

Empire College School of Law
Professor Wheeldin
Civil Procedure – Midterm
Thursday, December 8, 2011

Question 1 – One Hour

Robert Watson purchased a home in Sonoma, California, in 2006 for \$655,000. As a previous homeowner, Mr. Watson arranged for financing through Easy Mortgage, Inc., a Florida corporation that is a subsidiary of a large nationwide bank, AmericaBank, incorporated in Delaware.

To arrange the financing Mr. Watson dealt with the Easy Mortgage office in Denver, Colorado. Easy Mortgage hired a home inspector, paid for by Mr. Wagner, who inspected the home prior to the close of escrow and the inspection report did not identify any defects or issues of concern. The home had been in the Gary and Melinda Bell family since its original construction in 1971. Escrow closed in late 2006 with a traditional 30-year mortgage held on the property by Easy Mortgage.

In summer 2010, Robert Wagner embarked on a significant remodel, hiring a local General Contractor to completely remodel the kitchen and living room. The contractor discovered significant and dangerous amounts of asbestos in the home. In combination with the general decline of real estate values and discovery of the asbestos, the property was in an “upside down” status, making it worth considerable less than the amount of indebtedness.

Mr. Watson told his contractor to cease work, completing just enough to make the kitchen functional. Mr. Wagner ceased making mortgage payments. He also fails to pay the contractor the \$27,000 due on the remodel. Mr. Watson attempts to list the property for sale but his agent informs him with the amount of the existing mortgage and the strict disclosure requirements, his prospects for a sale are “slim and none”.

In March, 2011, Mr. Wagner is personally served with a copy of a Summons and Complaint from a U.S. Federal District Court in Tampa, Florida. The Complaint alleges there is unpaid mortgage debt in excess of \$500,000 and, additionally, there is a “default penalty” of \$51,000.

1. Can the Easy Mortgage vs. Wagner case be heard in the Court in Florida? (50 pts)
2. Assuming there is jurisdiction, can Mr. Wagner join the original sellers, contractor, and the inspector to this lawsuit? (30pts)
3. Mr. Wagner wishes to assert a claim against Easy Mortgage for failing to disclose any “default penalty” in the mortgage documents, can he do so? (20 pts)

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Question 2 – One Hour

Plaintiff, Mary Blue, resides in San Francisco, California and enjoys her status as a member of the 1% club. Her annual income exceeds \$450,000 and she is an avid fan of yachting, polo, and bridge. Through internet advertisements, she learns of an historically significant yacht, “Forever More”, which has come on the market in Oregon at a price of \$850,000.

She arranges through her broker to bid on the yacht and after exchange of offers and counteroffers, the seller, Springfield Yacht Club, an Oregon non-profit, a price agreement of \$750,000 is reached. The written contract contained standard clauses including: “This agreement contains the whole agreement between the Seller and the Buyer and there are no other terms, obligations, representations, or covenants that apply to this transaction”.

Mary arranges for a captain to bring the yacht from its Oregon berth to San Francisco. When the captain arrives at Coos Bay, Oregon, there is a “Notice of Lien” posted on the yacht, indicating that the vessel cannot be removed until \$78,000 in unpaid harbor fees are posted with the Harbormaster.

Mary directs her attorneys to file a lawsuit in the Superior Court of California, County of San Francisco. The Complaint alleges breach of contract and “material misrepresentations” by defendant and seeks compensatory and punitive damages. The Complaint further asserts that under California law, the Oregon Harbormaster has no legal authority of “Hold or seize” a vessel.

1. May defendant remove this case to U.S. District Court for the State of Oregon.? May it file a General Demurrer? (25 pts.)
2. Assume the matter is heard in U.S. District Court for Oregon, defendant asserts the Oregon Harbormaster has authority to seize vessels pursuant to the procedures of the United States Maritime law. Oregon state law is silent on the subject, California law does not allow for such seizures, which law should the Oregon Court apply? (50 pts)
3. If Defendant had filed a Motion for a more definite statement , how should the the Court have ruled? (25pts)