Research in the Real World

April 13, 2013

7th Annual
California Practice Resources

• Resource Guide:

• https://smartsite.ucdavis.edu/xsl-portal/site/rrw_2013
Fact Pattern

- A purchaser of real property entered into a contract with a seller. The purchaser put $1000 in to escrow, and was given 2 years to seek permits for a parcel split. He would have the right to cancel the transaction at any time in his sole discretion and receive back his deposit. After the purchaser spent a great deal of money pursuing the lot split, the seller canceled the agreement. The purchaser sought specific performance, but the seller argued that the agreement was an unenforceable and illusory contract, since the purchaser had the unfettered right to cancel. You represent the purchaser. What result?
What are Issues?

• What kind of contract is this? A bilateral purchase/sale or unilateral option contract?
• If an Option, is it revocable or irrevocable, namely was there sufficient consideration to hold the Seller to the bargain?
• Even if revocable option, can Buyer prevail for specific performance based on good faith partial performance?
General California Resources

• **CalJur3d**: On both Lexis and Westlaw
• **Index**
  – Contracts and Agreements
    • Real Property
      – Sales. See Index heading Real Property Sales

– Real Property Sales
  • Options: General Discussion REALEST 717-778
  • Contact of sale compared – Distinguishing option from contract of sale REALEST 722`
Contract of sale compared – Distinguishing Option from Contract of Sale REALEST 722

• REALEST Sec. 722: Whether a particular document is an option or an agreement of sale depends on the nature and terms of the document and the obligation of the parties, regardless of how the parties may label or identify the document.

Effect of Absence of Consideration

• REALEST Sec. 734: An option not supported by consideration is not a binding contract and the optionor may repudiate it or revoke it at any time before the optionee exercises the option.

• Ruess v. Baron, (1932) 217 Cal 83
Real Estate

Summary

PART ONE. Contracts for Sale

PART TWO. Bona Fide Purchasers and Encumbrancers; Priorities

PART THREE. Options and Preemptive Rights to Purchase Real Property

XXVIII. Nature of Option

§ 717 Definitions

§ 718 Dual nature of option

§ 719 Preemptive right compared

§ 720 Assignment compared

§ 721 Contract of sale compared

§ 722 Distinguishing option from contract of sale

§ 723 Construction of option agreement

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XXXI. Rights and Duties of Parties

XXXII. Exercise or Acceptance of Option

XXXIII. Termination
CalJur3d - Westlaw

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- Railroads
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      - § 720. Assignment compared
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      - § 722. --Distinguishing option from contract of sale
      - § 723. Construction of option agreement
  - XXIX. Validity
  - XXX. Consideration for Option
ALR – WHAT IS IT?

• Republishes Selected decisions
• Publishes annotations about those decisions
• ALR cases are noteworthy cases
• Annotations cover all of the relevant cases on a particular topic
• Annotations are updated
• West publishes but available on both Lexis and Westlaw
American Law Reports – Real Property

1. Instrument for purchase of land as a contract or an option

American Law Reports ALR | The ALR databases are made current by the weekly addition of relevant new cases. | 563 (Originally published in 1933)

...California...

...Where purchasers of 30-acre tract of land were given option to buy additional 24.9 acres and purchasers entered contract to convey 30-acre tract and optioned tract to plaintiffs, when purchasers exercised their option to buy, contract was converted into an executory contract of sale and purchasers became equitable owners of optioned land which they conveyed to plaintiffs by their contract...

2. When optionee's delay in exercising option excused

American Law Reports ALR | The ALR databases are made current by the weekly addition of relevant new cases. | A.L.R. 1311 (Originally published in 1945)

...California...
Resources

• Contract
  – CEB: Ca Law of Contracts
  – Bender: California Contract Litigation

• Real Property
  BW CCP: Real Property Litigation
  CPG: Real Property Transactions
  Ca. Real Estate Law and Practice, MB
  Miller & Starr Ca Real Estate
  Ca. Real Property Sales Transactions, CEB
CEB- Ca. Law of Contracts

• Index
• Real property
  – Specific performance
    • Transfer of RP, contract for Sec. 11.10
• Options
  – Irrevocable offer supported by consideration as option contract, Sec. 4.14
  – Unilateral contract, option characterized as, Sec. 3.52
CEB- Ca. Law of Contracts
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<td>1.</td>
<td>100% Index</td>
<td>California Law of Contracts [Business Law]</td>
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... rule for acceptance Generally, 4.23 Sale or lease of goods, inapplicability...

... See Performance of Contractual Obligations Sale of goods, acceptance of contract...

... for. See Sale or Lease of Goods (Generally...

... Convention on Contracts for International Sale of Goods (CISG), time limits...

... Convention on Contracts for International Sale of Goods (CISG), acceptance of...

... Convention on Contracts for International Sale of Goods (CISG) UNIDROIT Principles...

... Convention on Contracts for International Sale of Goods (CISG) Agents and...

... modification without new consideration, 4.52 Sale of goods, no requirement of...

... contract modifications, UCC, continuing for sale of goods, 3.45 Promissory estoppel...

| 2.   | 98% §3.52 3. Options | California Law of Contracts [Business Law] |

... 3.52 3. Options Options represent the other context in...

... unilateral contracts typically arise. An option is a unilateral contract in...
Results

• Sec. 3.52 provides
• Reference to:
• Section 4.14 (Irrevocable Offers: Options)
• Ca. Real Property Sales Transaction - Chapter 8
    • Option Contract rendered irrevocable by Part performance.
Ca. Real Property Sales Transactions

• Search by Case:
• Using Print Tables of Cases
• Using CEBOnLaw case search
CEBOnLaw Case Search

Case Search

Limit your search to specific sections, titles, or law areas by checking boxes in the Table of Contents.

Search for:
- case name or citation: steiner v. thexton
- Sort search results by: Rank (on)

When searching for a case by name, enter at least one word from the case name.
When searching for a case by citation, use specific formats (see samples below):
- 65 CA4th 511
- 135 CR2d 834
- 440 US 450
- 142 L Ed 2d 576
- 99 S Ct 914
- 247 F3d 920
- 259 F Supp 2d 992
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<td>§4.4 D. Options</td>
<td>California Real Property Sales Transactions [Real Property]</td>
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<td>... detail in chap 8. See Steiner v Thexton (2010) 48 C4th 411, 106...</td>
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<td>§8.10 2. Consideration for Option</td>
<td>California Real Property Sales Transactions [Real Property]</td>
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<td>... bargained for between the parties. Steiner v Thexton (2010) 48 C4th 411, 106...</td>
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<td>3.</td>
<td>§4.85 1. In General</td>
<td>California Real Property Sales Transactions [Real Property]</td>
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<td>... fail for lack of consideration. Steiner v Thexton (2010) 48 C4th 411, 106...</td>
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<td>4.</td>
<td>§8.5 1. Unilateral Contract for Right to Purchase</td>
<td>California Real Property Sales Transactions [Real Property]</td>
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<td>... contract is a unilateral contract. Steiner v Thexton (2010) 48 C4th 411, 106...</td>
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Adequacy of the Consideration

- Consideration: Did the $1000 put in to escrow sufficient consideration? Is it an irrevocable offer?
Miller & Starr

• **Index:**

• **Options and Option Contracts**
  – Adequacy of Consideration to support enforcement Sec. 1:58
  – Offer
    • Exception to right to revoke, option contract Sec 1:33
Adequacy Issue

• 1:58 : Query if Option price is substantially below the purchase price? Maybe not adequate and therefore revocable
1:33 If an option is not given for a separate identifiable consideration, it is revocable by the optionor prior to the exercise of the option by the optionee. (Kelley v. Upshaw (1952), 39 Cal.2d 179
California Practice Guide: Real Property Transactions: (Rutter)

• **Option to Purchase Index**
  
  – Consideration for
    
    • Lack of Sec. 8:55-8:71
  
  – Compare-Insufficient consideration, Sec. 8:65
    
    Full refund of deposit if does not exercise the option is not adequate consideration (Torlai v. Lee (1969) 270 CA2d 854, 859
  
  – Consideration for Option Sec 8:55
    
    • Examples – Sufficient Consideration, Sec. 8:58-62
And an optionee's part performance of a bargained-for promise to seek a parcel split created sufficient consideration to render an option to purchase a 10–acre parcel irrevocable even though the optionee was entitled to revoke the transaction at any time and for any reason. [See Steiner v. Thexton, supra, 48 C4th at 421–422, 106 CR3d at 261]

“It is true that [the optionee's] promise to undertake the burden and expense of seeking a parcel split may have been illusory at the time the agreement was entered into, given the language of the escape clause. However, there can be no dispute that [the optionee] subsequently undertook substantial steps toward obtaining the parcel split and incurred significant expenses doing so … …
California Secondary Sources

Texts & Treatises
- All California Texts & Treatises
  - California Civil Practice
  - California Jurisprudence
  - Miller & Starr California Real Estate
  - Rutter Group Practice Guides & Other Publications
  - Witkin’s California Treatises

Law Reviews & Journals
- All California Law Reviews & Journals
  - California Law Review
  - Stanford Law Review
  - UCLA Law Review
WLN – Set Up Favorites to Search Multiple Titles
Option to Purchase: An option to purchase is an enforceable contract only if supported by leg sufficient consideration.

...[8:55] Consideration for Option: As indicated earlier, an effective option agreement should set forth in detail the "option" portion of the contract (consideration for the option, terms and conditions for exercise of the option, if exercised, etc.) and the terms and conditions of the contemplated purchase and sale (giving due consideration important to a well-drafted purchase and sale agreement; see Ch. 4).