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9th Circuit rules for property owner in bankruptcy case

By Saul Sugarman

SAN FRANCISCO - A decision by the 9th U.S. Circuit Court of Appeals could signal a shift in the way the court handles foreclosures and evictions on litigants who have filed for bankruptcy.

In a divided opinion, the 9th Circuit on Friday reversed a decision by the federal Bankruptcy Appellate Panel, or BAP, which ruled that property owner Eden Place LLC unlawfully evicted Sholem Perl after he defaulted on his mortgage.

The opinion is unusual because typically the 9th Circuit will wait for a lower court to reach final rulings on all matters before considering an appeal.

In this case, however, the three-judge panel adopted a "pragmatic approach," citing a 2015 U.S. Supreme Court decision in *Bullard v. Blue Hills Bank* that held "the rules are different in bankruptcy."

"Our precedent has not been entirely pellucid regarding the flexible concept of finality in the bankruptcy context," wrote Circuit Judge Johnnie B. Rawlinson for the majority.

"There is no question that the discrete issue addressed by the bankruptcy court ... has been definitively and finally resolved. Resolution of that issue is as final as it will ever be in this case," he added.

That issue was Eden Place's violation of an automatic stay, which prevents creditors from immediately pursuing action against litigants who have filed for bankruptcy.

A bankruptcy court and the BAP ruled in favor of Perl, but the case was ultimately dismissed because Perl failed to appear at a meeting with Eden Place.

Still, there was an unresolved issue of damages, which made the issue not final. *Eden Place LLC v. Perl*, 2016 DJDAR 175.

The predicament drew a dissent Friday from Circuit Judge Paul J. Watford, who cited an older 1976 U.S. Supreme Court case, *Liberty Mutual Insurance Co. v. Wetzel*, as the controlling doctrine in Eden Place's eviction.

"We have jurisdiction to review the BAP's decision only if the underlying bankruptcy court order was in fact final," Watford wrote in his dissent.

"The bankruptcy court's order merely determined liability; it left entirely unresolved the relief to be awarded, which included a potential award of compensatory and punitive damages as well as an award of attorney's fees," Watford added.

Ronald N. Richards, a Beverly Hills-based lawyer who represented Eden Place on appeal, called Friday's decision a "very important opinion."

"After people lose their unlawful detainer cases, they file a huge amount of fraudulent and frivolous bankruptcy claims," Richards said.

He said the 9th Circuit ruling should bring symmetry toward Central District bankruptcy judges, who Richards observed as making divided rulings on automatic stay issues.

Monday, January 11, 2016

Discipline

Former LA judge put on probation

Former Los Angeles County Superior Court presiding judge James Bascue pleaded no contest Friday to felony assault with a deadly weapon on a police officer and was sentenced to five years' probation with 500 hours of community service and a prohibition on possessing firearms, drinking, driving, and using certain prescription drugs.

Bankruptcy

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A decision by the 9th U.S. Circuit Court of Appeals could signal a shift in the way the court handles foreclosures and evictions on litigants who have filed for bankruptcy.

Litigation

Private court reporters not bound by statutory fee caps

Private court reporters hired by parties are not bound by statutory transcript costs when appearing as the official reporter pro tem, a Los Angeles judge found. The decision goes against nearly 20 years of regulatory enforcement by the state's licensing board.

Corporate

On The Move

A weekly roundup of lateral attorney moves, law firm office openings and partner promotions from around California.

Santa Clara bioscience company tabs new GC

Bioscience leader Agilent Technologies Inc. promoted Michael Tang to general counsel, senior vice president and secretary last week.

Litigation

Burford Capital invests \$45M in London company

Not even two weeks into the New Year, Burford Capital LLC has nearly matched its 2013 litigation funding figures with a single \$45 million investment to an elite London company.

Judge considers motion to dismiss in long-running public corruption case

A San Bernardino Superior Court judge will consider a motion to dismiss the most serious criminal charges in one of the state's largest public corruption cases, after two days of arguments over the crux of a grand jury indictment and the integrity of attorneys on both sides.

KNBC age discrimination lawsuit set for 2nd trial

Reporter Frank Snapp's lawsuit will likely go to trial again with no sign of settlement

Perl had no attorney listed and did not appear on his own behalf.

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Legal industry posts substantial employment gains nationwide last year

The upswing in legal jobs is the first in three years, according to the Bureau of Labor Statistics.

Environmental

The first stage in bringing Volkswagen to justice?

The Volkswagen emission control device case seems to have all the essential ingredients of a criminal prosecution, but on Jan. 4, the DOJ filed civil charges against the company for violations of the federal Clean Air Act. By **Davina Pujari and Christopher Jensen**

Securities

2015 a record year for the SEC

Last year, the SEC filed a record 807 enforcement actions and obtained orders totaling \$4.2 billion in disgorgement and penalties. By **Nicolas Morgan, Sam Puathasnanon, and Thomas Zaccaro**

Judicial Profile

Steven J. Singley

Superior Court Judge San Bernardino County (Victorville)

California Supreme Court

State depublication rule draws criticism from judges, lawyers

A majority of judges and attorneys who responded to a request for public comment favor abolishing the state's 110-year-old practice of stripping precedential authority from appeals court opinions.