage income. If you have a job and are also claiming to be a real estate professional, be reasonable – records of time spent on real estate must be contemporaneous and believable. Source: *Kiplinger Tax Letter* Vol. 88 No. 8, April 12, 2013.



Mother's Day

The Birth of Mother's Day

May is the time of year when many of us celebrate our mothers or the people who have been like mothers to us. Mother's Day has only been celebrated in the US since 1914. A woman by the name of Anna Jarvis started the push to have Mother's Day become a national holiday. In 1908 Ms. Jarvis organized a "Mother's Work Day" to honor her mother's work of improving poor health conditions in the community. She then asked Congress to create a day each year to honor mothers. In 1914 Congress created the holiday and President Wilson signed a law making the second Sunday in May, Mother's Day. By the 1920s the holiday had already become very commercialized. Ms. Jarvis filed a lawsuit to try and stop Mother's Day but was unsuccessful.



Almost 60 years later, the third Sunday in June was declared Father's Day and was signed into law by President Nixon.

Mother's Day Fun Facts

- Mother's Day is the busiest phone day of the year.
- The biggest baby born on record weighed 22 pounds and 8 ounces.
- 54% of all women aged 15 to 44 are mothers.
- The average age of women when they have their first child is 25.
- About 152 million Mother's Day cards are given out each year.
- Mother's Day is celebrated in 43 countries around the world.



Employment Corner

The Family and Medical Leave Act

Employees who work in companies with 50 or more employees are covered under FMLA. Those employees can take leave to take care of minor children with serious conditions. The US Department of Labor has recently clarified that employees can now take FMLA leave to care for adult children who are age 18 or over, so long as the child meets the following criteria: (a) has a disability as defined by the ADA; (b) is incapable of self-care; (c) has a serious health condition; and (d) needs care due to the serious condition. *Source: The HR Specialist, Vol. 11, No. 3, March 2013.*

Internet-Use Disorder

For the first time, the new release of the official psychiatrist's diagnostic manual, the DSM-5, will include "Internet Use Disorder." It's not currently a clinical disorder, but one that will require more research to see if it gets to that level. If it does reach that level, employees may earn protection from the ADA for Internet Use Disorder. *Source: The HR Specialist, Vol. 11, No. 3, February 2013.*



Reminders and Other Items of Note

Revised I-9 Form

A new I-9 form was released on March 8th. In order to be in compliance, employers must begin using the new I-9 form by May 7th during their hiring process. If employers don't use the new I-9 form, they may be subject to fines, up to \$1,000 per form. The new I-9 form can be found at <http://www.uscis.gov/files/form/i-9.pdf>.

Don't Forget To Change Your FMLA Poster

Employers covered under FMLA should have changed their FMLA posters as of March 8th. The new poster includes a new version of the Employee Rights and Responsibilities Under the FMLA. The changes relate to FMLA leave for military families. If you have not already changed your poster, make sure you do take care of it immediately. A copy of the revised poster can be found at <http://www.dol.gov>.





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Dates To Remember

Mother's Day	May 12
Armed Forces Day	May 18
Memorial Day (Courts and government offices closed)	May 27
National Yo-Yo Day	June 6
National Doughnut Day	June 7
Father's Day	June 16
Summer Begins	June 21



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Did You Know?

- Donald Duck Comics were banned from Finland because he doesn't wear pants.
- Almonds are from a tree in the peach family.
- The first CD pressed in the US was Bruce Springsteen's "Born in the USA."
- There are no words in the English language that rhyme with orange, purple, or silver.
- Maine is the only state whose name has just one syllable.
- The cucumber is 96% water.



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