

Skill, Perseverance, Clear Communication Earn Hard-Fought Jury Defense Verdict in CA Wrongful Foreclosure Case

February 14, 2024

Where we started: In January, 2020, **Michelle McCliman** and **Kere Tickner** took over a 2018 case against a homeowners association and its property management company. The case involved an alleged wrongful foreclosure of Plaintiff's home for failure to pay his monthly HOA assessments. Plaintiff also claimed that the foreclosure and other conduct by the property management company violated California and federal fair debt collection practices acts.

There had previously been multiple rounds of amendments to the pleading, and our team became involved around the Second Amended Complaint. That complaint asserted 16 causes of action related to the wrongful foreclosure, violation of the Davis-Stirling Act and Covenants, Conditions, and Restrictions (CC&Rs), negligence, quiet title, and other related causes of action for a total value of more than \$5 million. What's more, Plaintiff and Plaintiffs' Counsel were obstructionist and unprofessionally aggressive, which made for unusually difficult circumstances surrounding this case.

Our strategy – plus more: The case required extensive law and motion. Prior to 2023, the court bifurcated the trial and held a bench trial on the Davis-Stirling Act, quiet title, and cancellation of instruments causes of action. Following that trial, essentially all of those causes were decided in our clients' favor. It then took almost a year to get the matter to a jury trial, by which time only four causes of action remained from the six following the bench trial.

We do this work because it's about people. At the end of the day, there's nothing we like more than telling clients, "your nightmare is behind you."

– Michelle McCliman

After a seven-day jury trial, we obtained a defense verdict after only two hours of deliberation. During the trial, our team was successful in getting a nonsuit motion granted on the breach of contract cause of action, leaving only the wrongful foreclosure, violation of the federal Fair Debt Collection Practices Act (FDCPA), and violation of the Rosenthal (California) Fair Debt Collection Practices Act. The jury was unanimous on the last two causes of action and 9-3 in our favor on the wrongful foreclosure claim.

More than just skilled representation on the facts of the case, the McGlinchey team adeptly assisted the Judge and jury members in understanding what could have been complicated technical arguments. Distilling complex legalese into the high-level facts at hand with plain, effective communication won the day. Nurturing and maintaining a united front with co-defendants, and indeed assisting other defendants in achieving Bona Fide purchaser standing, further strengthened our client's position throughout the process.

Upshot: Our clients, including volunteer HOA Board Members, dealt with this case for more than five years. They made every effort to work with Plaintiff, who went years without paying his monthly assessments, agreed to a deal, and then renegeed on that deal. In the eyes of our clients, they had done nothing but try to help a Plaintiff who lied to them and repeatedly failed to honor his agreements. Following the jury trial (generally an unfavorable venue for HOAs and Property Managers), the clients were extremely relieved that the jury ultimately "got it right."