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Gibson Dunn Secures Significant Relief For Elderly Berkeley Homeowner in Closely-Watched Receivership Case

Pro Bono | December 5, 2024

A Gibson Dunn pro bono team won an important victory for an elderly Berkeley homeowner in a significant case against a Receiver appointed by the City of Berkeley, ostensibly to correct a set of minor code violations in our client's two-story Harmon Street home. The first phase of the bifurcated case went to trial in February 2024, addressing the reasonableness of the work performed by the Receiver and the first installment of the Receiver's fees. The Gibson Dunn team compiled a formidable record at the trial court level to support our client's challenge to the Receiver's actions, including for purposes of any ultimate appeal. The trial evidence showed that our client, a U.S. Army veteran and U.S. Post Office retiree who worked part-time as a Berkeley school crossing guard, bought his 1910 house as a fixer-upper in 1975 with his wife, who passed away 20 years ago. In 2014, he received a Notice from the City of 33 health and safety code violations at his home, ranging from broken window glass and rotted stair rails to exposed electrical wires and peeling paint. Although it's unclear what prompted the City's inspection, press reports suggested it was triggered by neighbor complaints or a police visit on an unrelated matter. On receiving the Notice of Violation (NOV), our client and his sons immediately undertook to correct the violations, including by engaging contractors to perform any specialized work. By the time the Receiver was appointed, all 33 issues listed in the NOV had been corrected or addressed in estimates provided by outside contractors. At trial, Gibson Dunn argued that the Receiver's authority was limited to correcting the code violations that triggered the receivership, and presented expert evidence showing that the work could have been done for under $65,000—even putting aside the corrections our client and his sons already made. The Receiver nonetheless undertook a course of major renovations and construction, almost all unrelated to the 33 NOV items. Among other such work, the Receiver converted the home to a duplex from the single-family framework that had supported our client's family for four decades, entirely renovated the kitchen with granite countertops and other high-end features that our client neither requested nor needed, removed sliding pocket doors and other solid doors from the home and replaced them with hollow doors, and cut down a stand of decades-old juniper trees that the family had planted and nourished. There was strong evidence that the Receiver's plan was to flip the home—a troubling prospect for a senior citizen and homeowner living in a historically Black neighborhood that already had seen a sharp decline in Black families in recent decades. The Gibson Dunn team argued that the construction costs of nearly $550,000—all of which were imposed on our client by means of direct charges or the addition of debt to the home itself—were grossly excessive compared with what would have been required to fix the code violations. Although the trial court sided with the Receiver on whether the construction work was authorized by the court's prior orders—an issue the Gibson Dunn team fully preserved for appeal—it agreed with Gibson Dunn that the Receiver waived his right to about $165,000 in fees, clearing the way for a refund to our client of amounts he already paid. In the second and final phase of the case, the Receiver sought another $285,500 in fees and costs—including nearly $215,000 in legal fees incurred during the first phase of the case. The trial court disallowed almost half of the fees the Receiver sought based on the "significant portion" of fees it had disallowed in the first phase. Following the ruling in the second phase, the Receiver sought to secure his outstanding fees through an immediately enforceable, super-priority lien against our client's home—a potentially devastating result for our client that may have triggered

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foreclosure. Gibson Dunn argued the Receiver’s allowed fees should be secured by a lien subordinate to our client's existing mortgage and should not be enforceable until six months after the resolution of any appeal. The Gibson Dunn team also asked the trial court to waive the bond requirement on appeal, arguing that the Receiver’s monetary relief would be fully secured by the lien. The trial court agreed with Gibson Dunn on all counts. The court’s decision will allow our client and the Gibson Dunn team to pursue a full appeal from the trial court’s adverse rulings without the threat of the Receiver forcing foreclosure and the additional hurdles of posting a six-figure bond as a senior on a fixed income. The Gibson Dunn team was led by partners Marcellus McRae, Kristin Linsley, Andrew LeGrand, and Jeff Krause, and associates Jeremy Ochsenbein, Lauren Dansey, Kelsey Matevish, Yana Nebuchina, Warren Loegering, Matt Getz, Jesse Schupack, and Lindsay Laird.

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