

SUPREME COURT
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Case No. S241324

IN THE SUPREME COURT OF CALIFORNIA

Deputy

FILED WITH PERMISSION

WESTLAKE HEALTH CARE CENTER,
Defendant-Petitioner and Appellant,

v.

DR. LEEVIL, LLC,
Plaintiff-Respondent.

After a Decision of the Court of Appeal
Second Appellate District, Division Six
Court of Appeal No. B266931
Superior Court, County of Ventura Case No.: 56-2015-00465793-CU-UD-
VTA
The Honorable Vincent J. O'Neill, Jr.

PETITIONER'S REPLY BRIEF

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I.

SUMMARY OF REPLY

Respondents advocate a very dangerous and untenable position in their Answer Brief. In particular, applying a tortured construction of Code of Civil Procedure Section 1161a, Respondents essentially argue that even *potential* buyers can begin an eviction process without having perfected title to the property or even completed a sale. Under Respondent's theory, so long as title is perfected, i.e., the deed is recorded, before the sheriff actually shows up at the tenant's door, Section 1161a is satisfied. Such a reading of the statute cannot be what the legislature intended and defies California's long-standing rule that the unlawful detainer statutes must be strictly construed.

Requiring property owners to have the requisite perfected title *before* commencing the statutory eviction process promotes finality and avoids uncertainty and inconsistency for all parties, the courts, and the public. There is no purpose served in allowing any contrary interpretation of Section 1161a, and Respondent's position should be rejected.

II.

LEGAL ARGUMENT

A. *Actual Perfection of Title Must Occur Before Eviction.*

As Respondents acknowledge, service of a valid notice to quit is the "first step" in the eviction process. *See* Answer Brief at p. 13; *Highland Plastics, Inc. v. Enders*, 109 Cal.App.3d Supp. 1, 10 (1980). It is thus axiomatic that a person who wishes to start a statutory eviction process with a notice to quit must first have the requisite authority and standing to do so with *duly perfected title*. Recognizing that it prematurely commenced

eviction proceedings here before its title was actually perfected, Respondent now argues that purchasers at a foreclosure sale pursuant to Civil Code Section 2924h should somehow be entitled to special treatment and not be required to comply with the plain language of Code of Civil Procedure 1161a. Specifically, Respondent argues that because Civil Code Section 2924h(c) provides that a trustee's sale is "deemed" final and perfected as of the date of the sale so long as the deed is recorded within 15 days of the sale, its title was essentially constructively perfected at the time of service of the notice to quit for purposes of Section 1161a. Respondent is incorrect.

Civil Code Section 2924h(c) was enacted in 1993 in response to the frustration by lenders and foreclosure trustees of having otherwise properly conducted foreclosure sales avoided by a bankruptcy filing after the sale but before the deed upon sale could be recorded. *In re Sanders*, 198 B.R. 326 (Bankr. S.D. Cal. 1996). The purpose of Section 2924h(c) was to allow the *trustee's sale* itself to be deemed perfected and not subject to the automatic stay.¹ *Id.* However, nothing in the legislative history or notes on the enactment of Section 2924h(c) suggests that it was intended to encompass perfection of *title* or relate to any separate proceedings or issues with

¹ Section 2924h sets forth the procedure for accepting bids and payment at a trustee's sale. Among other things, Section 2924h(c) also provides that "in the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right." Moreover, "the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal."

respect to the eviction of tenants or occupants of the property sold under an entirely separate Code.

Indeed, by requiring that title be “duly” perfected, the language of Section 1161a itself makes clear that *actual* perfection of title and not mere constructive perfection is required before a tenant can be evicted. As this Court previously explained, prior to the enactment of Section 1161a, the summary eviction process was not available to subsequent purchasers of a property. The enactment of Section 1161a gave new purchasers of property the right to utilize the summary unlawful detainer procedure under certain circumstances, but only after service of a notice to quit:

By said subdivision 3, the summary proceeding for the recovery of real property provided in section 1161 and 1162 of the Code of Civil Procedure is extended to the purchaser of real property at a sale thereof under a deed of trust for the purpose of enabling said purchaser to recover possession of said real property from a person who holds over or continues in possession after said sale. ***In order for such purchaser to avail himself of this summary remedy, he must serve on the person in possession a three days' written notice to quit.*** Prior to the enactment of this new section of the Code, such a purchaser, in order to obtain possession of the property purchased as against a person holding over, was compelled to resort to one of the ordinary actions for the recovery of possession of real property, such as an action in ejectment or an action to quiet title. These actions were often long drawn out, and by such means the purchaser was often kept out of possession of his property an undue length of time. To remedy this defect in our procedure, section 1161a of the Code of Civil Procedure was undoubtedly enacted.

Duckett v. Adolph Wexler Building & Finance Corp., 2 Cal.2d 263, 265–266 (1935) (holding that summary unlawful detainer proceedings are an additional remedy available to a successful purchaser at a foreclosure sale) (emphasis added).

Indeed, Section 1161a made the summary eviction remedy available not only to purchasers at a trustee's sale, but also to subsequent purchasers of real property under several scenarios, ***but only where title under the sale has been duly perfected***. Section 1161a(b) provides in full:

(b) ***In any of the following cases***, a person who holds over and continues in possession of a manufactured home, mobilehome, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:

(1) Where the property has been sold pursuant to a writ of execution against such person, or a person under whom such person claims, ***and the title under the sale has been duly perfected***.

(2) Where the property has been sold pursuant to a writ of sale, upon the foreclosure by proceedings taken as prescribed in this code of a mortgage, or under an express power of sale contained therein, executed by such person, or a person under whom such person claims, ***and the title under the foreclosure has been duly perfected***.

(3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, ***and the title under the sale has been duly perfected***.

(4) Where the property has been sold by such person, or a person under whom such person claims, ***and the title under the sale has been duly perfected***.

(5) Where the property has been sold in accordance with Section 18037.5 of the Health and Safety Code under the default provisions of a conditional sale contract or security agreement executed by such person, or a person under whom such person claims, ***and the title under the sale has been duly perfected***.

Code of Civil Procedure Section 1161a(b) (emphases added).

As the statute makes clear, under each of these five scenarios, before eviction proceedings can occur, title under the sale must be **duly** perfected. The fact that the Code requires title to be duly perfected under each and every one of these scenarios underscores the fact that perfection of title is more than a mere technical requirement. It is to insure that the person seeking to institute the drastic remedy of eviction has the indisputable right and authority to do so before a tenant is forced to give up possession. “The term ‘duly’ implies that all of those elements necessary to a valid sale exist, else there would not be a sale at all.” *Kessler v. Bridge*, 161 Cal.App.2d Supp. 837, 841 (1958).

Respondent provides no explanation as to why a purchaser under Civil Code Section 2924h should be entitled to any special treatment over the other four scenarios and allowed a “15 day grace period” for compliance with the duly perfected title requirement of Section 1161a. In fact, the courts have also extended the benefit of the summary eviction remedy under Section 1161a(b)(3) to subsequent purchasers or transferees of the original purchaser under Section 2924h. *Evans v. Superior Court*, 67 Cal.App.3d 162, 169 (1977) (holding that there is no indication in Section 1161a that the Legislature intended to limit the remedy it affords to the immediate purchaser at a foreclosure sale). Under those circumstances, the requirement of duly perfected title remains a prerequisite to eviction, but without any corresponding “15 day grace period.” There is no rationale for allowing such inconsistent application of the duly perfected title requirement. Section 1161a requires title to be actually perfected under **all** circumstances **before** eviction proceedings can commence, including service of the notice to quit. Deeming title to be perfected after the fact is

neither consistent with the plain language of Civil Code Section 1161a or Code of Civil Procedure 2924h.

B. A Plain Reading of the Statute Requires Perfection of Title Before Service of the Notice to Quit.

Recognizing that it cannot simply deem title to be perfected where it is not, Respondent alternatively claims that title need only be perfected before physical “removal” of the tenant and not before service of the notice to quit. Respondent’s argument is contrary to a plain reading of the statute and rules of statutory construction. Section 1161a(b)(3) provides:

(b) In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobilehome, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:

...

(3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, *and* the title under the sale has been duly perfected.” (Emphasis added).

Code of Civil Procedure 1161a(b)(3).

In reviewing a statute, a court must “interpret a statute consistently with the meaning derived from its grammatical structure.” *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region*, 211 Cal.App.4th 557, 576 (2012) (citing *Moore v. Hill*, 188 Cal.App.4th 1267, 1281 (2010)). This includes “that a limiting clause is to be confined to the last antecedent, unless the context or the evident meaning of the statute requires a different construction,” and the “rule that the second sentence of a paragraph ordinarily pertains to the same subject

matter as the first.” *Addison v. Department of Motor Vehicles*, 69 Cal.App.3d 486, 496 (1977).

Applying the rules of construction, the Code therefore makes clear that the service of the three-day notice to quit and removal of the occupant can only occur “where the property has been sold ... *and* the title under the sale has been duly perfected.” *Id.*

Notwithstanding these rules of construction and logical reading of the statute, Respondent apparently contends that Section 1161a(b)(3) should be broken up into two separate and discrete parts: (i) the sale of the property under Section 2924, and (ii) duly perfected title. While Respondent argues that the second clause of subdivision (b)(3) has no relation to the service of the notice to quit in subdivision (b), Respondent’s brief is noticeably silent as to how the first clause relates to the notice to quit. Presumably, Respondent does not dispute that at the very least, sale of the property under Section 2924 must occur before service of the three-day notice to quit.²

Assuming this to be the case, Respondent apparently contends that once there has been a sale of the property under the first clause of subdivision (b)(3), a three-day notice to quit must then be given under subdivision (b) (presumably by the successful bidder). Then an unlawful detainer action can be filed and proceed to conclusion. Once Judgment in the unlawful detainer action is entered and a writ of execution is issued, then and only then must title be duly perfected or recorded under the

²Although Respondent does not expressly acknowledge this, this can be the only rational interpretation of Respondent’s argument, as Respondent certainly cannot be contending that a notice to quit can be given even *before* a sale under Section 2924h.

second clause of subdivision (b)(3) before the tenant can be “removed” under the broader subdivision (b) by a levying officer. Such a tortured reading of the statute defies logic and cannot be what the Legislature intended.

The first and second clause of the subdivision must be read and applied jointly. The logical construction and reading of the statute is thus, “in any of the following cases,” i.e., “where the property has been sold in accordance with Section 2924 of the Civil Code . . . *and* the title under the sale has been duly perfected,” “after a three-day written notice to quit the property” a person who holds over “may be removed therefrom as prescribed in this chapter.” Any other reading of the statute as advocated by Respondents would be illogical and contrary to the plain reading of the statute.

C. A Ruling in Support of Actual Perfection Would Be in the Interests of Justice and Promote Judicial Efficiency and Economy and Protect the Public At Large By Providing Certainty and Finality.

The purpose of requiring a landlord to have good record title or perfected title before a notice to quit is served would avoid confusion and provide certainty to all. This is particularly important since, as discussed above, a trustee’s sale could be rescinded if a successful bidder fails to pay the funds. *See* Code of Civ. Proc. 2924h(c) and (d); *see also* *Biancalana v. T.D. Service Co.*, 56 Cal. 4th 807, 820–821 (2013) (rescinding sale as a result of irregularities in the sale proceedings). Allowing a bidder to serve a notice to quit before title is perfected could result in serious problems should the sale be rescinded. This would leave the tenant in a difficult position.

First, assuming the tenant is even aware of the foreclosure sale, a tenant receiving a notice to quit where title has not yet been perfected would have to simply accept the word of the plaintiff that he is the successful bidder and new owner with no means to verify this representation. Second, assuming the tenant can confirm that the plaintiff is the successful bidder, the tenant would either have to comply with the notice to quit and immediately vacate the premises before the plaintiff's title is actually perfected and possibly run the risk of being deemed to have abandoned the premises or in breach of the lease if the sale subsequently falls through.³ Or the tenant would have to remain in the premises to wait and see whether the bidder will complete the sale and run the risk of being deemed a holdover tenant and potentially liable for holdover damages. Third and most importantly, a tenant could be forced through unnecessary unlawful detainer proceedings and judgment could be entered simply on the promise or allegation by the plaintiff that his deed will be recorded and his title will be perfected before he sends out the sheriff to remove the tenant. Should the plaintiff then fail to complete the sale and record the deed for whatever reason, the entire unlawful detainer action would have to be unwound and judgment set aside. Such a waste of the parties' and judicial resources would be easily avoided by simple compliance with the plain

³ Contrary to the arguments asserted by Respondent, termination of a lease upon a foreclosure sale is not automatic, and cannot be assumed in all cases. As discussed in Appellant's Petition for Review, parties to a real estate contract may contractually alter the priorities and their right otherwise fixed by law through the mechanism of subordination, non-disturbance or attornment clauses -- or SNDAs. *Miscione v. Barton Development Co.*, 52 Cal.App.4th 1320, 1339 (1997); *Principal Mut. Life Ins. Co. v. Vars, Pave, McCord & Freedman*, 65 Cal. App. 4th 1469 (1998). In this case, the lease at issue included all three SNDAs, which is not uncommon.

terms of the statute requiring duly perfected title *before* commencement of eviction proceedings and service of the notice to quit.

California courts have long adhered to the principle that the unlawful detainer statutes must be strictly construed and that relief not authorized by the statutes may not be given due to the summary nature of the proceedings. *Castle Park No. 5 v. Katherine*, 91 Cal.App.3d Supp. 6, 9 (1979); *accord Saberi v. Bakhtiari*, 69 Cal.App.3d 509, 515 (1985); *see Chase v. Peters*, 37 Cal.App. 358, 360 (1918). An unlawful detainer action is a statutory proceeding and is governed solely by the provisions of the statute creating it. *Kwok v. Bergren*, 130 Cal.App.3d 596, 599–600 (1982). “By virtue of the fact that an unlawful detainer involves a forfeiture of the tenant's right to possession, the courts strictly construe the statutory proceedings which regulate it.” *Lamanna v. Vognar*, 17 Cal.App.4th Supp. 4, 6 (1993) (reversing judgment for plaintiff where complaint was filed prematurely before the statutory three-day notice to quit expired due to an intervening holiday). Allowing expansion of the unlawful detainer statutes by reading into them provisions from other code sections violates these longstanding principles. This is particularly true here where the three-day notice to quit *and* the tenant’s deadline to respond to an unlawful detainer complaint⁴ could all conceivably pass before the expiration of the purported 15 day grace period advocated by Respondent.

There is simply no rationale for allowing a bidder at a foreclosure sale or any person to prematurely serve a notice to quit and commence eviction proceedings before his deed is recorded and title is duly perfected.

⁴ Code of Civil Procedure Section 1167.3 provides that the time for a defendant to answer a complaint for unlawful detainer shall not exceed 5 days.

In order to take advantage of the summary remedy under the unlawful detainer statutes, all purchasers should be required to duly perfect their title to the property before commencing eviction proceedings, including service of a notice to quit.

III.
CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court reverse the trial court's July 20, 2015 ruling and resulting Judgment thereon, and direct that Judgment be entered in favor of Petitioner, and/or remand the matter for further consideration.

Dated: March 27, 2018

Respectfully submitted,

ENENSTEIN PHAM & GLASS

By: 

Teri T. Pham, Esq.

Courtney M. Havens, Esq.

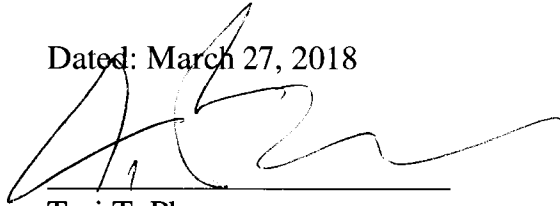
Attorneys for Petitioner

CERTIFICATE OF WORD COUNT

Cal. Rule of Court 8.520

Pursuant to California Rule of Court 8.520, I certify that the foregoing Petition for Review was produced on a computer and, according to the word count of the computer program used to prepare the brief, contains 3,489 words.

Dated: March 27, 2018

A handwritten signature in black ink, appearing to read 'Teri T. Pham', is written over a horizontal line. The signature is stylized and cursive.

Teri T. Pham

PROOF OF SERVICE

STATE OF CALIFORNIA,
ORANGE COUNTY

I reside in Orange County in the State of California. I am over the age of 18. I am not a party to this action. My business address is 650 Town Center Drive, Suite 840, Costa Mesa, CA 92626. On March 27, 2018, I served the foregoing document described as: **PETITIONER'S REPLY BRIEF** on the interested parties in this action addressed below:

Geoffrey S. Long, Esq. L/O of Geoffrey Long APC 1601 N. Sepulveda Blvd., No. 729 Manhattan Beach, CA 90266 Attorneys for Respondent/Plaintiff Dr. Leevil, LLC	Supreme Court of California 350 McAllister St. San Francisco, CA 94102
Office of the Clerk 2nd District Court of Appeal Division 6, Court Place 200 East Santa Clara Street Ventura, California 93001	

BY FEDERAL EXPRESS OVERNIGHT: I placed true copies of the document in sealed envelopes addressed to the individual(s) included above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with Federal Express on that same day in the ordinary course of business.

BY ELECTRONIC SERVICE: I caused the document(s) to be sent to the persons at their respective electronic notification address, listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 27th day of March, 2018 at Orange, California.


Jennifer Schamberger

PROOF OF SERVICE

STATE OF CALIFORNIA,
ORANGE COUNTY

I reside in Orange County in the State of California. I am over the age of 18. I am not a party to this action. My business address is 650 Town Center Drive, Suite 840, Costa Mesa, CA 92626. On March 27, 2018, I served the foregoing document described as: **PETITIONER'S REPLY BRIEF** on the interested parties in this action addressed below:

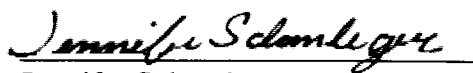
Ronald N. Richards, Esq. L/O Ronald Richards & Assoc., APC P.O. Box 11480 Beverly Hills, California 90213 Attorneys for Respondent/Plaintiff Dr. Leevil, LLC

BY UNITED STATES MAIL: I placed true copies of the document in sealed envelopes addressed to the individual(s) included above, with prepaid postage, in the U.S. mail in Orange County, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

BY ELECTRONIC SERVICE: I caused the document(s) to be sent to the persons at their respective electronic notification address, listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 27th day of March, 2018 at Orange, California.


Jennifer Schamberger