



Reversal of Unlawful Detainer Judgment Puts Evicting Landlord At Risk for Damages Action

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A landlord of commercial premises, who believed it had evicted a tenant in accordance with all judicial process requirements, found itself defending an action for breach of contract damages brought by the tenant after the eviction. The case presents a challenge to landlords seeking to determine whether to enforce an unlawful detainer judgment immediately, consistent with the unlawful detainer process being a summary proceeding, or whether to wait the requisite statutory period (typically, 60 days) to determine whether a notice of appeal is filed before proceeding with eviction.

If an appeal is filed a landlord must then determine whether to proceed with eviction or permit the tenant to continue to occupy premises, likely without paying rent, while the appeal is pending. A landlord's decision as to how proceed may depend in part upon an evaluation of the strength of the unlawful detainer decision and the affirmative defenses brought by the tenant in such proceeding.

In *Munoz v. MacMillan*, 2011 Cal. App. LEXIS 578 (May 13, 2011), the Court held that even though the landlord had followed all judicial process requirements in evicting a commercial tenant from its premises, the fact that the tenant had prevailed in reversing the unlawful detainer judgment on appeal provided the tenant the right to pursue an action for breach of contract against the landlord, and to be entitled to a trial determining whether it had suffered damages on account of landlord's early dispossession of the tenant.

The Unlawful Detainer Action: MacMillan brought a successful unlawful detainer action against Munoz, obtained a judgment, and then evicted Munoz in accordance with that judgment. Between the date of the issuance of the writ of possession and the date of eviction, Munoz appealed from the unlawful detainer judgment. Munoz did not obtain a stay of execution pending appeal, and MacMillan proceeded to evict Munoz while the appeal was pending.

Nearly a year later, Munoz prevailed on appeal; the Court reversed the unlawful detainer judgment. The decision did not address whether Munoz thereafter had the right to regain possession of the premises.

The Breach of Contract Action: Following the reversal of the unlawful detainer judgment, Munoz brought an action for breach of contract against the landlord, claiming damages in excess of Five Million Dollars (\$5,000,000.00) allegedly suffered as a result of landlord's breach of the lease provisions entitling the tenant to lawful and quiet possession of the premises until the end of the term of the lease.

Finding no authority directly on point, the Court looked to a 1917 California Supreme Court case, *Black v. Knight* (1917), 176 Cal. 722, which had noted that a landlord could risk "making himself liable for the damage resulting from this deprivation of possession, in the event of a reversal of the judgment." The Court accepted this reasoning, holding that "a landlord can breach a lease by evicting a tenant using judicial processes when the unlawful detainer judgment relied on for the right of possession is later reversed." The Court distinguished the actual holding in *Black*, where the tenant had voluntarily abandoned the property following a judgment against it in an unlawful detainer proceeding, as opposed to MacMillan's decision to execute on a writ of possession to have Munoz forcibly removed.

Notably, the Court did not award Munoz any damages. In reversing the summary judgment, the Court merely sent the case back to the trial court for a decision on the merits. Munoz still must prove actual damages.

Lessons Learned: While unlawful detainer proceedings are intended to move quickly in order to allow landlords to reclaim possession of property on an expedited schedule, landlords should give pause before evicting a tenant before the unlawful detainer judgment is final. As a result of this decision, the landlord may want to wait until the time to appeal has lapsed before enforcing a writ of possession.

Where the tenant does appeal, and a final decision may be a year away, landlords must balance the risk of a reversal against the cost of not following through with the eviction. As noted above, this analysis depends on the issues raised by the tenant in the case and the likely damages the tenant could prove if the judgment is reversed.

The landlord may also want to consider ways to encourage the tenant to move voluntarily (as occurred in *Black*), in which case the landlord should be able to avoid a damages claim.

Kenneth Kramer has more than 25 years of experience as a real estate attorney and serves as the Chair of Nossaman's Real Estate Practice Group. His national practice involves advising developers and investors on a full spectrum of office, industrial, and retail property and portfolio transactions, including acquisitions and dispositions, leasing, financing, joint ventures, and workouts and distressed transactions. He can be reached at 949.833.7800 or kkramer@nossaman.com.

Rick E. Rayl is the Chair of Nossaman's Eminent Domain and Valuation Practice Group and a member of the Firm's Real Estate Practice Group. Mr. Rayl is an experienced trial attorney dealing with eminent domain, inverse condemnation and other real estate and business disputes. He is also editor of the blog, "California Eminent Domain Report." He can be reached at 949.833.7800 or rrayl@nossaman.com.