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Rare eviction ruling gains attention

In an apparent case of first impression, bank is told its eviction policy was illegal.

By Jason W. Armstrong

In an apparently unprecedented case in California, a judge turned down a mortgage company's attempt to evict a nonpaying tenant from a Los Angeles home because it flouted a federal law requiring new owners of foreclosed properties to give such tenants 90 days' notice before eviction.

After Private National Mortgage Acceptance Company LLC bought the owner's property at a foreclosure sale, the company served renter Kamie Stanko a "3 day pay rent or quit notice," contending she'd stopped paying her \$2,500 monthly term.

But in a decision last week, Los Angeles County Superior Court Judge Lawrence H. Cho granted Stanko's motion to quash the eviction complaint, finding the bank failed to give her a 90-day "notice to quit" under the 3-year-old Protecting Tenants at Foreclosure Act. The judge ruled that Private National's failure barred it from booting her - even though she'd racked up \$22,500 in back rent after not paying for nearly a year. *PNMAC Mortgage Co. LLC v. Stanko*, 11U04495 (Los Angeles County Super. Ct., filed 2011).

'No matter what rights or 'interest' the foreclosing party assumes (including the right to evict for non-payment of rent), it cannot evict without providing the minimum 90 day notice to bona fide tenants.' - Judge Lawrence H. Cho

Real estate lawyers said the case could make lenders and other purchasers of foreclosed properties reassess their eviction policies when dealing with tenants living in such homes. The issue has heated up in the midst of the real estate downturn and has triggered recent state legislation, including statutes addressing premature service of unlawful detainers on renters in foreclosures.

In his ruling, Cho said the issues in the case appeared to be legally untested "without controlling caselaw for either side." According to legal observers, such detailed court decisions analyzing statutes involving eviction matters are few and far between because judges handling such cases usually have packed calendars, and most unlawful-detainer tenants don't have lawyers.

"The fact that Judge Cho published a written opinion about this issue shows he knows he'll see this issue coming up again in the future," said Ronald Richards, Stanko's lawyer. "The Legislature has given tenants broad protection, and the bank here tried to circumvent that."

Richards is a partner with The Law Offices of Ronald Richards & Associates APC.

It wasn't clear whether the bank would challenge the ruling. Deborah Bass, an attorney representing Private National, couldn't be reached for comment Monday. Bass is a partner with The Law Offices of Deborah Bass APC.

In a Feb. 27 hearing in the case, the judge and lawyers for both sides grappled with whether the bank was legally permitted to step into the landlord's shoes upon foreclosure for the purposes of evicting for past due rent. Private National's lawyers argued that it could enforce Stanko's lease post-foreclosure and had the power to evict her for nonpayment. The bank's attorneys contended the federal 90-day notice requirement applied only when a foreclosing party sought to evict based on eviction alone, not on a failure-to-pay-rent theory.

"There's never been one penny of rent paid to our client, who has right of

Tuesday, March 13, 2012

U.S. Court of Appeals for the 9th Circuit 9th Circuit calls for tougher sentencing for Millennium Bomber

Twenty-two years behind bars isn't nearly enough for the man behind the foiled plot to detonate high explosives at Los Angeles International Airport on Dec. 31, 1999, a 9th U.S. Circuit Court of Appeals en banc panel ruled Monday.

Government

Democrats move to force vote on district court nominees

Senate Democrats moved Monday to break through Republicans' procedural delay on judges and force confirmation votes for a candidate for the federal bench in Los Angeles and 16 other district court nominees.

California AG secures funds, rights in foreclosure settlement

California is set to receive the lion's share of the nearly \$1 billion in fees and penalties paid by the banks to states in the foreclosure settlement.

PG&E reaches another settlement with San Bruno in pipeline explosion

Utility giant Pacific Gas and Electric Company on Monday announced a \$70 million settlement with the city of San Bruno, which lost eight of its residents in a pipeline explosion a year and a half ago.

Intellectual Property

Yahoo sues Facebook for patent infringement

Yahoo Inc. is deploying the large patent portfolio it has amassed over the years by filing an infringement complaint against social networking giant Facebook Inc.

Education

Future of diversity in higher education hangs in the balance

A case before the U.S. Supreme Court should frighten all who believe that diversity in higher education matters. By **Erwin Chemerinsky** of University of California, Irvine School of Law

Litigation

In wake of ZIP code ruling, courts sort out penalties

One year after the state Supreme Court's decision banning most retailers from asking customers their ZIP codes, the elephant lurking in the room is a question of how much money stores can be forced to pay in penalties.

Obscure agency goes after credit union heads

A federal agency that has sued former credit union executives in an unusually aggressive liquidation here does not have to front litigation fees as defense lawyers had sought, a judge ruled Monday.

Government

Prosecutorial misconduct matters only for certain cases

Government lawyers tend to get a free pass when they misbehave, unless the victim has special clout.

possession," Paul Tauger, co-counsel for the lender, told Cho in the hearing, according to a transcript. "We're the landlord by operation of the law, which means we have a right to collect rent."

Richards disagreed.

"According to counsel, landlords - or owners that buy at a foreclosed sale can say, 'Oh, you're a tenant. Okay. I'm going to - you didn't pay the 2,000 dollars this month. I'm now going to serve a three-day notice,'" the attorney told Cho at the hearing.

"That's not the law," Richards said during the proceeding.

In his ruling, Cho said the 90-day notice provision is "inviolable no matter what theory of eviction a foreclosing party has available to it.

"No matter what rights or 'interest' the foreclosing party assumes (including the right to evict for non-payment of rent), it cannot evict without providing the minimum 90 day notice to bona fide tenants."

Cho said that, after giving that notice, the bank would have the option of filing suit to pursue Stanko's back rent or of evicting her.

As part of the judge's ruling, he denied Richards' request for attorney fees and sanctions against Private National.

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By **Gideon Kanner** of Loyola Law School

Perspective

Chapter 11: Tactical considerations

When valuing real property collateral in Chapter 11 bankruptcies, keep these strategies in mind. By **Howard N. Madris** of Law Office of Howard N. Madris APC

Real Estate

Award of litigation expenses rightfully allowed only after trial

Public agencies that are forced to file condemnation actions should not be penalized for settling before trial. By **Mona M. Nemat** of Best Best & Krieger LLP

Mergers & Acquisitions

Dealmakers

San Francisco-based INgrooves tapped Manatt, Phelps & Phillips LLP for its acquisition of Fontana Distribution from Universal Music Group.

Entertainment & Sports

Law firms, agents court video game developers

As studios and record labels continue to adjust to the harsh realities of an online world, many Hollywood agents have turned their energies to the growing video game business.

Large Firms

Baker & McKenzie closing its doors in San Diego

Baker & McKenzie LLP is slated to officially close its San Diego office by the end of March, according to three sources familiar with the matter.

Government

Rare eviction ruling gains attention

In an unprecedented case, a judge denied a mortgage company's attempt to evict a non-paying tenant because it flouted a federal law requiring foreclosing parties to give such tenants 90 days notice before eviction.

Solo and Small Firms

Boutique gains lawyer, changes name

McKool Smith Hennigan LLC partner C. Dana Hobart joins forces with longtime colleague Kenneth A. Linzer to form Hobart Linzer LLP.

Family

Innocent spouse gets double the protection

The IRS has recognized that an indemnification clause is actually a reason to grant innocent spouse status, not deny it. By **Mitchell A. Jacobs** and **Jennifer Morra** of the Law Office of Mitchell A. Jacobs.

Judicial Profile

Katrina West

Superior Court Judge San Bernardino County (San Bernardino)

Real Estate

Green building poses more safety risks, new study shows

Among the most dangerous jobs, construction is near the top of the list. Now, a new study warns environmentally sustainable, or "green," construction could be even more dangerous, which has lawyers talking about how to prevent injuries.