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4

5 NINTH CIRCUIT COURT OF APPEAL  
6

7 In Re:REGINALD ESCOBAR SILVA & )  
8 CARLITA MARIE SILVA )

9 Debtors. )  
10

11 CARLITA MARIE SILVA )  
12

13 Appellant )  
14

15 v.  
16

17 MBB PROPERTIES, LLC )  
18

19 Appellee(s) )  
20

Case No. 15-56123

Dist. Court # 2:15-cv-02061-AB

BANKRUPTCY COURT  
CASE NUMBER.

**9:10-bk-14135-PC**

ADVERSARY CASE  
NUMBER  
**9:15-ap-01014-PC**  
(Related Case)

**URGENT MOTION**

**SEEKING A STAY  
PENDING APPEAL**

**CIRCUIT RULE 27-3(b)**

21 This motion will is supported by the attached declaration of Janet A. Lawson  
22 and request for judicial notice of state court documents and transcripts.

23  
24 Dated: October 19, 2015  
25

26  
27  
28 Janet A. Lawson,  
Attorney for Appellant

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27           <sup>1</sup>Kathleen P. March, Judge Alan M. Ahart, Judge Leskie Tchakovsky

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I**

3                   **INTRODUCTION**

4                   **1. Emergency Basis for This Motion.**<sup>2</sup> Appellant and Debtor herein  
5 Carlita Silva (hereinafter “Silva”) needs a stay pending appeal of an order granting  
6 relief from the automatic stay found at 11 U.S.C § 362<sup>3</sup>. The goal of this motion is  
7 to prevent her eviction which will likely occur on or about the 23<sup>rd</sup> of October  
8 2015. The subject matter of the motion for relief from the automatic stay is Silva’s  
9 home located at 1100 North 3<sup>rd</sup> Street, Lompoc California 93436. The order  
10 granting relief allows Appellee MBB Properties, LLC (hereinafter “MBB”) to  
11 “foreclose upon and obtain possession of the Property in accordance with  
12 applicable nonbankruptcy law . . .”<sup>4</sup>

13                  Upon obtaining relief from the bankruptcy automatic stay MBB filed an  
14 unlawful detainer action against Silva in a state court of “limited jurisdiction.”<sup>5</sup> It  
15 appears however from the transcript of a hearing on August 28, 2015 that the trial  
16 court did not consider Silva’s affirmative defense that she owns the property by  
17 adverse possession.<sup>6</sup> This effectively amounts to taking her property without due  
18

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19                  <sup>2</sup>This motion is made pursuant to Circuit Rule 27-3(b) “Urgent Motion.”

20                  <sup>3</sup>ER Vol. 1, pages 56 - 78, Order Granting Relief From the Automatic Stay  
21 including the memorandum incorporated by reference.

22                  <sup>4</sup>ER Vol. 1, page 57, paragraph 5 of the Order granting relief from the automatic  
23 stay.

24                  <sup>5</sup>Exhibit A, the unlawful detainer complaint, Exhibit B, the answer.

25                  <sup>6</sup>Transcript at page 7 of Exhibit C, line 13 page 8, line 10) - “I understand  
26 the law, and yet, at the same time, it doesn’t make sense to me. If all your great  
27 academics are true, then the Court of Appeals will intervene and tell me to have a

1 process.<sup>7</sup>

2       **A. State Court Actions.** The state court judgement was entered on August  
3 7, 2015.<sup>8</sup> Silva filed a writ of supercedeas and a temporary stay was granted.<sup>9</sup>  
4 The writ was denied on October 13, 2015.<sup>10</sup> The appeal is still pending.<sup>11</sup> MBB is  
5 now free to obtain a writ of possession.

6       **B. Silva Will Suffer Irreparable Harm If She Is Evicted.** The  
7 bankruptcy court found that losing her home was an irreparable harm to Silva.<sup>12</sup>  
8 She has lived in the home since 1988.<sup>13</sup> She has therefore satisfied the first criteria  
9 necessary for a stay pending appeal.

10  
11 trial on adverse possession, or they will decide it themselves, or whatever is the  
12 right answer.”

13  
14       <sup>7</sup> *Lindsey v Norment* (1972) 405 U.S. 56, 92 S. Ct. 862, 31 L.Ed.2d 36 the court  
15 explained at pages 387-388 that a speedy process is justified in the normal landlord tenant  
16 case when the issue is simply non-payment of rent or holding over but not when issues of  
17 title are asserted. The court in *Martin-Bragg v Moore* (2013) 219 Cal. App 4<sup>th</sup> 367,  
18 quoted the Supreme Court: “the constitutionality of these summary procedures is based on  
19 their limitation to the single issue of right to possession and incidental damages.”

20       <sup>8</sup>Exhibit D, the unlawful detainer judgement.

21       <sup>9</sup>Exhibit E, a copy of the order granting a temporary stay.

22       <sup>10</sup>Exhibit F, a copy of the order denying the writ.

23       <sup>11</sup>Exhibit G, copy of the briefing schedule in the appeal.

24       <sup>12</sup>ER Vol. 1, page 56, lines 4 -9. “The subject property is Silva’s primary residence,  
25 and “loss of a primary residence constitutes irreparable harm. *Hernandez v Downey Sav.*  
26 & *Loan Ass’n*, 2009 WL 704381, \*9 (S.D. Cal. 2009).” See *Nichols v Deutsche Bank*  
27 *Nat’l Trust Co.*, 2007 WL 4181111, \*3 (“[I]mmminent foreclosure of Plaintiff’s residence  
28 presents a threat of irreparable harm.””).”

13ER Vol. 1, page 45, line 7.

1           **C. Silva Raised the Issue of Adverse Possession With The Bankruptcy**

2           **Court.** Silva opposed the granting of relief from the automatic stay on the  
3 grounds that she owned the property by adverse possession.<sup>14</sup> She did not address  
4 the issues of her defense “adverse possession” with the district court because that  
5 issue was sent to state court when the bankruptcy court granted relief from the  
6 automatic stay.<sup>15</sup>

7           To be clear, Silva is not asking this court to weigh in on the merits of her  
8 claim of adverse possession. She is asking this court to grant her a stay pending  
9 appeal on her claim that Michael Bollag and the Bollag Family Trust, (herein after  
10 “the Bollags”), the predecessors in interest to MBB, violated the automatic stay  
11 when they recorded their Trustee’s Deed Upon Sale more than four years after  
12 Silva’s Chapter 13 bankruptcy case was filed. When the Bollags gave MBB a  
13 quitclaim deed to the subject property, nothing was transferred because the  
14 recording by the Bollags was void as a matter of law, *In re Schwartz* 954 F.2d 569  
15 (9<sup>th</sup> Cir. 1992).

16           **II**

17           **JURISDICTION**

18           **1. This Court Has Jurisdiction to Hear This Motion.** The Bankruptcy  
19 Court had jurisdiction to enter the order granting relief from the automatic stay  
20 pursuant to 28 U.S.C. § 158(a). An order of the bankruptcy court granting relief

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22           <sup>14</sup>ER Vol. Pages 714-716. Response to Motion Regarding The Automatic Stay  
23 and Declaration(s)

24           <sup>15</sup>The tentative ruling issued by the bankruptcy court makes that perfectly clear.  
25 The tentative goes into detail explaining the limits of a relief from stay order. It cites  
26 *Johnson v Righetti (In re Johnson)*, 756 F.2d 738, 740 (9<sup>th</sup> Cir. 1985), cert denied, 474  
27 U.S. 828 (1985) and other cases for the proposition that the bankruptcy court is not  
determining the merits of the defense.

from the automatic stay found at 11 U.S.C. § 362 is an immediately appealable order, *Cimarron Investors v WYD Properties (In re Cimarron)*, 848 F.2d 974, 975 (9<sup>th</sup> Cir. 1988). The district court had jurisdiction to hear the appeal from the bankruptcy court pursuant to 28 U.S.C. §§ 158(a)(1) 1334(a) and (b), and 1291.

**2. Standard of Review.** Whether or not the automatic Stay has been violated is reviewed *de novo*, *Sternberg v Johnson*, 595, F3d 937, 943 (9<sup>th</sup> Cir. 2003). The reviewing court independently reviews the bankruptcy court's decisions, *In re Dyer*, 322 F.3d 1178, 1186 (9<sup>th</sup> Cir. 2003), *In re Su*, 290 F.3d 1140, 1142 (9<sup>th</sup>. Cir. 2002). "Whether the automatic stay provisions of 11 U.S.C. § 362(a) have been violated is a question of law reviewed de novo." *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1213 (9th Cir.2002).

The district court found that the bankruptcy court erred, but it came up with an alternative ground for finding the bankruptcy court order valid. It determined that an exception to the automatic stay existed under 11 U.S.C. 362(b)(24).<sup>16</sup> The district court's decision on an appeal from a bankruptcy court is also subject to novo review. *McCarthy Johnson & Miller v. North Bay Plumb.*, 217 F. 3d 1072, 1077 (9<sup>th</sup> Cir. 2000), citing *Del Mission Ltd. v. Traxel*, 98 F.3d 1147, 1150 (9th Cir. 1996).

III

## **STATEMENT OF THE FACTS**

There are no disputes about the facts. The bankruptcy court made findings of fact that neither party challenges except for the omission of two facts found in Silva's declarations.<sup>17</sup> The first omitted fact is found in Silva's declaration dated

<sup>16</sup>ER Vol. 1, page 8, lines 3 to 21.

<sup>17</sup>There was no live testimony at the bankruptcy court level. All facts were

1 January 19, 2015 where she states that no one made any effort to take possession  
2 of her home for the over five year period post foreclosure sale.<sup>18</sup> In the second  
3 declaration she states that she never heard from anyone again after Todd Lyle told  
4 her on September 1, 2009 that she did not own the property.<sup>19</sup> Bear in mind that  
5 Todd Lyle never claimed to have re-contacted Silva after September 1, 2009, nor  
6 did he ever claim to have given her any contact information. The facts below are  
7 the ones found by the bankruptcy court.<sup>20</sup>

8           1. "On January 1, 2008, Silva and her husband, Reginald E. Silva, owned  
9 the Subject Property. They had owned and occupied the Subject Property since  
10 1988. The Subject Property was encumbered by two deeds of trust: (1) a first deed  
11 of trust lien recorded on May 19, 2004, securing payment of a note in the original  
12 principal sum of \$125,000, executed by Carlita M. Silva and Reginald Silva and  
13 payable to World Savings Bank, FSB dated May 13, 2004; and (2) a second deed  
14 of trust lien recorded on April 27, 2005, securing payment of a note in the original  
15 principal sum of \$30,000 executed by Carlita M. Silva and Reginald Silva and  
16 payable to World Savings Bank, FSB dated April 22, 2005."

17       2. "On September 3, 2008, a Notice of Default and Election to Sell Under  
18 Deed of Trust was recorded as to the second deed of trust. A Notice of Trustee's  
19 Sale was thereafter recorded on January 29, 2009. On August 12, 2009, a Trustee's  
20 Deed Upon Sale ("Trustee's Deed") was executed following a foreclosure sale  
21 conducted on August 10, 2009, at which the Subject Property was purchased by

determined by declaration.

<sup>18</sup>ER Vol. 5, page 709, paragraph 12.

<sup>19</sup>ER Vol. 6, declaration dated February 6, 2015 at page 941.

<sup>20</sup> ER Vol 1, pages 56-78, including the memorandum incorporated by reference. The facts are copies verbatim from pages 66 to 69.

1 the Bollags for the sale price of \$34,127.49. The Trustee's Deed conveyed title to  
2 the Subject Property to The Bollag Family Trust and Michael Bollag, subject to  
3 the first deed of trust lien securing payment of the \$125,000 note. Silva claims  
4 that, at the time, she was not aware of the foreclosure sale nor execution of the  
5 Trustee's Deed."

6 3. "On September 1, 2009, Todd Lyle ("Lyle"), an employee of MBB, met  
7 with Silva "and informed her that the [Subject Property] had been sold pursuant to  
8 a properly noticed foreclosure sale held on August 10, 2009, and that The Bollag  
9 Family Trust and Michael Bollag were the new owners of the [Subject Property]."

10 Silva testified that:

11 "I do recall a man coming to my house at about the time Todd  
12 Lyle says he did, September 1, 2009. This man told me I did not "own  
13 the property." I did not believe him. I was in the process of trying to  
14 negotiate a loan modification with the first mortgage, which was the same entity that 1  
15 time. The person I  
16 was working with on the loan modification told me not to worry about  
17 what this man said. I believed her when she told me he did not own  
18 my house"."

19 4. "On July 21, 2010, Wells Fargo Bank, N.A. ("Wells Fargo"), as  
20 successor in interest to World Savings Bank, FSB, caused a Notice of Trustee's  
21 Sale to be recorded as to the first deed of trust. On August 10, 2010, Silva and her  
22 husband filed a voluntary petition under Chapter 13, in part, to stop the  
23 foreclosure by Wells Fargo. In their schedules, the Silvas disclosed in Schedule A  
24 that they owned the Subject Property valued at \$195,000 in "Fee Simple." Neither  
25 the Bollags or MBB<sup>21</sup> are listed in the list of creditors, mailing matrix, schedules

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27 <sup>21</sup>MBB is owned and operated by Michael Bollag and the Bollag Family Trust.

1 or statements nor is the foreclosure sale conducted pursuant to the second deed of  
2 trust lien disclosed in response to Question # 5 of the Statement of Financial  
3 Affairs.”

4 5. “On November 10, 2010, an order was entered confirming the Silva’s  
5 Chapter 13 Plan (“Plan”). The Plan provided for post-petition mortgage payments  
6 to be made directly to Wells Fargo on the \$125,000 note, with arrears to be cured  
7 over a period of 60 months. Reginald E. Silva died in 2012. Silva is current on  
8 Plan payments, with about 7 payments remaining until completion of the Plan.”

9 6. “On October 16, 2014, the Trustee’s Deed was recorded in the Santa  
10 Barbara County Recorder’s Office – over 5 years after the Trustee’s Deed was  
11 executed and delivered to the Bollags. According to Lyle’s testimony:

12 “Michael Bollag and The Bollag Family Trust did not immediately  
13 record their Trustee’s Deed Upon Sale because they inadvertently  
14 believed that they had purchased the [Subject Property] at a  
15 foreclosure sale conducted by the first trust deed holder, not the  
16 second. When they discovered their error, they attempted to contact  
17 the owners of the first trust deed to ascertain the loan payoff amount.  
18 However, the first trust deed holder would not discuss this with  
19 Michael Bollag, The Bollag Family Trust, and MBB Properties, LLC  
20 (“the “Bollag Entities”).

21 The Bollag Entities were disinclined to become the record owners of the  
22 [Subject Property] because there was likely little, or no, equity in the [Subject  
23 Property] above what was owed to the first trust deed holder, and they did not  
24 want to risk have [sic] their credit sullied by getting foreclosed out by the first  
25 trust deed holder. Instead, Michael Bollag and The Bollag Family Trust decided  
26 not to become record owners, to allow Ms. Silva to live on the [Subject Property]

1 without paying rent to them, and to see if the [Subject Property] increased in value  
 2 over time to make it worthwhile for them to become record owners.”

3       7. “On October 17, 2014, the Bollags executed a Quitclaim Deed,  
 4 conveying the Subject Property to MBB. The Quitclaim Deed was recorded the  
 5 same day. When the Trustee’s Deed and Quitclaim Deed were recorded, there was  
 6 no notice of Silva’s bankruptcy in the chain of title; and, according to Lyle’s  
 7 testimony, the Bollags and MBB did not have any knowledge of Silva’s  
 8 bankruptcy. On October 24, 2014, the Bollags and MBB served Silva with a  
 9 Notice of New Ownership. Silva, through counsel, informed the Bollags and MBB  
 10 that Silva had filed a Chapter 13 petition on August 10, 2010. Lyle testified that  
 11 “[t]his was the Bollag Entities’ first and sole notification that Silva had filed  
 12 Chapter 13 bankruptcy.”

13       8. “The Bollags and MBB never took possession of the Subject Property.  
 14 Silva remained in possession of the Subject Property continuously between the  
 15 foreclosure sale on August 10, 2009 and the recordation of the Trustee’s Deed on  
 16 October 16, 2014. During this period, Silva made all payments to Wells Fargo on  
 17 the \$125,000 note secured by the Subject Property, and paid the insurance and  
 18 property taxes due on the Subject Property (with one crucial exception).”<sup>22</sup>

19       9. “On December 15, 2014, MBB filed a motion seeking relief from the  
 20 automatic stay under §§ 362(d)(1) and (d)(2) (“Stay Motion”) to exercise its rights  
 21 with respect to the Subject Property, including an annulment of the stay to validate  
 22 the post-petition recordation of the Trustee’s Deed and Quitclaim Deed. Silva filed  
 23 a response in opposition to the Stay Motion. A hearing on the Stay Motion was  
 24 commenced on February 3, 2015, and continued to March 10, 2015.”

25       10. “In the meantime, Silva filed a complaint in this adversary proceeding

27       22This “exception” relates to the adverse possession claim.

1 against the Bollags and MBB on January 27, 2015, for alleged violation of the  
2 automatic stay, avoidance of transfer under §§ 544 and 549, adverse possession,  
3 quiet title, fraud, and declaratory relief. On February 9, 2015, Silva filed an  
4 amended complaint, together with the Motion seeking a preliminary injunction to  
5 prevent the Bollags and MBB from transferring any interest in the Subject  
6 Property pending a final judgment in this adversary proceeding. The Bollags and  
7 MBB filed written opposition to the Motion on February 19, 2015, to which Silva  
8 replied on February 23, 2015.”

III

**THE AUTOMATIC STAY WAS VIOLATED AND  
THERE ARE NO APPLICABLE EXCEPTION**

Silva argues that the bankruptcy court and the district court erred in determining that the admitted stay violation was subject to certain exemptions which would validate a post petition recording of a Trustee's Deed Upon Sale. The bankruptcy court found that 11 U.S.C. 549(c) was an exception to the automatic stay, therefore relief was granted pursuant to 11 U.S.C. 362(d)(2) and (d)(3).<sup>23</sup> The district court erred in finding that 11 U.S.C. 362(b)(24) was an exception to the automatic stay.

## **1. The Automatic Stay Was Violated When The Bollags Recorded Post**

20 **Petition.** There is no question that the automatic stay was violated. Acts which  
21 violate the automatic stay are void, *In re Schwartz*, 954 F.2d 569, 571 (9<sup>th</sup> Cir.  
22 1992). Silva was in bankruptcy when the Bollags recorded their Trustee's Deed  
23 Upon Sale (hereinafter "the deed") on October 16, 2014. The bankruptcy court  
24 correctly found that Silva had a legal title in the property and a possessory interest  
25 in the property citing *Davidson v. Engles (In re Engles)*, 193 B.R. 23, 25 (Bankr.

<sup>23</sup>ER Vol. 1, page 61, first paragraph; page 57 paragraph 3, (a) and (b).

1 S.D. Cal. 1996 and *Hunt v. TTC Properties, Inc. (In re Hunt)*, 160 B.R. 131, 135  
 2 (9<sup>th</sup> Cir. BAP 1993). At the time the deed was recorded because she had been in  
 3 bankruptcy for over four years.<sup>24</sup> A debtor's legal and equitable interests are  
 4 property of the estate, *Butner v United States*, 440 U.S. 48, 54-55 (1979, and 11  
 5 U.S.C. 541.

6 Given the fundamental purpose of the automatic stay as enunciated in *In re*  
 7 *Schwartz*, there was a clear violation of the automatic stay. Silva had a protectable  
 8 interest in the property. She was in bankruptcy. At this step of the analysis the  
 9 recording by the Bollags is void. The recording by the Bollags was an act to gain  
 10 possession of the property. The next question is was there an applicable exception  
 11 to the automatic stay based on the facts in this case? The answer to that is clearly  
 12 "no."

13 **A. Section 11 U.S.C. § 549(c) Does Not Apply As An Exception To**  
 14 **Section 362(d)(3) and (d)(2).** The bankruptcy court found that Section 549(c)  
 15 was an exception to the automatic stay and therefore granted relief under section  
 16 362(d)(3) and 362(d)(2). This cannot possibly be a true statement of the law.

17 **(1) Section 549 Does Not Apply to Stay Violations.** The purchase by  
 18 the Bollags at the foreclosure sale was a "prepetition purchase. The recording of  
 19 the Trustee's Deed Upon Sale by the Bollags was not a "transaction."<sup>25</sup> It was an  
 20 attempt to complete the sale that happened August 10, 2009. A case that is  
 21 directly on point is *True Value v Mitchell (In re Mitchell)*, supra. There the court  
 22 held that Section 549 "applies to transfers of property which are not voided by the

24 Fact four.

25 "a business deal : an occurrence in which goods, services, or money are passed from one person, account, etc., to another: the act or process of doing business with another person, company, etc. : the act or process of transacting business," *Merriam-Webster.com/dictionary/trnsaction*.

1 stay." *Mitchell* at 842. Since we start here with a clear violation of the stay,  
2 Section 549 cannot possibly apply.

3           **(2) Ninth Circuit Authority Has Foreclosed Any Argument That 11  
4 U.S.C. 549 Applies To Anything Other Than Debtor Initiated Transactions.**

5 Section 549(c) is not an exception to the automatic stay as it only applies to debtor  
6 initialed transactions. At page 842 the court in *In re Mitchell* wrote, "Section  
7 549(c) exists as a protection for creditors against unauthorized debtor  
8 transactions"<sup>26</sup> See also *In re Tippett*, 338 B.R. 82 (B.A.P. 9<sup>th</sup> Cir. 2006) at page  
9 87, "We have interpreted *Schwartz* to mean that 549(c) 'does not apply to creditor-  
10 initiated transactions that violate the automatic stay, but only to debtor-initiated  
11 transactions that do not violate the automatic stay.'"<sup>27</sup> In accord, *In Re Samaniejo*,  
12 224 B.R. 154 (Bankr. E.D. Wash. 1998). See also California Practice Guide,  
13 Bankruptcy<sup>28</sup> at ¶ 21:1323.

14           In *40235 Washington Street Corp. v. Lusardi*, 329 3d. 1076 (9<sup>th</sup> Cir. 2003).<sup>29</sup>  
15 the Ninth Circuit at page 1081 agreed with the holdings in *True T Sales, Inc v.*  
16 *Mitchell (In re Mitchell)*, 279 B.R. 839, (9<sup>th</sup> Cir. B.A.P. 2002) Ninth Circuit  
17 authority has foreclosed any argument that 11 U.S.C. 549 applies to anything other  
18 than creditor initiated transactions. Pages 1082-1083 made it as quite clear, §  
19 549(c) is not an exception to the automatic stay. At pages 1082 -1084 it explained  
20

---

21           <sup>26</sup>Although the court alluded to the possibility of a fact pattern not involving the  
22 debtor, it was clear when it stated that "Section 549 applies to unauthorized transfers of  
23 estate property which are not otherwise prohibited by the Code." *Mitchell* at 842. Acts in  
24 violation of the stay are prohibited, 11 U.S.C. 362. The district court did not cite any  
25 facts that would possibly involve such a situation. ER Vol. 1. page19, lines 1 - 20.

26           <sup>27</sup>*In re Schwartz*, 954 F.2d 569, 571 (9<sup>th</sup> Cir. 1992)

27           <sup>28</sup>Kathleen P. March, Judge Alan M. Ahart, Judge Leskie Tchakovsky

28           <sup>29</sup>Cert denied, 540 U.S. 983 (2003).

1 other cases that seemed to be in conflict with the current holding. See also *In re  
2 Fjeldsted*, 293 B.R. 12, 25 (B.A.P. 9<sup>th</sup> Cir. 2003),

3 " . . .549 protects the estate from unauthorized transfers  
4 by the debtor. Congress saw fit to protect BFPs in § 549  
5 but not in §362, presumably expressing its intent to  
6 afford greater protection to BFPs who purchase from  
7 debtors than those purchasing at sales violating the  
8 automatic stay."

9 The district court erred in relying on authority from other jurisdictions to  
10 reach a contrary result when Ninth Circuit authority has ruled directly on the issue.  
11 *40235 Washington Street Corp* at 1081,

12 "As subsection (a) and (d) make clear, section 549 concerns  
13 avoidance actions by the trustee, not transfers that are already  
14 void under the automatic stay. Subsection (c), which Lusardi  
15 invokes, prevents such avoidance actions from succeeding  
16 against certain bona fide purchasers. By its terms, subsection  
17 (c) creates an exception only to subsection (a). 11 U.S.C. §  
18 549(c) (describing transfers that "trustee may not avoid under  
19 subsection (a) of this section"). Thus, as the Mitchell court  
20 noted, the language and the structure of both section 362 and  
21 section 549 support the view that section 549(c) does not create  
22 an exception to the automatic stay provision."

23 The law then is clear. Ninth Circuit authority has foreclosed any argument  
24 that 11 U.S.C. 549 applies to anything other than debtor initiated transactions.  
25 The argument that Silva cannot prevail because she did not record the bankruptcy  
26 petition is a red herring. That argument only makes sense if one concludes  
27

1 Section 549(c) applies.

2       **B. California Civil Code Section 2924h(c) Does Not Apply.** The  
3 Trustee's Deed Upon Sale obtained by the Bollags was recorded more than fifteen  
4 days after the foreclosure sale so California Civil Code Section 2924h(c) does not  
5 apply. Both courts and Silva agree with this proposition.

6       **C. Section 549(c) Is Not A Substitute For California Civil Code Section**  
7 **2924h(c).** The bankruptcy court therefore erred in relying on *In re Stork*, 212 B.R.  
8 970, 971 (Bankr. N.D. Cal. 1997) finding that a recording more than five years  
9 after the foreclosure sale qualified as an exception under Section 549(c), *Stork* at  
10 972. The statement that "Section 549(c) protects a purchaser regardless of the  
11 number of days after the sale the purchaser records the deed as long as the deed is  
12 recorded before notice of the bankruptcy filing is recorded." is not only wrong, but  
13 overturned by the holding in *40235 Washington Street Corp. v. Lusardi*. *Stork* is  
14 just a district court opinion. As stated above there is not an exception to an  
15 automatic stay violation under 11 U.S.C. 549. Since the recording by the Bollags,  
16 more than four years after the filing of the petition, MBB received nothing by its  
17 quit claim deed. See *In re Smith*, 224 B.R. 44, 37 (Bankr. E.D. Mich. 1998) the  
18 court found that when a foreclosure sale is void, nothing is transferred. Here  
19 there was a valid foreclosure sale, but the recording of the Trustee's Deed Upon  
20 Sale was a post petition event that violated Section 362(a)(3). It was therefore an  
21 error for the bankruptcy court to find that MBB had a "colorable" claim to the  
22 property.

23       **2. The District Court Dodged Making A Conclusive Decision On The**  
24 **Issue Of The 11 U.S.C. 549(c).** Instead of outright finding that the bankruptcy  
25 court erred, the district court found an alternate ground to affirm the judgement

26

27

28

1 citing *In Re Yochum*, 89 F.3d. 661, 670 (9<sup>th</sup> Cir. 1996).<sup>30</sup> This was a new issue not  
2 briefed by either party.<sup>31</sup> This section was enacted with the 2005 Bankruptcy  
3 Abuse Prevention and Consumer Protection Act (BAPCPA). This is not the first  
4 time BAPCPA has been criticized for its poor grammar and constriction.<sup>32</sup> It only  
5 makes sense when you put the two subsections together.

6 “362(b) The filing of a petition under section 301, 302,  
7 or 303 of this title, or an application under section  
8 5(a)(3) of the Securities Investor Protection Act of 1970,  
9 *does not operate as a stay* -

10 (24) under subsection (a), *of any transfer that is not avoidable*  
11 *under section 544 and that is not avoidable under*  
12 *section 549.*” (Emphasis added).

13 It is basic grammar that two negative equal a positive.<sup>33</sup> Read correctly the  
14 bankruptcy code reads, “There is no stay of a transfer that is avoidable under  
15 sections 544 and section 549.” See *McKay v U.S.* 957, F2d 689, 693 (C.A.9(Cal.)  
16 1982) where the court held that certain IRS obligations were dischargeable as the  
17 result of the statute using a double negative.

18 This is not the first case to deal with this. For example in *In re Striblin*, 49  
19 B.R. 301 (Bankr. M.D. Fla. 2006) at page 303 the court posed the question, “In

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20  
21 <sup>30</sup>“A district court may affirm the bankruptcy court on any grounds supported by  
22 the record, even if the bankruptcy court “reached its decision on erroneous grounds”. ER  
23 Vo. 1, pages 8, 10, 18, and 32. Also Page 6, lines 21-23 [In Chambers] Order Denying  
Appellant’s Motion For Stay Pending Appeal And Waiver of Bond, Docket No. 24.

24 <sup>31</sup>The district court criticized Appellant for not briefing it in its decision denying  
her motion for reconsideration, Exhibit E, page 6, line 24 to page 7, line 14

25  
26 <sup>32</sup>*In re Dumont*, 581 F.3d 1104, 1110 (9<sup>th</sup> Cir. 2009).

27 <sup>33</sup>Oxforddictionaries.com/words/double-negatives.

1 order to determine whether § 362(b)(24) applies to the Sale, the Court must  
 2 determine whether the sale was a transfer that was not avoidable under section  
 3 549. Section 549 only applies to debtor initiated transfers.”<sup>34</sup> The court answered  
 4 this question at page 304. “Because the sale is not a transfer to which § 549  
 5 applies in the first instance, it is not “not avoidable under section 549” and is  
 6 therefore not an exception to the automatic stay as set forth in § 362(b)(24). That  
 7 case involved a post petition foreclosure. *In re Ducker*, 2007 WL 1119640  
 8 involved another attempted foreclosure sale after the petition was filed. The court  
 9 agreed with the reasoning in *In re Stubin*.

10 As Judge Papas wrote in *In re Ellis*, 441 B.R. 656 (Bankr. Idaho 2010) at  
 11 page 663, “ . . . because transfers that are “not avoidable under § 549” includes  
 12 those made to good faith purchasers meeting the requirements of § 549, the  
 13 addition of § 362(b)(24) provides an explicit § 362(b) exception for § 549(c)  
 14 transfers.” He went on to write, “ . . . the new rule can be summarized simply:  
 15 when a debtor makes a post-petition transfer of an interest in real property to a  
 16 good faith purchaser without knowledge of a bankruptcy case for fair equivalent  
 17 value, the transfer is neither avoidable by the trustee, nor void as a violation of the  
 18 automatic stay.” It is as simple as that. In *In re Howard* 391 B.R. 516 517 (Bankr.  
 19 N.D. Ga 2008) the court found that a post petition tax sale was not a voluntary  
 20 transfer so 362(b)(24) did not apply.

21 Here the transfer to MBB Properties is not subject to avoidance under § 549  
 22 because the transfer does not meet the requirements of § 549.

23 a. it was not a debtor initiated transaction as required in this  
 24 jurisdiction;

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25  
 26       <sup>34</sup>The court in *Striblin* relied on *40235 Washington Street Corp. v Lusardi*, 329  
 27 F.3d 1076, 1081 (9<sup>th</sup> Cir. 2003) in coming to its conclusions.

- 1                   b. no value was paid by MBB
- 2                   c. The purported transfer was not voluntarily made by Silva;
- 3                   d. the Bollag recording was void; and
- 4                   e. what the Bollags paid was paid pre-petition.<sup>35</sup>

5                  Based on these simple facts MBB is not entitled to relief from stay and Silva  
6                  should be granted a stay pending appeal to this court.

7                  **3. Section 544(3) Simply Does Not Apply To The Facts Of This Case.**

8                  By its clear terms this section requires a bona fide purchaser for value, *from the*  
9                  *debtor*. The facts clearly show this did not happen. It was an error to grant relief  
10                 from the automatic stay under this section.

11                 **4. Silva Has Demonstrated She Is Likely To Prevail On The Merits.**

12                 Based on the foregoing Silva has demonstrated that she has met the second  
13                 requirement of a stay pending appeal. Both the district court and the bankruptcy  
14                 court failed to recognize that the Bollag recording of the Trustee's Deed Upon  
15                 Sale was a stay violation for which there is no exception. Furthermore, having  
16                 demonstrated the likelihood of prevailing, the bar is lowered on what is necessary  
17                 to show "irreparable harm." In *Winter v Nat. Res. Def. Council, Inc. v U.S.*, 555  
18                 U.S. 7, 22 (2008), the court wrote "[the] District Court and the Ninth Circuit also  
19                 held that when a plaintiff demonstrates a strong likelihood of prevailing on the  
20                 merits, a preliminary injunction may be entered based only on a "possibility" of  
21                 irreparable harm."

22                 **IV**

23                 **A BOND SHOULD NOT BE REQUIRED**

24                 A stay may be conditioned on such terms as will protect the parties. A bond  
25                 is not necessarily required, *Lofstead v Kendall (In re Kendall)*, 510 B.R. 356, 359-

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26  
27                 <sup>35</sup>ER Vol. 6, page 868, line 6, page 931, line 8, and 934, line 3.

1 360 (Bankr. Colo. 2014). The court may fashion “appropriate” relief, FRBP 8005.  
2 The bankruptcy court found that Silva was current on the mortgage payments on  
3 the first deed of trust.<sup>36</sup> At the time the case was filed the monthly payment was  
4 \$932.06. There was a rate change on 1/1/2014 increasing the payment to \$935.78.  
5 The payment includes taxes and insurance.<sup>37</sup> At the time the court’s decision was  
6 entered she had paid 40 months at \$932.06 and 15 months at \$935.78. This comes  
7 to \$51,319.10. In addition to that, she has paid the Wells Fargo arrearage in the  
8 amount of \$17,057.93. Those two sums total \$65,740.71. Since March 10, 2015  
9 she has continued to pay the mortgage, insurance and taxes (which are impounded  
10 in her payment). This amount should suffice to protect Appellees during the  
11 appeal. Pending appeal she is willing to continue to make the mortgage payments.

12 **1. Neither MBB or The Bollags Are Entitled To An Offset For Rent**

13 Silva does not owe them rent as an offset because there never was a rental  
14 agreement, express or implied. The bankruptcy court quoted the Todd Lyle  
15 declaration “The Bollag Family Trust decided not to become record owners, to  
16 allow Ms. Silva to live on the [subject property] without paying rent to them . . .”<sup>38</sup>  
17 California law is clear, a quantum meruit recovery requires that “the services were  
18 rendered under some understanding or expectation of both parties that  
19 compensation therefore was to be made.” *Huskinson & Amp, Brown, LLP v Wolf*,  
20 32 Cal 4th 453, (2004), *Advanced Choices. Inc. v State Dept. Of Health Services*,  
21 182 Cal. App. 4<sup>th</sup> 1661, 1673 (2010), and *Day v Alta Bates Medical Center*, 98

22  
23 <sup>36</sup>Fact 8.

24  
25 <sup>37</sup>Motion for a Stay Pending Appeal From the Order Granting Relief From the  
Automatic Stay, Declaration of Carlita Silva and Janet A. Lawson, Docket No. 72 page  
74 - Annual Escrow statement.

26  
27 <sup>38</sup> Fact 6.

1 Cal. App. 4<sup>th</sup> 243, 248-249 (2002). Given the admission of Todd Lyle, no  
2 reimbursement is necessary or required.

3 V

4 **REQUIREMENTS FOR A STAY PENDING APPEAL**

5 There are four factors to consider in determining whether or not to exercise  
6 discretion in granting a stay pending appeal pursuant to Federal Rule of  
7 Bankruptcy Procedure ("FRBP") 8005. They are: (1) whether the stay applicant  
8 has made a strong showing that she is likely to succeed on the merits; (2) whether  
9 the applicant will be irreparably harmed absent a stay; (3) whether the stay will  
10 substantially injure the other parties interested in the proceeding; and (4) where  
11 the public interests lie. The applicant bears the burden of demonstrating  
12 circumstances that justify the exercise of judicial discretion to grant the stay  
13 pending appeal. The first two factors are the most critical. See *Fireman's Fund*  
14 *Insurance Co. v Plant Insulation Co. (In re Plant Insulation Co.)*, 485 B.R. 203,  
15 237 (N.D. Cal. 2012), *reversed and remanded on other grounds*, 734 F.3rd 900  
16 (9<sup>th</sup> Cir. 2013), citing *Nken v Holder*, 556 U.S. 418, 433-434 (2009). FRBP 8005  
17 gives the court the discretion to stay any order during the pendency of the appeal  
18 on such terms as will protect the rights of all parties in interest.

19 As discussed above, Silva has demonstrated that she is likely to prevail on  
20 the merits, that she will be irreparably harmed if a stay is not granted, and that  
21 MBB will not be harmed if the stay is granted because she continues to service the  
22 first mortgage. The only thing MBB will suffer is delay. In *In Re Conceicao*, 331  
23 B.R. 885, 894 (B.A.P. 9<sup>th</sup> Cir. 2005) the court passed muster on a grant of a  
24 preliminary injunction because the debtor demonstrated a likelihood of prevailing  
25 on the merits in a stay violation case. There is no harm here to the public interest  
26 as no public policies are involved.

1 VI  
2

CONCLUSION

Having demonstrated the necessary requirements for a stay, equity demands that one be granted. A stay would preserve the status quo. A full hearing on the merits of the bankruptcy issues would include whether or not Silva had any strong arm powers under 11 USC 544(a)(3) and 546(a) due to the Bollags latches. It would allow her to complete the appellate process in state court. It is readily apparent from the transcript from state court on August 7, 2015 that the state court judge was uncertain about the effect of the Order granting relief from stay.<sup>39</sup> Silva needs time to get that sorted out in state court.

Dated: October 19, 2015

Janet A. Lawson, Attorney for Carlita Silva  
3639 East Harbor Blvd. #109  
Ventura CA 93001  
(805) 985 1147  
[Jlawsonlawyer@gmail.com](mailto:Jlawsonlawyer@gmail.com)

Pursuant to FRAP Rule 27(d)(2) this motion does not exceed 20 pages (omitting the table of contents and citations).

---

<sup>39</sup>Exhibit G. The transcript dated June 12, 2015 is Marked as Exhibit H for completeness. All letter Exhibits are attached to a Request For Judicial Notice.

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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
3639 East Harbor Blvd. #109, Ventura CA 93001

A true and correct copy of the foregoing document entitled (specify): URGENT MOTION SEEKING A STAY PENDING APPEAL

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 10/19/2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Joseph Shoulder, sholder@g-tlaw.com Felicia Torres, torres@g-tlaw.com

I NOTIFIED MR. SHOLDER ON FIRDAY 10/16/2015 THAT I WOULD BE FILING THIS MOTION

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

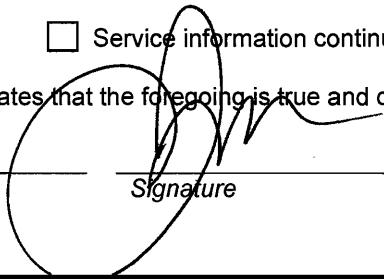
Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/19/2015 JANET LAWSON  
Date Printed Name

  
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

DECLARATION OF JANET A. LAWSON

I, JANET A. LAWSON could and would competently testify to the following if called to do so:

1. I represent Carlita Silva in the state court unlawful detainer proceedings.

2. I am asking the court to take judicial notice of the attached state court documents pursuant to Federal Rules of Evidence Section 201(2).

9	A. Complaint for Unlawful Detainer.....	2
10	B. Answer to Complaint.....	17
11	C. Transcript of Proceedings August 28, 2015.....	21
12	D. Unlawful Detainer Judgement.....	34
13	E. Order granting a temporary stay.....	38
14	F. Order terminating the stay.....	41
15	G. Briefing Schedule.....	44
16	H. Transcript of proceedings August 7, 2015.....	46
17	I. Transcript of proceedings August 7, 2015.....	72
18	3. The attached copies are true and accurate copies.	

19 I declare under penalty of perjury under the laws of the state  
20 of California that the foregoing is true and correct. Executed at  
21 Ventura California on October 19, 2015

~~JANET A. LAWSON~~

1           **LAW OFFICES OF**  
2           **MARTINEZ & MARTINEZ, INC**  
3           **JESSE MARTINEZ 147765**  
4           **P.O. BOX 6325**  
5           **Santa Maria, CA 93456**  
6           **(805) 928-8482**

7  
8  
9           **Attorneys for Plaintiff**

10           **FILED**  
11           **SUPERIOR COURT OF CALIFORNIA**  
12           **COUNTY OF SANTA BARBARA**

13           **MAY 15 2015**

14           **Darrel E. Parker, Executive Officer**  
15           **BY Karen Cox**  
16           **Karen Cox, Deputy Clerk**

17  
18           **SUPERIOR COURT OF SANTA BARBARA COUNTY**

19           **STATE OF CALIFORNIA**

20           **MBB PROPERTIES, LLC., )           CASE NO. 15CV 01040**  
21           a Delaware Limited Liability Company )  
22           )  
23           Plaintiff, )           Complaint for Unlawful Detainer  
24           )           LIMITED CIVIL JURISDICTION  
25           vs. )           POST-FORECLOSURE EVICTION  
26           )           CCP Sections 1161a (b)(3), 1166,  
27           CARLITA MARIE SILVA, )           & 1177  
28           DOES 1-100 )  
29           Defendants, )           AMOUNT DEMANDED DOES NOT  
30           )           EXCEED \$10,000

31           1. Plaintiff MBB PROPERTIES, LLC. is and at all times mentioned in this  
32           complaint was a limited liability company organized and existing under the laws of the  
33           State of Delaware and which at all material times mentioned hereto is and was  
34           authorized and doing business in the state of California, County of Santa Barbara.

35           2. Defendants CARLITA MARIE SILVA is and at all times mentioned in this  
36           complaint was an individual over the age of 18 years.

37           3. The true names and capacities of Defendants DOES 1 through DOES 100  
38           are unknown to plaintiff, who therefore sues these defendants by such fictitious names  
39           and will amend this complaint to allege their true names and capacities when  
40           ascertained. Plaintiff is informed and believes and thereon alleges that each of the

1 fictitiously named defendants claims a right under the named defendant to possession  
2 of the premises against plaintiff. These defendants will be served pursuant to Code  
3 of Civ. Proc. Section 415.46.

4 4. The property of which Plaintiff seeks possession is located at 1100 N. Third  
5 Street, Lompoc, California, County of Santa Barbara, (the "Premises"). Said  
6 Premises is located within this Superior Court Judicial District.

7 5. Pursuant to a Quit Claim Deed executed by Plaintiff's predecessors of  
8 interest, Michael Bollag and The Bollag Family Trust and delivered to plaintiff,  
9 plaintiff is the owner, and entitled to possession, of the real property known as 1100  
10 N. Third Street, Lompoc, California, County of Santa Barbara. Said Quit Claim Deed  
11 is attached hereto as Exhibit A and incorporated herein

12 6. Possession of the Premises is sought pursuant to Code of Civ. Proc.  
13 Section 1161a. Plaintiff's predecessors of interest, Michael Bollag and The Bollag  
14 Family Trust obtained title to the Premises by its purchase at a foreclosure sale  
15 validly held in compliance with Civil Code Section 2924, the particulars of which are as  
16 follows:

17 A. Defendant CARLITA MARIE SILVA executed as Trustor, a Deed of Trust,  
18 with power of sale, recorded on or about April 27, 2005, instrument number  
19 2005-0038533 of the official records in the office of the County Recorder of SANTA  
20 BARBARA County, California, which Deed of Trust encumbered the Premises.

21 B. Defendant CARLITA MARIE SILVA defaulted in the payment of the  
22 promissory note and, thereafter, on September 3, 2008, at the request of the  
23 beneficiary, the trustee, in accordance with Civil Code Section 2924, caused to be  
24 recorded in the official records in the office of the County Recorder of Santa Barbara  
25 County, California, instrument number 2008-0051797, a notice of default and breach  
26 of conditions of the trust deed and its selection to sell the property under the power of  
27 sale contained in the trust deed to satisfy the obligation secured by the trust deed.

1  
2       The notice of default contained the statement specified in Civil Code Section  
3       2924c(b)(1).

4           C. All requirements of law regarding the mailing of copies of notices or the  
5       publication of a copy of the Notice of Default or the personal delivery of the copy of the  
6       Notice of Default and the posting and publication of the copies of the Notice of Sale  
7       were complied with.

8           D. Pursuant to the foreclosure and sale of the Premises, under the power of  
9       sale contained in the Deed of Trust and in compliance with Civil Code Section 2924,  
10      the Trustee sold and conveyed title to the Premises to the Plaintiff's predecessors of  
11     interests, pursuant to a Trustee's Deed Upon Sale recorded on or about October 16,  
12     2014 in the Official Records of Santa Barbara County as Instrument Number  
13     2014-0047554, a copy is attached and incorporated herein as Exhibit B.

14           7. Title was and had been perfected by Plaintiff's predecessors of interests on  
15     October 16, 2014..

16           8. Plaintiff is informed, believes, and thereon alleges that Defendants  
17     CARLITA MARIE SILVA, and DOES 1 through 50 were in possession of the  
18     Premises at the time of sale, and that Defendants CARLITA MARIE SILVA, and  
19     Defendants 1 through 100 remained in possession after the sale.

20           9. On or about May 11, 2015, plaintiff caused to be served on defendant a  
21     written notice stating that plaintiff had purchased the property and that its title had  
22     been duly perfected and demanding that defendant quit the premises within three  
23     days after service of the notice. A copy of the notice is attached to this complaint as  
24     Exhibit C and made a part of this complaint.

25           10. The three day period expired on May 14, 2015, , and since that date  
26     plaintiff has been and is entitled to immediate possession of the premises,

27           11. Defendant failed and refused to deliver up possession within the  
28     three-day period or since and continues in possession of the premises without

plaintiff's permission or consent. Unnamed defendants will be served pursuant to Code of Civ. Proc. Section 415.46.

12. The reasonable rental value of the premises is \$48.33 per day, and the damages to plaintiff proximately caused by defendant's unlawful detention have accrued at the rate since May 15, 2015, , and will continue to accrue at the rate so long as defendant remains in possession of the premises.

WHEREFORE, plaintiff prays judgment against defendant as follows:

1. For possession of the premises;
  2. For damages for the unlawful detention of the premises at the rate of \$48.33 per day from May 15, 2015, until entry of judgment;
  3. For costs of suit herein incurred; and,
  4. For such other and further relief as the court may deem proper.

Dated: 5/17/2015

JESSE MARTINEZ

By:

**Attorney for Plaintiff**

# VERIFICATION

I, Todd Lyle, am an officer of MBB PROPERTIES, LLC., the plaintiff in the above-entitled proceeding. I have read the above complaint and know the contents thereof. The same is true of my knowledge, except as to those matter are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

1      Dated: 5/15/15

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4      Manager \_\_\_\_\_ (Title)  
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2014-0047800

Recorded  
Official Records  
County of  
Santa Barbara  
Joseph E. Holland  
County Clerk Recorder

REC FEE 20.00  
CERTIFICATION 2.50  
COPIES OFFICE 10.00

01:50PM 17-Oct-2014 Page 1 of 2

Recording requested by:

And when recorded, mail this deed and tax statements to:  
MBB Properties, LLC  
3208 Campanil Dr.  
Santa Barbara, CA 93109

## QUITCLAIM DEED

TRA: \_\_\_\_\_

APN: 087-025-010

- This transfer is exempt from the documentary transfer tax.  
 The documentary transfer tax is \$0.00 and is computed on:  
 the full value of the interest or property conveyed.  
 the full value less the liens or encumbrances remaining thereon at the time of sale.
- The property is located in  an unincorporated area  the city of \_\_\_\_\_

For recorder's use

For a valuable consideration, receipt of which is hereby acknowledged,  
Michael Bollag 50%, The Bollag Family Trust 50%

hereby quitclaims(s) to

MBB Properties, LLC, Registered in the state of California to do business as MBB California Real Estate, LLC

the following real property in the City of Lompoc, County of Santa Barbara, California:Address: 1100 N. 3rd St. Lompoc, CA 93436

See Exhibit A

Date: \_\_\_\_\_

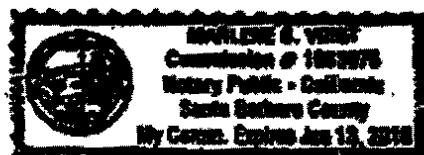
Date: \_\_\_\_\_

State of California

County of Santa Barbara

On October 17, 2014, before me, Marlene S. Voigt, personally appeared Michael Bollag and Benjamin Bollag, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Marlene S. Voigt  
Signature of Notary

1007.4

EXHIBIT A

Exhibit "A"

LOT 40 OF SUBDIVISION NO. LOM-58, IN THE CITY OF LOMPOC, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 54, PAGES 53 AND 54, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

The street address and other common designation, if any, of the real property described above is purported to be:  
1100 N 3RD STREET  
LOMPOC CA 93436

RECORDED REQUESTED BY:  
RECORDED RETURN TO:

## WHEN RECORDED MAIL TO:

MICHAEL BOLLAG  
3666 CAMPANIL DRIVE  
SANTA BARBARA CA 93109



2014-0047554

Recorded	REC FEE	10.00
Official Records	TAX	37.44
County of	CERTIFICATION	2.00
Santa Barbara	COPIES-OFFICE	10.00
Jessica E. Holland		
County Clerk Recorder		

TRA # 001000  
Trust No. 1174459-02  
Loan No. XXXXX1782



11:15AM 16-Oct-2014 Page 1 of 2

2 LD-  
PCOR, COPY cert

## MAIL TAX STATEMENT TO:

Same as above

## Space Above This Line For Recorder

Documentary Transfer Tax \$37.40

 Grantee was/was not the foreclosing beneficiary. consideration \$34,127.49 unpaid debt \$34,127.48 non exempt amount \$ Computed on the consideration or value of property conveyed. Computed on the consideration of value less liens or encumbrances remaining at time of sale.

*Megan Cooper*

Signature of Declarant or Agent

AP# 087-025-10-00

## TRUSTEE'S DEED UPON SALE

CAL-WESTERN RECONVEYANCE CORPORATION (herein called trustee) does hereby grant and convey, but without covenant or warranty, express or implied to 50% THE BOLLAG FAMILY TRUST 50% MICHAEL BOLLAG (herein called Grantee) the real property in the county of SANTA BARBARA, State of California described as follows:

LOT 40 OF SUBDIVISION NO. LOM-58, IN THE CITY OF LOMPOC, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 54, PAGES 53 AND 54, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

The street address and other common designation, if any, of the real property described above is purported to be:  
1190 N 3RD STREET  
LOMPOC CA 93436

This conveyance is made pursuant to the authority and powers vested in said Trustee, as Trustee, or Successor Trustees, or Substituted Trustee, under that certain Deed of Trust executed by CARLITA M SILVA AND REGINALD SILVA WIFE AND HUSBAND as Trustor, recorded April 27, 2005, as Document No. 2005-0038533, in Book XX, page XX, of Official Records in the Office of the Recorder of SANTA BARBARA County, California; and pursuant to the Notice of Default recorded September 03, 2008, as Document No. 2008-0051797 in Book XX, page XX of Official Records of said County, Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by said Deed of Trust, including, among other things, as applicable, the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof.

*Exhibit B*

TRA # 001000  
Trust No. 1174459-02  
Loan No. XXXXXX1782

At the place fixed in the Notice of Trustee's Sale, said Trustee did sell said property above described at public auction on August 10, 2009 to said Grantee, being the highest bidder therefore, for \$34,127.49 cash, lawful money of the United States, in satisfaction pro tanto of the indebtedness then secured by said Deed of Trust.

CAL-WESTERN RECONVEYANCE CORPORATION

Dated: August 12, 2009

Campbell

Pamela Campbell, A.V.P.

State of California )  
County of San Diego)

On 8/18/09 before me, C. Hoy

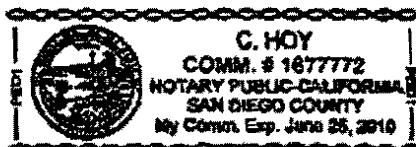
a Notary Public in and for said State, personally appeared Pamela Campbell, A.V.P., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_

C. Hoy

(Seal)



**NOTICE TO QUIT**  
**NOTICE TO VACATE PROPERTY**

**TO: CARLITA MARIE SILVA & AND ALL OTHERS IN POSSESSION**

**ADDRESS: 1100 N. THIRD ST, LOMPOC, CALIFORNIA County of Santa Barbara**

NOTICE IS HEREBY GIVEN THAT MBB PROPERTIES, LLC is the purchaser of the subject property which has been duly sold in accordance with Section 2924 of the California Civil Code, under a power of sale contained in a Deed of Trust encumbering the property and title under the sale has been duly perfected.

**YOU AND EACH OF YOU** are hereby put on notice that within three (3) days after service upon you of this Notice you are hereby required to quit and deliver up possession of the real property you occupy at the above-captioned address to the owner or the undersigned as agent and representative of the owner thereof UNLESS you provide evidence you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the Federal "Protecting Tenants at Foreclosure Act of 2009 (PTFA) or are protected by 703 of the PTFA.

In the event you have not either vacated and relinquished possession within three (3) days after service of this Notice upon you or provided evidence that you are a bona fide tenant pursuant to PTFA or protected by PTFA, you will be subject to court proceedings in the form of an Unlawful Detainer proceeding, and will be responsible for damages and all court costs incurred.

This Notice is being given to you under the provisions of the PTFA and California Code of Civil Procedure Sections 1161a, 1161b and 1161c

Dated this 11 day of May 2015



JESSE MARTINEZ,  
Attorney for MBB PROPERTIES, LLC  
426 E. BARCELLUS STE 302  
SANTA MARIA, CA 93454  
805 680-5690

Attached: Trustee's Deed Upon Sale Recorded as Doc # 2014-0047554  
Quit Claim Deed Recorded as Doc # 2014-0047800  
Sheet concerning your rights if you are a renter and Carlita or Reginald Silva  
do not reside in the home

EXHIBIT C

**Notice to Any Renters Living At  
1100 N. THIRD ST. LOMPOC, CALIFORNIA County of Santa Barbara**

The attached notice means that your home was recently sold in foreclosure and the new owner plans to evict you.

You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers it may hurt your credit if you do not respond and simply move out. Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.

You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

**How to Get Legal Help**

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.



2014-0047800

Recorded  
Official Records  
County of  
Santa Barbara  
Joseph E. Hollings  
County Clerk Recorder

01:58PM 17-Oct-2014 Page 1 of 2

REC FEE 28.00  
CERTIFICATION 2.00  
COPIES-OFFICE 10.00

Recording requested by:

And when recorded, mail this deed and tax statements  
to:MBB Properties, LLC  
3208 Campanil Dr.  
Santa Barbara, CA 93109

D-  
2 cert copy

For recorder's use

**QUITCLAIM DEED**

TRAC: \_\_\_\_\_

APN: 087-025-010

- This transfer is exempt from the documentary transfer tax.  
 The documentary transfer tax is \$ 0.00 and is computed on:  
 the full value of the interest or property conveyed.  
 the full value less the liens or encumbrances remaining thereon  
at the time of sale.
- The property is located in  an unincorporated area  the city of

For a valuable consideration, receipt of which is hereby acknowledged,  
Michael Bollag 50%, The Bollag Family Trust 50%

hereby quitclaims(s) to  
MBB Properties, LLC, Registered in the state of California to do business as MBB California Real Estate,  
LLC

the following real property in the City of Lompoc, County of Santa Barbara,  
California:

Address: 1100 N. 3rd St. Lompoc, CA 93436

See Exhibit A

Date: \_\_\_\_\_

Date: \_\_\_\_\_

State of California

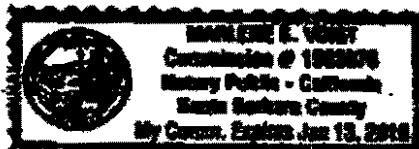
County of Santa Barbara

(Signature of declarant) Michael Bollag  
as Trustee for the Bollag Family Trust  
(Signature of declarant) Benjamin Bollag

On October 17, 2014, before me, Marlene S. Voigt, personally appeared Michael Bollag and Benjamin Bollag, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Marlene S. Voigt  
Signature of Notary



1167.41

Exhibit "A"

LOT 40 OF SUBDIVISION NO. LOM-58, IN THE CITY OF LOMPOC, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 54, PAGES 53 AND 54, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

The street address and other common designation, if any, of the real property described above is purported to be:  
1100 N 3RD STREET  
LOMPOC CA 93436

RECORDING REQUESTED BY &  
RECORDED RETURN TO  
WHEN RECORDED MAIL TO:

MICHAEL BOLLAC  
3666 CAMPANIL DRIVE  
SANTA BARBARA CA 93109

TRA # 001000  
Trust No. 1174459-02  
Loan No. XXXXX1782



2014-0047554

	REC FEE	18.00
Official Records	TAX	\$7.00
County of Santa Barbara	CERTIFICATION	2.00
Joseph E. Holland	COPIES-OFFICI	10.00
County Clerk Recorder		

17:15AM 16-Oct-2014 Page 1 of 2

*Z LD -  
PCOR, COPY cert.*

## Space Above This Line For Recorder

MAIL TAX STATEMENT TO:

Same as above

Documentary Transfer Tax \$37.40

 Grantee was not the foreclosing beneficiary.

consideration \$34,127.49

unpaid debt \$34,127.48

non exempt amount \$

 Computed on the consideration or value of property conveyed. Computed on the consideration of value less liens or encumbrances remaining at time of sale.

*Megan Cooper*

Signature of Declarant or Agent

AP# 087-025-10-00

## TRUSTEE'S DEED UPON SALE

CAL-WESTERN RECONVEYANCE CORPORATION (herein called trustee) does hereby grant and convey, but without covenant or warranty, express or implied to 50% THE BOLLAC FAMILY TRUST 50% MICHAEL BOLLAG (herein called Grantee) the real property in the county of SANTA BARBARA, State of California described as follows:

LOT 40 OF SUBDIVISION NO. LOM-58, IN THE CITY OF LOMPOC, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 54, PAGES 53 AND 54, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

The street address and other common designation, if any, of the real property described above is purported to be:  
1100 N 3RD STREET  
LOMPOC CA 93436

This conveyance is made pursuant to the authority and powers vested in said Trustee, as Trustee, or Successor Trustee, or Substituted Trustee, under that certain Deed of Trust executed by CARLITA M SILVA AND REGINALD SILVA WIFE AND HUSBAND as Trustor, recorded April 27, 2005, as Document No. 2005-0038533, in Book XX, page XX, of Official Records in the Office of the Recorder of SANTA BARBARA County, California; and pursuant to the Notice of Default recorded September 03, 2008, as Document No. 2008-0051797 in Book XX, page XX of Official Records of said County, Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by said Deed of Trust, including, among other things, as applicable, the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof.

TRA # 001000  
Trust No. 1174459-02  
Loan No. XXXXXXJ782

At the place fixed in the Notice of Trustee's Sale, said Trustee did sell said property above described at public auction on August 10, 2009 to said Grantee, being the highest bidder therefore, for \$34,127.49 cash, lawful money of the United States, in satisfaction pro tanto of the indebtedness then secured by said Deed of Trust.

CAL-WESTERN RECONVEYANCE CORPORATION

Dated: August 12, 2009

Campbell

Pamela Campbell, A.V.P.

State of California )  
County of San Diego)

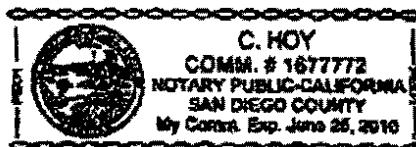
On 8/18/09 before me, C. Hoy,  
a Notary Public in and for said State, personally appeared Pamela Campbell, A.V.P., who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I  
certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(Seal)

Signature C. Hoy

C. Hoy



1 JANET A. LAWSON #107321  
2 3639 East Harbor Blvd. #109  
3 Ventura, CA 93001  
4 (805) 985-1147  
5 (805)658-2302 (FAX)  
6 [lawsonlawyer@gmail.com](mailto:lawsonlawyer@gmail.com)

FILED  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

MAY 20 2015

Darrel E. Parker, Executive Officer  
BY J. Bailey  
J. Bailey, Deputy Clerk

SUPERIOR COURT OF SANTA BARBARA - LOMPOC  
STATE OF CALIFORNIA

11 MBB PROPERTIES, LLC a ) Case No. 15CV01040  
12 Delaware Limited Liability Company )  
13 Plaintiff, ) ANSWER TO COMPLAINT  
14 v. ) Date:  
15 Carlita Marie Silva, ) Time:  
16 Does 1-100 ) Courtroom:  
17 Defendant )

18 1. Defendant denies that MBB Properties, LLC a Delaware Limited Liability Company is  
19 at "all material times mentioned hereto is and was authorized and doing business in the state of  
20 California, County of Santa Barbara" based on a lack of information and belief.

- 21 2. Defendant admits paragraph 2 of the complaint.  
22 3. Defendant denies paragraph 3 based on a lack of information and belief.  
23 4. Defendant admits paragraph 4 of the complaint.  
24 5. Defendant denies paragraph 5 of the complaint.  
25 6. Defendant admits paragraphs 6, 6A, 6B, 6C, 6D.

28 Answer to Complaint

2

- 1      7. Defendant denies paragraph 7.
- 2      8. Defendant admits paragraph 8.
- 3      9. Defendant admits paragraph 9.
- 4      10. Defendant denies paragraph 10.
- 5      11. Defendant denies paragraph 11.
- 6      12. Defendant denies paragraph 12.

7                   **AFFIRMATIVE DEFENSES**

- 8      1. Defendant has perfected her title by adverse possession. She is therefor entitled to
- 9      possession. She has resided continuously in the property in since August 12, 2009, the date of the
- 10     Trustee's Deed Upon Sale. She paid the 2009, 2010, 2011, 2012 and 2013 taxes which were
- 11     assessed during that time period. She also paid the taxes that were levied during that time period.
- 12     As of August 10, 2014 she became the owner of the property.

13                  Dated: May 20, 2015

14  
15                  Janet A. Dawson,  
16                  Attorney for Carlita Silva  
17  
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28                  Answer to Complaint

2

1 VERIFICATION  
2

3 I am a  Plaintiff  Defendant  Cross-Defendant in this action. I have read the  
4 foregoing responses to:

- 5  Form Interrogatories  
6  Interrogatories  
7  Request for Production of Documents  
8  Request for Admissions  
9  Verified Pleading

10 The matters stated therein are true of my own knowledge except those matters stated on  
11 information and belief, and as to them I believe them to be true.

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

14 Dated: May 20, 2015

15 Signature /  
16

17 Carlita Silva  
18 Name printed  
19  
20  
21  
22  
23  
24  
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26  
27  
28

PROOF OF SERVICE  
STATE OF CALIFORNIA  
COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action; my business address is 3639 East Harbor Blvd. #109, Ventura CA 93001.

On the date set forth below I served the foregoing document described as:

ANSWER TO COMPLAINT

On interested parties in this action by:

✓ electronically transmitting a true copy thereof to the  
 firm with the consent of opposing counsel, as well as a true confirmation copy placed in an envelope with postage prepaid, addressed as follows:

MARTINEZ AND MARTINEZ  
POB 6325  
Santa Maria, CA 93456

United States mail as addressed above.

I am readily familiar with the firm's practice of collections and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Oxnard, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date, or postage meter date is more than one day after the date of deposit for mailing in affidavit.

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

Executed on 5/20/2015 at VENTURA, California.

  
\_\_\_\_\_  
JANET LAWSON, #107321

 Deborah Lawson

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
SANTA MARIA - COOK DIVISION

MBB PROPERTIES, )  
vs. Plaintiff, )  
CARLITA SILVA, ) NO. 15CV01040  
Defendant. )  
\_\_\_\_\_  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HONORABLE JAMES F. RIGALI, JUDGE

Friday, August 28, 2015

**ORIGINAL**

APPEARANCES:

FOR THE PLAINTIFF:

DIANA JESSUP LEE  
Attorney at Law  
1421 State Street  
Santa Barbara, CA 93101

FOR THE DEFENDANT:

JANET A. LAWSON  
Attorney at Law  
3639 East Harbor Blvd.  
Suite 109  
Ventura, CA 93001

**Exhibit C**

REPORTED BY: SHELLI V. PORTER, C.S.R.# 9729

Santa Maria, California

Friday, August 28, 2015

## Morning Session

THE COURT: Good morning, Your Honor, MBB Properties, LLC, versus Carlita Silva, 15CV01040. May I have your appearances, please.

MS. LAWSON: Yes. Janet Lawson on behalf of  
Carlita Silva.

MS. LEE: Good morning, Your Honor, Diana Lee on behalf of MBB Properties.

THE COURT: Hello and welcome. Thanks for being here. I have all these other cases, but no people. Your client got a different lawyer than last time?

MS. LEE: I was here last time.

THE COURT: You were?

MS. LEE: Yes. That was my first time on this.

THE COURT: My apologies. I have a terrible memory.

MS. LEE: That's okay.

THE COURT: I was thinking the first time, when we started this, weren't there two men over here?

MS. LAWSON: Yes. I think one was Todd Lyle.

MS. LEE: Jesse Martinez had this.

1 initially.

2 THE COURT: So, this is -- I'm looking at  
3 your ex parte application, and I don't have anything  
4 in writing, but you're here to oppose it orally, or  
5 did you have writings?

6 MS. LEE: We had writings that were  
7 submitted and confirmed yesterday. I have an extra  
8 copy, if you like.

9 THE COURT: They are, probably, in here.  
10 The computer is how we're supposed to do it, so I'll  
11 do it this way, if I can find it. How come I have  
12 her papers?

13 THE CLERK: I'm not sure.

14 THE COURT: It has nothing to do with the  
15 two of you, or your client's concerns, it was just  
16 they gave me your papers.

17 MS. LAWSON: I don't object to you getting a  
18 paper copy.

19 THE COURT: That's not the point, at all.  
20 I'm just trying to wing myself off the paper because  
21 they are telling me it's supposed to be a paperless  
22 system. We have so many people, and, of course, when  
23 it's an ex parte, hurry up and get it over to the  
24 judge, and now they are hurrying up and getting it  
25 over to the judge, including the paper. So, the  
26 answer to that puzzle is that the opposition is  
27 scanned, but the ex parte isn't. So, I have them  
28 both, one in paper.

1           MS. LAWSON: We, also, filed a declaration  
2 of indigence, and I don't know if you have that.

3           THE COURT: That is in the computer. You  
4 filed that on the 27th, which, I guess, was  
5 yesterday, by fax.

6           MS. LAWSON: Yes.

7           THE COURT: So, you both filed things  
8 yesterday, and they got in the machine. Could have  
9 been just the people that were scanning it couldn't  
10 get to this, or something. I don't know.

11          When I signed the judgment I signed, I cut  
12 the baby in half and stated to a certain date, what  
13 date was it? It was some day --

14          MS. LAWSON: You signed it on the seventh,  
15 it was served on me on the 12th. I was out of the  
16 country.

17          THE COURT: Didn't it say anything on there?

18          MS. LEE: It was stayed until August 31st.

19          THE COURT: Okay. But you were gone?

20          MS. LAWSON: I was gone. I was out of the  
21 country, so I was in Canada.

22          THE COURT: What were you doing there?

23          MS. LAWSON: It was great. It was my  
24 cousin's 25th anniversary.

25          THE COURT: How long were you in Canada?

26          MS. LAWSON: Five days. I had instructed my  
27 staff to let me know if something came from the Santa  
28 Maria court, but it came from counsel, so they didn't

1 contact me while I was gone. Because I was prepared  
2 to do something while I was gone, because the  
3 envelope -- they were being literal. I have someone  
4 new in the office.

5 THE COURT: What does the declaration of  
6 indigence do?

7 MS. LAWSON: It just shows that she doesn't  
8 have the funds, the ability to post the bond. Her  
9 income is Social Security.

10 THE COURT: Okay. I'm sorry, I just want to  
11 know because, I mean, she is, then, at the same time,  
12 agreeing to pay the impounded rent, or whatever, or  
13 the payment.

14 MS. LAWSON: Her mother gives her the money  
15 for that.

16 THE COURT: Okay. I mean, I don't want to  
17 get into it too much, I just -- and, a lot of times I  
18 can't, because I'm not supposed to talk about the fee  
19 waivers, and stuff, in public to violate the Bill of  
20 Rights. I just want to know what the relevance was  
21 to the bond.

22 Let me start out by saying you are  
23 tenacious, also. Nobody just wins because they are  
24 tenacious, but good lawyering is never a bad thing.

25 THE COURT: All right. So, Ms. Lawson, you  
26 filed your notice of appeal on the 20th of August --

27 MS. LAWSON: Correct.

28 THE COURT: -- in this court. And you filed

1 your notice of filing notice of appeal on the 26th.

2 Oh, no, that's a court document.

3 MS. LAWSON: I received nothing from the  
4 court in Santa Barbara regarding my appeal.

5 THE COURT: Well, on the 26th of August,  
6 which was just, I guess, two days ago, on Wednesday,  
7 the clerk's office issued -- the appeals clerk of our  
8 court, Patricia Frutos, who has to get the record  
9 together, and do all the work to get it to the Court  
10 of Appeal, issued the notice of filing of your notice  
11 of appeal.

12 MS. LAWSON: I filed a designation of the  
13 record this morning.

14 THE COURT: When you filed your notice of  
15 appeal on the 20th, was that before or after your  
16 Canadian vacation?

17 MS. LAWSON: When I had come back.

18 THE COURT: When did you get back?

19 MS. LAWSON: I got back --

20 THE COURT: August, most of it's crossed  
21 out, but you can still see it.

22 MS. LAWSON: 18th.

23 THE COURT: So, you didn't see their notice  
24 of entry of judgment until the 18th?

25 MS. LAWSON: Correct. That's when I came  
26 back. That's a Monday, right? Yeah.

27 THE COURT: That's a Tuesday. Close enough.

28 MS. LAWSON: I traveled on --

1           THE COURT: I'm not going to be --

2           MS. LAWSON: I traveled on the 18th, didn't  
3 get into Los Angeles -- I didn't get home until 11:00  
4 o'clock at night, so my first day back to work was  
5 the 19th.

6           THE COURT: All right. Well, I don't have  
7 the privilege of having you appear in front of me all  
8 the time, so I don't know you well, and you don't  
9 know me well, and that's not supposed to make a  
10 difference because it's just the law, but I have a  
11 thing for lawyer vacations. I mean, I really don't  
12 think that people should get penalized for it.

13          It was my intent, when I signed the  
14 judgment, and, admittedly, it's embarrassing that I  
15 can be so naive when I'm the judge, or whatever, but  
16 I gave her 24 days to get to figure this thing out,  
17 or whatever she was going to do. I understand all  
18 the law, and, yet, at the same time, it doesn't make  
19 sense to me. If all of your great academics are  
20 true, then the Court of Appeal will intervene and  
21 tell me to have a trial on adverse possession, or  
22 they'll decide it themselves, or whatever is the  
23 right answer.

24          But even if the Federal Court doesn't have  
25 the power to decide the State Court issue, I would  
26 think that if you -- they do have the power to stay  
27 State Court actions. So, if there was relief from  
28 the automatic stay, so you could go in and try to

1 un-relief it, or whatever that motion is, by telling  
2 them that you are now at the Court of Appeal stage.  
3 So, maybe that judge will be more excited about it,  
4 since you got further.

5 If he or she isn't, then it would seem, to  
6 me, that's tantamount to the same thing as having the  
7 federal court judge let you get kicked out again.  
8 You know? So, either you get help from Ventura, or  
9 you get help from the federal judge, but your stay is  
10 extended to the 12th of September, and that's it.

11 MS. LAWSON: Okay.

12 THE COURT: Unless I change my mind, and  
13 because I should, and I will, and it's my job. I  
14 know it sounds like I'm doing it all backwards, but I  
15 do this all the time, so if -- that's right, you guys  
16 were here before. This is Judge Herman's old firm.

17 If you can change my mind, then I'm happy to  
18 change my mind, but now you know what I'm thinking.  
19 So, there's that combination of absolute black letter  
20 law, and then judicial discretion, then the  
21 practicalities of how you go and get a client to  
22 understand that, you know, you're exactly correct,  
23 but the judge did it anyway.

24 I really don't think that people respect  
25 lawyers enough, and I want to respect them all the  
26 time, and I don't think she's lying about her  
27 Canadian vacation. I don't know what she's going to  
28 do until the 12th of September, but can you change my

1 mind?

2 MS. LEE: Well, I have a couple of comments,  
3 but I will start with, I'm willing, if you want to  
4 give her until the 12th of September to get a stay  
5 from somebody else, I'm fine with that.

6 THE COURT: All right. Then, let's just  
7 leave it at that.

8 MS. LEE: I'd like to point out that,  
9 technically, under the statute, there's a mandatory  
10 requirement that the defendant pay into court in  
11 order to obtain any stay. So, between now and the  
12 12th of September, and assuming the Court isn't going  
13 to change their mind after we leave, we'll wait on  
14 that. But if --

15 THE COURT: Well, the other part of it is,  
16 and I forget the machinations, but how much money is  
17 your person paying each month?

18 MS. LAWSON: She pays 932.

19 THE COURT: Is this like on a monthly basis,  
20 or something?

21 MS. LAWSON: Correct. The \$1,000 her mother  
22 gives her --

23 THE COURT: I don't want to know all that  
24 because it's just too much. But the condition of my  
25 stay, even though it's only now, for whatever is the  
26 remaining period of time, is that she pay that  
27 nine-hundred-whatever dollars --

28 MS. LAWSON: Okay.

1                   THE COURT: -- for the month of September,  
2 just like she was. She's, actually, overpaying per  
3 day, because the stay is only for half that period.

4                   MS. LAWSON: Correct.

5                   THE COURT: Just do it that way, and avoid  
6 all the undertaking business. And either she can get  
7 a judge to buy what she's selling, or your client  
8 wins in a couple weeks, and just tell him to go and  
9 have a good Labor Day, and come back and see what  
10 happens. Good luck to you now.

11                  MS. LAWSON: Thank you.

12                  THE COURT: Somebody needs to write it up.  
13 You should do the homework.

14                  MS. LAWSON: There's a proposed order.

15                  THE COURT: All right. Then I'll mark it  
16 up. I do have it.

17                  MS. LAWSON: You can mark it up, and I can  
18 give you a couple envelopes, if you like, because I  
19 brought them, because I realized we didn't send them  
20 up.

21                  THE CLERK: We have envelopes from your  
22 judgment.

23                  MS. LAWSON: Okay.

24                  MS. LEE: The second page is probably the  
25 easiest.

26                  MS. LAWSON: Yeah. I need to get a copy so  
27 that I can --

28                  THE COURT: There's nobody in here, so we

1 can help you, just like it's a Cadillac deal, but  
2 sometimes there's tons of stuff in here, and we can't  
3 promise to do that. It's not that we don't want to.  
4 Then sometimes -- Aileen is my resident clerk, so I  
5 know what favors I can ask her to give, without  
6 getting in trouble, but sometimes I have substitute  
7 clerks, and I start giving out their favors, and  
8 that's kind of rude of me, unless I have a working  
9 deal with them, because, you know, I don't have  
10 control over anybody, except for when I'm in session,  
11 because she has a boss. And if you think this is a  
12 great job, you should get it.

13 MS. LEE: Can I understand, Your Honor, that  
14 there will be no further extensions from this Court?

15 THE COURT: Absolutely. It would be an  
16 utter waste of time and sanctionable to even come  
17 back. I've spent a lot of court resources on it, and  
18 I'm impressed with the lawyering on both sides.

19 Again, I think at some point, there's just a  
20 lot of work for everybody to do, and if you can't get  
21 the federal judge to reconsider the relief that was  
22 granted, now that you're all the way to the Court of  
23 Appeal, then -- because when that federal judge sent  
24 it over here -- well, I don't want to make anymore  
25 dicta that's going to get me in trouble with anybody.  
26 Now I can get in trouble with the Court of Appeal.  
27 You can, actually, get sanctioned as a judge for  
28 being overly stupid, or something. I don't want to

1       be overly stupid. Good luck.

2           MS. LEE: Thank you, Your Honor.

3           MS. LAWSON: Thank you.

4           THE COURT: Have a good day.

5           MS. LAWSON: I won't be back because the  
6 other court is much closer.

7           THE COURT: Yeah, I know.

8           MS. LAWSON: But the rules require that I  
9 make it here first.

10          THE COURT: And you did, and you had a good  
11 Canadian vacation.

12          MS. LAWSON: I did. It was fabulous.

13          THE COURT: Thank you. Sorry you had to get  
14 up here early and get over here, and all of that.  
15 Travel back safely, please.

16          MS. LEE: Thank you, Your Honor.

17          MS. LAWSON: Thank you, Your Honor.

18                   -000-

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1 STATE OF CALIFORNIA )  
2 COUNTY OF SANTA BARBARA ) SS.  
3

4 I, Shelli V. Porter, C.S.R., Official Court  
5 Reporter Pro Tem of the Superior Court of the Santa  
6 Maria Judicial District, State of California, in and  
7 for the County of Santa Barbara hereby certify that  
8 the foregoing pages 1 through 12 comprise a full,  
9 true and correct transcript of the proceedings had in  
10 the within-entitled matter, recorded by me by  
11 stenotype on the date and at the hour herein written,  
12 and thereafter transcribed by me into typewriting.

13 In compliance with section 8016 of the  
14 Business and Professions Code, I certify under  
15 penalty of perjury I am a certified shorthand  
16 reporter with license number 9729 in full force and  
17 effect.

18 Dated this 22nd day of September, 2015.  
19

20   
21 Shelli V. Porter, C.S.R. NO. 9729  
22  
23  
24  
25  
26  
27  
28

Reicker, Pfau, Pyle &amp; McRoy LLP

1421 State Street, Suite B, Santa Barbara, CA 93101

TELEPHONE NO.: 805-966-2440 FAX NO. (Optional): 805-966-3320

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Plaintiff MBB Properties, LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA

STREET ADDRESS: 312-C East Cook Street

MAILING ADDRESS:

CITY AND ZIP CODE: Santa Maria, 93454

BRANCH NAME: Cook Division

PLAINTIFF: MBB PROPERTIES, LLC

DEFENDANT: CARLITA MARIE SILVA, et al.

## JUDGMENT—UNLAWFUL DETAINER

 By Clerk  
 By Court By Default  
 Possession Only After Court Trial  
 Defendant Did Not Appear at Trial

CASE NUMBER:

15CV01040

AUG 07 2015

Daniel E. Parker, Executive Officer

BY Brittany Berrier  
Brittany Berrier, Deputy Clerk

## JUDGMENT

1.  BY DEFAULT

- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.
- d.  Clerk's Judgment (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
- e.  Court Judgment (Code Civ. Proc., § 585(b)). The court considered
  - (1)  plaintiff's testimony and other evidence.
  - (2)  plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).

2.  AFTER COURT TRIAL. The jury was waived. The court considered the evidence.

- a. The case was tried on (date and time): June 12, 2015 and August 7, 2015 at 8:30a.m.  
before (name of judicial officer): James R. Rigali.

## b. Appearances by:

 Plaintiff (name each):

MBB Properties, LLC

 Plaintiff's attorney (name each):

(1) Diana Jessup Lee on 8/7/15

(2) Jesse Martinez on 6/12/15

 Continued on Attachment 2b (form MC-025). Defendant (name each):

Carlita Marie Silva

 Defendant's attorney (name each):

(1) Janet Lawson

(2)

 Continued on Attachment 2b (form MC-025).c.  Defendant did not appear at trial. Dd.  A statement of decision (Code Civ.

## Exhibit D

PLAINTIFF: MBB PROPERTIES, LLC

DEFENDANT: CARLITA MARIE SILVA, et al.

JUDGMENT IS ENTERED AS FOLLOWS BY:

 THE COURT THE CLERK

## 3. Parties. Judgment is

- a.  for plaintiff (name each): MBB Properties, LLC

and against defendant (name each): CARLITA MARIE SILVA

 Continued on Attachment 3a (form MC-025).

- b.  for defendant (name each):

4.  Plaintiff  Defendant is entitled to possession of the premises located at (street address, apartment, city, and county):  
1100 North Third Street, Lompoc, CA; Santa Barbara County

5.  Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

## 6. Amount and terms of judgment

- a.  Defendant named in item 3a above must pay plaintiff on the complaint:

(1) <input type="checkbox"/> Past-due rent	\$	
(2) <input checked="" type="checkbox"/> Holdover damages	\$ 4,108.05*	and **
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input checked="" type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL JUDGMENT		\$

- b.  Plaintiff is to receive nothing from defendant named in item 3b.

*LR*  
 Defendant named in item 3b is to recover costs: \$

and attorney fees: \$

\*\$48.33 from 5/15/15 through 8/7/15 *LR*

\*\*\$48.33/day to surrender of possession *LR*

Jurisdiction over damages, deemed reserved by Federal Court. *LR*

- c.  The rental agreement is canceled.  The lease is forfeited.

7.  Conditional judgment. Plaintiff has breached the agreement to provide habitable premises to defendant as stated in Judgment—Unlawful Detainer Attachment (form UD-110S), which is attached.

8.  Other (specify): Enforcement stayed until 8/31/15.

Continued on Attachment 8 (form MC-025).

Date: 8/7/15

JUDICIAL OFFICER

James F. Rigali

Date:

Clerk, by \_\_\_\_\_

, Deputy

(SEAL)

## CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by \_\_\_\_\_ . Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Diana Jessup Lee

SBN: 155191

Reicker, Pfau, Pyle & McRoy LLP  
1421 State Street, Suite B  
Santa Barbara, CA 93101

TELEPHONE NO: 805-966-2440

FAX NO. (optional): 805-966-3320

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Plaintiff MBB Properties, LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA

STREET ADDRESS: 312-C East Cook Street

MAILING ADDRESS:

CITY AND ZIP CODE: Santa Maria, 93454

BRANCH NAME: Cook Division

PLAINTIFF/PETITIONER: MBB PROPERTIES, LLC

DEFENDANT/RESPONDENT: CARLITA MARIE SILVA, et al.

FOR COURT USE ONLY

NOTICE OF ENTRY OF JUDGMENT  
OR ORDER

CASE NUMBER:

15CV01040

(Check one):  UNLIMITED CASE  
(Amount demanded  
exceeded \$25,000)       LIMITED CASE  
(Amount demanded was  
\$25,000 or less)

## TO ALL PARTIES :

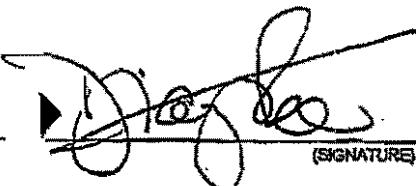
1. A judgment, decree, or order was entered in this action on (date): August 7, 2015
2. A copy of the judgment, decree, or order is attached to this notice.

Date: August 12, 2015

Diana Jessup Lee

(TYPE OR PRINT NAME OF)  ATTORNEY  PARTY WITHOUT ATTORNEY

(SIGNATURE)



PLAINTIFF/PETITIONER: MBB PROPERTIES, LLC

CASE NUMBER:

DEFENDANT/RESPONDENT: CARLITA MARIE SILVA, et al.

15CV01040

**PROOF OF SERVICE BY FIRST-CLASS MAIL**  
**NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify): 1421 State Street, Suite B, Santa Barbara, CA 93101

2. I served a copy of the Notice of Entry of Judgment or Order by enclosing it in a sealed envelope with postage fully prepaid and (check one):

- a.  deposited the sealed envelope with the United States Postal Service.
- b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The Notice of Entry of Judgment or Order was mailed:

- a. on (date): August 12, 2015
- b. from (city and state): Santa Barbara, CA 93101

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Janet Lawson, Esq.

Street address: 3639 East Harbor Boulevard, Suite 109

City: Ventura

State and zip code: CA 93001

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

5. Number of pages attached 2.

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

Date: August 12, 2015

Mary Jo Barbeau

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

1 Superior Court of California  
2 County of Santa Barbara  
3 APPELLATE DIVISION  
4 118 E. Figueroa Street  
Santa Barbara, CA 93101  
805-882-4534

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

SEP 14 2015

Daniel E. Parker, Executive Officer  
BY *[Signature]*  
Patricia Frutot, Deputy Clerk

DE ✓

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PTY -

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COD -

ST -

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA

APPELLATE DEPARTMENT

CARLITA SILVA,

Petitioner,

No. 15CV02844

vs.

SANTA BARBARA SUPERIOR COURT

ORDER

Respondent.

The Court issues a temporary stay of enforcement of the underlying judgment effective upon execution of this order. (CRC 8.824(c).) The temporary stay is conditioned on Appellant's continued payment of the monthly mortgage on the real property commonly known as 1100 N. Third Street, Lompoc, California as set forth in the trial court's Order on Ex Parte Application for Stay of Enforcement of Judgment dated August 28, 2015. The temporary stay will remain in effect pending this court's determination of the petition for writ of supersedeas.

Appellant must serve a copy of the petition for writ of supersedeas, along with a copy of this order, on Respondent no later than 5:00 p.m. on Monday, September 14, 2015. Respondent then has fifteen (15) days from the date of service to submit an opposition. (CRC 8.824(b).) Appellant is directed to submit a transcript of the June 12, 2015 trial and August 7, 2015 hearing to this Court and Respondent within the same fifteen (15) day deadline.

Exhibit E

1 Other than Respondent's opposition, no further briefing is authorized unless otherwise  
2 ordered by the Court.

3 Dated: 9/14/15

4  
5  
6 Thomas P. Anderle  
7 Presiding Judge of the Appellate Department  
Santa Barbara Superior Court

8  
9  
10 Timothy J. Stafel  
11 Judge of the Appellate Department  
Santa Barbara Superior Court

12  
13 Jean M. Dandona  
14 Jean M. Dandona  
15 Judge of the Appellate Department  
Santa Barbara Superior Court

<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA</b></p> <p>STREET ADDRESS: 118 E. Figueroa Street CITY AND ZIP CODE: Santa Barbara, 93101 • BRANCH NAME: Appeals</p>	<p><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>FILED</b> <b>SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA</b> <b>SEP 14 2015</b></p> <p>Darrel E. Parker, Executive Officer BY <i>[Signature]</i> Patricia Frutos, Deputy Clerk</p> <p style="text-align: right;">DE F NDX Y CA FIN J PTY ATT CCB ST</p>
<p><b>SHORT TITLE OF CASE:</b> <b>CARLITA SILVA,</b></p> <p style="text-align: center;">Petitioner</p> <p>vs.</p> <p><b>SANTA BARBARA SUPERIOR COURT,</b></p> <p style="text-align: center;">Respondent.</p>	
<p><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER: 15CV02844</p>

I hereby certify that I am not a party to this cause, and that true copy of the document(s) listed as follows:

Order Filed 9-14-15

Listing of documents mailed continued on reverse

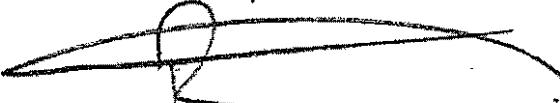
Were served to each person or entity named below, by placing a copy thereof in a sealed enveloped addressed to each of them as shown with postage thereon fully prepaid, and on the date shown below depositing it in the US mail at Santa Barbara, California

JANET A.LAWSON  
Attorney at Law  
3639 E. Harbor Blvd., #109  
. Ventura, CA 93001  
[Via e-mail [jlawsonlawyer@gmail.com](mailto:jlawsonlawyer@gmail.com) ]

DIANA JESSUP LEE  
Reicker, Pfau, Pyle & McRoy LLP  
1421 State St., Suite B  
Santa Barbara, CA 93101  
[Via e-mail [dlee@rppmh.com](mailto:dlee@rppmh.com) ]

CC: Commissioner Denise Motter

DARREL E. PARKER, Executive Officer

  
Patricia Frutos, Appeals Clerk

Dated: September 14, 2015

1 Superior Court of California  
2 County of Santa Barbara  
3 APPELLATE DIVISION  
4 118 E. Figueroa Street  
Santa Barbara, CA 93101  
805-882-4534

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

OCT 13 2015

Darrel E. Parker, Executive Officer  
BY *[Signature]*  
Patricia Frutos, Deputy Clerk



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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 APPELLATE DEPARTMENT

11 CARLITA SILVA, }  
12 Petitioner, } No. 15CV02844  
13 VS. } ORDER  
14 SANTA BARBARA COUNTY SUPERIOR COURT }  
15 Respondent. }

16  
17 Issuance of a writ of supersedeas is discretionary with the reviewing court. (Code of Civ.  
18 Proc., § 923; *Deepwell Homeowners' Protective Ass'n v. City Council of Palm Springs* (1965)  
19 239 Cal.App.2d 63, 66-67.) To support issuance of such a writ, the petitioner must show  
20 "substantial issues" will be raised on appeal. (Cal. Rules of Court, rule 8.824(a)(4)(A).) Based  
21 on the record submitted, petitioner has failed to show any such issues.

22 Nor has petitioner shown the trial court abused its discretion by setting an expiration date  
23 on the stay below. (*Selma Auto Mall II v. Appellate Department* (1996) 44 Cal.App.4th 1672,  
24 1682, citing *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1050.)

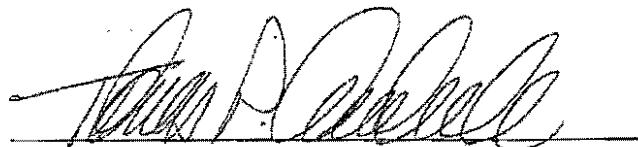
25       ////  
26       ////  
27       ////  
28       ////

Exhibit F

1        Accordingly, the Court hereby denies the petition for writ of supersedeas. The denial is  
2 effective upon filing of this order. (Cal. Rules of Court, rule 8.935(b)(1)(A).) The temporary  
3 stay previously issued by this court is dissolved forthwith.

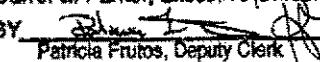
4  
5        Dated:

10/13/15



Thomas P. Anderle  
Presiding Judge of the Appellate Department  
Santa Barbara Superior Court

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<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA</b>  STREET ADDRESS: 118 E. Figueroa Street  CITY AND ZIP CODE: Santa Barbara, 93101  BRANCH NAME: Appeals</p> <p><b>SHORT TITLE OF CASE:</b>  <b>CARLITA SILVA,</b></p> <p style="text-align: center;">Petitioner vs. SANTA BARBARA SUPERIOR COURT, Respondent.</p>	<small>FOR COURT USE ONLY</small> <p style="text-align: center;"><b>FILED</b>  <b>SUPERIOR COURT OF CALIFORNIA</b>  <b>COUNTY OF SANTA BARBARA</b>  <b>OCT 13 2015</b>  <b>Darrel E. Parker, Executive Officer</b>  BY   <b>Patricia Frutos, Deputy Clerk</b></p>
<p><b>CLERK'S CERTIFICATE OF MAILING</b></p>	
<p>CASE NUMBER:  <b>15CV02844</b></p>	

I hereby certify that I am not a party to this cause, and that true copy of the document(s) listed as follows:

Order Filed 10-13-15

Listing of documents mailed continued on reverse

Were served to each person or entity named below, by placing a copy thereof in a sealed enveloped addressed to each of them as shown with postage thereon fully prepaid, and on the date shown below depositing it in the US mail at Santa Barbara, California

JANET A.LAWSON  
Attorney at Law  
3639 E. Harbor Blvd., #109  
Ventura, CA 93001  
[Via e-mail [jlawsonlawyer@gmail.com](mailto:jlawsonlawyer@gmail.com) ]

DIANA JESSUP LEE  
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[Via e-mail [dlee@rppmh.com](mailto:dlee@rppmh.com) ]

DARREL E. PARKER, Executive Officer

  
, Deputy  
Patricia Frutos, Appeals Clerk

Dated: October 13, 2015

1 Superior Court of California  
2 County of Santa Barbara  
3 APPELLATE DIVISION  
4 118 E. Figueroa Street  
Santa Barbara, CA 93101  
805-882-4534

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

SEP 24 2015

Derrel E. Parker, Executive Officer  
BY *[Signature]*  
Patricia Frutos, Deputy Clerk

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SANTA BARBARA  
9 APPELLATE DEPARTMENT

10 MBB PROPERTIES,

11 PLAINTIFF and RESPONDENT,  
12 VS.

13 CARLITA SILVA,

14 DEFENDANT and APPELLANT

15 } No. 15CV01040

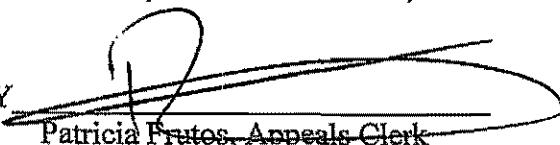
16 } NOTICE OF TIME  
17 PLEASE TAKE NOTICE that in accordance with Rule 8.881 of the California Rules of  
18 Court, that the record on appeal in the above entitled action, received from Superior Court,  
19 Lompoc Division was filed on 9/24/2015. Pursuant to Rule 8.882 of said rules, the Appellant  
20 shall file an Opening Brief not later than 10/26/2015; the Respondent shall file a Respondent's  
21 Brief not later than 11/23/2015; and the Appellant may file a Reply Brief not later than  
22 12/14/2015.  
23 All Briefs must be filed at the Appellate Division, 118 E. Figueroa Street, Santa Barbara,  
24 CA 93101.  
25  
26  
27 Exhibit G  
28

1       Upon the filing of the briefs, an original and 3 copies are required to be kept by the  
2       appellate clerk and proper service of said briefs, with proof of service attached, are required.  
3       The hearing shall be set upon completion of the briefing schedule.  
4  
5

6 Date: 9/24/2015

DARREL E. PARKER, Executive Officer,

7 CLERK, BY

8   
Patricia Frutos, Appeals Clerk

9  
10 CERTIFICATE OF MAILING

11  
12 I, DARREL E. PARKER, CLERK OF THE SUPERIOR COURT of the State of California for  
the County of Santa Barbara, and not a party to the within action, hereby certify, that on  
13 9/24/2015 I served this Notice of Time to File Briefs on the parties in the within action, by  
14 depositing true copies thereof, in the United States Post Office mail box at Santa Barbara,  
15 California, addressed as follows:

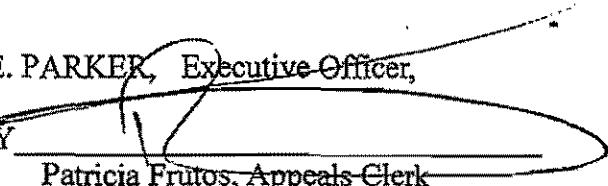
16  
17 JANET A.LAWSON  
Attorney at Law  
18 3639 E. Harbor Blvd., #109  
Ventura, CA 93001

19 DIANA JESSUP LEE  
Reicker, Pfau, Pyte & McRoy LLP  
20 1421 State St, Suite B  
Santa Barbara, CA 93101

21  
22  
23  
24 Date: 9/24/2015

25 DARREL E. PARKER, Executive Officer,

26 CLERK, BY

27   
Patricia Frutos, Appeals Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
SANTA MARIA - COOK DIVISION

MBB PROPERTIES, )  
vs. Plaintiff, )  
CARLITA SILVA, ) NO. 15CV01040  
Defendant. )  
\_\_\_\_\_  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HONORABLE JAMES F. RIGALI, JUDGE

Friday, August 7, 2015

**ORIGINAL**

APPEARANCES:

FOR THE PLAINTIFF:

DIANA JESSUP LEE  
Attorney at Law  
1421 State Street  
Santa Barbara, CA 93101

FOR THE DEFENDANT:

JANET A. LAWSON  
Attorney at Law  
3639 East Harbor Blvd.  
Suite 109  
Ventura, CA 93001

**Exhibit H**

REPORTED BY: SHELLI V. PORTER, C.S.R.# 9729

1

Santa Maria, California

2

Friday, August 7, 2015

3

Morning Session.

4

5

THE COURT: Yes?

6

MS. LAWSON: I'm just begging to go next.

7

THE COURT: Sure, why not. It doesn't matter, really, the order. Can you remind me the name of your case.

8

MS. LAWSON: It's Silva. MBB versus Silva. Janet Lawson representing Carlita Silva. Counsel is present, substituted counsel.

9

MS. LEE: Good morning, Your Honor, Diana Jessup Lee on behalf of MBB, and with me today is Todd Lyle, the manager of MBB.

10

THE COURT: All right. You'll have to teach me what about my tentatives you received, or didn't receive, or whatever. I thought I had made sure everybody got my research on it.

11

MS. LEE: Your Honor, we did receive your order that you requested additional letter briefing, and I think we both filed our additional briefing last week. I can summarize that for you, if you haven't --

12

THE COURT: Sure, you can summarize it. Why don't you do that.

13

MS. LEE: I believe, in this unlawful

1           detainer, the defendant is claiming that she  
2           acknowledges that the plaintiff obtained title at a  
3           foreclosure sale. Her position is that she adversely  
4           possessed and re-obtained ownership through adverse  
5           possession.

6                 The five elements for adverse possession,  
7           there's only, really, one at issue, and that is  
8           whether or not she paid taxes for the five years  
9           required by the statute. Plaintiff's position is the  
10           statute expressly says you have to pay taxes for the  
11           five years of the adverse possession, and she didn't  
12           pay the full time that she was adversely possessing.  
13           She did not pay in 2014.

14                 Defendant's position is that she had paid  
15           five years' worth of taxes, and it doesn't have to be  
16           the exact same timing. I believe the only case cited  
17           by the defense on that is a case in which payment of  
18           taxes wasn't required where the property that was  
19           being adversely claimed, there were no taxes assessed  
20           or levied against it. It was owned by a church. In  
21           that circumstance, the Court did find that the  
22           defendant did not have to pay taxes, none had been  
23           levied.

24                 THE COURT: I'm sorry, I am going to  
25           interrupt you because this isn't the quick matter  
26           that I am going to squeeze in the middle of all the  
27           rest of this stuff. I had a hearing awhile ago, was  
28           it a month, maybe it was longer, and I did my

1 research and spent a lot of time on it, and I  
2 understand what you're saying, but I want to give it  
3 all the time and energy that it's entitled to.

4 I need to take this case at the foot of the  
5 calendar. I'm sure everyone came from far away, or  
6 whatever, but I can't do this right here, right now,  
7 in the middle of the calendar. Are you in a hurry,  
8 or something?

9 MS. LAWSON: Well, no, but I don't know how  
10 long all this is going to go.

11 THE COURT: Yeah, well, I mean, you filed a  
12 letter brief, or you didn't?

13 MS. LAWSON: I did file a brief, Your Honor,  
14 and I also filed a proposed judgment. In the  
15 judgment, I put the findings of facts and inclusions  
16 of law, and basically --

17 THE COURT: Well, if they are here and they  
18 want to be heard, then I want them to be heard. If  
19 you have all briefed it, and you want to leave, then  
20 you can leave, and I'll take it under submission. It  
21 was a relatively interesting case. I gave you a  
22 ruling that said that I thought that sort of, to my  
23 surprise, research suggested that she was going to  
24 win. I am assuming you're here to teach me that's  
25 not the case. If that's the situation, I want to  
26 take the time on it. It's not, really, just an  
27 unlawful detainer at stake here.

28 MS. LEE: What I might suggest, Your Honor,

1       is that we can wait to the foot of the calendar, and  
2       if you even had an opportunity at a break to review  
3       the briefs that were filed last Friday, then we could  
4       address that further.

5                  THE COURT: I don't only plan on doing that,  
6       I plan on taking your letter briefs and sitting down  
7       with my lawyers, and that kind of thing. You are  
8       here on an unlawful detainer calendar. It's not a  
9       law and motion calendar, so your stuff isn't being  
10      sent through the research attorneys because it's an  
11      MSJ, or something. In order to get the special  
12      handling, you have to wait. You have to wait because  
13      you are in here trying to snatch victory out of the  
14      jaws of defeat, so I'm sure you expected to wait, so  
15      you have to wait.

16                 MS. LAWSON: Okay. We'll wait.

17                 MS. LEE: Thank you, Your Honor.

18                 (Whereupon, proceedings were heard and, not  
19       to be included in this transcript, are omitted  
20       herefrom.)

21                 THE COURT: Okay. Well, on this matter, if  
22       I remember right, the plaintiff was flying in from  
23       the East Coast, or something, for hearings. Is that  
24       still going on?

25                 MS. LEE: No, Your Honor.

26                 THE COURT: Well, whatever, you just need to  
27       be commercially prudent about getting here, whatever.  
28       I know you come from Ventura, or what?

1 MS. LAWSON: From Ventura.

2 THE COURT: Okay. Well, my order  
3 unsubmitting it and setting this date said that you  
4 had to tell each other who was going to be presenting  
5 new evidence at this hearing, assuming that this is  
6 going to be the trial; although, I wouldn't assume  
7 that because I have to decide that's what I'm doing.  
8 But did anybody give anybody notice? I've read your  
9 thing, it doesn't look like anybody said they were  
10 trying the case all over again. So, I think the only  
11 thing we are really stuck with is the same things  
12 that we had in the beginning, which was what am I  
13 going to make of all of this, and how am I going to  
14 rule?

15 So, you can teach me whatever you can teach  
16 me today, you can expect that I am going to study  
17 your letter briefs, or whatever. I guess, just to  
18 make it clear, I didn't get a very long one from you,  
19 correct? You only had one?

20 MS. LAWSON: I don't think it was very long,  
21 no.

22 THE COURT: All right. Then, I meet with my  
23 lawyers, the research attorneys, and then I decide  
24 what I'm going to do, then I give you my tentative  
25 ruling, like I did the last time, and I give you  
26 another chance to look at it, until I'm convinced  
27 that I know which lawyers are telling me the right  
28 thing. That's how it works. The lawyers do the

1 work, then the judge decides. I like my lawyers. I  
2 like you. I don't know who is right, and until  
3 everybody gets a chance to convince me, one way or  
4 the other, then we keep going. Right now I'm not  
5 sure what I'm going to do.

6 There are Constitutional limitations to  
7 getting stuff done lickety split, or whatever. I  
8 apologize, you have to come, and you just happen to  
9 get here on the day we had the guy back after a  
10 month, a death in the family, or whatever, so now it  
11 takes this long. I would have much rather scheduled  
12 you on some other day, at some other time, but here  
13 you are, so let's try to do what we can do.

14 To get the unlawful detainer case before  
15 the research attorneys, and everything, is kind of  
16 unusual because we have sort of protocols, and we  
17 don't usually research unlawful detainer cases. This  
18 case got heavily worked on, and I signed the order.  
19 I have my own legal mind, obviously, so I have to  
20 decide how I'm going to rule in the end.

21 I'm not sure that my original -- or my  
22 order, not the original one, but the order we're  
23 talking about, has the law right, as it relates to  
24 real estate law regarding foreclosures, and juniors,  
25 and seniors, and the like, whatever. Some of the  
26 other stuff in there was meaningful, and it was worth  
27 signing it and getting you in here and figuring out  
28 what's going on.

I've read your things, and I'm not sure how  
I'm going to rule just yet. I want to give my  
lawyers the courtesy of letting them see your  
lawyering and try to have them figure out what to do.  
When a case goes, you know, from unlawful detainer  
calendar to research attorney, then you have to get a  
match between the lawyers, and their disciplines, and  
all of this kind of stuff.

We don't have someone lying around that's an  
expert in eviction cases, per se. Most of the time,  
we get real estate cases, and we start noodling on  
them, they are commercial disputes, or whatever.

Ms. Lawson was in here, doing the kind of  
Don Quixote thing, and I was impressed with her  
candor. And when the lawyers have these things to  
suggest, or whatever, then I thought I better sign  
this order and get everybody back in here.

Do you want to say anything about the issues  
that are raised in the letter brief filed by the  
plaintiff, orally?

MS. LAWSON: Orally, I would just say that  
there's nothing in their letter brief that addresses  
the issue of the taxes, which is the meat of this.  
We agree that there was a foreclosure sale and that  
MBB became the owner of the property in August 2009.  
The meat of where we disagree is whether or not the  
taxes my client paid in 2009 count. That's the meat.  
That's really the only thing that's in issue in this

1 case.

2 If we look at page six of my trial brief,  
3 section B, those cases that I've cited are outcome  
4 determinative. I cited them in the -- I had the  
5 audacity to go ahead and prepare findings of fact,  
6 summary of law for the Court.

7 THE COURT: If you serve it on opposing  
8 counsel, I have no problem with you giving it to me  
9 for my consideration while I deliberate on the  
10 matter, if it turns out, in the end, I'm not going to  
11 have another hearing, or whatever. But you can  
12 always submit proposed orders. I love to see them,  
13 much like I do special verdict forms, because, you  
14 know, everybody keeps lawyering, then when you have  
15 to write it down and put it in the final version,  
16 then the dots have to connect. I'd love to see what  
17 you wrote.

18 MS. LAWSON: I did file them with the Court,  
19 but I'll give you this copy now. Basically, what I  
20 cite are the cases that are outcome determinative.  
21 The first one is Glatts v. Henson, 1948 California  
22 Supreme Court decision, which is very clear, you only  
23 have to pay the taxes that were levied and assessed  
24 in the period -- and the period that you're paying  
25 the taxes doesn't have to line up with the five  
26 years.

27 That case was followed by Hagman v. Meher, a  
28 2013 case out of the second division, which followed

1       the Glatts case. And that's a very interesting case  
2       because in that case, no taxes were assessed, or  
3       levied, because it was a church property, and Hagman  
4       won. Why? Because he occupied it adversely for five  
5       years.

6                   So, the fact that the property was a  
7       church, kind of an immaterial fact, because what it's  
8       really about is if they are not levied and assessed,  
9       you don't have to pay them. And the Hagman case  
10      quotes Glatts v. Henson, and I quote, "The burden is  
11      on the adverse claimant of the fee to establish that  
12      no taxes were assessed against the land, or that if  
13      assessed, he paid them."

14                  That's the law in this case, and there's no  
15      dispute about that. Nothing was raised in their  
16      letter argument that refutes that, disputes it, cites  
17      any other case the other way, and, on that, I'll  
18      submit. That's the law. It is what it is. And I  
19      will give you my proposed judgment. I'm sorry it  
20      didn't make it in your file.

21                  THE COURT: No, no, I'll look at it. It's  
22      not that it didn't make it into the file, it's  
23      mechanically, we're paperless.

24                  MS. LAWSON: Okay.

25                  THE COURT: But not e-signature. So, the  
26      orders have to be routed through a yellow folder, in  
27      an analog way, so they don't go into the things that  
28      we can look at. But it doesn't matter because I

1 haven't looked at it.

2 MS. LAWSON: I'll tell you how I prepared  
3 the facts.

4 THE COURT: If I can ask my clerk to look  
5 for the yellow folder, which we don't have on UD day,  
6 but if you can try to see if we have this, or make a  
7 copy and give her back her copy.

8 MS. LAWSON: No, you can have it.

9 THE COURT: No problem. We can keep it.  
10 Okay. We'll keep it.

11 MS. LAWSON: So, what I did, I went and took  
12 Judge Carroll's PDF from Exhibit H, which we  
13 stipulated the facts from, I pulled those facts into  
14 a new document, numbered the paragraphs, and called  
15 it "Finding of Facts." Then, I have inclusions of  
16 law, which is, essentially, right out of my trial  
17 brief, citing, specifically, the Glatts case and the  
18 Hagman case.

19 THE COURT: I appreciate your  
20 straight-forward nature, and the fact that you're not  
21 taking any position different than you did the first  
22 time, pretty much, as far as my take on it goes. If  
23 you don't want to make any other record, that's fine.  
24 Sounds like you're comfortable if I just take it  
25 under submission, and that's fine, Counsel?

26 MS. LEE: Yes, Your Honor. The issue the  
27 Court raised in the last order was whether or not the  
28 plaintiff had dually perfected title because it

1       hadn't paid the senior lienholder, and the Court  
2       cited some cases that say a junior lienholder needs  
3       to pay off a senior lienholder.

4                   THE COURT: I guess I'm not so much worried  
5       about that right now, as I sit here, right here. I'm  
6       more concerned about the conversations that I had  
7       with myself, in theory, you know, with my research  
8       lawyers, when they are talking about holding onto the  
9       trustee's deed upon sale, or whatever, and holding  
10      onto it for a period while Ms. Lawson's client was  
11      servicing the first.

12                  That's the fact pattern that's intriguing to  
13       me that I'm trying to figure out what relationship it  
14       has to the procedural posture of the whole thing.  
15       Because it doesn't appear, to me, that in the joint  
16       statement of the case that the parties came  
17       originally to this Court with and said, you know,  
18       this is an academic answer, can you answer this  
19       question, that that was self-evident. And I'm  
20       curious about what, if anything, the federal judge  
21       cares and/or thinks about, because this is a pass  
22       view thing where it's, okay, shove that thing down  
23       there to -- it's just a UD, or whatever, that gets  
24       pushed down here. We do it like it's just a UD, then  
25       the federal judge finds out, well, I know that  
26       interesting thing, or whatever.

27                  So, there is -- among the other things that  
28       are in there, there's my rub. I've read your letter

1 brief and your position is, well, there was rent due,  
2 and it was more than that, or whatever. Okay.

3 That's a good argument. I don't know what case or  
4 law tells me what I'm supposed to do about those  
5 arguments, and which one is more compelling, or if I  
6 just pick the one I like. So, what else did you want  
7 to teach me?

8 MS. LEE: Well, Your Honor, the Federal  
9 Court has addressed this a number of times and has  
10 written in its decision that it also noted the  
11 anomaly here, the unusual circumstances. And,  
12 although, ultimately, it made a finding based on the  
13 facts and the law, and that the law for adverse  
14 possession just wasn't established by the defense, so  
15 that was a technical, legal conclusion. But, prior  
16 to -- and was in favor of the plaintiff.

17 But, prior to coming to that conclusion, the  
18 Federal Court also expressed the same concern that  
19 you're having, which, frankly, all of us have had,  
20 which is, gee, she continued to pay on this first.  
21 The Federal Court noted, though, however, and in sort  
22 of balancing those equities of two parties on both  
23 sides doing something that's not typical, with the  
24 fact that the defendant had received -- hadn't paid  
25 on the second, the one that was foreclosed, had  
26 received a notice of default, had received the notice  
27 of sale, it had gone to foreclosure sale, and then  
28 after the sale, she was told by the purchaser that

1       they purchased it, she no longer owns it, and from  
2       that point forward, she never pays on the second.

3                   So, she had a \$34,000 debt that my client  
4       paid on her behalf in order to purchase the property,  
5       and she, for that five-year period, never inquires  
6       about that. I mean, she claims she was not aware the  
7       title had transferred, except as the Federal Court  
8       says, she was clearly on, at a minimum, inquiry  
9       notice. She's no longer paying on this second.  
10      Somebody is taking care of her debt. So, that's how  
11     the Federal Court reserve comes down.

12                  There's no law on whether or not the fact  
13       that she continued to pay towards the first, which is  
14       a debt she owed, she still had obligation on that  
15       debt, whether or not she owned the property, she owed  
16       the loan still, and, as we both cited, if my client  
17       ever wants to get rid of that lien, they'll have to  
18       pay that loan. But she still owed it, and that's why  
19       she was paying on it, she was personally liable on  
20       that loan.

21                  The fact that it was less than she would  
22       have been paying in rent, it's my understanding that  
23       it's legally irrelevant. It just goes to that  
24       equitable issue that, I think, the Court is  
25       struggling with, the idea that she had paid --

26                  THE COURT: If I can -- I mean, I don't want  
27       to just get stuck on that fact. When you were here  
28       last, Ms. Lawson, you were talking about some aspect

1 of the Federal Court that was still going, or  
2 something.

3 MS. LAWSON: Well, I'll bring you up to  
4 speed on that.

5 THE COURT: Because in an unlawful detainer  
6 case, when an unlawful detainer case wins, or a party  
7 wins on it, or they lose on it, it doesn't usually  
8 mean anything, as it relates to title, per se, or  
9 whatever. I mean, it's just a posessory resolution.  
10 Granted, you have to own it to kick somebody out, or  
11 whatever.

12 It seems, to me, as far as the judge that  
13 wants to be doing this, that they want to be having a  
14 trial where it's proven, you know, that the rents  
15 were equal to the money that was spent on the  
16 mortgages, and that the equitable interest in the  
17 property, if not the title interests, are taken into  
18 consideration through a quiet title action, or an  
19 equitable partition action, or some declaratory  
20 relief action, cause of action, in addition to an  
21 unlawful detainer.

22 So, you know, I'm not wasting your time,  
23 only insofar as you're competing to win, but I'm  
24 trying to avoid having me punt with some other  
25 judgment that doesn't leave you with an answer  
26 because I can --

27 MS. LAWSON: I can clear it up.

28 THE COURT: If I dismiss the UD, with some

1 ubiquitous language from a state judge, and leave it  
2 up in the air, you are still suing them for fraud in  
3 federal court, et cetera, et cetera.

4 MS. LAWSON: Correct. I can clear this up.

5 THE COURT: I hope you would.

6 MS. LAWSON: Well, I'm working on it. All  
7 right. So, Judge Carroll, the Bankruptcy Court  
8 judge, denied my motion for a preliminary injunction  
9 based on the adverse possession issue. Now, that  
10 brief did not include the Glatts decision or the  
11 Hagman decision. Although, I researched it long and  
12 hard, I did not find those cases until it came up to  
13 the UD, and I broke down and went to the library and  
14 looked at Miller and Star.

15 THE COURT: Then, why don't you go and get  
16 reconsideration, or whatever, in front of the federal  
17 judge?

18 MS. LAWSON: Let me explain where we're at  
19 with that. So, in bankruptcy, you have an adverse --  
20 an adversary proceeding, it's like a little lawsuit.

21 THE COURT: I'm not totally dumb, just  
22 because I take a humble approach to deferring to the  
23 other lawyers. I practiced in Federal Court.

24 MS. LAWSON: All right. In the main  
25 bankruptcy case, we had a motion for leave from the  
26 automatic stay, and Judge Carroll granted the motion  
27 for relief from the automatic stay to MBB, which left  
28 MBB free to come over here and do their UD case, and

1 that's why we're here.

2 THE COURT: Right. So, my thought is why  
3 don't you get that judge to stop me from doing this?  
4 Because what I routinely do is kick people out,  
5 right, if they don't own the property. If he decided  
6 that they owned the property, to the point that they  
7 can come here and kick you out, then what's the deal?

8 MS. LAWSON: No. All unlawful -- I'm sorry,  
9 all the motion for relief from stay does is say that  
10 they have a colorable claim. He doesn't decide the  
11 possession issue. He doesn't decide the adverse  
12 possession issue.

13 THE COURT: Why shouldn't I just write some  
14 order and send it back up to the federal judge and  
15 say, I'm confused, you know, could you please tell me  
16 if this is what you really meant. Because you, as a  
17 federal judge, are telling me that the plaintiff owns  
18 this property, and there's no adverse possession  
19 issue, as far as the Federal Court is concerned, then  
20 it's law of the case. And then, you know, like they  
21 said when they first came in, it's a slam dunk sort  
22 of thing.

23 MS. LAWSON: Well, it's not a slam dunk  
24 because there's no final ruling.

25 THE COURT: Well, it wasn't because we're  
26 still here. You're either just really good or --

27 MS. LAWSON: All right. So, the point I'm  
28 trying to make is the decision in the Bankruptcy

1 Court was a ruling on a motion for a preliminary  
2 injunction. Okay? It's not a final order. That  
3 order was not appealed. All right? In fact, now  
4 they filed a summary judgment motion set to be heard  
5 in September on my adversary complaint. That's  
6 what's going on over there. In the meantime --

7 THE COURT: September is not all that far  
8 away. If I really thought the Federal Court was  
9 going to rule on it, and you'd be done --

10 MS. LAWSON: Okay. So, then, in the  
11 meantime what happened was -- because the main  
12 bankruptcy case is a different case with a different  
13 case number. I appealed the decision granting relief  
14 from stay, I appealed it to the District Court. The  
15 District Court found that the Bankruptcy Court made  
16 an error, but affirmed on a different ground, and I  
17 have appealed that now to the Ninth Circuit.

18 I did try a little end game to get to the  
19 Ninth Circuit faster. That appeal didn't work. That  
20 was dismissed. Now, I re-filed a timely appeal on  
21 the merits, so I'm good in the Ninth Circuit to go.

22 I, actually, would not be adverse to you  
23 kicking this back to the Bankruptcy Court on the  
24 summary judgment determination because I believe,  
25 sincerely, and if the Court looks at it, that the  
26 Glatts case and the Hagman case are outcome  
27 determinative, and when that gets presented to the  
28 Bankruptcy Court judge, I'm certain I will prevail,

1 and if I don't, then I know how to get to the Ninth  
2 Circuit, because those cases are outcome  
3 determinative.

4 THE COURT: Well, as it relates to if I  
5 would look at it, that's a little bit insulting  
6 because you were here last time, and we've,  
7 obviously, looked at it and --

8 MS. LAWSON: In my trial brief, I did talk  
9 about the Constitutional issue of raising adverse  
10 possession as an affirmative defense is entirely  
11 permissible. Not only permissible, Constitutionally  
12 required. Whenever you have a summary proceeding,  
13 and it's the normal summary deals, okay, you just do  
14 it on a summary basis. But when someone has a  
15 substantive claim to ownership, then this court,  
16 meaning this UD department, looks at it, or it gets  
17 kicked over to another department in Superior Court.

18 THE COURT: It's not going anywhere, other  
19 than right here.

20 MS. LAWSON: I understand that. I don't  
21 want to file another complaint, that's for sure.

22 THE COURT: If you do that, I'll look at  
23 that, or whatever judge --

24 MS. LAWSON: I don't want to.

25 THE COURT: Whatever judge that's assigned  
26 to. But this one is assigned to me, so it's not  
27 going anywhere.

28 MS. LAWSON: So, I feel, with great

1 confidence, in the Glatts case and the Hagman case,  
2 it's outcome determinative.

3 MS. LEE: Your Honor, the Federal Court has  
4 made a decision, and a ruling on the issue of adverse  
5 possession, and they spell out their reasoning, and  
6 it comes down to this issue on payment of taxes.

7 They concluded that she had not paid -- she  
8 paid taxes for four years, she hadn't paid for the  
9 fifth year, and they, therefore, ruled that she  
10 doesn't have a likelihood, any likelihood, of success  
11 on the merits. And the truth is that was an  
12 appealable order, that was a final ruling on that  
13 issue.

14 THE COURT: Okay.

15 MS. LEE: As Ms. Lawson stated, she didn't  
16 appeal that, so that is a final, binding ruling by  
17 the Federal Court.

18 THE COURT: The representation is that the  
19 adversarial -- the adversary action inside of the  
20 Federal Court is scheduled to be the subject of the  
21 motion for summary judgment in September, or do you  
22 know anything about that? Are you attorney of record  
23 in that case?

24 MS. LEE: I am not the attorney of record in  
25 that case, Your Honor. However, there is a motion  
26 for summary judgment pending. That is a motion for  
27 summary judgment for fraud, and that will deal with  
28 the Court's issues about the finances here. It won't

1 deal with the adverse possession. That's been  
2 determined by the Federal Court. They do not find a  
3 defense there, and that's why leave was granted.

4 The Federal Court cannot grant possession  
5 under an unlawful detainer. Unlawful detainees are  
6 the subject of this Court. But the Court found,  
7 through all the various motions, there's no -- there  
8 is no adverse possession defense applicable here,  
9 granted leave to go to State Court to regain  
10 possession of the property.

11 The issue of money damages, that if there  
12 was a fraud, if there was something done that  
13 equitably caused Ms. Silva to lose title to her  
14 property and continue to pay money, for which MBB  
15 should be liable, that will be decided in the Federal  
16 Court. I agree with that, and that's set for a  
17 motion. If it's not decided on summary judgment,  
18 it'll go to trial.

19 But the issue of possession needs to be  
20 decided here, and that's one that we would ask -- in  
21 fact, it would probably increase their damage claim,  
22 if we win. But that's the issue before the Court  
23 here, which is on possession. Has the plaintiff  
24 shown that they are entitled to possession of the  
25 property they own? They have. She has not regained  
26 title to the property through adverse possession.  
27 They have served the notices, they are entitled to  
28 possession. Claims for damages will be handled in

1 the Federal Court.

2 THE COURT: Okay. I think the matter, then,  
3 at this time, is deemed submitted, then I'll just  
4 make a ruling. I think that it's unfortunate that it  
5 can't be done in a commercially more reasonable  
6 manner, but I have the authority to get you in here,  
7 and I wanted to get you in here, and I needed to get  
8 you in here so that I could decide where all of my  
9 decisions needed to land, after hearing from all of  
10 the lawyers.

11 I just challenge my own lawyers all the time  
12 to be sure that they are open-minded enough to let me  
13 hear from you lawyers, too, and whoever I need to  
14 hear from last. But I'm done hearing from lawyers.  
15 I know what I'm going to do, I just need to figure it  
16 out clearly. Obviously, if you have relief in State  
17 Court, and I do the wrong thing, then you can go to  
18 Ventura, which is right around the corner, and you  
19 know how to go there. I think we talked about that  
20 last time.

21 MS. LAWSON: Figueroa Street.

22 THE COURT: If I did rule in favor of the  
23 plaintiff, I think I would -- what is the date of the  
24 hearing in September?

25 MS. LAWSON: 10th.

26 THE COURT: The 10th. I am going to stay my  
27 judgment -- execution on the enforcement of the  
28 judgment for the plaintiff until the federal judge,

1 whose findings I am adopting, is made aware of his  
2 power to -- I mean, he has the power to, or whatever,  
3 but I want him to understand that I am treating his  
4 findings in the manner that they were presented in  
5 the stipulation of the facts of this case as being  
6 the basis for not having any further evidentiary  
7 proceeding on that issue, which, I guess, the defense  
8 is conceding because you brought it to me by  
9 stipulation anyway.

10 MS. LAWSON: Sure. We agree to the facts.

11 THE COURT: I'm not -- you don't need to  
12 have a federal judge take any action on it, or  
13 whatever, but you need to take the concern that I put  
14 in my judgment, and put it into a pleading in the  
15 Federal Court, and be sure that it's in there in the  
16 reply to motion for summary judgment, or in the oral  
17 argument on the day the lawyer in that case can read  
18 the unlawful detainer judgment from Judge Rigali to  
19 His Honor, and just be sure that he has notice of  
20 whatever my caveat is with regard to it.

21 Because as you get to the point now where  
22 you say, well, if you grant the unlawful detainer,  
23 then you're increasing the damages in the adversarial  
24 action, well, it's not really how it works, insofar  
25 as the judges don't cause damages. You know? If the  
26 federal judge is okay with me causing damages, then I  
27 guess that's okay.

28 MS. LEE: Your Honor, I didn't mean to imply

1       that you caused any damages at all. What I'm saying  
2       is that if the defense, if Ms. Silva has a claim she  
3       can prove, then those damages will happen in -- be  
4       determined in the Bankruptcy Court. If she has lost  
5       possession, if she's lost her home through some form  
6       of fraud, that increases -- not the Court's ruling,  
7       but that increases what she can claim there. But the  
8       decision in the Bankruptcy Court is only going to be  
9       a money decision. They are not going to decide  
10      possession. That's what I hear the Court saying  
11      is --

12                  THE COURT: I'm taking it under submission.  
13       I don't know what I'm going to sign my name to. I'm  
14       not giving you anything more than what I've given you  
15       in form of a tentative ruling, or whatever. Sorry I  
16       can't be more specific. I don't intend to have you  
17       all come back. There's not enough interesting things  
18       going on here that I'm going to do this again.

19                  You'll have my decision shortly. I'm  
20       probably going to decide and sign it today. I'm  
21       happy to have my staff send it to you. I'm not  
22       afraid to give it to you. It's not that I'm afraid  
23       to tell people how I'm going to rule. I'm happy to  
24       do that all the time. I did it when I told you that  
25       I thought Ms. Lawson had more here than your  
26       predecessor thought she had. But, in any event, the  
27       matter is deemed submitted. Thank you very much.  
28       Have a good day.

1 MS. LEE: Thank you, Your Honor.

2 MS. LAWSON: Thank you.

3 MS. LEE: Procedurally, do I understand  
4 you're going to issue a tentative, and you would  
5 like, then, whoever prevails to prepare a proposed  
6 order?

7 THE COURT: No. That's what I said,  
8 originally, because I wasn't so sure that I was going  
9 to get so much clarification, but I think I have  
10 everything clarified. I'm just going to issue a  
11 ruling. If you need a more formal judgment, or  
12 something, after the ruling, then whoever prevails  
13 can prepare that. She's prepared a proposed  
14 judgment.

15 MS. LEE: I prepared one, also.

16 THE COURT: I have one from you, and one  
17 from her. So, I may just use one of these two.

18 MS. LEE: I'll submit this one. It doesn't  
19 have findings of fact, or rulings, because I didn't  
20 know what they would be.

21 THE COURT: I don't know how you could know  
22 because I haven't made them yet. Thank you. Good  
23 luck to you all now.

24 MS. LEE: Thank you, Your Honor.

25 MS. LAWSON: Thank you.

26 MS. STEWART: Thank you.

27 -000-

28

1 STATE OF CALIFORNIA )  
2 COUNTY OF SANTA BARBARA ) SS.  
3

I, Shelli V. Porter, C.S.R., Official Court  
Reporter Pro Tem of the Superior Court of the Santa  
Maria Judicial District, State of California, in and  
for the County of Santa Barbara hereby certify that  
the foregoing pages 1 through 24 comprise a full,  
true and correct transcript of the proceedings had in  
the within-entitled matter, recorded by me by  
stenotype on the date and at the hour herein written,  
and thereafter transcribed by me into typewriting.

In compliance with section 8016 of the  
Business and Professions Code, I certify under  
penalty of perjury I am a certified shorthand  
reporter with license number 9729 in full force and  
effect.

Dated this 22nd day of September, 2015.



Shelli V. Porter, C.S.R. NO. 9729

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
SANTA MARIA - COOK DIVISION

MBB PROPERTIES, )  
vs. Plaintiff, )  
CARLITA SILVA, ) NO. 15CV01040  
Defendant. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HONORABLE JAMES F. RIGALI, JUDGE

Friday, June 12, 2015

**ORIGINAL**

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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**Exhibit I**

REPORTED BY: SHELLI V. PORTER, C.S.R.# 9729

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Santa Maria, California

Friday, June 12, 2015

## Morning Session

THE COURT: Good morning, Mr. Martinez.

What's up?

MR. MARTINEZ: We have case MBB Properties versus Silva.

MS. LAWSON: Janet Lawson, Your Honor, on behalf of Ms. Silva.

THE COURT: Hello and welcome.

MBB Properties versus Carlita Marie Silva,  
15CV01040. I have to find it on here because Judge  
Herman will be mad if I use paper. This is on for  
summary judgment and trial?

MR. MARTINEZ: Yeah.

THE COURT: Did you oppose the summary judgment motion?

MS. LAWSON: I did, and it was filed, I think, yesterday. In the beginning of the case, I filed a notice of non-appearance that I would be out of the state until the ninth.

THE COURT: Of what month?

MS. LAWSON: June. And, despite that fact, the summary judgment motion was, apparently, served on my office on the fifth, but my staff wasn't present, and it went into a drop box in my neighbor's mailbox. So, when I -- I, actually, spoke to

1 Mr. Martinez on Monday, asked him to e-mail it to me.

2 THE COURT: Okay. Hold on. Did you ever  
3 have a settlement conference with Mr. Corbo?

4 MR. MARTINEZ: Yes, we did.

5 THE COURT: Okay. Motion for summary  
6 judgment is denied. Trial right now. Call your  
7 witnesses.

8 MR. MARTINEZ: All right.

9 MS. LAWSON: Do you have the stipulation?

10 MR. MARTINEZ: Your Honor, basically, we  
11 have a stipulation that we submitted this morning.  
12 We're -- virtually all of the allegations in our  
13 complaint are admitted.

14 THE COURT: Okay.

15 MR. MARTINEZ: Except for the issue of  
16 damages, which we can submit on declaration later.

17 MS. LAWSON: Now, the declaration, the  
18 stipulation that we filed also stipulates to the  
19 facts as found by Judge Carroll, which would be in  
20 Plaintiff's Exhibit H in the request for judicial  
21 notice, and my exhibit one in request for judicial  
22 notice. They are, essentially, the same, so all of  
23 the facts are stipulated to.

24 THE COURT: Okay. Well, you're going to  
25 have to slow down because you're very smart, and you  
26 know everything about this case, and I know nothing.

27 MS. LAWSON: Well --

28 THE COURT: You came all the way up from

1 Ventura.

2 MS. LAWSON: Yes. I do have a suggestion.

3 I have a suggestion.

4 MR. MARTINEZ: Your Honor, I have a client  
5 that flew from the East Coast here to testify.

6 THE COURT: Which part of the East Coast?

7 MR. MARTINEZ: Columbus, Ohio.

8 THE COURT: Last I checked, isn't Ohio  
9 Midwest, or no?

10 MR. LYLE: East Coast time zone.

11 THE COURT: East Coast time zone. Well,  
12 there's a lot of big basketball going on over there.  
13 Well, is it your understanding that we are going to  
14 resolve the matter today?

15 MS. LAWSON: What I would like to do today,  
16 Your Honor, is we've each filed trial briefs, and I  
17 think that each trial brief addresses each party's  
18 points fairly thoroughly. We have agreed facts. I  
19 would suggest that we -- that you take the matter  
20 under submission, read our documents, read Judge  
21 Carroll's findings of fact, the respective trial  
22 briefs, and come to a conclusion and let us know.

23 There's really nothing more to add. This  
24 defense is all about adverse possession. We have  
25 agreed that for the year 2010, '11, '12 and '13, my  
26 client paid the property taxes. Adverse possession  
27 requires five years of open or hostile possession.  
28 They have admitted that's true, the facts established

1           that's true. The question is the 2009 taxes. So, if  
2 I can just briefly explain it, then I can make it  
3 pretty simple. 2009 the taxes were assessed --

4           THE COURT: You know what, can you just hold  
5 on yet one more second.

6           MR. MARTINEZ: Your Honor, we're arguing  
7 collateral estoppel. This has been litigated and  
8 litigated all the way up to the Ninth Circuit, and  
9 they, basically, denied that she has any merit to  
10 this argument.

11          THE COURT: Hold on a second. What is this  
12 that you are fighting over? Is it an apartment?

13          MS. LAWSON: It's a residence.

14          THE COURT: 40 acres?

15          MR. MARTINEZ: It's a three-bedroom house.

16          THE COURT: A three-bedroom house.

17          MR. MARTINEZ: In Lompoc.

18          THE COURT: In Lompoc.

19          MR. MARTINEZ: Dilapidated.

20          THE COURT: It's your position that your  
21 clients have adversely possessed fee?

22          MS. LAWSON: Correct.

23          THE COURT: And what does Judge Carroll have  
24 to do with it?

25          MS. LAWSON: If I can explain it, I can  
26 explain it in about two minutes.

27          THE COURT: Okay.

28          MS. LAWSON: There was foreclosure on August

1       10th, 2009, on the second mortgage. Their clients  
2 purchased it. They came out to the house in  
3 September of 2009 and said, "Hey, we own the house,"  
4 then they left. My client never heard from them  
5 again. Precisely one year later, my client filed  
6 chapter 13 bankruptcy to cure the arrears on the  
7 first mortgage, and she does that.

8              In October of 2014, his clients pop up, pay  
9 the first quarter taxes for 2014, then find out about  
10 the bankruptcy. I, then, oppose their actions in the  
11 bankruptcy court saying, "Hey, you violated the  
12 automatic stay. You didn't know it when you did it,  
13 but now you know, and it's willful."

14              Judge Carroll did not agree with me, neither  
15 did the District Court. When the District Court  
16 didn't agree with me, and wouldn't give me a stay, I  
17 filed an appeal to the Ninth Circuit Court of  
18 Appeals. The Ninth Circuit Court of Appeals said,  
19 "Counsel, you made a procedural error. That wasn't a  
20 final ruling, you should have gotten permission to  
21 appeal to the Ninth Circuit." So, these are all  
22 bankruptcy issues involving 362 of the Bankruptcy  
23 Code.

24              So, Ninth Circuit Court of Appeals dismissed  
25 my appeal at the Ninth Circuit. It's now back at the  
26 District Court, where, by the way, it's been fully  
27 briefed. We simply have to wait for a decision, and  
28 when we get one, and I expect to lose, I'll go back

1 to the Ninth Circuit. In the meantime, we have State  
2 Court claims pending in the Bankruptcy Court.

3 Now, this can happen under Stern v.  
4 Marshall, which is the Supreme Court decision that  
5 determined that Bankruptcy Court judges are not  
6 article three judges. When they make decisions, they  
7 have to prepare findings of fact and conclusions of  
8 law, which then I have the right to make the District  
9 Court bless, or not bless. Okay?

10 So, it is possible, and done all the time in  
11 bankruptcy, you filed an adversary proceeding, which  
12 is what we call a complaint, which lists our  
13 bankruptcy claims for relief, along with the State  
14 Court claims for relief. I filed a motion for a  
15 preliminary, quote, unquote, injunction. I lost.  
16 Counsel now is arguing --

17 MR. MARTINEZ: On the issue of adverse  
18 possession, you lost, specifically.

19 MS. LAWSON: Correct. I lost on everything.  
20 I went down in flames. All right? However, a motion  
21 for preliminary injunction is not a final order. In  
22 his citation, where he talks about motions that are  
23 final orders, it's judgment on pleadings, demurrers,  
24 summary judgment. How in the world can a preliminary  
25 motion ever be a final determination of anything?  
26 All the denial of the preliminary injunction says,  
27 "Hey, we don't think you're going to win. I still  
28 have the bite at that apple."

1                   MR. MARTINEZ: Your Honor --

2                   MS. LAWSON: I'm still talking. I still get  
3 to go down to Judge Carroll, I get to have that  
4 trial, I get to get findings of fact, conclusions of  
5 law, I get to go to the District Court. If, in the  
6 District Court, if I lose there, I have appeal  
7 rights. The denial of my preliminary injunction on  
8 the adverse possession claim is not a final order. I  
9 don't have the right to appeal that order. It's not  
10 a final decision on the merits. As we all know, you  
11 can't appeal anything, unless it's a final order.

12                  So, here we are. They got relief from stay,  
13 so we're here on an unlawful detainer. I am  
14 asserting, as a defense to the unlawful detainer,  
15 that she owns the property via adverse possession,  
16 and that is properly before this Court because I  
17 cited a case in that brief that says, "Hey,  
18 constitutionally, you get to have this summary  
19 proceeding, only when we're talking about did you pay  
20 the rent, or did you not pay the rent?" And the  
21 Supreme Court has said, "Hey, constitutionally, that  
22 passes muster, but if you have some other issue  
23 beyond that, you can't summarily deny someone of  
24 their right to a day in court."

25                  In my trial brief, I ask for a continuance,  
26 I ask for three options. All right? But since we  
27 have come to a conclusion, an agreement about the  
28 facts, as determined by Judge Carroll -- and I will

1 say this for Judge Carroll, he did an excellent job  
2 of preparing the facts, good and bad, on both sides.  
3 Good job. All right? So, those facts you can use to  
4 come to your conclusion, and, really, it's only a  
5 legal issue that we're talking about.

6 In my brief, I cited a case, and I believe,  
7 Your Honor, that it's outcome determinative, that's  
8 Hagman v. Meher Mount Corporation, 215 Cal.App.4th  
9 82. In that case, Larry Hagman adversely possessed a  
10 property in Ojai, never paid the taxes. He won on  
11 adverse possession. Why? Because no taxes were ever  
12 levied or assessed against that property because they  
13 had a 503(c) exemption.

14 So, Judge Carroll's opinion was this, Judge  
15 Carroll believed you had to pay the taxes for all  
16 five years, and it didn't count if they levy and  
17 assess before your adverse possession period started.  
18 Taxes were levied and assessed some time before March  
19 2009, they were paid timely first quarter November  
20 2009, second quarter February 2010. So, we all agree  
21 that's what happened, right? So, that's the only  
22 issue, do those taxes count? Does that count for  
23 adverse possession?

24 MR. MARTINEZ: Your Honor, it was clearly  
25 ruled in Smith v. Byer --

26 THE COURT: Hold on a second. I know you  
27 haven't had a chance to talk, but this is an unlawful  
28 detainer calendar.

1                   MR. MARTINEZ: Right.

2                   THE COURT: I am going to my daughter's  
3 graduation at Santa Clara, got in here a little late,  
4 wasn't expecting anything this cerebral. Very  
5 interesting following your arguments, but I'd like to  
6 work with the other people that are going to get out  
7 of here faster, then come back to this in a few  
8 minutes, when we don't have everybody waiting on you.  
9 They are not likely to be talking about circuit  
10 courts, and the like.

11                  MS. LAWSON: Thank you, Your Honor.

12                  THE COURT: All right. Thank you. Most  
13 interesting.

14                  (Whereupon, proceedings were heard and, not  
15 to be included in this transcript, are omitted  
16 herefrom.)

17                  THE COURT: Back to the case involving  
18 clients of Janet Lawson and Mr. Martinez.

19                  MR. MARTINEZ: Your Honor.

20                  THE COURT: Yes?

21                  MR. MARTINEZ: It's very interesting what  
22 Counsel had to say, but it's all irrelevant. All of  
23 this has been dealt with in the Federal Courts. The  
24 issue of adverse possession has been fully litigated  
25 on the merits and decided. There is no adverse  
26 possession. The Bankruptcy Court denied a relief of  
27 stay, the Circuit Court denied emergency relief of  
28 stay, and relief of stay, the Ninth Circuit Court

1 denied relief of stay, or to impose a stay. There is  
2 no stay. The record is fully clear on track to  
3 decide this case today.

4 MS. LAWSON: Oh, I don't disagree that this  
5 Court has jurisdiction to decide it. Clearly, the  
6 Bankruptcy Court granted relief from stay, and,  
7 clearly, I did not prevail at the District Court, or  
8 the Ninth Circuit.

9 THE COURT: I like your style, but you don't  
10 have to keep telling me you didn't win anywhere yet.

11 MS. LAWSON: Okay. I admit it.

12 THE COURT: It's candor, and it's  
13 refreshing, and it's helpful, and you've been very  
14 helpful --

15 MS. LAWSON: Thank you.

16 THE COURT: -- to your client and to the  
17 Court. So, that's not the issue.

18 MR. MARTINEZ: All matters have been  
19 stipulated, or admitted, on the complaint that we  
20 filed, Your Honor.

21 THE COURT: Okay. This is State Court,  
22 unlawful detainer court, so if you want to --  
23 following the law, in my mind, and making it up as I  
24 go, if you want to have a witness testify, or create  
25 a record of some kind, go ahead and do it. This is a  
26 situation that's been going on for a long time, so it  
27 doesn't matter if I don't decide it until Monday,  
28 instead of today, or something.

1           I do want to read everything and appreciate  
2 Defense Counsel's contention that I should  
3 adjudicate, with de novo status, subject to your  
4 stipulation of facts and law, or whatever, because I  
5 haven't read it, that ties me to your agreements.  
6 Then, if I am supposed to, as an independent judge,  
7 or whatever, decide that they have perfected adverse  
8 possession, then, I guess, that's what I would do.

9           But, if it's as Mr. Martinez says, and it is  
10 not the case, then you lose again pretty promptly on  
11 Monday, or whatever. Is your client living in this  
12 house?

13           MS. LAWSON: Correct.

14           THE COURT: And has been for years,  
15 obviously?

16           MS. LAWSON: 30 years.

17           THE COURT: So, if it's as easy as you say,  
18 then I'm going to pretty much just be rubber stamping  
19 that which was already done, including things in the  
20 Federal Court, as it relates to the adoption of the  
21 facts, or whatever, and you'd lose on Monday, and I  
22 would stay it for 10 days, so that you can run to the  
23 Federal Court and make sure that they didn't mean for  
24 me to do that, if they have some other understanding  
25 of whatever they were going to do. But, after that,  
26 then I think you're out of time, or whatever.

27           MS. LAWSON: Well, I would need the 10 days,  
28 actually, to file in the State Court of Appeals.

1                   THE COURT: Okay. So, you go to Ventura --

2                   MS. LAWSON: Yeah.

3                   THE COURT: -- and talk to Perrin, and  
4 company, and see if I did it wrong, or whatever. So,  
5 I agree that there's not a lot of trial. In fact, it  
6 doesn't really even matter because if you lose today,  
7 she's going to go to Ventura, either way.

8                   MR. MARTINEZ: Right.

9                   THE COURT: Going to Ventura.

10                  MR. MARTINEZ: She's run us up to the Ninth  
11 Circuit Court, Your Honor.

12                  THE COURT: I can't keep her from going to  
13 Ventura.

14                  MR. MARTINEZ: I know. That's where we need  
15 to get the ball rolling and get it there, whatever.  
16 She's going to do it, anyways, so if we delay here --

17                  THE COURT: That's a good point. I don't  
18 need to delay, if she's already going to go there.

19                  MR. MARTINEZ: Yeah.

20                  THE COURT: You won't get an eviction,  
21 anyway, before she gets to the Court of Appeal  
22 because you can't get the Sheriff to evict that fast.

23                  MR. MARTINEZ: Right.

24                  THE COURT: By the time you get your writ,  
25 and you sign up to do it, she'll have already gone to  
Ventura.

27                  MR. MARTINEZ: I agree.

28                  MS. LAWSON: Which is just down the street

1 from where I'm at.

2 THE COURT: Well, you could have stipulated  
3 to lose here and just gone there, and then it would  
4 have saved you some time and gas.

5 MS. LAWSON: But, I believe we're solid  
6 today.

7 THE COURT: Well, it sounds very  
8 interesting. I'm going to use my best brain to read  
9 it and figure out what it is, and then if I agree  
10 with her, then I'm going to do what I'm going to do.  
11 If I agree with him, then you'll need to talk to  
12 Gilbert and company.

13 So, now, she's good with the papers and the  
14 record. You need to have a witness testify. He came  
15 from the East Coast, or Ohio, whatever you want to  
16 do.

17 MR. MARTINEZ: I'd like to submit all of our  
18 documents that we requested judicial notice for.

19 THE COURT: That's fine. You want to pull  
20 them out and show them to the other side and do  
21 business with the clerk?

22 MR. MARTINEZ: They have copies of them.

23 MS. LAWSON: He's shown them to me. They  
24 support my argument, so I'm happy to have you read  
25 all two inches.

26 THE COURT: Very fine. Go ahead and do that  
27 now. Do you have them?

28 MR. MARTINEZ: Yeah, but I submitted them

1 and I filed them with the Court, also.

2 THE COURT: I already have them?

3 MR. MARTINEZ: You already have them.

4 THE COURT: They are in the paperless  
5 machine.

6 MR. MARTINEZ: That will be part of the  
7 record.

8 THE COURT: The Court does grant judicial  
9 notice, as requested by the plaintiff.

10 MR. MARTINEZ: Thank you. Also, the  
11 three-day notice that is attached to the complaint  
12 is -- the original one that's attached to the  
13 complaint, I'd like that to be an exhibit, also.

14 THE COURT: That's fine, unless there's an  
15 objection?

16 MS. LAWSON: Describe that again. I'm not  
17 following what you're asking to have as an exhibit.

18 THE COURT: He wants to be sure the original  
19 three-day notice --

20 MS. LAWSON: Oh, that's fine. I don't have  
21 a problem with that.

22 THE COURT: You could stipulate to the use  
23 of a copy, or whatever, but the presence of the  
24 original three-day notice is not disputed, nor is it  
25 a basis for reversal, or anything. Okay. What else?

26 MR. MARTINEZ: All right. I'd like to have  
27 my client testify that he paid the 2014 taxes.

28 THE COURT: Sure. Yeah.

1 MS. LAWSON: I'll stipulate.

2 THE COURT: Sir, raise your hand and be  
3 sworn.

4

5 TODD LYLE,

6 Having been sworn, testified as follows:

7

8 THE CLERK: Thank you. Can I have your  
9 name, please.

10 THE WITNESS: Todd Lyle.

11 THE CLERK: Please spell that.

12 THE WITNESS: T-o-d-d, L-y-l-e.

13 THE CLERK: Thank you.

14 THE COURT: You may inquire.

15

16 DIRECT EXAMINATION

17 MR. MARTINEZ:

18 Q Mr. Lyle, are you the managing officer of  
19 the MBB Properties, the plaintiff in this matter?

20 A I am.

21 Q And as part of your duties, did MBB  
22 Properties, LLC, pay the 2014 taxes on the subject  
23 property in this matter?

24 A They did.

25 Q Did MBB Properties pay both installments of  
26 the 2014 property taxes in this matter?

27 A They did.

28 MR. MARTINEZ: That's it, Your Honor. No

1 further questions.

2 THE COURT: All right.

3 MS. LAWSON: I would like to move into  
4 evidence my request for judicial notice, which is  
5 only three documents. The Court has it.

6 THE COURT: Any objection?

7 MR. MARTINEZ: No objection.

8 THE COURT: The Court grants judicial notice  
9 to defense, takes notice of the documents that you  
10 asked me to take notice of. Did you want to  
11 cross-examine plaintiff?

12 MS. LAWSON: No.

13 THE COURT: Okay.

14 MR. MARTINEZ: Your Honor, we'd like to  
15 reserve the issue of damages to be proven up by  
16 declaration, once we get a determination that we have  
17 possession.

18 THE COURT: Sure. If you want to agree to  
19 that, that's fine with me.

20 MS. LAWSON: Here's my issue with that. One  
21 of the findings of fact by Judge Carroll is that MBB,  
22 their predecessor interest, Michael Bowlay, and the  
23 Bowlay Family Trust, agreed to allow Ms. Silva to  
24 stay there. There was no agreement, but they just  
25 decided they would let her stay, without paying rent.

26 THE COURT: Right. Well, this is the point  
27 here is that you can't -- you get a quick trial in an  
28 eviction case, or unlawful detainer case, for all the

1 reasons the two of you already know.

2 MR. MARTINEZ: Yes.

3 THE COURT: Once possession is not an issue,  
4 then your trial for damages takes the back seat to,  
5 you know, all the other things, just like everybody  
6 else.

7 MR. MARTINEZ: Right.

8 THE COURT: It is administratively sort of a  
9 pain because when the unlawful detainer case, which  
10 is labeled as such and put in the computer as such,  
11 and all that stuff, becomes a regular civil action,  
12 then there is no way for the computer to change it  
13 over to the other numbers, and all that kind of  
14 stuff.

15 If you're not worried about damages today,  
16 and you just want to get possession, and then you  
17 want to agree to come back and have a trial on that  
18 other issue, then I agree, there's no point in making  
19 everyone do filing fees, and everything, all over  
20 again. You know, if they are mad, and the clients  
21 are going to sue, and if you are right, you are going  
22 to win, and all that. I'm happy to take your  
23 stipulation, bifurcate the issue of damages, and give  
24 you an order that allows you to call my secretary and  
25 to set it for trial on 30-days' notice, or  
26 something --

27 MR. MARTINEZ: Your Honor --

28 THE COURT: -- once all of her federal

1       efforts and State Court of Appeal efforts are done.  
2       I don't want to be talking about damages until it's  
3       all over with. If you can get some other court, you  
4       can ask them and tell them that this is pending, and  
5       they should instruct me that some other judge has  
6       already created a collateral estoppel issue  
7       preclusion, and there are no damages, or whatever.

8           MS. LAWSON: The issue of damages -- let's  
9       just say worst case scenario I lose. If I lose at  
10      the Court of Appeals, we still have a fraud case  
11      against them. So, damages, really, at this point, is  
12      totally premature. I can guarantee you at the end of  
13      the day -- well, there is pending right now in the  
14      Bankruptcy Court a fraud cause of action, for which  
15      I've asked for a jury trial, which will get the  
16      matter kicked down to District Court.

17           MR. MARTINEZ: There is an adequate remedy  
18      at law, damages.

19           MS. LAWSON: So, that's damages.

20           MR. MARTINEZ: It doesn't have to interfere  
21      with this case, Your Honor.

22           MS. LAWSON: I'm saying we shouldn't have a  
23      damages issue in this case. This is about  
24      possession, and possession only.

25           THE COURT: Well, I mean, your client's  
26      trying to raise his hand, like it's a classroom, and  
27      I know I have a low-key style. I really can't talk  
28      to him, unless he goes through you. But, it seems to

1 me like you should take up her agreement to stipulate  
2 to bifurcate the damages from the possession issue  
3 and to be entitled to bring a small claims -- I don't  
4 know how many damages you're asking for, but to  
5 bring, you know, another action, or whatever.  
6 Because if you're going to be confronted with the  
7 fact that this is the UD trial, and you have to prove  
8 up your damages right now, and if you're not ready to  
9 do that, you could, theoretically, lose because --  
10 call your witness.

11 MR. MARTINEZ: We're ready to prove up the  
12 damages issue.

13 THE COURT: So, you pick, you either prove  
14 them up right now, and/or agree to punt it down the  
15 road. If you are going to get sued again anyway, I  
16 don't know why you wouldn't just drag him through  
17 that other thing, as an offset. You're not going to  
18 get rid of this lawyer, you can tell.

19 MR. MARTINEZ: Right.

20 THE COURT: Even when you get possession,  
21 this thing isn't over. If your client thought, by  
22 flying from Ohio to Santa Maria that's going to  
23 happen, it's not going to happen.

24 MR. MARTINEZ: Okay. So, we'll punt.

25 THE COURT: All right. So, the issue, by  
26 stipulation of damages, and this Court's original  
27 jurisdiction for the same, and the plaintiff's  
28 opportunity to use the same as any offset in any

1 affirmative action by the defendant against the  
2 plaintiff, notwithstanding possession issues, for any  
3 fraud, or any other tort issues, or contract issues,  
4 is reserved.

5 The statute of limitations is tolled until  
6 the defendant exhausts all of their appeal rights in  
7 State Court and their Federal Court efforts to try to  
8 get possession back. Once -- if they lose, and once  
9 they have no more rights in that regard, then the  
10 clock ticks on the plaintiff to sue the defendant for  
11 those damages. If you don't do that within -- you  
12 agree, but I say within one year, then they are  
13 barred.

14 MS. LAWSON: One year is fine with me, Your  
15 Honor.

16 THE COURT: Is that all right?

17 MR. MARTINEZ: That's fine.

18 THE COURT: Okay. Everyone knows the rules  
19 now. Good luck to you.

20 MR. MARTINEZ: Your Honor, I have a judgment  
21 prepared, just in case you make a decision in our  
22 favor.

23 THE COURT: You may submit that. Did you  
24 give a copy to Ms. Lawson?

25 MR. MARTINEZ: I'm going to give a copy to  
26 her.

27 THE COURT: Okay.

28 MS. LAWSON: Should it go my way, I'll

1 prepare a judgment.

2 THE COURT: That's fine. I would instruct  
3 in my ruling that you do so.

4 MS. LAWSON: Okay.

5 THE COURT: Or sometimes my research  
6 attorneys feel real generous and they type stuff up  
7 for people.

8 MR. MARTINEZ: You can cross off the part  
9 that does the damages on there, because I was  
10 prepared to --

11 THE COURT: All right. I'm not the longest  
12 sitting judge in State Court, but I'm not a rooky,  
13 either, and this is the most interesting unlawful  
14 detainer I have ever had. So, good luck to you now.

15 MR. MARTINEZ: Thank you.

16 MS. LAWSON: Happy reading.

17 THE COURT: Thank you.

18 MS. LAWSON: Thank you for your patience and  
19 time. You don't always get that.

20 THE COURT: It's my privilege to have  
21 lawyers appear in front of me. It's much better than  
22 having self-represented litigants do the work.

23 -000-

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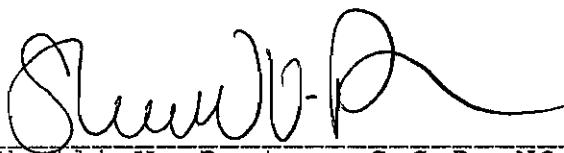
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1 STATE OF CALIFORNIA )  
2 COUNTY OF SANTA BARBARA ) SS.  
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I, Shelli V. Porter, C.S.R., Official Court  
Reporter Pro Tem of the Superior Court of the Santa  
Maria Judicial District, State of California, in and  
for the County of Santa Barbara hereby certify that  
the foregoing pages 1 through 23 comprise a full,  
true and correct transcript of the proceedings had in  
the within-entitled matter, recorded by me by  
stenotype on the date and at the hour herein written,  
and thereafter transcribed by me into typewriting.

In compliance with section 8016 of the  
Business and Professions Code, I certify under  
penalty of perjury I am a certified shorthand  
reporter with license number 9729 in full force and  
effect.

Dated this 22nd day of September, 2015.

  
Shelli V. Porter, C.S.R. NO. 9729

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