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HON. HALIM DHANIDINA CASE LIST

REAL ESTATE

Lipscomb v. Girardi

3/1/2018

2018 WL 1127686

Defendants appealed an interlocutory judgment of partition of real property in favor of plaintiff. Court reversed interlocutory judgment, finding that trial court applied incorrect criteria to conclude that plaintiff did not waive the right to partition because trial court waiver of partition is only available where property is purchased to guarantee a stream of monthly income through a written lease for a term of years. Rather, California law is clear that the right to partition can be waived in a variety of ways, including by acquiring property for a purpose that would be defeated by partition as defendants did here.

Bank of New York Mellon v. Nazaryan

4/11/2018

2018 WL 1736622

Beneficial interest holder in deed of trust and underlying loan brought suit against defendant, seeking a declaration that the deed of trust was enforceable and that it held a first-priority lien against the property. Trial court granted summary judgment in favor of plaintiff, and defendant appealed. Court affirmed judgment, holding that plaintiff's predecessor was a bona fide encumbrancer of the property, defendant took title to the property subject to the deed of trust, and plaintiff had standing to sue defendant.

Khodaqulyan v. Aminpour

9/6/2018

2018 WL 4275351

Cross-plaintiff sued cross-defendants for fraud and breach of contract to recover \$480,000 he had loaned to them, which was secured by a deed of trust on a car wash. The jury found in favor of cross-plaintiff and cross-defendants appealed. Court affirmed the judgment, holding that cross-plaintiff's testimony constituted substantial evidence of cross-defendant's agreement to guarantee the note if it was not paid; and substantial evidence supported the fraud claim because the jury could have reasonably concluded that cross-defendants falsely promised to guarantee the note, misrepresented their solvency, and concealed material facts concerning the value of the car wash with the intent to induce cross-plaintiff into signing the agreement.

Jackson v. America's Servicing Company

9/19/2018

2018 WL 4474667

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Plaintiff lost her home in a nonjudicial foreclosure sale and sued defendant for negligence. Trial court granted summary judgment in favor of defendant and plaintiff appealed. Court affirmed judgment, holding plaintiff failed to meet her burden on appeal because she failed to provide several critical documents in the record, mainly, defendant's separate statement and supporting declarations, as well as plaintiff's declaration in support of her opposition papers.

PNG Investments, Inc. v. RG Real Estate Investments

11/20/2018

2018 WL 6064838

Plaintiff sued defendants for fraud, breach of contract, wrongful foreclosure, and declaratory relief in connection with a real estate loan transaction. After a bench trial, the trial court found in favor of plaintiff on its claims, and defendants appealed. Court affirmed in part and reversed in part the judgment, holding insufficient evidence supported the fraud claim because there was no evidence that plaintiff lost any benefit, he would have enjoyed absent defendants' false representations. However, the declaratory relief cause of action was supported by substantial evidence as there was proof of an actual controversy between the parties regarding the terms of the loan, which was resolved by the trial court.

Baq Fund, LLC v. Sand Canyon Corporation

11/28/2018

2018 WL 6191020

Defendant appealed from an order denying its motion to set aside a default judgment under the mandatory relief provision of Code of Civil Procedure section 473(b). Trial court denied the motion, finding that defense counsel's deliberate action led to the default. Court reversed judgment, holding, although substantial evidence supported placing the blame on defense counsel, that was not a valid reason to deny the mandatory relief because there was no evidence in the record that defendant was aware of or agreed to defense counsel's decision not to respond to the complaint, and the evidence showed that the failure to answer was based on defense counsel's mistaken belief that he could resolve the matter outside of litigation by meeting with plaintiff's counsel.

Garau v. Nationstar Mortgage, LLC

12/12/2018

2018 WL 6521899

Plaintiff brought action to stop a nonjudicial foreclosure sale of his home. The trial court granted defendants' motion for judgment on the pleadings, finding that plaintiff failed to state a cause of action for declaratory relief. Court affirmed the judgment, holding plaintiff did not have right to bring a preemptive judicial action to determine whether defendants had the authority to initiate nonjudicial foreclosure of his home.

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Garza-Wiesand v. Garza

1/17/2019

2019 WL 257858

Plaintiff filed suit against defendant relating to ownership of real properties and alleged causes of action for quiet title, financial elder abuse, fraud, an accounting, money had and received, and declaratory relief. Defendants filed a special motion to strike under Code of Civil Procedure 425.16 on the grounds that plaintiff's suit because of their involvement in a prior related litigation. Trial court granted motion and plaintiff appealed. Court reversed order, holding that complaint did not arise from protected activity even though it mentioned the prior litigation, which was incidental and provided context to plaintiff's present claims.

Selective 901 Truman, LLC v. Goodrich & Hops Properties West

1/22/2019

2019 WL 275832

Plaintiff appealed from a judgment confirming an arbitration award that determined the fair rental value of real property leased from defendant pursuant to a rent reset clause. Court affirmed judgment, holding arbitrator did not exceed his authority by considering the impact of the long-term ground lease in determining the fair rental value of the property, properly afforded plaintiff a fair and impartial hearing and considered all material evidence, and acted within his authority in determining the land should be valued as encumbered by the ground lease rather than unencumbered.

MELR, Inc. v. San Fernando Road Property

1/29/2019

2019 WL 350816

Plaintiff appealed an order striking its complaint under Code of Civil Procedure section 425.16 (anti-SLAPP), contending the motion was untimely. Court reversed order, finding that defendant's motion was untimely as it was filed more than 15 months after the original complaint was served, which contained identical claims as the most recent operative pleading that was stricken.

Smith v. IH4 Property West, LP

3/29/2019

2019 WL 1417157

After unsuccessfully suing her note holder, the trustee of her trust deed, and her loan servicer for wrongful foreclosure, plaintiff filed this action against several entities that participated in subsequent conveyances of her former residence following a trustee sale. The trial court sustained the demurrer of defendants without leave to amend, concluding the judgment in

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plaintiff's prior action precluded the claims against these defendants under the res judicata doctrine. Court affirmed judgment, holding plaintiff's claims were premised on the same primary right she asserted in a prior litigation, i.e., the right to be free from an unlawful foreclosure; the prior litigation resulted in a judgment on the merits not on a procedural defect; and, in any event, plaintiff failed to state a claim for relief on her remaining causes of action because the mere filing or maintenance of a lawsuit—even for an improper purpose—is not a proper basis for abuse of process or intentional infliction of emotional distress causes of action.

JFK Investment Group, LLC v. Kobi

5/31/2019

2019 WL 2315203

After a bench trial, the trial court entered judgment in favor of plaintiff and one of its members, and against plaintiff's other member and her son. After finding that son did not have a membership interest in plaintiff, the trial court ordered son to transfer title to one of plaintiff's assets—an apartment building—back to plaintiff. Although the trial court ordered the sale of the property, with the proceeds to be evenly split between members, it did not dissolve plaintiff. The trial court also awarded plaintiff attorney's fees under an indemnity provision in plaintiff's operating agreement. The member and son appealed, contending the judgment should be reversed because the court failed to adjudicate son's claim for quantum meruit and member's statutory claim for dissolution of plaintiff. Court reversed the attorney fee award, finding the indemnification provision in plaintiff's operating agreement was not an attorney fees provision. However, the Court affirmed the judgment because member and son did not include a quantum meruit claim in their cross-complaint and the trial court clearly rejected member's request for dissolution of plaintiff.

Cooley v. W. Lakeside Homes, LLC

6/19/2019

2019 WL 2521979

Defendants appealed from a default judgment entered against them in an unlawful detainer action. Court affirmed judgment, holding that under Code of Civil Procedure sections 1167.4 and 418.10 defendants were required to file their petition for writ of mandate and a notice that they had done so within five days, plus an extra five days for service by mail, from service of the order denying their motion to quash to extend their time to respond to the unlawful detainer complaint. Further, defendants failed to timely file their writ because their attorney admitted not only that he had received the court's order denying defendants' motion to quash, but that the court had mailed it on the day it was entered. Finally, defendant's motion for relief under the mandatory provision of Code of Civil Procedure section 473(b) was defective because defendants' counsel did not attach a copy of their proposed answer to his declaration, nor did he declare he had served a copy on plaintiff, or that he intended to lodge a copy with the court before or at the hearing.

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Awani v. Nationstar Mortgage LLC

6/25/2019

2019 WL 2591022

Plaintiff sued bank, the beneficiary under the deed of trust on his residence, and his loan servicer, for multiple claims stemming from foreclosure proceedings that defendants ultimately aborted. The trial court granted defendants' motion for summary judgment, concluding defendants met their burden of demonstrating plaintiff could not establish one or more elements of his claims and plaintiff failed to submit admissible evidence raising a triable issue of material fact in opposition. Court affirmed judgment, holding plaintiff could not establish his estoppel claim because there was no evidence of a clear and unambiguous promise; plaintiff could not establish his claim for a violation of the Homeowner's Bill of Rights because there had been no trustee's sale and plaintiff accepted a loan modification offer from defendants; plaintiff could not establish a negligence claim (HBOR) because defendants did not owe him a common law duty of care concerning the loan; the statute of frauds barred plaintiff's claim for a breach of an oral contract; plaintiff could not establish an Unruh Act violation because there was no evidence that defendants' actions were based on race; and plaintiff could not establish a UCL violation because defendants were not liable for the underlying HBOR claim.

Momoli v. Wells Fargo Bank, N.A.

7/9/2019

2019 WL 2950157

Plaintiffs appealed from a judgment entered in their wrongful foreclosure action after the court granted defendant's motion for summary judgment. Court affirmed the judgment, holding that plaintiffs failed to provide a summary of the facts relevant to their appeal and therefore failed to meet their burden to affirmatively demonstrate the trial court erred in granting summary judgment. Plaintiffs also forfeited their claims to defendants' evidence in support of summary judgment because they did not object in the trial court. Moreover, the defendants met their burden to show plaintiffs could not state a claim for dual tracking as the evidence was undisputed that the bank complied with the requirements of Civil Code section 2923.6 before it recorded the notice of trustee's sale, then, after the plaintiffs filed their loan modification application, the bank stopped the foreclosure process and began evaluating the application. Further, the evidence was undisputed that the bank complied with Civil Code 2923.7 by assigning plaintiffs a single point of contact after plaintiffs filed their loan modification application.

Sun v. Chang II

7/22/2019

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2019 WL 3282985

Plaintiff obtained a judgment against defendant, and subsequently secured an order assigning rents from real property owned by defendant to satisfy the judgment. Defendant moved to vacate the assignment order, arguing he had not been properly served with the assignment motion and was no longer the record owner of the real property. The trial court denied the motion to vacate, and defendant appealed. Court affirmed the order, holding that an order denying a Code of Civil Procedure section 1008 motion is not appealable and that was the only authority cited by defendant in support of his motion to vacate the assignment. However, even if the Court were to construe defendant's appeal to be from a motion to vacate under Code of Civil Procedure section 473, which is appealable, the appeal would fail on the merits because substantial evidence supported the trial court's finding that defendant was properly served with the assignment order and defendant lacked standing to assert error on behalf of the record owner of the real property.

Moore v. Lerner

7/23/2019

2019 WL 3297146

Plaintiff appealed from a dismissal of his action for breach of contract and intentional interference with prospective economic advantage after he failed to post a vexatious litigant bond under Code of Civil Procedure section 391. Court affirmed the dismissal, holding trial court properly qualified plaintiff as a vexatious litigant given two prior findings by other courts that plaintiff was a vexatious litigant; plaintiff could not demonstrate his claims in this action were not frivolous; and plaintiff could not use an unliquidated judgment against a trust as an offset or an exemption to the bond requirement given the judgment was against a separate entity from plaintiff.

Mitsuwa Corporation v. Wehba

8/6/2019

2019 WL 3561928

Plaintiff sued a group of defendants after they defaulted on a pair of promissory notes issued as partial payment for two parcels of property purchased from plaintiff. Plaintiff and defendant later signed a settlement agreement, which provided defendants would make the first two payments in full and on time, they would not need to make the last payment. Plaintiff obtained a judgment against defendants, which was later vacated by the trial court on the grounds that the settlement agreement contained an unlawful penalty provision. Court reversed order, reinstating former judgment because it merely obligated defendants to pay plaintiff the same amount had they agreed to settle the parties' lawsuit and was therefore not a penalty provision.

Friends of Griffith Park v. City of Los Angeles

9/19/2019

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2019 WL 4509209

Community group, trust, and homeowners' association sued the city in writ of mandate, challenging the city's closure of major entrance into the park without requiring a public hearing and decision by park department's board. The trial court denied the petition and plaintiffs appealed. The Court affirmed the judgment, holding plaintiffs improperly raised their argument for the first time at oral argument that the city's general manager's decision to change the park entrance to egress only and therefore the argument was forfeited. Further, plaintiffs improperly characterized their arguments as pure legal issues based on undisputed facts when the nature and access that was still afforded through the park entrance, whether the park had been closed in any way after the changes to the entrance were made, and whether there was an operational decision were all disputed facts that were disputed in the lower court.

Dhiman v. Dhiman

10/23/2019

2019 WL 5410099

Brother sued each other over the investment, sale, and refinancing of two properties. Defendant and cross-complainant appealed a judgment following a denial of his motion for mistrial and his request for constructive trust on the real property. Plaintiff and cross-defendant appealed the denial of his motion for prejudgment interest. Court affirmed judgment and orders, holding trial court properly denied defendant's request for a constructive trust on the real property because defendant could not recover both a money judgment and a decree imposing a constructive trust. Further, the trial court properly denied plaintiff's request for prejudgment interest because his damages were uncertain until fixed by the verdict.

Ulkarim v. Westfield, LLC

11/22/2019

2019 WL 6242472

Plaintiff appealed two separate judgments: one dismissing her complaint against defendant after trial court granted motion for terminating sanctions and a second judgment in favor of defendant following a court trial on its cross-complaint. The litigation arose out of a short-term license agreement between the parties where plaintiff would be authorized to sell accessories for electronics in defendant's shopping center. The agreement was for one year subject to defendant's right to terminate at its sole discretion on seven days' written notice to plaintiff. Defendant served plaintiff with the termination notice and plaintiff sued. Court affirmed the judgments, holding terminating sanctions were appropriate given plaintiff deliberately relied on false invoices to inflate plaintiff's damages and a lesser sanction would not have ensured a fair trial. Further, the judgment on the cross-complaint was supported by substantial evidence because the evidence showed that plaintiff only partially satisfied his rent obligation to defendant even though he knew he owed additional holdover rent and, in any event, defendant did not owe a duty to plaintiff to notify him of the additional holdover rent because that term was clearly in the license agreement.

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Ustach v. Lim

2/14/2020

2020 WL 746878

Defendant appealed from a judgment entered in favor of plaintiff following a bench trial. Defendant loaned plaintiff and his wife \$120,000, which was secured by a deed of trust on a property plaintiff owned. The trial court found that defendant obtained the promissory note through fraud and declared the note void. Court affirmed the judgment, holding that substantial evidence supported the finding that the note was illegal and obtained through defendant's and his associates' misrepresentations and that plaintiff did not have sufficient understanding of the note given his insufficient understanding of English and lack of representation.

American/BCEGZ v. Shores, LLC

4/30/2020

2020 WL 2110265

Plaintiffs and defendant entered into a contract to construct a 544-unit apartment complex. While the apartment was under construction, numerous disputes arose over delays, the amount charged for extra and changed work, and defects in the construction. The parties executed an addendum to the contract, amending the terms governing the parties' resolution of disputes, including a term that required the parties to submit all their present and future claims to arbitration. Plaintiffs sued the defendant and cross-claimed. Plaintiffs did not raise arbitration as a defense in their answer. Two years into the litigation, plaintiffs filed a motion to compel arbitration, which was denied. Court affirmed the denial, holding substantial evidence supported trial court's finding that plaintiffs waived their right to arbitrate because ample evidence supported a finding that plaintiffs acted inconsistent with the right to arbitrate during a two-and-a-half-year period of litigation where they failed to raise arbitration as a defense in numerous filings. Further, defendant was prejudiced by plaintiffs' delay as considerable time and money had already been spent on the litigation, the parties had engaged in extensive discovery, and litigated substantive claims in a bifurcated proceeding.

WFG National Title Insurance Company v. Wells Fargo Bank, N.A.

6/12/2020

51 Cal.App.5th 881

Mortgage lender brought action against existing lienholder, alleging that lienholder was part of sham transaction that defrauded lender, seeking to quiet title to property and declaratory relief to the effect that its deed of trust was senior to existing lienholder's. Defendant filed a motion for summary judgment, which was granted. Court affirmed the judgment, holding lender did not obtain valid interest in the property because underlying deed was forged, and defendant could not be equitably estopped from asserting its superior lien position because defendant was not negligent as defendant did not have a duty to monitor and correct public records regarding the property.

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AIDS Healthcare Foundation v. City of Los Angeles

6/15/2020

50 Cal.App.5th 672

Affordable housing organization brought action against city for violations of federal Fair Housing Act (FHA) and state Fair Employment and Housing Act (FEHA), alleging four multi-use development projects approved by city had disparate impact on Black and Latino residents. The trial court sustained demurrers by city and real parties in interest, which were projects' owners and developers, without leave to amend. Organization appealed. Court affirmed the dismissals, holding city's approval of development projects to revitalize area constituted policy or practice sufficient to support disparate-impact claims; city's policy was not artificial, arbitrary, or unnecessary barrier to fair housing; halting development until city initiated measures to mitigate gentrification was not appropriate remedy for any violations of FHA and FEHA; and organization failed to establish reasonable possibility defects in complaint could be amended.