

Check out our
new look!

RECENT DEVELOPMENTS

- The Giardinelli Law Group, APC recently settled a real estate dispute, between co-tenants without having to go to trial.
- The Giardinelli Law Group, APC recently assisted a board of directors in resolving a dispute with an outgoing officer, saving the organization thousands and avoiding trial.

CALENDAR

Risk Management

Date: September 23, 2010
Where: Inland Valleys
Association of
REALTORS®, Riverside

Please contact the sponsoring
Association to sign up!

GRI Seminar – Legal Issues

Date: September 24, 2010
Where: San Diego Association
of REALTORS®, San
Diego

Please contact the Greater Realty
Institute at
<http://www.edesignations.com/>
to sign up!

C.A.R. Business Meetings & REALTOR® Expo

Date: October 5-7, 2010
Where: Anaheim Convention
Center, Anaheim, CA

Please contact the California
Association of REALTORS® website at
<http://www.car.org/meetings/carmetings/>
to sign up!

Courtside Newsletter

Informing Real Estate Brokers, Association members, and local Businesses for over twenty years.

Garcia v. World Savings, FSB: A Potential Lifeline for the Foreclosed

PROMISES OF A LENDER TO A BORROWER IN FORECLOSURE MAY PROVIDE A WAY FOR THE BORROWER TO AVOID A TRUSTEE'S SALE

BY: RYAN D. MILLER



Due to the overwhelmingly high volume of cases we have seen recently, where a lender has foreclosed despite the borrower believing they are in a valid loan modification program, it was thought that it would be beneficial to discuss a recent California State case, from the 2nd Appellate District, titled: *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031. The facts of the case are as follows:

Francisco and Maria Elena Garcia purchased a home in September of 2004 with a loan from World Savings, FSB. Between October 2006 and August 2007, the Garcias did not make any payments on their loan. The Garcias were sent a notice of default in January of 2007 and a notice of trustee's sale to take place June 21, 2007. The Lender agreed to postpone the foreclosure sale until July, and then until August, 20, 2007. Before the sale took place, the Garcias hired a mortgage broker to help them get a loan to avoid the trustee's sale.

The Garcias' broker spoke to one of the managers of the World Savings, FSB foreclosure department and told him that the Garcias obtained a conditional loan approval. That manager agreed to postpone the sale until August 29, 2007. World Savings sent the Garcias' broker the amount necessary to reinstate the loan. On August 27, 2007, the Garcias' broker called that same manager to ask for another extension until the first week of September. The manager said he would postpone the sale until August 30th and "see where [they]

were at after that." The broker asked what would happen if the Garcias' new loan did not close by the 30th, and the manager told him that the property "won't go to sale because I have the final say-so and as long as I know that you could close it the first week of August [sic], I'll extend it."

On August 29, the broker called the World Savings manager's office and left messages on his direct line, letting him know that the loan would not close for another week. The manager did not return any of his calls. You can guess what happens next. On August 30, 2007, the Garcias' home was sold at a trustee's sale.



The trial court granted summary judgment to World Savings, finding that the foreclosure sale was proper. That decision was appealed. The Appellate Court reversed the lower court decision based upon promissory estoppel. Promissory estoppel is a doctrine in the law that applies when a person makes a specific promise and another person, relying upon that promise, acts to their detriment. The Garcia Court said it this way: "a promise had been made upon which the complaining part[ies] relied to [their] prejudice"

Continued...

In the Garcias' case, their broker was promised the sale would not go through in enough time for them to get a new loan. The Garcias hired this broker and actually did get a new loan, something they would not have done had they not received the promise. They incurred this loan in reliance upon World Savings, FSB'S promise. Therefore, World Savings was estopped (prevented) from claiming the agreement was not valid and binding.

manager at the bank told you something is likely insufficient. You would need evidence in writing or the case manager's admission of the promise. Since you are not likely to get either, it is recommended that you make sure every agreement with the lender is in writing. If it is not in writing, do not trust it. Your home could conceivably still be sold in foreclosure even though a case manager tells you otherwise. Also, keep a log of every telephone conversation with your lender: what time you called; who you spoke to; and what they said at the time they said it. Be detailed. This will help you keep track of where you are and may provide evidence to support a claim should your home be wrongfully sold at a trustee's sale. Lastly, don't wait to get help from someone who knows what they are doing. So many individuals come to our office after having lost their home already. It is monumentally more difficult to undo a trustee's sale than to prevent it in the first place.

Promissory Estoppel cannot be established from preliminary discussions and negotiations. Furthermore, the person against whom the promissory estoppel is asserted must have created a reasonable belief of the existence of the reality of the promise, such that it would be unconscionable to deny. But, it is a viable way to avoid a foreclosure when a borrower trusts the statements of a lender to its detriment.

What do we take away from the Garcia case? First, you need to be able to prove that the promise was real. The fact that some case

CLIENT FOCUS

Congratulations to Southwest Riverside County Association of Realtors® on its New Office



It has been a long time in the making, but SRCAR finally moved into their new building, located at 26529 Jefferson Avenue, in Murrieta. SRCAR managed its finances responsibly for several years to be able to afford to purchase the offices, debt free. In April of 2010, SRCAR commenced renovating the chosen location, a former Auto Dealership, in order to make it suitable for SRCAR's needs. On September 6, 2010, SRCAR finally began moving in. The Giardinelli Law

Group, APC congratulates SRCAR on its new home and is happy to have taken a part in seeing SRCAR's goal come to fruition. The Giardinelli Law Group, APC has had a longstanding relationship with SRCAR and helped SRCAR in drafting the purchase agreement as well as appropriate documents for tenant improvements. Congratulations Southwest Riverside County Association of Realtors®!

LEGAL SEMINAR CONTEST

The Giardinelli Law Group is in the process of developing curriculum for seminars on legal topics affecting business today. We are currently reviewing topics for these seminars. If there is a legal topic you would like more information on, let us know. If we choose your topic for a seminar, we will present it to your business at no charge. Topic submissions can be sent to: inquiries@glawgroupapc.com. Restrictions and limitations apply. Contact the Giardinelli Law Group, APC for details.

Contact the Giardinelli Law Group, APC for a consultation. Call us to find out whether your consultation is free.

Riverside County: (951) 245-9163

Orange County: (714) 978-2060

BUSINESS CORNER

"We want to help."



BUSINESS TIPS

California and Federal Employment Discrimination and Harassment Law

Is your company in compliance with California and federal employment discrimination and harassment law? These recent lawsuits illustrate the risk a company takes if it does not have and enforce appropriate policies:

- **Sexual Harassment:** A company ignored repeated complaints by 21 employees that a multiple coworkers, including a supervisor, were subjecting them to unwelcome touching, explicit sexual comments, and requests for sex. The Equal Employment Opportunity Commission filed a suit alleging a dangerous and sexually hostile work environment. The company settled for **\$5.8 million**.
- **Medical Condition Discrimination:** A jury deliberated for only one day after a three week trial and awarded **\$820,700** to a county employee with a seriously deformed hand for medical costs, past and future lost earnings and emotional distress resulting from the county's failure to investigate and properly respond to his repeated complaints that his coworkers ridiculed and mocked him, started a blog where coworkers called him names like "claw."
- **Age Discrimination:** A 60 year old VP of Sales was terminated for alleged performance reasons. During the first year, he had a stroke and was off work for a time. On returning, he walked with a cane and had a speech impairment. His supervisor gave him positive performance reviews, and the only deficiency was blamed on reasons beyond his control. The appeal court found he stated a prima facie case (discrimination is presumed) and the burden shifted to the company to prove the termination was not due to his medical condition or age. The company had to face continued expensive litigation back in the trial court.
- **Age Discrimination:** A jury deliberated for only one day after a 44 day trial and awarded **\$25,916,917** to a 64 year old manager of a big-box-store who was terminated after 20 years of employment. He alleged that after the company merged, it carried out a mandate to replace the older managers with younger ones.

What you should do:

- Give every employee your company's policy on prohibiting discrimination and harassment and explaining the process for handling complaints.
- Train all employees on discrimination and harassment, and if there are more than 50 employees, provide 2 hour training to all supervisors as required California law.
- Investigate all allegations of harassment and discrimination and take appropriate action.
- Accurately document employee performance in writing for personnel files – softening the blow could hurt the company in court.
- Consult with legal counsel for policy drafting or review, assistance with investigation, strategies for termination, and responding to complaints.

For any legal questions related to the above, or if you would like to see one of these topics discussed in greater detail, contact us at:

(951) 245-9163

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