Kriger LAW FIRM News

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Who's Responsible for Tree-mendous Damage in California

By Niki Tran, Esq.

Tree disputes can be a source of frustration and conflict between neighbors and homeowner associations. These disputes often arise when a tree on one person's property damages another person's property. In such cases, it is important to understand who is responsible for the damages and what steps can be taken to resolve the issue. This topic and questions regarding who is responsible have become recurring, particularly with the recent heavy windstorm and rainfall throughout Southern California.

The starting point for analysis of liability concerning any tree in California is the determination of ownership. Ownership of a tree is determined by the location of the trunk of the tree. Generally, if the trunk of a tree originates entirely on one person's property, then that person owns the tree. (Civil Code §833.) Owners are generally responsible for injury caused to others by their want of ordinary care or skill in the management of their property. (Civil Code §1714.) If a tree belongs to the HOA, then the HOA is responsible for properly caring for the tree to prevent any foreseeable damage to others, which includes maintaining the health of the tree (including limbs and roots), keeping it trimmed, and taking note of any dangers posed by it.

Generally, the standard for responsibility for property damage is not a "strict liability" standard but is instead a "negligence" standard. What that means is that even if a tree or branch from a tree belonging to the HOA fell and damaged an owner's property, the HOA is not automatically responsible for the damage unless the HOA had been negligent in maintaining the tree. In other words, to hold the HOA responsible for the damages caused by the fallen tree, the owner of the damaged property would need to establish that the HOA had breached the requisite standard of care with respect to tree maintenance and that the damage resulted from that breach. If the owner can prove that the HOA had been negligent, then the HOA would be responsible for all damages resulting from that negligence.

If the tree was healthy and strong at the time it fell but was knocked down due to a natural cause such as strong winds or heavy rain, the damage is considered an "Act of God" and the HOA may not be held liable for the damages. This Act of God doctrine provides that a property owner may not be liable for damages caused by an unpredictable and uncontrollable natural event, such as strong winds or heavy rain. In other words, a property owner may not be liable for damages caused by a natural phenomenon unless they have created the conditions that caused the phenomenon. However, whether a storm or earthquake causes a properly maintained tree to fall or lose a limb may not always be clear.

If, on the other hand, the tree was diseased or in a state of disrepair at the time it fell, then the HOA may be responsible for the damages. In this case, it can be argued that the HOA should have taken steps to remove or repair the tree and that its failure to do so constitutes negligence. It is the duty of every property owner to maintain their property, including trees, in a safe and hazard-free condition. If the fallen tree belongs to HOA then the HOA may be responsible for damage caused to the owner or neighbor's property, but only if it can be found that the HOA failed to properly maintain the tree. Generally, such failure is considered to be "negligence" and a negligent owner can be liable for all damage resulting from such negligence.

Another factor to consider is whether the property owner who suffered damages was aware of the hazardous condition of the tree and failed to take steps to protect his or her property. If so, the owner may be partially or fully responsible for the damages.

Another frequent concern from our associations is the issue of fallen leaves, fruit, twigs, or debris belonging to an HOA tree that ends up on an owner's or neighbor's property. Generally, unless there is actual physical damage, California law does not offer any remedy to the affected property owner unless they can prove that the HOA failed to maintain the tree. Leaves, twigs, etc., are considered natural debris and are treated as any other material that falls or blows onto one's property, even where they cause damage, such as clogged gutters.

Tree disputes can be a complex and emotional issue but understanding the general rule and exceptions can help resolve the issue fairly and efficiently. Taking legal action over fallen branches and debris can be more expensive than the clean-up itself. So while the affected property owner cannot require the HOA to clean up or pay for the mess, a cooperative approach may help preserve the relationship and reduce legal expenses for all parties involved.

If you are involved in a tree dispute, it is important to communicate with the other party and seek legal assistance if necessary to resolve the dispute. As with many HOA disputes, preparation is key. The association should consult with tree care professionals to regularly trim and maintain trees belonging to the HOA. ■

In This Issue:

Appellate Court Finds No Vested Right in Renewal of Term-Limited Short-Term Rental Licenses

By Steven Banks, Esq.

Some California cities have enacted ordinances to regulate the proliferation of short-term rentals. These ordinances often limit the number of homes that can be offered as short-term rentals by requiring licenses subject to random nonrenewal. The recent case of *Hobbs v. City of Pacific Grove* (2022) 85 Cal.App.5th 311, involved a challenge to such an ordinance.

The City of Pacific Grove's ordinance allowed short-term rentals subject to licensing, taxes, and other regulations. Owners could apply for one-year licenses subject to earlier revocation for good cause. The City capped the number of short-term rental licenses at 250 and established a density cap of 15 percent per block. After the City later discovered that it had issued rental licenses exceeding these caps, it selected licenses to "sunset" after a grace period after their current term expired. It adopted a random lottery to fairly and equitably reduce the number of licenses without favoritism. The City's voters approved a ballot measure that prohibited and phased out all existing short-term rentals in residential districts, except for those located in the City's "Coastal Zone."

The owners of two homes sued the City, alleging it unconstitutionally deprived them of "their right to allow guests to stay in their home." They alleged the ordinance violated the right to due process by (1) arbitrarily limiting how many homes could be offered as short-term rentals, (2) subjecting them to random selection for license nonrenewal, and (3) prohibiting short-term rentals outside the Coastal Zone. The trial court disagreed, and the owners appealed.

The owners asked the Court of Appeal to hold that the City, by granting them one-year licenses to offer the properties for short-term vacation rentals, conferred a property right protected by the state and federal constitutions in the renewal of those licenses. The owners contended that their economic interest in renting their vacation homes exclusively for transient visitors was an entitlement – a "vested right" – subject to state or federal constitutional protection. The appellate court concluded that the owners had no right beyond the defined terms of their licenses and that the claims had no constitutional merit.

The owners also argued that the City's selection of one of their licenses by lottery for nonrenewal denied them an opportunity to be heard on what they characterized as the deprivation of a vested right to continued renewal of their one-year licenses. They claimed nonrenewal of their licenses deprived them of a property interest, but the appellate court found the owners failed to establish that they held any right to renew short-term rental licenses that were expressly term-limited.

In conclusion, community associations in municipalities that permit short-term rentals only subject to term-limited licenses may wish to keep track of the licensure status to ensure that short-term rentals are not being operated unlawfully and to minimize the effects of such rentals on the community. Owners granted a short-term rental license are not entitled to its renewal. ■

What's happening at Kriger LAW FIRM

Kriger Law Firm attended the 2023 CACM Southern California Law Seminar and Expo. We hope you had a chance to stop by our booth and say hello. It is a great time to mix and mingle in person and learn from the seminars about the laws affecting our communities. We enjoyed seeing everyone and had a lot of fun, and we wish everyone a wonderful year until next time.

Our Voice on the Web

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Fumigation and Tenting

By Bradley Schuber, Esq.

Under California Law, a homeowner association may require its residents to temporarily vacate their homes for fumigation and tenting in order to treat for termites. More specifically, under California Civil Code Section 4785, an association may "…cause the temporary, summary removal of any occupant of a common interest development for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms."

To meet the notice requirements of Civil Code Section 4785, an association needs to take the following steps. First, an association should prepare a notice that specifically states "…the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation." Second, an association must provide a copy of the notice to the occupants of the separate interest and to the owners of the separate interest, if the owners do not reside in it. Third, the notice needs to be provided within a specific time frame, i.e., not less than 15 nor more than 30 days before the date of temporary relocation. Lastly, an association must provide notice to the occupants by personal delivery or individual delivery pursuant to Civil Code Section 4040. If the occupants do not own the separate interest, then the association must also provide notice to the owners by individual delivery.

If a person refuses to vacate after an association provides notice in compliance with Section 4785, then an association may seek a court order for temporary, summary removal. This issue was the subject of a recent unpublished case entitled *Golden West Patio Homes Owners Association v. Artedi B. Cortez* No. G060606 (Cal. Ct. App. Oct 28, 2022).

In this case, Golden West Patio Homes Owners Association ("Association") is a homeowner association in Westminster, California. In the spring of 2019, the Association decided to fumigate and tent the buildings in the development. Mr. Artedi Cortez and his wife resided in one of the units in the development; however, they refused to cooperate with the Association, believing there were other viable treatment methods besides fumigation and tenting.

As a result, the Association filed an ex parte application under Civil Code Section 4785 for summary removal and immediate possession of Mr. Cortez's unit and another unit in the development. Mr. Cortez appeared in court and opposed the motion; however, the Association prevailed, and the trial court ordered Mr. Cortez to temporarily remove people, animals, and perishable items from the unit. The court also enjoined Mr. Cortez from interfering with the scheduled termite fumigation. After the hearing, the Association filed a separate motion for $8,235.00 in attorney's fees and $1,253.56 in costs. In January 2020, the trial court awarded the Association most of its attorney's fees and costs.

Although Mr. Cortez did not appeal the trial court's removal order under Section 4785, he did appeal the award of attorney's fees and costs. On appeal, the appellate court upheld the trial court's award of attorney's fees and costs. The appellate court stated: "The Association achieved its main litigation objective when it obtained the order permitting it to take temporary possession of Cortez's unit for the purpose of tenting and fumigating the structure for termites. The Association was required to

obtain the order because Cortez's refusal to vacate and cooperate with the planned fumigation prohibited the Association from performing its maintenance duties under the CC&Rs." The appellate court also stated, "Once the trial court determined the Association to be the prevailing party in the action, it had no discretion to deny attorney fees under section 5975."

As illustrated in the Golden West Patio Homes case, an association can obtain a court order to remove uncooperative residents and recover legal expenses. An association planning to fumigate and tent should consult with legal counsel in preparing a notice compliant with Section 4785 and with temporary summary removal of residents if necessary. ■

Parker Case Imposes Additional Restrictions in Bankruptcy

By Garrett Wait, Esq.

A bankruptcy case from the Northern District of California provided new restrictions for homeowners associations dealing with an owner's bankruptcy. In *In re Sarah-Jane Parker*, involving a years-long dispute between the Bayside Court Owners Association and an owner at the Association, the Court imposed harsh penalties for the Association's attempts to impose fines and penalties during the bankruptcy proceedings.

The owner held title to the largest property in the Association, which had variable assessments based on square footage. The Association's budget stated that the property's annual assessments comprised 12% of the annual revenue. Unfortunately, the Association had little recourse to recover pre-petition debts because it alleged that the property was upside down. The Association's Board of Directors took steps to protect their post-petition rights, some of which the Court deemed too aggressive.

After the Association received relief from the automatic stay on an unopposed motion, it sent significant demand letters and "settlement offers" of both pre-petition and post-petition debts. Further, the Association declined the owner's offer to surrender title to the property to the Association. However, the Association later amended its CC&Rs to allow it the right to lease the property despite not having an ownership interest.

Additionally, the Association began sending letters to the owners claiming that the property was in "substantial non-compliance" with the governing documents. The Association then

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PARKER CASE IMPOSES ADDITIONAL RESTRICTIONS IN BANKRUPTCY

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called her to hearings and levied numerous $500 fines for alleged governing document violations. Unfortunately for the Association, the Court found that the alleged violative conduct began before the owner filed her bankruptcy petition. Under the Court's analysis, the fines were considered a pre-petition debt because the violations occurred before her bankruptcy filing.

The Court affirmed the analysis in another bankruptcy case, *Goudelock v. Sixty-01 Association*, that common interest assessments are a pre-petition debt and that the debtor has no personal obligation to pay assessments following a discharge. Moreover, Bankruptcy Code § 362(k) authorizes damages for willful violations of the automatic stay. The Court found that the Association's aggressive tactics violated the automatic stay and that the facts supporting the disciplinary fines arose pre-petition. The Court found the Association liable for $5,000.00 in emotional distress damages, $39,000.00 in property right interference damages, and $10,000 in punitive damages. The Court also awarded the owner attorney's fees and costs.

The primary takeaway should be for Associations to proceed cautiously when an owner filed for Chapter 13 bankruptcy protections. Courts have expanded the definition of pre-petition debts and the scope of the automatic stay. Any conduct that results in monetary penalties must have arisen after the bankruptcy petition for the fines to be enforceable. Furthermore, Boards that want to aggressively pursue collection efforts during a pending bankruptcy do so at significant risk. Associations should always thoroughly review their options with legal counsel before taking action during a bankruptcy matter. ■