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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HON. A. JAMES ROBERTSON II, JUDGE PRESIDING

DEPARTMENT NUMBER 502

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| | | |
|-------------------------------|---|---------------|
| PETER M. OWENS, an |) | |
| individual, CAROLYN A. |) | |
| RADISCH, an individual, |) | |
| STEPHEN L. OWENS, an |) | Case No. |
| individual, |) | CGC-14-543437 |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| IRIS CANADA, an individual, |) | |
| OLD REPUBLIC TITLE COMPANY, a |) | |
| California corporation, and |) | |
| DOES 1-10, inclusive, |) | Pages 1 - 13 |
| |) | |
| Defendants. |) | |

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday, April 27, 2016

Reported By:

Sarah Goekler, CSR No. 13446, RPR, CRR, CCRR

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BY: MICHAEL SPALDING, ATTORNEY AT LAW
ERIN KATAYAMA, ATTORNEY AT LAW

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1 Wednesday, April 27, 2016

9:48 a.m.

2 P R O C E E D I N G S

3 ----o0o---

4 THE CLERK: Can I have your appearances for
5 the record.

6 MR. ZACKS: Andrew Zacks for the plaintiffs.

7 MR. CHERNEV: Mark Chernev for Plaintiff.

8 THE COURT: Good morning, Mr. Zacks.

9 Good morning.

10 MR. SPALDING: Michael Spalding for Defendant.

11 THE COURT: Good morning, Mr. Spalding.

12 Good morning.

13 MS. KATAYAMA: Erin Katayama for Defendant.

14 THE COURT: Good morning, Ms. Katayama.

15 THE CLERK: This is the matter of Peter M.
16 Owens, et al. versus Iris Canada, et al., and the case
17 number is CGC-14-543437.

18 THE COURT: So do we have -- is Ms. Canada
19 present?

20 MR. SPALDING: She is, Your Honor.

21 THE COURT: All right. And how about the
22 plaintiffs?

23 MR. ZACKS: Plaintiffs are on the East Coast,
24 but I have full authority to act on their behalf,
25 Your Honor.

1 THE COURT: All right. So at the last
2 hearing, I distributed to you a tentative decision, and
3 basically continue the matter a week to see if some
4 resolution could be reached before considering the
5 tentative decision.

6 The tentative decision basically provided that
7 Defendants' motion for relief was to be -- from
8 forfeiture was to be granted. However, it was
9 conditioned that Defendant make full compensation to the
10 plaintiff and honors her obligations under the
11 promissory note, deed of trust, and life estate.

12 And I set forth the conditions, the defendant
13 shall pay Plaintiffs' reasonable attorneys' fees to be
14 determined on a motion for attorneys' fees.

15 Defendant shall make -- shall timely make all
16 the payments currently due under the agreement up to and
17 including May 2016. Payment by no later than May 6,
18 which I might revise to give a little more time to.

19 Defendant shall make all subsequent payments
20 in a timely manner.

21 Defendant shall not establish any tenancies or
22 allow occupancy by any individuals other than himself.
23 This includes but is not limited to any care provider.
24 No one other than Defendant may receive mail at the
25 premises. Notices regarding any individual providing

1 permanent care must be given to the plaintiff within 48
2 hours of the inception of such care.

3 Defendant must notify Plaintiff in writing if
4 she is absent from the premises for more than 14 days.
5 Such notice shall be provided at the inception of the
6 absence, if the length of the absence is known, or
7 within two business days of the absence reaching 14
8 days.

9 So that was the tentative that I have. Have
10 we any further argument on this? Any settlement
11 possibilities here that have been reached?

12 MR. ZACKS: Your Honor --

13 THE COURT: That was the purpose for the
14 week's continuance.

15 MR. ZACKS: Andrew Zacks on behalf of the
16 plaintiffs, Your Honor.

17 Regrettably, we have not received any
18 proposals and have not been able to resolve the matter.
19 I do want to make clear my clients submit to the
20 tentative ruling with some very minor clarifications
21 that we proposed to the Court regarding the timing of
22 the attorneys' fees matter.

23 I also want to make clear to the Court that my
24 client is fully prepared to give up any right to
25 attorneys' fees in this case and any costs associated

1 with this matter merely for the exchange of signatures
2 on the necessary subdivision paperwork so that this
3 six-unit building can be lawfully converted to
4 condominiums.

5 There are five other owners of this building
6 who are residing in the property as owners. Under
7 San Francisco law, they have a right to convert to
8 condominiums.

9 Because of the fact that Ms. Canada was on
10 title as a life estate holder, her signature was
11 necessary, according to the City and County. We have
12 simply been requesting that signature for several years
13 and that's what's actually led to this litigation.

14 If Ms. Canada is prepared to sign those
15 subdivision papers, my client is fully prepared to give
16 up on the attorneys' fees that they're entitled to under
17 the law and what the Court has recognized should be
18 ordered.

19 And I will note we have a notary public here
20 in the courtroom today prepared to notarize Ms. Canada's
21 signature if she's prepared to execute those documents.

22 THE COURT: So, Mr. Zacks, let me ask this
23 question: So does -- if she signs the condominium
24 conversion, does this have any effect on her life
25 estate?

1 MR. ZACKS: Absolutely not, Your Honor,
2 assuming the Court would reinstate it in the manner that
3 the relief had granted. Ms. Canada would have the right
4 to remain in the unit pursuant to the terms of the life
5 estate, and she would have always had the right to
6 remain in the unit, and that was always the intention of
7 my client.

8 THE COURT: So she could stay in the unit if
9 she signs the tenancy document under the same terms as
10 before?

11 MR. ZACKS: Correct.

12 THE COURT: And you'd give up -- what you're
13 entitled to, which is reasonable attorneys' fees.

14 MR. ZACKS: Correct, Your Honor. And, for the
15 record, Your Honor, that was always my client's
16 intention, and that is what led to this dispute, the
17 refusal, quite frankly, not by Ms. Canada but by the
18 family members to allow that to happen, Your Honor.

19 THE COURT: So, Mr. Spalding, any -- I
20 understand the situation here.

21 MR. SPALDING: I just wanted to raise a couple
22 issues, Your Honor.

23 THE COURT: Yes. Mr. Spalding, I welcome your
24 comments.

25 MR. SPALDING: On the proposed order with

1 respect to the nature of Ms. Canada's caregiver. We
2 interpret the provision that notice regarding any
3 individuals providing permanent care as to contemplator
4 provide that Ms. Canada could have an in-home or
5 around-the-clock care provider in a way that wouldn't
6 establish any right to possession for that care provider
7 but would allow Ms. Canada to get the full benefits of
8 the life estate that she has purchased.

9 So we would just like some additional clarity
10 in No. 4, that it does provide for her to have an
11 in-home or around-the-clock care provider without
12 violating the tentative order and, No. 5, just that it
13 provides the notice to Plaintiff can be provided by
14 anybody, not the defendant herself.

15 THE COURT: Mr. Zacks.

16 MR. ZACKS: Obviously to the second matter we
17 have no issue.

18 We have concerns about in-home care providers,
19 and we do think the tentative ruling correctly addressed
20 that issue. Obviously, we don't have those persons
21 present in court to execute documentation, and this
22 building would be subject to the provisions of
23 San Francisco's Rent Control Ordinance.

24 The concern that the owners would have about
25 having that be part of this order is that it's not clear

1 that the person who would be residing in the unit would
2 not later assert some claim or right to possession under
3 the Rent Ordinance, which is something that we do see
4 occasionally in cases that involved home caregivers.

5 I do think that Counsel and I might be able to
6 work out some language to amend this order before the
7 time of the attorneys' fees issue that would address
8 this issue.

9 We would be very willing to work with Counsel
10 to try and come to some language that would include a
11 specific agreement that the caregiver would have to sign
12 so that the caregiver was relinquishing any claims to
13 protections under the Rent Ordinance and any claims that
14 the caregiver might make to being a tenant in the
15 building.

16 So if we were to work on that level of detail,
17 I think we could probably come to some agreement.

18 I don't see any reason why this order can't go
19 ahead and be executed. Obviously, we're going to have a
20 further stay that's going to occur as a result of the
21 attorneys' fees matter that's going to happen. And
22 between now and the attorneys' fees time, I'm confident
23 that Counsel and I can work out language that would
24 address Counsel's concern on this.

25 THE COURT: So let me ask now, so my tentative

1 order provides for attorneys' fees to be determined on a
2 motion for attorneys' fees.

3 When would you contemplate having such a
4 motion heard?

5 MR. ZACKS: We would file the motion within
6 the next week and have it heard in the next -- within
7 the next three weeks, Your Honor, if the Court is
8 available. Obviously, we would be on the Court's
9 disposal on scheduling, but we would be anticipating
10 doing that rather promptly, and obviously a stay would
11 be in place through that period.

12 And our proposal contemplates that a stay
13 would remain in effect for a 14-day period after that
14 order, the attorneys' fees order, is entered to give
15 Ms. Canada sufficient time to make payment on the
16 attorneys' fees order, whatever that might be, and of
17 course that's also something to be revisited once we get
18 to that point of the litigation.

19 THE COURT: Anything further?

20 MR. SPALDING: We would ask that after the
21 order providing for attorneys' fees is entered, that the
22 defendants have 30 days to post or pay the attorneys'
23 fees instead of the 14 that have been provided for here
24 and that we -- you do not adopt the language that no
25 further stays of eviction shall issue at that point,

1 giving you the discretion depending on the facts of this
2 case to stop issuing stays when it's warranted.

3 MR. ZACKS: No objection to 30 days,
4 Your Honor.

5 We do think there have been enough stays in
6 this case, and that there should be an order that no
7 further stays should --

8 THE COURT: Mr. Spalding, I'm going to accept
9 your suggestion for 30 days. And I'm going to delete
10 "no further stays of execution."

11 Mr. Spalding, I don't think I'm going to
12 modify 4 at this time, but I'm going to leave that open
13 for you and Mr. Zacks to discuss. I don't see any
14 reason why that can't be -- appropriate language can't
15 be adopted to meet your objective of having a 24-hour
16 caregiver present. But I think it would require some
17 redrafting from attorneys like yourselves that are
18 familiar with the San Francisco Rent Ordinance.

19 MR. SPALDING: Thank you, Your Honor.

20 THE COURT: So anything further?

21 MR. ZACKS: Nothing further, Your Honor.

22 Thank you to the Court for your time.

23 THE COURT: I'm going to go ahead and execute
24 the order then. I appreciate your coming in today.

25 Thank you very much.

1 Mr. Zacks and Mr. Spalding, please advise my
2 clerk of when you would like to have that motion for
3 attorneys' fees heard.

4 MR. ZACKS: Thank you, Your Honor. We will.

5 THE COURT: Thank you very much.

6 We're in recess.

7 (Proceedings adjourned at 10:01 a.m.)

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3 County of San Francisco)
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5 I, Sarah Goekler, Court Reporter at the
6 Superior Court of California, County of San Francisco,
7 do hereby certify:

8 That I was present at the time of the above
9 proceedings;

10 That I took down in machine shorthand notes
11 all proceedings had and testimony given;


12 That I thereafter transcribed said shorthand
13 notes with the aid of a computer;

14 That the above and foregoing is a full, true,
15 and correct transcription of said shorthand notes, and a
16 full, true, and correct transcript of all proceedings
17 had and testimony taken;

18 That I am not a party to the action or related
19 to a party or counsel;

20 That I have no financial or other interest in
21 the outcome of the action.

22 Dated: May 10, 2016

23
24 

25 Sarah Goekler, CSR No. 13446