

The California Supreme Court (and Court of Appeal) – August 2, 2022

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We are spotlighting a published California Court of Appeal decision on rehearing for its analysis on contract and fraud claims arising out of a real estate transaction.

The California Court of Appeal, Fourth Appellate District, Division One issued the following decision:

Munoz et al. v. PL Hotel Group, LLC, et al., No. D078215: An 80-year-old real estate investor and his company (“Buyers”) bought a vacant hotel and restaurant from a company owned and managed by a father and son (“Sellers”). The parties agreed that after the sale, Buyers would lease the property back to Sellers. Before closing, Sellers’ agent circulated a lease to Buyers’ agent (the “July 17th lease”). On August 29th, Sellers’ agent sent an email to Buyers’ agent reattaching the July 17th lease, and representing that the July 17th lease was the lease the parties would execute after closing.

After escrow closed, Sellers’ agent emailed Buyers’ agent, asking Buyers to sign the attached lease. Unbeknownst to Buyers, *that* lease (the “September 13th lease”) had a number of provisions adverse to Buyers which were not in the July 17th lease. The September 13th lease shifted the duty to repair from Sellers to Buyers, limited Sellers’ tax obligations and liability for assignments and subleases, and restricted Buyers’ remedy in the event of a default to retaking possession of the property. After a “ cursory” review, Buyers signed the September 13th lease, believing it to be the same as the July 17th lease.

After discovering the differences, Buyers sued Sellers, asserting claims for breach of contract, bad faith, fraud, and financial elder abuse. The matter made its way up to the California Supreme Court. Though the trial court sustained Sellers’ demurrer to Buyers’ claims without leave to amend, the Court of Appeal reversed, finding (among other

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things) that Buyers had stated a viable fraud claim based on fraud in the execution. In their petition for review of that decision, Sellers argued that the parties had not briefed the issue of fraud in the inducement. The Supreme Court granted review and remanded with directions to allow supplemental briefing on that issue.

On rehearing, the Court of Appeal found that Buyers had not stated viable claims for breach of contract, bad faith, or fraud against the entity owned by the father and son. It **did** find that Buyers stated viable claims for financial elder abuse against Sellers and fraud against the son. Taking the facts alleged as true for a demurrer, the complaint alleged that the son drafted the July 17th lease; circulated it via his agent; confirmed via his agent that the July 17th lease would be executed by the parties; and, with his father, swapped the leases without disclosing it to Buyers. This was precisely the type of conduct that can constitute fraud in the execution.

Finally, the Court of Appeal noted that the investor had failed to read the September 13th lease before executing it but nonetheless alleged facts showing reasonable reliance. Among relevant factors were the investor's age; that the lease was not written in his primary language; that he had never bought a hotel or been part of a leaseback arrangement; he *had* reviewed and approved the July 17th lease, which was confirmed as final at least four times; and Sellers did not disclose that they swapped the leases, the differences between which were "not so numerous to be obvious."

The full opinion is available [here](#).