QUIET TITLE AND THE STATUTE OF LIMITATIONS

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Quiet Title: An Overview

WHAT DOES IT MEAN TO QUIET TITLE?

- Code of Civil Procedure §§ 760.010-765.060
- A process to determine interests in real and personal property.
- May involve ownership, liens, possessory or other rights in property.
- Will establish rights against defendants and “all persons known and unknown.”

WHAT IS THE STATUTE OF LIMITATIONS ON A QUIET TITLE ACTION?

- There is no statutory statute of limitations for quiet title actions.
- Must instead refer to the "underlying theory of relief," e.g., the "gravamen" of the cause of action.
- Common time limits are 3 years (fraud/mistake claims); 4 years (cancellation of instrument or breach of contract); or 5 years (adverse possession)

WHEN DOES THE STATUTE OF LIMITATIONS BEGIN TO RUN?

- General rule is that the statute of limitations begins to run when the injury occurs.
- Exceptions include delayed discovery, continuing violations and continuous accrual.
- A further exception for quiet title is that the statute does not run against one "in possession" of the property. (*Tannhauser v. Adams* (1947) 31 Cal.2d 169.)

"POSSESSION IS NINE-TENTHS OF THE LAW"

- What does "Possession" mean?
- "Possession" = "Undisturbed Possession." (*Sears v. County of Calaveras* (1955) 45 Cal.2d 518.)
- What does "Undisturbed Possession" mean? That's where it gets interesting.

THE EVOLUTION OF "UNDISTURBED POSSESSION"

- The principle that the statute of limitations does not run against one in "possession" of property traces back to some of the earliest decisions by California courts. (See*, e.g., Smith v. Matthews* (1881) 81 Cal.120 (holding that a quiet title claim brought after "many years" was not barred by the statute of limitations because the plaintiff "remained in the actual possession of the land…").)
- Purpose of Rule: "In many instances one in possession would not know of dormant adverse claims of persons not in possession. Moreover, even if, as here, the party in possession knows of such a potential claimant, there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him." (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560-561.)
- The first use of "undisturbed possession" was traced to *Sears v. County of Calaveras*.
- "'Disputed possession' is the equivalent of having the validity of one's occupancy, dominion or control over the property called into question." (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467.)

EXAMPLES OF WHAT DOES NOT DISTURB POSSESSION

- Recording a Notice of Default (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467; *Garfinkle v. Sup. Ct.* (1978) 21 Cal.3d 268.)
- Notice of an upcoming tax sale (*Mayer v. L&B Real Estate* (2008) 43 Cal.4th 1231.)
- Challenging title to a classic car without taking possession (*Eleanor Licensing LLC v. Classic Recreations LLC* (2018) 21 Cal.App.5th 599.)
- Recording a Notice of Trustee's Sale (*Huang v. Wells Fargo Bank* (2020) A152074)

EXAMPLES OF WHAT DOES DISTURB POSSESSION

- Notice of a Certificate of Tax Sale (*Kaufman v. Gross & Co.* (1979) 23 Cal.3d 750)
- Notice of a completed foreclosure sale (*McCaslin v. Hamblen* (1951) 37 Cal.2d 196)

DON'T SLEEP ON LACHES!

Even if the Statute of Limitations has not started, don't fall asleep on a potential laches defense. (*Muktarian*, 63 Cal.2d at 561 (explaining that "the party in possession runs the risk that the doctrine of laches will bar his action to quiet title if his delay in bringing the action has prejudiced the claimant.").)

ESCROW ENTITY LIABILITY TO THIRD PARTIES

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General Overview of Escrow Liability to Third Parties

Liability of escrow entities to third parties should be and often is relatively straight-forward:

- An escrow holder is an agent and fiduciary of the parties to the escrow. Its "obligations are limited to compliance with the parties' instructions." (See *Summit Fin. Holdings, Ltd. v. Cont'l Lawyers Title Co.*, 27 Cal. 4th 705, 711 (2002).)
- The escrow company is generally not liable for a "failure to do something not required by the terms of the escrow or for a loss incurred while obediently following the escrow instructions." (See *Axley v. Transamerica Title Ins. Co.,* 88 Cal. App. 3d 1, 9 (1978).)
- Additionally, an escrow company has no general duty to police the affairs of its depositors. (See *Summit*, at 711.)
- However, an escrow company is a fiduciary, and like any other fiduciary, is under a duty to communicate to its principal, knowledge acquired in the course of its agency with respect to material facts which might affect the principal's decision as to the pending transaction. (See *Axley* at 9.)
- An escrow company also has a duty to "exercise reasonable skill and ordinary diligence in its employment", and if it acts negligently, "it is ordinarily liable for any loss occasioned by the breach of duty."

RECENT CASE EXAMPLES OF THIRD PARTIES ATTEMPTING TO CREATE A DUTY OF CARE TO ESCROW COMPANY CLIENTS

Although the case law is relatively clear that the escrow company only owes duties to the parties that hired it as the escrow company, parties frequently attempt to name the escrow and/or title company as a party to the underlying case. Just within this past year, we have represented escrow and title companies on over 5 occasions regarding similar claims, and we will highlight two occasions where the Court correctly analyzed the issue in our opinion, and one case where they did not.

CASE STUDY 1: PROBATE MATTER; *SECTION* 850 PETITION

- In a recent San Francisco County case, we represented the escrow company and title company, named in a probate matter, specifically a Section 850 petition.
- In this case, the Petitioner claimed that he was the beneficiary of a property in San Francisco pursuant to a will. A second will identified a different beneficiary to that property, and that beneficiary put the property on the market and sold the property to a third party. There was a dispute as to which will controlled, but this dispute did not come to light until after the escrow and sale.
- Our client, the escrow and title company, was named in the subject Petition. After two demurrers were sustained, the sole remaining claim by the Petitioner against our client was that they negligently prepared and recorded an Affidavit of Death, and failed to follow proper probate code section requirements to give proper notice to interested parties, failed to obtain a probate referee appraisal, failed to list the property on MLS and failed to maximize the sale price.
- The Probate Court sustained our demurrer without leave to amend, stating that Petitioner had not stated a viable claim. Specifically, the Court found that our client had no duty to Petitioner to investigate the authority of the parties to the escrow or the commercial reasonableness of the transaction in escrow.
- This was the correct result. Requiring an escrow company to evaluate the legality of which will controlled, or to "maximize" the sale price would require almost a mini-litigation for an escrow, taking depositions as to the intent of each will, determining if they were competent, etc. Additionally, requiring an escrow company to perform duties of a realtor would increase the costs of an escrow substantially.

CASE STUDY 2: SAN MATEO COUNTY DEMURRER

- In this case, we represent an escrow company in a case involving an alleged missed and/or misidentified easement in connection with the purchase of a property in Pacifica. The Plaintiff was an alleged promisor of a party (brother and business partner) to the escrow and sale.
- The title company and the escrow company were under the same general corporate umbrella, and Plaintiff named all potential associated entities, not knowing which entity would be responsible for title insurance claims, or which entity was involved solely with the escrow. Plaintiff alleged that some parties to the subject transaction represented themselves to be acting on behalf of the title insurer and escrow company throughout the escrow, and that based on agency principles or acting jointly with the title company, that the demurrer should be overruled with respect to the escrow company.
- Voluntary document production and declarations had outlined that the escrow and title companies were distinct legal entities, and Plaintiff continued to treat them as one and the same in their complaint. The core of the complaint was that the company improperly denied a claim from the alleged promisor, but they combined these claims against both the title insurer and the escrow company.
- At the demurrer stage, we argued that the Plaintiff improperly named the escrow company, that the evidence submitted that they were separate and distinct from the title insurer, and that our client owed no duty to the third party, and that a minimum Plaintiff must plead what each entity did and how they owed Plaintiff a legal duty.
- The Court, we think incorrectly, ruled that Plaintiff had stated a claim for a legal duty based on representations made during escrow regarding the Plaintiff's business relationship with the contracting party. The Court noted that this could be addressed in a Motion for Summary Judgment, but at the demurrer stage, the Court needed to accept the allegations regarding the business relationship as true. Our Motion for Summary Judgment is pending.

CASE STUDY 3: SANTA CLARA COUNTY DEMURRER

- In this case, we represented a client, whose corporate name was identified as both the escrow company and the title insurer, in a quiet title action.
- Our client was named in a cross-complaint by the heir to a trust. She was not a party to the subject escrow transaction, and made a claim to the property after the trustee sold the property to an innocent third party.
- The Cross-Complaint alleged that the trustee informed the escrow officers that she was an heir, and that she was therefore a third party beneficiary. She also alleged that even though the trustee was the seller in the transaction, that the escrow officers told the trustee that they would be receiving a policy of title insurance. She attempted to support this allegation by pointing to evidence that they paid for the title insurance for the buyer.
- The Court held that she did not state a valid claim with respect to our client as an escrow holder. The Court correctly stated that the agency created is limited to the obligations of the escrow holder to carry out the instructions of each of the parties to the escrow. There were no allegations that our client failed to faithfully comply with the parties' escrow instructions, and accordingly the demurrer was sustained.

BRIEF CONCLUSION

- In recap, parties involved in real estate related disputes frequently attempt to bring in the escrow and/or title companies to get another seat at the table with potential funds. Often these cases can be disposed of at the demurrer stage if the claims are being made by a third party whom the escrow company likely owes no legal duty to.
- The escrow instructions themselves should clearly identify the parties to the transaction, what the parties want the escrow company to do, and the specific entity involved for the escrow and title insurance duties, especially if they are under the same corporate umbrella, which often they are.
- The escrow and title insurers themselves should be cautious to identify their role in the transaction, and be sure that there is no confusion as to their roles, and that the escrow company is truly intended by all parties to the transaction to be only working on their behalf, and not strangers to the transaction.

QUESTIONS

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