

Real Estate Lawyering On a Budget

By Kelley K. Blatnik, Esq.

Introduction

Recently, litigation regarding NRS 116 and non-judicial foreclosures based upon homeowners association (HOA) assessment liens grew exponentially. As decisions such as *Shadow Wood Homeowners Association, Inc. vs. New York Community Bancorp, Inc.*, 132 Nev. Adv. Op. 5, ___P.3d ___, 2016 WL 347979 (2016) and *Centino vs. JP Morgan Chase Bank, N.A.*, Case No. 67365 (Nev. March 18, 2016) (NSOP) compound pre-existing ambiguities in the law, practitioners within the real estate litigation field must brace themselves for protracted litigation. Unfortunately, not all clients possess resources for protracted litigation despite the validity of their claims or defense. Therefore, a wise practitioner would use cost saving techniques to assist their client's resources survive and fund the protracted litigation. The following tips should assist practitioners in saving limited resources for litigation.

Coordinate

Typically, HOA foreclosures involve four groups of litigants: investors (purchasers of the property at the HOA foreclosure sale), banks (lenders who claim interest in the disputed property via deed of trusts), HOAs (non-profit homeowners associations who sought payment of owed assessments), and collection agencies (entities hired by HOAs to collect past due assessments). Each party may set and take its own deposition of any witness. However, setting multiple depositions in the same case for the same witness wastes time and money. Practitioners who coordinate depositions with counsel save time and efficiently gain an accurate picture of the case. Ideally, the parties would coordinate the depositions of witnesses involving the same case on the same day so that the lawyers may use information gleaned from one deposition to assist in gaining information from the next without memory loss due to the sheer volume of cases litigated. Another option for deposition coordination is scheduling multiple depositions of the same witness on the same day so that multiple cases may be handled in a short period of time and the witness need only travel for deposition for one day.

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Parties may also coordinate motion hearings. Due to the volume of cases under litigation, motions filed hours apart receive different hearing dates. When this occurs, agreeing to move the motions to the same date saves travel time and courtroom costs for the client. Clerks tend to understand the desire to set motion hearings for the same day and seem willing to move the hearing dates so long as all counsel agree.

Transcript costs

Even for a well-funded litigant, transcripts are costly. Prior to ordering a transcript, review notes of the deposition or hearing, and carefully consider whether the entire transcript needs be ordered. Often, although the information from a deposition was very useful, the transcript is not necessary until either closer to trial or after discovering conflicting information from the witness testimony. Unfortunately, not all depositions prove fruitful for information. In those instances, practitioners may save their clients resources by not ordering the transcript of a fruitless deposition.

Share costs

Each of the four litigation groups possess different interests and claims, but may align themselves to share costs for the benefit of their respective clients. Transcript costs may be shared as discussed above, but so may costs associated with expert witness reports. Typically, banks obtain expert reports regarding valuation of the disputed property at the time of the HOA foreclosure sale. A rebuttal report refuting a bank's expert valuation may be desirable to investors, collection agencies, and HOAs despite the latter having different theories of the case. If the parties refuting the bank's expert report regarding valuation agree to share the cost of the rebuttal expert report, that report becomes much more affordable as does the rebuttal expert's testimony at trial.

Stipulate

Not all motions need objections. Not all motions need oral arguments. If a motion does not harm your client or your client's position, consider not objecting or even stip-

ulating to the motion. Stipulations save court time, travel costs, and expenses your client. So long as your client's position or defense is not harmed, there is no need to object to every motion. Motions for Leave to Amend commonly appear and do not routinely need objection. NRCP 15(a) states that leave to amend "shall be freely given" and case law adds so long as the claims are not futile or cause undue prejudice. Therefore, even if a practitioner does not believe the amended claims will prevail at trial, so long as the claims are not futile or cause undue burden, stipulating to allow the party to amend their pleading or not objecting saves courtroom time and client resources.

Independent contractors

Litigation experiences ebbs and flows. At times, practitioners feel overwhelmed with the volume of work necessary and at other times, not enough work. In such circumstances, using independent contractors to assist with briefing, motion drafting, and pleading drafting assists the practitioner to meet the demands of litigation without the hassle or headache of a full-time employee. Use of independent contractors also prevent the necessity of letting employees go when not enough work is present to warrant the expense of employment. Therefore, during temporary peaks in litigation needs, independent contractors may assist in filling gap between capacity and necessity.

Conclusion

Even the well-funded litigant benefits from resource conservation. By coordinating depositions and hearings, practitioners decrease courtroom time, travel, and costs to client. Practitioners may agree to split costs associated with coordinated depositions or carefully consider the cost benefit of a transcript and choose not to order the transcript. Litigants with diverse claims and defenses may align themselves for certain costs such as expert witness fees or rebuttal expert witness fees. Carefully choosing which motions require objection and agreeing to stipulate when the motion does not harm your client saves clients courtroom time and costs. When necessary, utilize independent contractors to assist in meeting litigation needs. Prior to filing a pleading, noticing a deposition, or drafting a motion, contact opposing counsel and determine common ground or limit the scope of the disagreement to conserve courtroom and client resources. **C**

Kelley K. Blatnik, Esq. is the managing attorney of Blatnik Law, LLC and in reference to HOA litigation, primarily represents HOA clientele.



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10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
1-877-303-5757, ajuras@abbyconnect.com

