



Issue 143 2nd Quarter

Source

**27th Annual
Invest in
Success
Conference!**
page 20

**Want to
become a CPM
Sponsor? Find
out how!**
page 8

Click to read



**JOIN THE
CONVERSATION
@IREMOC91**



Follow our FB page
www.facebook.com/iremorangecounty

**ABANDONED INVENTORIES -
ARE YOU DOING EVERYTHING YOU CAN
TO PROTECT
YOUR OWNER FROM LIABILITY?**

By: Ronald K. Brown Jr., Esq. and Ellen L. Ticknor

**CHECK OUT
THESE GREAT
PHOTOS!**

ARTICLE

ABANDONED INVENTORIES - ARE YOU DOING EVERYTHING YOU CAN TO PROTECT YOUR OWNER FROM LIABILITY?

By: Ronald K. Brown Jr., Esq. and Ellen L. Ticknor

The Issue:

While the economy is improving, commercial landlords continue to be a target of tenants and other parties seeking to "hit the jackpot" in a variety of types of lawsuits. One particular type of lawsuit we have seen far too many times in the last few years is an action for conversion. This is the remedy provided to a tenant (including subtenants and assignees) when the tenant believes the landlord has wrongfully converted a tenant's personal property for the landlord's own use or profit. This typically involves an inventory of property (furniture, equipment, etc.) that is left behind when a tenant vacates or is removed from commercial space.

Case In Point:

One such case, which went thru a four and a half (4 1/2) week jury trial in Riverside Superior Court a few years back, illustrates the issue quite clearly. In that situation, an unauthorized subtenant of our client's tenant chose to store personal property in an industrial warehouse after the subtenant lost his home in foreclosure. Having to "downsize" into an apartment, the subtenant decided to store all of his excess furniture, furnishings and other personal items in the warehouse.

A few months after the items were moved into the warehouse, the rent became delinquent and the landlord initiated an eviction action naming the original tenant and the unauthorized subtenant in the unlawful detainer case. The case was not contested and judgment was entered in favor of the landlord and against both the tenant and the unauthorized subtenant. The Sheriff's office proceeded with the lock-out and the landlord was placed in possession of the warehouse.

Much to the property manager's surprise, when

she entered the warehouse after the lock-out, she found a massive amount of personal items left behind ranging from musical instruments to costume clothing, dated (but broken) furniture, old pictures, inoperable bicycles, art and pictures, related furnishings and personal property. While the inventory was in poor condition and much of it was damaged, broken, stained, etc., there was a very large quantity of items left behind.

Luckily, the manager prepared a very detailed written inventory and took nearly sixty (60) color photos. Our office served statutory Notices of Right to Reclaim and upon expiration, published the required Notice of Sale, in compliance with code. Neither the former tenant nor subtenant returned to claim the inventory. At the auction sale, no one appeared to bid on anything and the items were subsequently donated to a local charity.

Nine months after the auction, the subtenant appeared at the manager's doorstep wondering where his "cherished family heirlooms, priceless antique furniture, high-end performance costumes and valuable treasures" went. The manager explained that the required notices were given to the tenant and subtenant, sale notice published and auction held, all in compliance with code and that the inventory was subsequently donated to charity.

A few months later, the subtenant sued the property owner for just under \$500,000 based on (a) the alleged breach of the subtenant's "implied contract to store the property in the commercial warehouse"; and (b) for "conversion." Unfortunately, those types of claims were not covered by the landlord's insurance, so the landlord had to pay to defend itself in the action out of its own pocket. We handled the defense of the case.

The plaintiffs in this particular case were definitely looking for a windfall and there was no way to settle the case without the property owner writing a very large check. It took almost two years to bring the case to trial and the actual trial took four and a half weeks. The jury returned a verdict in favor of the property owner finding that the landlord had complied with California Law. In doing so, the landlord was found to have fallen into the "safe harbor" provisions of the code that insulate and protect a landlord from liability. After the verdict, the jurors were polled. Many said they felt the inventory was

“old junk” based on the pictures the property manager took, and that the subtenant was just trying to capitalize on the landlord’s “deep pockets” with a bogus claim.

Avoid the Bulls Eye - Don't Be A Target - Know What Is Required:

Are you doing everything you can to make sure your commercial landlords don't find themselves defending a conversion claim? Help keep that “target off their back” by making sure you follow the “safe harbor” requirements of the law. Do you know what notices to give? Are you taking pictures and preparing accurate inventories of personal property when a tenant or subtenant vacates?

The Process:

1. Inventory: When a tenant (including subtenants and assignees) leaves anything behind inside a commercial space following a move-out, abandonment or eviction, start with a detailed written inventory. The more detail you can provide, the better. We don't expect you to count paper clips but you want to make sure to list and describe everything of any significance.

2. Photographs: Take digital photographs of the inventory. The photographs will help to substantiate your written inventory list and are critical to establishing the “condition” of the inventory. These photos can be stored on your computer indefinitely and can make a huge difference if a lawsuit is filed against your owner at a later date.

3. Addresses: Make sure to provide counsel with all addresses you have for the tenant (including subtenants and assignees) and any lease guarantors. The protection afforded by the relevant statutes is based upon notice being given to all known addresses. If you have information in your file (i.e. residence addresses) and do not use it, you are not in compliance with the code. Likewise, if you are cashing checks that include alternate addresses, then you technically do have knowledge of those addresses and must use include them in any mailing gird.

4. UCC Searches: It is important to ascertain

whether any of the inventory left behind is financed or leased. The most efficient way to determine whether any lender or business has a lien on the inventory is to run a UCC search under (a) the tenant's name; (b) the lease guarantor's name; (c) the business name; and (d) the property address. If you find any UCC filings, then those secured parties must also be given an opportunity to claim and remove their part of the inventory.

5. Reclaim Notices: Prepare and serve Notices of Right to Reclaim Abandoned Personal Property (“Reclaim Notices”). This is typically done by counsel but you can do them yourselves provided you carefully follow the requirements of statute. The notices are to be served (by first class mail) to the former tenant, any lease guarantors, any subtenants or assignees and any known secured creditors at ALL addresses you have or can reasonably obtain. In other words, if your corporate office has financials on record, then you have reasonable access to that information. The Reclaim Notices must include a detailed written inventory and must give parties at least eighteen (18) calendar days to claim and remove the inventory. There are two types of Reclaim Notices

A. Less than \$750: The first notice is used when the value of the entire inventory is believed to be worth the lesser of \$750 or \$1.00 per square foot of the space that was leased. In this case, Reclaim Notices are served and upon expiration, the inventory can be donated or disposed of by the landlord.

B. More than \$750: The second notice is used when the value of the entire inventory is believed to be worth more than \$750. In this case, Reclaim Notices are served and upon expiration, a public sale is scheduled. The public sale must be noticed in a newspaper of general circulation that covers the city or zip code where the real estate is located and licensed to publish legal notices. The sale notice must be published two times, one week apart and the second publication must be at least five days before the actual sale date.

6. Sale Date: If the value of the inventory is significant, you may wish to retain the services of a professional auctioneer. If the value is not significant, many of our clients opt to handle the auctions themselves.

ARTICLE

The key things to remember about an auction are (a) make sure everything is made available; (b) no items are "set aside" for anyone; (c) items are sold to the highest bidder; (d) receipts are written that describe the items exactly as the items were described on the inventory list; (e) all items are sold in "as is" condition and the words "Sold As Is" are written on each receipt.

7. **Unsold Items and Proper Documentation:** Any items that are not sold may be donated or disposed. We recommend that you document your file carefully. If the balance of the inventory is donated, get a tax receipt and note the date of the donation and the name and address of the charity organization in your file. If the inventory is disposed of, note the date and where the inventory went and get a receipt if you pay anyone to haul the stuff off. The goal here is to have your actions documented. Note: Make sure no unsold items end up in the possession of the landlord or any of its employees. Everything must be accounted for and the receipts need to match.

8. **Can the landlord buy the inventory?** Yes, but it must be handled very carefully. A landlord may make a "credit bid" to buy the inventory. The landlord must comply with code requirements, may not be given preference over other buyers and must have an "arms-length" transaction. We suggest you consult with counsel well in advance of the auction date.

9. **Auction Proceeds:** The money received in connection with the auction needs to be applied in accordance with code. It cannot be applied towards back rent. Consult with counsel as to proper application of auction proceeds.

SEIDE LAW

| DILIGENT | INNOVATIVE | RESPONSIVE |