

Hot Topics and Myths in Appraiser Liability

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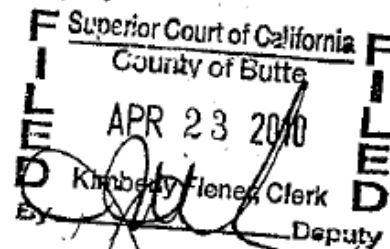


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"Typical" Buyer's Remorse Case

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TYP, LLC, CHESLEY B. SULLENBERGER III, and
LORRAINE SULLENBERGER



SUPERIOR COURT OF CALIFORNIA - COUNTY OF BUTTE

BY FAX

C 10-01879

11 TYP, LLC, CHESLEY B. SULLENBERGER
12 III, and LORRAINE SULLENBERGER,

Plaintiffs,

v.

14 GRUBB & ELLIS COMPANY, CHERIE
15 HUILLADE, STERLING SAVINGS BANK as
16 successor in interest by merger to SONOMA
17 NATIONAL BANK, BECKI ROBERTS, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 150077

FIRST AMENDED COMPLAINT FOR:

1. DECLARATORY AND INJUNCTIVE RELIEF;
2. FRAUD AND DECEIT;
3. FRAUD AND NEGLIGENT MISREPRESENTATION;
4. CONSTRUCTIVE FRAUD;
5. BREACH OF FIDUCIARY DUTY;
6. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;
7. UNJUST ENRICHMENT;
8. NEGLIGENCE;

Allegations from “Typical” Buyer’s Remorse Case

1 22. On or around October 2009, Plaintiffs obtained a forensic appraisal of the Subject
2 Property. The appraisal verified that Defendants’ representations regarding the fair market value
3 of the Subject Property when it was purchased in 2002 had been significantly overstated. The
4 forensic appraisal indicated in pertinent part as follows:

5 It is our opinion that the market value of the Leased Fee Interest in the subject property,
6 as of October 20, 2002, should fall within a value range of \$680,000 to \$720,000. This
7 range of value has been based on a review and analysis of numerous sales and rent
8 comparables of auto-service related facilities in the Northern California marketing area
9 which had closing dates between 2000 and early 2003 (and also included an analysis of
10 the four sales and four rent comparables utilized in the original appraisal report – which
were represented by the same four properties). It appears that the original appraised value
of \$920,000 and contract sales price of \$935,000 were substantially above market value.
This may have occurred for a number of reasons from both an appraisal perspective, but
also from a lack of fiduciary responsibility on the part of the other real estate
professionals involved in the transaction.



“So . . . Can a *Third Party* Sue the Appraiser?”

In most states, an appraiser may be liable to third parties for negligent misrepresentation, if . . .

1. The appraiser provided false information/deficient valuation;
2. The third party reasonably relied on that false information to their harm; and
3. The appraiser knew or reasonably expected that the third party would use or rely on the information.



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What Can I Do?

- Pay attention to your intended user and use language in engagements and reports. Narrower and more precise is safer.
- Be wary of additional “reliance” language required by clients.
- Don’t contradict your user and use language in other documents, such as cover letters.
- Be careful with communications with borrowers – avoid creating evidence that you knew or expected the borrower would use/rely on your report.
- Follow Engagement/Terms and Conditions project work by AI.



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Recent Commercial Appraisal Case Willemssen v. Mitrosilis – CA Court of Appeal (2014)

report stated: “The function of this appraisal report is to provide Farmers and Merchants Bank with a Summary Appraisal Report.” It further stated: “The intended use of this appraisal is to assist Farmers and Merchants Bank in analyzing a new loan for the subject property. The intended users of this appraisal are Farmers and Merchants Bank and/or its designated representatives.” Another portion of the report said: “The report may not be used for any purpose by any person other [than] the party to whom it is addressed without the written consent of the appraiser and the appraiser specifically disclaims any liability to such unauthorized third parties.” The appraisal report was addressed to the bank.

What Can I Do?

Include a specific advisory in reports directed to purchasers/borrowers and sellers. Example:

The appraiser has not identified any purchaser, borrower or seller as an intended user of this appraisal and no such party should use or rely on this appraisal for any purpose. Such parties are advised to obtain an appraisal from an appraiser of their own choosing if they require an appraisal for their own use. This appraisal report should not serve as the basis for any property purchase decision or any appraisal contingency in a purchase agreement relating to the property.



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A Short Lesson from the Mass Litigation Phenomenon Affecting Appraisers

WELCOME TO LLANO, TEXAS



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**600+ appraisers
sued by the
entities so far**

COMES NOW, LLANO FINANCING GROUP LLC, by and through its attorney,

Get Legal Advice – Not Internet Advice

Yesterday at 12:28pm - [REDACTED], IL - [REDACTED]

Anyone have experience with that Liano company trying to come after you for an old appraisal completed? I have a buddy who is no longer in the business getting letters from them on something he completed as an associate in late 2007.



[REDACTED] Just tell him to tell them he burned the files a few years back and have no idea what they are talking about? If they want a new appraisal, maybe he can recommend you but do you really want to hear from these guys years from now on an old report?

Like · Reply · 1 · Yesterday at 12:45pm

after. Like I said tho, he was just a trainee, so I can't see how much of anything could fall on him legally, even if within discovery.

Like · Reply · Yesterday at 1:49pm

[REDACTED] It would be on the supervisor that signed the report

Like · Reply · Yesterday at 2:40pm



“Wait . . . What About the Statute of Limitations? That appraisal was 9 years old.”

Myth: “I can’t be sued over an appraiser that I did more than 5 years ago.”

Statutes of limitation for claims against appraisers:

- Have no relationship to USPAP’s 5-year recordkeeping requirement
- May be subject to the “discovery rule”
- Are extended for the FDIC and some others
- Vary by the type of claim and state

- So how long is it here?
- Does a “discovery rule” apply here?