

Daily Journal

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TOP VERDICTS OF 2016

The largest and most significant verdicts and appellate reversals handed down in California in 2016

TOP DEFENSE VERDICTS

Lincoln Studios LLC v. DLA

case INFO

Breach of contract

Los Angeles County
Superior Court Judge
Suzanne G. Bruguera

Defense lawyers: Gibson, Dunn & Crutcher LLP, James P. Fogelman, Harper L. Gernet-Girard, Michael M. Lee, Marysa Lin, Rachel N. Perahia, Jay P. Srinivasan

Plaintiff lawyers: Miller Barondess LLP, Louis R. "Skip" Miller



JAMES P. FOGELMAN



JAY P. SRINIVASAN

During his 25 years of practicing law, Gibson Dunn & Crutcher LLP partner James Fogelman said he has never seen a case like this one. Investment company NMS Capital Partners LLC — which sued Fogelman's real estate advisory client P6 LA MF Holdings SPE LLC of AEW Capital Management LP for a contractual dispute involving nine residential properties — was found to have forged documents in order to tailor a joint venture agreement to their liking. The tampered documents were submitted to the judge, who dismissed the \$12 billion lawsuit in December.

"I have not really seen anything like this before. You're talking about multiple forgeries being submitted to the court of law," said Fogelman.

NMS, headed by a well-known Santa Monica developer, sought to trigger a sale in the agreement over the multi-residential properties in West Hollywood and Los Angeles, with the hope of acquiring the properties at a reduced price from AEW, according to the lawsuit. The agreement was

altered to fast-track a buy-sell provision from five to three years and to increase the amount of time until NMS would be removed as a property manager in the agreement.

The case, known as the Lincoln Studios litigation, was especially complex because the documents were electronically forged, requiring forensic experts to dig through metadata and trace the fraudulent activity, said Fogelman. *Lincoln Studios LLC v. DLA*, BC551551 (L.A. Super. Ct., filed July 15, 2014).

"This was a terrific team. It took about a year and a half to unravel the whole thing. [Experts] had to analyze hard copies. They were able to find documents [NMS] were trying to delete in electronic form," said Fogelman.

"I am not sure a regular person could have done it. They said it was a textbook example of fraudulent documents and forgery," he added.

Los Angeles Superior Court Judge Suzanne G. Bruguera highlighted the severity of the case when she dismissed the suit.

"I appreciate the fact that they were involved in this case because it was my orders that were just ignored and more than ignored, but I appreciate the fact that the fraud was revealed because it's not just this court's order, it's the whole system, the fraud on the whole system," she said.

Fogelman also commended the work of colleagues Harper Gernet-Girard, Mike M. Lee, Marysa Lin, Rachel Perahia and Jay Srinivasan.

Fogelman called the case a "great roadmap" for those trying to defend themselves in similar wrongful contractual litigation.

Now, the firm has filed a lawsuit that relates to the efforts taken to forge documents and thwart the sale of the property. "They took a lot of steps to cover their tracks," said Fogelman.

— Justin Kloczko