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2024 Real Property Law Retreat

Real Estate Litigation - Case Law Updates and Recent Developments

Saturday, March 9, 2024
11:30am - 12:30pm

Speakers: Christopher Peterson

Conference Reference Materials

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CASE SUMMARIES

- Easement Issues
- Romero v. Shih (2024) __P.3d__(2024) 2024 WL374870 (February 1, 2024) (Area of Law Covered: Easements)
- Issue: Whether an "exclusive" easement can be created via implication?

Romero v. Shih

FACTS

Property (2 parcels) held under common ownership. Prior to division of property, the planter and driveway encroached onto other parcel and fence was improperly placed marking western edge of driveway and planter. Property was transferred (no lot line adjustment ever completed). Evidence of prior use existed when lots were transferred in or around 1986. Come 2015, different owners on both parcels. Survey is commissioned which confirms encroachment. Litigation ensues.

Court of appeal denied grant of implied easement based on the fact that it would provide, in effect, an exclusive easement, likening the denial to prescriptive easement analysis. The Court of Appeal did grant an equitable easement based on the prior use and payment to servient tenement owner.

TAKEAWAYS

- CA Supreme Court reversed appellate court on issue of implied easement;
- An implied easement can be awarded via implication;
- CA Supreme Court did not agree that the analysis is akin to that of prescriptive easements: "In this regard, implied easements are similar to express easements; to recognize an implied easement creates none of the statutory nullification concerns underlying the Raab line of cases." "To establish the existence of an implied easement, a plaintiff must allege and prove a specific set of circumstances surrounding a particular land transaction: that a common owner of property conveyed a portion of that property to another, that the parties to the transaction must have intended to maintain the benefits and burdens between the newly divided estates after the separation of title, and that the resulting easement was reasonably necessary to the dominant estate."
- Still utilize appellate decision (78 Cal.App.5th 326) for equitable easement theories on "de minimus" grounds or "the easement is necessary to protect the health or safety of the public or for essential utility purposes"
- Property Owners---Seek Clarification on Boundary Lines; Secure Surveys; Old Rules pertaining to Agreed Boundary Doctrines can still apply

CASE SUMMARIES

- Premises Liability Issues
- <u>Nicoletti v. Kest</u> (2023) 97 Cal.App. 5th 140 (November 14, 2023) (Area of Law Covered: Premises Liability)
- Issue: Was running rain on driveway a danger that required a warning? Was the situation such that claimant was required to encounter the danger?

<u>Nicoletti v. Kest</u>

<u>FACTS</u>

Plaintiffs sued apartment complex after falling down on driveway. It was raining that day (and thunderstorms). Plaintiff observed that the concrete on the "North Side Gate" driveway which she used "thousands" of times was wet, and rainwater formed a current that was running down the driveway. Plaintiff did not observe any caution tape or other warning advisements. Plaintiff fell. On summary motion, apartment complex was granted summary judgment. Appellate court confirmed.

<u>TAKEAWAYS</u>

- A landowner must ' 'maintain land in [its] possession and control in a reasonably safe condition.''…But an accident on a landowner's property does not necessarily create premises liability.";
- " ''Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition…In that situation, owners and possessors of land are entitled to assume others will 'perceive the obvious' and take action to avoid the dangerous condition.'";
- "However, running water on a surface is arguably a more obvious danger than standing water. Not only does the water current make the surface slippery, but also a reasonable person would observe that running water could create a force that would cause someone to fall over. Further, "[i]t is a matter of common knowledge among children and adults that wet concrete is slippery and that, when on a slanting incline" such as a driveway, "it does not provide a safe footing."
- A landowner's duty of care is not negated " ''when it is foreseeable that, because of necessity or other circumstances, a person may choose to encounter the condition.''" (court mentioned *Kaney* decision citing to access to lone bathroom). Here, there were several entrances that Plaintiff could have used

CASE SUMMARIES

- Unlawful Detainer/Procedural Issues
- Duncan v. Kihagi (2023) 96 Cal.App. 5th 644 (October 19, 2023) (Area of Law Covered: Unlawful Detainer)
- Issue: Were tenants barred from raising their affirmative claims by not raising them in the unlawful detainer action under the "primary right" theory?

Duncan v. Kihagi

FACTS:

Tenants had obtained judgment against landlords for tenancy related issues. In separate UD suits, tenants did not raise their affirmative claims in the unlawful detainer issues. Court of appeal held that the tenants' failure to raise their affirmative claims in the unlawful detainer actions did not result in their claims being barred by "primary right" theory.

TAKEAWAYS

- "True, the tenants proceeded with their own complaints and did not seek relief by filing a cross-complaint in the unlawful detainer actions. But, contrary to the landlords' insistence, they were not required to do so. In general, where a defendant to a lawsuit fails to allege any related causes of action by way of a cross-complaint, that defendant 'may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded.'";
- "This requirement to allege all related claims does not apply in unlawful detainer actions, however, unless one of two things happens: the tenant (1) files a cross-complaint or (2) files an answer to any amended complaint the landlord files after the case becomes a regular civil action. (§ 1952.3, subd. (a)(2).) The legislative committee comment following section 1952.3 states that the 'limitation of the application of the compulsory cross-complaint statute ... protect[s] the defendant [tenant] against inadvertent loss of a related cause of action.; (Legis. Comm com., 10A West's Ann. Civ. Code (2022 ed.) p. 111.) In other words, if a tenant chooses to file a cross-complaint in an unlawful detainer action after surrendering possession, all possible causes of action must be alleged."
- "Here, the tenants had no reason to file such a cross-complaint after surrendering possession of their unit since they already had filed a separate complaint. And they apparently had no reason to file an amended answer, since there is no indication that after the tenants surrendered possession the landlords sought any further relief in the unlawful detainer actions. It is simply not true that the tenants improperly ' 'split' a cause of action into successive suits,' as the landlords claim."
- **IMPORTANCE: PROCEDURAL IMPACTS-DO NOT SLEEP ON YOUR RIGHTS…BOTH SIDES**

CASE SUMMARIES

- Unlawful Detainer/License Procedural Issues
- Castaic Studios, LLC v. Wonderland Studios LLC (2023) 97 Cal.App. 5th 209 (November 15, 2023) (Area of Law Covered: Unlawful Detainer/License Procedural Issues)
- Issue: Was licensor entitled to utilize CA's unlawful detainer remedies against licensee?

Castaic Studios, LLC v. Wonderland Studios LLC

FACTS:

Licensor and licensee entered into a license agreement "under which **Castaic** granted Wonderland 'the exclusive,' but 'non-possessory' right 'for the use of' the property, with the exception of a stage area and storage building." Relevant terms of license were: "[t]his agreement is not a lease or any other interest in real property. It is a contractual arrangement that creates a revocable license. Licensor retains legal possession and control of the Premises and the area(s) assigned to Licensee. Licensor has the right to terminate this Agreement due to Licensee's default. When this Agreement is terminated ... the license to use the Premises is revoked. Licensee agree[s] to remove Licensee's personal property and leave the area(s) as of the date of termination. Licensor is not responsible for personal property left in the area(s) after termination." "If Licensee defaults on Licensee's obligation under this Agreement, Licensee agrees that Licensor may cease to provide ... access to the Licensee's area(s) of use without notice or the need to initiate legal process.'" "Section 13.3(a) provides that if Wonderland defaults, Castaic may 'immediately terminate Licensee's right to use of the Premises by any lawful means, in which case Licensor's obligations under this Agreement shall immediately terminate and Licensor shall have option to immediately take over use of the Premises from the Licensee.' Section 29 provides, '[t]his agreement will be governed by the contract[ ] laws and not by the landlord tenant laws.'"

TAKEAWAYS

- Court agreed with licensee that unlawful detainer remedies did not apply;
- Appellate court notes: Here, on the other hand, the contract provides for remedies that directly conflict with landlord-tenant law. For example, section 12.1 provides that if Wonderland defaults on the agreement, 'Licensor may ... access ... Licensee's area(s) of use without notice or the need to initiate legal process.'
- Appellate court notes: "It is well established that the unlawful detainer statute primarily concerns landlord tenant relationships…. Castaic's position that 'landlord tenant laws' should be construed not to include unlawful detainer asks us to ignore the "popular meaning" ascribed to unlawful detainer—i.e., that it is a remedy pertaining above all to landlord tenant relationships. We do not ignore that meaning."
- Too simplistic? What about Roberts v. Casey? The court examined the issue in the published case of Roberts v. Casey (1939) 36 Cal.App.2d Supp. 767, 774-775. The court noted: "We are in the instant case of the opinion that though apparently intended to be framed under the provisions of Subdivision 1 of Section 1160 of the Code of Civil Procedure, the complaint is

sufficient in form to state a cause of action under the first subdivision of Section 1161 of that Code. While this section starts out by saying that, “A tenant of real property, for a term less than life is guilty of unlawful detainer ***” (proceeding then to specify the circumstances in which he is so guilty), and while it is true that a guest or lodger is, as we have seen, no tenant, yet in subdivision 1 of the section entitled “Possession after expiration of term,” the statute proceeds to assimilate to the situation of a true tenant, others who do not occupy that status by using the language, “including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, **or licensee** and the relation of master and servant or employer and employee or principal and agent or licensor and licensee has been lawfully terminated ***.” We find it laid down in 1 McAdam on Landlord and Tenant, that: “Guests in a hotel, boarders in a boarding house, and roomers or lodgers, so called, are generally, mere licensees and not tenants. They have only a personal contract and no interest in the realty.”

So, then, though they are not tenants and though, as we have seen, their presence on the premises involved is not in strictness either a possession or an occupancy of such premises, since the possession and occupancy are in strictness all the time not in them but retained by the proprietor, yet as we have just seen guests or lodgers when their right to remain such has ceased, are, **as having been licensees, by the above quoted language of the statute included expressly in the category of “persons to be removed.”**

Coming, then, to the question of notice it will be at once observed that though a three day notice to pay (or vacate) is provided for in case of the class of persons described in the second subdivision of said Section 1161**, no notice whatever is provided for as required by the first subdivision of that section except in the single case of a tenant at will, which is something wholly different from a licensee. We conclude, therefore, that so soon as a guest or lodger has, either by default in making payments due or otherwise, breached his contract he may <u>by appropriate proceedings</u> be ousted without the requirement of any advance notice.** His actual right to remain having ceased, his continued presence amounts to little more than a trespass and, as said in Gladwin v. Stebbins, 2 Cal. 103, 105, “it would be absurd, in such a case, to require either a demand, or notice to quit.”

- For Landowners, explicitly include provision that enables licensor to utilize CA unlawful detainer remedies? Avoid any potential for “self-help” claims.
- Real World implications? Getting authorities to assist with eviction absent an order/judgment???!!

CASE SUMMARIES

- Unlawful Detainer/COVID-19 Issues
- West Pueblo Partners, LLC v. Stone Brewing Co., LLC (2023) 90 Cal.App. 5th 1179 (April 3, 2023) (Area of Law Covered: Unlawful Detainer/Force Majeure/COVID-19)
- KB Salt Lake IIII, LLC v. Fitness Intern., LLC (2023) 95 Cal.App.5th 1032 (September 26, 2023) (Area of Law Covered: Unlawful Detainer/Force Majeure/COVID-19)
- Issue: COVID-19 ISSUES and where do we stand?

FACTS:

In both matters, tenants ceased paying rent and raised COVID-19 as a defense to Unlawful Detainer matters filed by the landlords. In West Pueblo, it was Stone Brewing Co., LLC which, as noted by the Court of Appeal "is a large beer brewing and retail corporation that, among other things, operates restaurants known as "brewpubs."" "'Stone[ ] repeated[ly] admi[tted] that it nevertheless had the financial resources to pay rent to [West Pueblo] from December 2020 to March 2021.'" Similarly, in KB Salt Lake III, LLC, the tenant "Fitness International, however, did not have a cash flow problem. It admitted it had the funds to pay rent. Moreover, even if Fitness International were operating at a loss (and there is no evidence it was), that alone would not excuse Fitness International from paying rent…" The lease in KB Salt Lake III, LLC also called for tenant to make renovations (which court found it could have done during the COVID-19 shutdowns).

TAKEAWAYS

- "force majeure clause did not excuse Fitness International from paying rent where there was 'no evidence *1053 or argument ... the pandemic and resulting government orders hindered Fitness [International's] ability to pay rent']; see also *West Pueblo Partners, supra*, 90 Cal.App.5th at p. 1188, 307 Cal.Rptr.3d 626 [no triable issue of fact regarding whether the COVID-19 pandemic prevented a lessee from paying rent where, even though the pandemic affected the lessee's business operations, the lessee admitted it had the financial resources to pay rent].)"
- "Like Fitness International, the tenant in *West Pueblo Partners* admitted that it could have made rent payments, but argued that it would have been more costly to do so because local restrictions on indoor dining 'were 'devastat[ing]' to its operating profits' and forced the brewpub to lay off the 'vast majority' of its employees. (*Id.* at pp. 1183-1184, 307 Cal.Rptr.3d 626.) In affirming an order granting the landlord's motion for summary judgment, the court held the force majeure provision in the lease, which was similar to section 22.3, did not excuse the obligation to pay rent: The tenant's "ability to pay rent must have been 'delayed, interrupted, or prevented' by COVID-19 because timely performance would have either been impossible or was made impracticable due to extreme and unreasonable difficulty. There is no triable issue of fact as to this issue because [the tenant] admitted that it had the financial resources to pay rent ... for the subject months, even though the brewpub ... was operating at a loss. The mere fact that [the tenant] was generating less revenue during this time period did not render its performance impossible or impracticable, and the force majeure event therefore did not impair [the tenant's] ability to pay

its rent. [The tenant] merely argues that the force majeure event made it more costly to do so.' (*Id.* at p. 1188, 307 Cal.Rptr.3d 626, italics omitted.)

- No evidence re impracticability?
- Were these the right tenants?
- See out of state case by case analysis in West Pueblo Partners, LLC