

NATIONWIDE MORTGAGE E ALERT[©]

(9-8-14)

WHEN YOU BUY A PROPERTY AT A FORECLOSURE SALE WITH A TENANT IN PLACE YOU MUST HONOR ANY LEASE IN EXISTENCE OR RISK BEING SUED

FACTS

Sierra Asset Servicing, LLC bought property at a foreclosure sale that had been “red tagged” Mary Schwann had previously owned the residence in which she leased various rooms to several tenants individually. **Joseph Erlach leased one bedroom, one bathroom, and all common areas. A written agreement provided that Erlach would pay a specified sum in advance to rent the property for eight months.** About a month before Erlach’s lease term expired, **Schwann had gas and electric services cut off**, purportedly because other tenants had not paid rent. **Subsequently, Schwann also cut off water service.** Shortly later, a **code-enforcement inspector for the county posted a “red tag”** on Schwann’s property because it **lacked electricity, heat, and hot water.** **Within days, Sierra Asset Servicing, LLC, acquired Schwann’s residence in a foreclosure sale.**

Sierra agreed to let Erlach stay for one month beyond his lease term by applying Erlach’s security deposit as rent for that month. Nonetheless, Sierra proceeded to remove the carpets, flooring, and kitchen and bathroom fixtures from the residence. By the end of the extended time for which Erlach had paid rent, Sierra had not restored the property for occupancy. At that time, the red-tag was still posted and precluded Erlach’s occupancy.

Erlach filed a complaint for damages against Sierra and Schwann that alleged numerous claims. Sierra demurred to all Erlach’s claims. The trial court sustained the demurrer without leave to amend. The trial court found that no landlord-tenant relationship existed between Erlach and Sierra because Erlach’s tenancy with Schwann was terminated by the red tag before Sierra took possession of the premises. The court reasoned that when Sierra took over Schwann’s property, Erlach’s lease was void and Erlach was thus “a squatter with no legal rights.” The court **granted Sierra’s motion to be dismissed with prejudice from Erlach’s action. Erlach appealed.**

The 6th District Courts of Appeal said . . .

Reversed. The court of appeal reversed and remanded, holding that the **red tag did not terminate Erlach’s lease. Health & Safety Code §17910 et seq.,** the word “tenant” **sets out a tenant’s rights and remedies after a building is red-tagged.** The Legislature contemplated that the tenant still has rights and remedies although he or she might not be able to occupy a building because of a red tag. **When Sierra**

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bought the property, Erlach's tenancy had not been terminated. Erlach had paid rent for a term beyond the date on which Sierra acquired the property. The California Supreme Court has held that a new owner of rental property is required to address outstanding code violations even if they were caused by the previous owner. Thus, §17980.6, as well as Civil. Code §1941, **required Sierra put the property into a condition that was fit for occupation, as well as to repair all subsequent dilapidations.**

Here, **Erlach alleged Sierra's violation of the warranty of habitability in various forms in five of his eight claims.** It could not be said as a matter of law that such claims by Erlach were not viable.

As to **Erlach's remaining claims for constructive eviction, breach of the covenant of quiet enjoyment, and retaliatory eviction, the court pointed out that Civ. Code §1927 provides that every lease includes a covenant of quiet possession and enjoyment.** In addition, §1940.2(a) makes it unlawful for a landlord to commit specified acts "for the purpose of influencing a tenant to vacate a dwelling." In sum, at this stage of the proceedings, Erlach's claims were adequately pleaded. Especially when you take into consideration the federal law entitled "*The Protecting Tenants at Foreclosure Act of 2009*" which is due to expire December 31, 2014. (*Erlach v. Sierra Asset Servicing, LLC, 226 CA4th 1281*)

MORAL

If you are going to bid on a property at a foreclosure sale, in conducting your "due diligence" be certain there are no tenants in occupancy, and check to see if utilities have been turned off or you may get stuck since as the buyer you inherit the liabilities at the trustee's sale.

A REMINDER THAT ALTHOUGH THIS IS A CALIFORNIA CASE, IT IS BASED UPON A FEDERAL LAW AND AS SUCH IS UNDOUBTEDLY ENFORCEABLE IN ALL STATES

AN ONGOING REMINDER ABOUT THE CONTINUED LIABILITY OF A CALIFORNIA HOME OWNER FOR HOMEOWNER ASSOCIATION DUES EVEN AFTER THEY VACATE THE PROPERTY

FACTS

Homeowner decides can no longer afford property and either during or before foreclosure starts vacates the property. Homeowner may even file a bankruptcy during the process. **HOWEVER**, until the foreclosure is complete and title has been changed to the name of the new owner, even if the new owner is the mortgage lender, the homeowner is still liable for all homeowner association assessments while the property remains in the name of the homeowner. If homeowner has filed bankruptcy the dues are discharged up to the date of filing. **BUT** they pick up again as new debt after the filing of the bankruptcy.

Then may be one or two years later the homeowner discovers being sued for the debt. It is a viable lawsuit and the homeowner has to defend.

MORAL

As long as you are going to remain liable for the HOA dues you might as well continue living in the property and at least pay the dues. This removes a potential later liability until the property changes ownership through foreclosure or short sale. We have had several homeowners and mortgage originators contact us on this issue but usually after the fact. If you are in a property where there are HOA dues and you want to vacate because you no longer can afford the mortgage contact legal counsel BEFORE YOU VACATE for legal advice that may save you thousands of dollars in the long run. Payment for one hour of legal advice potentially can save you thousands of dollars in the long run.

COSTA MESA MAN ARRESTED FOR FRAUDULENTLY ATTEMPTING TO SELL RESIDENTIAL REAL PROPERTY AS THE LISTING AGENT IN HUNTINGTON BEACH, CALIFORNIA

FACTS

On September 6, 2014 the Huntington Beach Police Department Bunco/Forgery Unit working in conjunction with the Orange County District Attorneys' Office (OCDA) Major Fraud/Real Estate Unit, and the United States Secret Service, arrested Daniel Gallimore, 52 in the City of Costa Mesa, California. The case originated in the City of Huntington Beach and is related to the attempted fraudulent sale of a residential property with Gallimore representing himself as the listing agent for the property. Gallimore is not a licensed real estate agent and has no authority or connection to the property.

Gallimore was arrested pursuant to a warrant for Grand Theft and was being held at Huntington Beach City jail with bail set at \$20,000. (*hbpdrelease 9-6-14*)

MORAL

Remember, a person is innocent until proven guilty in a court of law.

ORANGE COUNTY, CALIFORNIA DISTRICT ATTORNEY STILL HOT AFTER MORTGAGE FRAUD AND PRE-TRIAL IS SET FOR OCTOBER WITH TRIAL SET FOR DECEMBER.

FACTS

KAHRAM ZAMANI is a licensed real estate broker, (*a check of the BRE website on September 7, 2014 indicates it is currently revoked*) is **accused of owning and running Infinity Group Services (Infinity), a loan modification company that targeted distraught homeowners.** Zamani is accused of soliciting clients through radio ads. He is accused instructing his employees to make promises to consumers, knowing the promises were false, that the company could obtain a home loan modification or loan forgiveness in exchange for an up-front fee of \$995.

The defendant is accused of also instructing his employees to make false promises that they could secure low-interest rates on a modified mortgage loan, offer full refunds if a loan could not be modified, and stating that Infinity had a 98 percent success rate in obtaining loan modifications. After the consumer paid the up-front fee, they were rarely able to contact the Infinity employee handling their case. When the consumer made contact with the Infinity sales representative handling their case, the Infinity employees are accused of giving misleading information about the progress of their modification request, charging an additional fee in order to secure the promised interest rate, and telling the homeowner that the new rate would not be honored without payment of the additional fee.

The case is currently set for pretrial and trial on October 31 and December 12, 2014 respectively in Dept. C42 of the Orange County Superior Court. (*OCDA press release website 9-7-14, Case No. 09CF2919*)

MORAL

Remember Mr. Zamani is innocent until proven guilty so if you are interested you may attend his trial since it is open to the public. Since it is being prosecuted by the WHITE COLLAR CRIME TEAM I trust he can afford good legal counsel. In fact, at this stage he should already have competent legal counsel.

SACRAMENTO, CALIFORNIA MAN DRAWS 35 YEARS IN FEDERAL PRISON FOR MORTGAGE FORECLOSURE SCAM-16 OTHERS FOUND GUILTY AS WELL. INVESTIGATION LASTED 10 YEARS STARTING IN 2004

FACTS

On September 3, 2014 CHARLES HEAD, 40, OF PITTSBURGH, PENNSYLVANIA, (FORMERLY OF LOS ANGELES AND ORANGE COUNTY) was SENTENCED TO 35 YEARS IN PRISON.

Head was **convicted in two jury trials of two conspiracies to commit mail fraud in connection with nationwide “foreclosure rescue” scams.** He was also convicted of seven counts of mail fraud. Head was the CEO of a group of brokerage and financial companies in Orange County and Los Angeles County: **HEAD FINANCIAL SERVICES, CREATIVE LOANS,** and others.

A federal grand jury **indicted Head and 16 other defendants** in two cases, charging them with conspiracy to commit mail fraud, mail fraud, and other charges related to the Head Financial Services equity skimming schemes. The defendants solicited homeowners facing foreclosure, promising to help the homeowners avoid foreclosure and repair their credit. Instead, through **misrepresentations, fraud, and forgery**, the defendants led the victims to complete transactions that substituted straw buyers for the victim homeowners on the titles of properties without the homeowners’ knowledge. These **straw buyers were often friends and family members of the defendants,** or were solicited on the Internet. Once the straw buyers were on title to the homes, the defendants applied for mortgages to extract the maximum available equity from the homes. The defendants then shared the proceeds of the ill-gotten equity and the

“rent” that the victim homeowners paid them. Ultimately, the victim homeowners were left with no home, no equity, and with damaged credit ratings.

Initially, Head focused his scam on distressed homeowners in California before expanding throughout the United States. In the course of the schemes, between January 2004 and June 2006, the defendants **obtained over \$90 million in fraudulent loans, caused estimated losses of over \$50 million, and stole title to over 300 homes.**

Head and his **BROTHER JEREMY MICHAEL HEAD, 34, OF HUNTINGTON BEACH**, were convicted following a nearly four-week trial. A second trial was held in December 2013 that lasted five weeks. Head and two other defendants were convicted.

“In large fraud schemes like the one devised by Charles Head, we can’t forget about the individual homeowners who comprised the more than \$50 million in losses,” said Monica Miller, Special Agent in Charge of the Sacramento division of the FBI. **“TODAY’S SENTENCING ENDS AN INVESTIGATION THAT HAS BEEN ONGOING FOR MORE THAN 10 YEARS** and brings some closure to the innocent people who were victimized by Head’s callous scheme.”

SIXTEEN OTHER DEFENDANTS HAVE ALSO BEEN CONVICTED in the two related cases and are awaiting sentencing:

ELHAM ASSADI, AKA ELHAM ASSADI JOUZANI, AKA ELY ASSADI, 34, OF IRVINE, CALIFORNIA; LEONARD BERNOT, 54, OF LAGUNA HILLS, CALIFORNIA; AKEMI BOTTARI, 32, OF LOS ANGELES, CALIFORNIA; KEITH BROTEMARKLE, 46, OF JOHNSTOWN, PENNSYLVANIA; BENJAMIN BUDOFF, 47, COLORADO SPRINGS, COLORADO; JOSHUA COFFMAN, 34, OF NORTH HOLLYWOOD, CALIFORNIA; JOHN CORCORAN, AKA JACK CORCORAN, 56, OF ANAHEIM, CALIFORNIA; JEREMY MICHAEL HEAD, 34, HUNTINGTON BEACH, CALIFORNIA; SARAH MATTSON, 31, OF PHOENIX, ARIZONA; DOMONIC MCCARNS, 40, OF IRVINE, CALIFORNIA; OMAR SANDOVAL, 36, OF RANCHO CUCAMONGA, CALIFORNIA; XOCHITL SANDOVAL, 33, OF RANCHO CUCAMONGA, CALIFORNIA; LISA VANG, 28, OF WESTMINSTER, CALIFORNIA; ANDREW VU, 43, OF SANTA ANA, CALIFORNIA; JUSTIN WILEY, 32, OF IRVINE, CALIFORNIA, AND KOU YANG, 36, OF CORONA, CALIFORNIA.

In addition, defendant **AHN NGUYEN** is pending trial and **DEFENDANT DOMONIC MCCARNS** is awaiting a second trial on additional charges related to these offenses. The charges are only allegations; the defendants are presumed innocent until and unless proven guilty beyond a reasonable doubt. (*usattyedca9314*)

MORAL

Remember what I have been saying all along? The prosecutors can go back 10 years. Well, here they did go back ten years, the investigation starting in 2004 and keeping quiet until all the ducks were lined up in a row. Anyone here you know? We have represented numerous parties over the years regarding

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mortgages but none of them made out as badly as this. Now it goes civil with the Lehman Brothers chasing losses incurred by the FDIC and we are representing several in that matter as well.

UNION COUNTY NEW JERSEY PASTOR PLEADS GUILTY TO MORTGAGE FRAUD

FACTS

On September 4, 2014, SEAN A. SOUELS, 44, OF LINDEN, NEW JERSEY, a pastor of the now-defunct ReBirth International Church in Elizabeth, New Jersey, admitted to defrauding financial institutions as part of a \$15 million mortgage fraud scam that used phony documents and “straw buyers” to make illegal profits on overbuilt condos. He pleaded guilty before U.S. District Judge Jerome B. Simandle in Camden federal court to a second superseding indictment charging him with one count of conspiracy to commit wire fraud.

Souels was among 11 defendants charged with conspiracy to commit wire fraud and conspiracy to commit money laundering. Two additional defendants, **NICHOLAS TARSIA, 65, OF TOTOWA, N.J., AND MASHON ONQUE, 43, OF EAST ORANGE, N.J.,** were charged in November 2013 with conspiracy to commit wire fraud. Tarsia was also charged with one count of conspiracy to commit money laundering.

Souel’s conspirators, including **DARRYL HENRY, 48, OF SOMERSET, NEW JERSEY, AND JERRY SMITH, 48, OF RAHWAY, NEW JERSEY**—who both pleaded guilty previously located oceanfront condominiums overbuilt by financially distressed developers and negotiated a buyout price with the sellers. They then caused the sales prices for the properties—located in Wildwood Crest and North Wildwood, New Jersey, other locations in New Jersey and in Naples, Fla.—to be much higher than the buyout price to ensure large proceeds. Other defendants helped conceal the true sales prices of certain properties through inflated sales contracts and finder’s fee agreements.

In 2007, Souels agreed with Henry and Smith to recruit a church member to purchase a Wildwood Crest property at an inflated rate. In order for the “straw purchaser” to appear more creditworthy, Souels submitted documents fraudulently claiming that the church member was employed as the president of operations at ReBirth International Church. Once the loan was approved and the mortgage lender sent the loan proceeds in connection with real estate closing, Souels received \$30,000 from his conspirators. The wire fraud conspiracy charge is punishable by a maximum potential penalty of **30 years in prison** and a \$1 million fine. Souels is scheduled to be sentenced on Jan. 20, 2015. (*usattynj9414*)

MORAL

Federal prosecutors here went back to fraud that occurred seven years ago. Like I have been saying the prosecutions in this attorneys opinion will not stop while the economy is still in trouble. It is good press aside from the fact the people convicted are arguably part of the cause that created the effect.

PLEASE NOTE THERE WERE ELEVEN IN TOTAL THAT HAVE BEEN CHARGED, AND/OR PROSECUTED, AND/OR PLEADED GUILTY AND/OR ARE DOING “TIME.”

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IF YOU ARE IN A CAR ACCIDENT WHAT ARE YOUR LEGAL RIGHTS?

If the case is serious the longer you delay seeking an attorney the more damage you may do to your case. It may become difficult to locate witnesses, the party that injured you may move without leaving a forwarding address. The treatment you need may be done under a lien if you do not have medical insurance. There are many reasons to seek counsel. This consultation is free. As Attorneys we can help you recover money for your damaged property, medical bills, and personal injuries suffered by you and gather the evidence that presents your case favorably.

Our trial lawyer is Alan Brown a member of the National Trial Lawyers Association and past president of the Orange County Trial Lawyers Association. The National Trial Lawyers of America is by invitation only to the 100 top trial lawyers in each state. We are quite proud of Alan’s accomplishment and the fact

that we may serve those of you that have been injured so that you receive just compensation for your injuries. Recently he has won a medical malpractice case for over \$3 million. Perhaps we can assist you.

If we may serve you please contact one of our attorneys at:

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