

**PROPERTY LAW**  
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**Landlord Who Wins an Unlawful Detainer Judgment May Still Be Stuck with Tenant**

**by Theresa M. Brehl, Column Editor**

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In an unlawful detainer action, even after a plaintiff landlord has successfully obtained a judgment forfeiting a defendant tenant's right to occupy the premises, the trial court still has discretion under California Code of Civil Procedure ("C.C.P.") §1179 to relieve the tenant from that forfeiture and restore the tenant's right to occupy the premises. Section 1179 provides:

**The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion. An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. ... In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.**

The Third District Court of Appeal recently analyzed C.C.P. §1179 in *Gill Petroleum, Inc. v. Hayer* (March 15, 2006) 2006 W.L. 627158.

**Facts**

In the *Gill Petroleum v. Hayer* case, the lease in question arose out of the plaintiff/landlord's sale of a business, which consisted of a market and gas station, to the defendants for \$626,965 in 1999. The property where the business was located continued to be owned by the plaintiff/landlord, who leased it to the defendant/tenants. The initial term of the lease was 10 years, with multiple options to extend for five-year periods. The rent was \$6,200 per month. The lease also provided: "Lessee is responsible to obtain, [sic] maintain in effect all permits to operate tanks and gas station and pay all city, county, state and federal environment fees for the operation of gas station." *Id.* at \*2. In the event the tenant failed to make such payments, the lease provided that the landlord could pay them directly, and that the amounts paid by the landlord for such fees would be deemed "additional rent payable upon demand." *Id.*

The Health and Safety Code requires that owners or operators of underground storage tanks obtain a permit and that the owner of the tank is ultimately responsible for payment of permit fees. Those fees had not, however, been paid by the landlord before it sold the business and when the tenants took over the business they did not pay the fees either. It was not until after the tenants had already purchased the business that the landlord told them they were obligated to pay the storage tank fees and asked for proof that had been done. The tenants responded by claiming that the landlord: (1) was obligated to pay those fees, (2) committed fraud when it failed to disclose the fees during negotiations, and (3) that as the owner of the storage tank who was ultimately obligated for the fees, the landlord should pay them.

In June 2001, the landlord paid the State Board of Equalization \$31,526 for the storage tank fees. (Of those fees, \$23,509 were due for the period of time when the tenants owned the business.) The landlord then demanded that the tenants pay those fees. When the tenants refused, the landlord gave them a 3-day notice to pay and then filed a complaint for unlawful detainer. At trial, the court found in favor of the landlord and a judgment forfeiting the lease and restoring the premises to the landlord was entered. That judgment included an award to the landlord of \$340 per day from the date of the 3-day notice to quit until the tenant vacated the premises for the fair rental value of the premises. It also awarded the landlord reasonable attorneys' fees and costs.

After the judgment was entered, the tenants petitioned for relief from forfeiture under C.C.P. §1179. At the hearing on that petition, the trial court noted its intent to grant the petition and then allowed the parties to confer to stipulate on conditions to be imposed on the tenants in order to allow relief from forfeiture. Although the parties were able to stipulate to most of the conditions, there were two items that could not be agreed on which were left to the trial court to decide. First, tenants requested relief from the \$340 per day damages and argued that the actual \$6,200 per month rental rate should be used. (At trial, the landlord presented expert opinion testimony that the fair rental value was \$10,200, from which the \$340 per day was calculated. The tenant did not present any fair rental value evidence at the trial.)

Second, after the unlawful detainer judgment had been entered, the plaintiff entered into lease negotiations with a new tenant to occupy property adjoining the business. The new tenant's business would compete with the defendant/tenant's business, and under the terms of the lease, the defendant/tenant's consent would have been required to allow the landlord to rent the adjoining property to someone whose business would compete with defendants. The landlord therefore asked that, as a condition of relieving the defendant/tenants from forfeiture, the court require the tenants to consent to the lease of a competing business on the adjacent property.

The trial court ruled in favor of the tenants on the two disputed issues and entered an order granting relief from forfeiture which incorporated the conditions to which parties had stipulated. The court noted that "equity will be served if defendants [tenants] pay to plaintiff [landlord] only the contract amount of rent (including, of course, the underground storage tank fees, penalties and interest) as opposed to the per diem damages set forth in the judgment." *Id.* at \*9.

## Appellate Opinion

The plaintiff/landlord appealed from the trial court's ruling, arguing that the trial court lacked jurisdiction to make its order under C.C.P. §1179 because judgment had already been entered. The appellate court disagreed and explained that "courts retain the inherent equitable power to relieve a party from the burdens of a judgment," in appropriate cases. *Id.* at \*9. While some of the case law cited by the landlord held that certain post-trial motions could not be heard after judgment had been entered, the appellate court reasoned:

**Section 1179 is a specific statutory procedure that vests a trial court with the authority to affect a judgment after its entry. The provision applies solely in unlawful detainer actions. [Citation omitted.] It vests the court with discretion to relieve a tenant from forfeiture and restore him or her to his or her former estate or tenancy. So long as the court imposes the statutory conditions, the full payment of rent due or full performance of conditions or covenants so far as practicable, the court has broad equitable discretion to determine the conditions upon which relief will be granted. [Citations omitted.]**

*Id.* at \*9.

The appellate court further held that even though the trial court was required by C.C.P. §1179 to make the full payment of rent due a condition to relief from forfeiture, that did not mean that the trial court had to require the tenants to pay sums other than the amount contained in the lease.

## CONCLUSION

As this case makes clear, when representing parties in landlord/tenant disputes, in particular unlawful detainer actions, it is important to review and understand the provisions of C.C.P. §1179. Under that section, even when the tenant has clearly breached the lease and the plaintiff/landlord has obtained a judgment in unlawful detainer forfeiting the tenant's lease, the court has authority, under appropriate circumstances, to relieve the tenant of that forfeiture. While the *Gill Petroleum v. Hayer* appellate decision does not analyze what types of "hardships" may warrant relief from forfeiture, the facts of the case certainly provide an example of circumstances under which, if the relief was not granted, the tenants could have suffered the hardship of losing all or part of the \$626,965 investment they made when they purchased the business that occupied the leased premises at issue. Although they would have continued to own the business, if forced to move, they would have incurred relocation expenses and lost the goodwill and other attributes associated with operating the business at that location.