

October 2012

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SOUTHERN ARIZONA'S REAL
ESTATE LAW FIRM

Welcome to the MMGM Newsletter

Paraproisdokian Sentences

You're Never Too Old To Learn Something Stupid



When trick-or-treating first became popular in the United States in the 1800s, more children played mischievous pranks than asked for candy. By the 1950s, though, the focus had switched to good old family fun, with sugar-hyped children dressed in costumes.

Liability of Designated Broker

By Michael J. Monroe, Esq.

In a recent (2012) California case Plaintiff, a trust ("Trust"), filed a lawsuit against a brokerage firm and its designated broker ("Broker"). The salesperson, Mr. Dresser, ("Salesperson") fraudulently induced the trust to invest \$600,000 in repairs to a property and take back a second lien. In fact, the property needed much more than \$600,000 to adequately repair the property. At the same time, the holder of the first lien was preparing to foreclose leaving the Trust's note unsecured. Also the Salesperson allegedly expended \$300,000 of the loaned monies for his own personal benefit. The salesman died so was not named in the suit and the brokerage company was insolvent. That left the Broker.

The claim revolves around the claim that the Broker owed a fiduciary duty to the trust because the Broker had a statutory duty to supervise the brokerage's employees. The Trust claimed that if the Broker had exercised his duty to supervise the Salesperson, he would have known of the Salesperson's misrepresentations. The Broker claimed he had no personal duty to the Trust. He claimed to have no knowledge of the Salesperson's interactions with the Trust and

his duty to supervise was owed solely to the corporation, not to the Trust. The trial court agreed with the broker and dismissed the case. The Trust appealed. The California Court of Appeals affirmed the trial court. It found that in California, a corporate officer can only be liable to a third party for breach of a duty if the officer breached a duty owed specifically to the third party. The court found that an officer of the corporation is not liable to third parties for breach of duties owed to the corporation and here the Broker did not have a fiduciary duty to the Trust. The court stated that the Broker's statutory duty to supervise the Salesperson was a duty owned to the brokerage

firm (corporation). Since the Broker had no contract with the Trust, the Broker did not owe any duty to the Trust. The lawsuit was dismissed.

Sandler v Sanchez, 142 Cal. Rptr. 3d 771 (Cal. Ct. App. 2012)



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[Tucson Association of REALTORS®](#)

[Green Valley Association of REALTORS®](#)

[Southeast Arizona Association of REALTORS®](#)

[Santa Cruz County Board of REALTORS®](#)

[National Association of REALTORS®](#)

[Tucson Women's Council of REALTORS®](#)

MMGM “BEARED DOWN” AT THE TAR EXPO

This year’s Tucson Association of REALTORS® Real Estate Expo was held on Thursday, September 13, 2012 from 10:00 a.m. to 4:00 p.m. at the Tucson Convention Center, 260 S. Church Ave.

MMGM GAVE AWAY 500 STUFFED BEARS AND OTHER FUN ANIMALS.

Congratulations to [Carmen Rodriguez of Tierra Antigua Realty](#) for winning the Giant Stuffed Bear. [Rodney Bell of Fairway Independent Mortgage Corporation](#) stated: *“I visited your booth today at expo, Won the coolest little bear. The people that worked the booth were having a blast very fun. Thanks.”* *We look forward to seeing you at next year’s expo.* Page



Lawyers Giving Back to the Community

By D. Rob Burris, Esq.

Contrary to what many people may think, lawyers are not all about billable hours. In fact, the vast majority of lawyers are innate problem solvers who really do want to help people. Many lawyers agree that the worst part of their job is having to bill clients for services which they think are a fundamental part of our society. Lawyers also believe having access to quality legal representation should be available to anybody who wants it. It is frustrating that quality legal representation isn't cheap and many people cannot afford it.

That's why many lawyers do what they can to provide free services and advice in order to give back to the community. For example, the lawyers here at MMGM have helped to create, establish, and advise numerous charitable organizations. Once the organization is up and running, we continue to support and assist those organizations throughout the years free of charge.

Most recently, with the collaborative help of my partner Larry McDonough and attorney Gerry O'Meara at Gust Rosenfeld, PLC, I helped to incorporate a nonprofit organization called Sister Jose Women's Shelter. The Shelter is a charitable organization dedicated to the care and nurture of homeless women within our Tucson community. The Shelter offers a warm bed on cold nights, food and other nourishment, showers and laundry facilities, and, for those without purpose, the Shelter offers engagement.

My wife and I have been involved with the Shelter for many years and we have contributed in any way we can, whether it be by our own hard labor and skills or financially. The Shelter is a tremendous organization full of talented people who truly want to help others. Working with the Shelter and its director, Jean Fedigan, has allowed me, and the MMGM family at large, to give back to the community and promote the greater good. Providing free legal services and advice is something we here at MMGM would like to do for all of our clients. Unfortunately, we cannot provide free services to everyone who needs help.

MMGM works hard to give back whenever and wherever we can and we take great satisfaction in helping others.

For more information on Sister Jose Women's Shelter, please contact Jean Fedigan at jfedigan@cox.net.



What Signatures Are Required on the Real Estate Employment Agreement?

By Karl MacOmber, Esq.



In *Young v. Rose*, the Arizona Court of Appeals has ruled that a real estate agent may sue to recover compensation due under a real estate employment agreement only if there is a written agreement that complies with both A.R.S. §§ 44-101(7) and 32-2151.02(A). This means that not only must the client sign the agreement, so must the broker. The Court of Appeals punted on the question of whether a series of emails, which included "an electronic business card consisting of her name, business address, e-mail address, telephone numbers, website address, and photograph" could constitute an electronic signature, ruling that the record was not sufficiently developed to decide such an issue on a Motion to Dismiss.

The law continues to develop and expand in this age of electronic revolution.

Tree Disputes

By Carolyn B. Goldschmidt, Esq.



*I hear the wind among the trees
Playing the celestial symphonies;
I see the branches downward bent,
Like keys of some great instrument.
~Henry Wadsworth Longfellow*

Neighbor Disputes. Unfortunately, trees can bring disharmony to neighbors when branches or roots encroach over or on the land of another or interfere with views. There are no statutes in Arizona that address tree encroachments; however, there is “common law” in Arizona and every other state that does. Common law comes from trial court cases that are appealed to a higher court. There is one case in Arizona that addresses tree encroachments: *Cannon v. Dunn* (Arizona Court of Appeals, 1985). This case establishes that Arizona follows the generally-accepted rule that a landowner who sustains injury by the branches or roots of a tree intruding from another property onto his, regardless of their non-poisonous character may, without notice to the tree owner, cut off the offending branches or roots at his property line.

If you are going to remove encroaching branches or roots from a neighbor’s tree, consider the following:

1. Start with a written request to your neighbor for help or abatement, which explains the need for tree revision (i.e., “branches drop debris that plugs up my roof drains” or “roots are breaking up my patio”).
2. If the neighbor isn’t responsive, consult with an arborist or similar expert as to the tree's condition and advice on extent of trimming that can be safely done. Get the expert’s opinion in writing.
3. Photograph or videotape the encroachment both before and after you have trimming done.
4. Have an expert do the work.

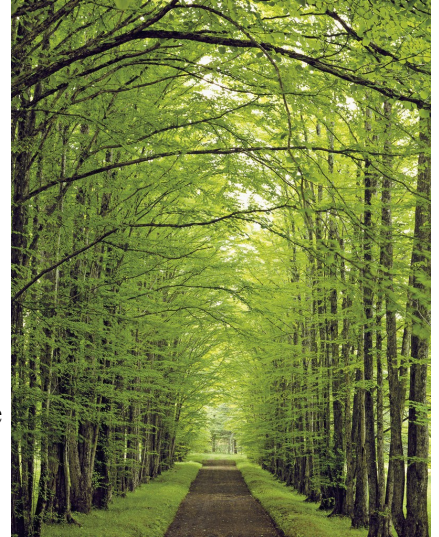
The injured landowner may not cut the tree down or cut its branches or roots beyond the extent to which they encroach upon his/her land. Thus, a property owner aggrieved by his neighbor’s tree may not cut the tree down or cut its branches or roots beyond the extent to which they encroach upon his land.

Common mistakes that the tree challenged can make that can create exposure to a claim for damages are:

1. Pruning the tree at the top (for an increased view, light or greater exposure) can structurally harm a tree. Pruning lower branches and leaving growth only at the top can also increase the risk of a structurally unsound tree that could topple in wind or rain.
2. Cutting roots, which may solve your problem, can also weaken a tree, causing it to fall.

TREE DISPUTES CONTINUED:

Tree Issues in Homeowners Associations. An Association's Board of Directors typically is burdened by tree issues, particularly when there are a number of trees in the common area or on other areas of Association responsibility that are mature and too large for the area in which they are planted. Some of the common tree problems that face Associations are:



1. Need to remove a tree that a homeowner wants to remain. The Association generally is responsible for maintaining trees on its common areas. Oftentimes, property owners adjacent to a common area do not want a tree removed that has been providing shade and beauty to their lot. In other cases, owners want trees removed from common areas to restore their view. Many Boards of Directors find themselves in a “no win” situation---some owners are angry because the trees are not being pruned or removed and other owners are angry because they are. As with most conundrums of this nature, the Board should get expert advice, allow community input, and create a reasonable policy that is consistently followed.
2. Removing a tree because it is a liability. If a common area tree causes damage on a private lot, the Association may be liable for damage done. Therefore, it is important for the Board to get expert advice on the health and placement of common area trees.
3. View issues. There is no right to a view unless some promise of view protection is in the Association's governing documents. Some CC&Rs state that trees need to be trimmed so that there is no “substantial interference with a material view” or some similar language. Many Association Boards have had to embark on a research and a public relations campaign that resulted in a policy that would meet the intent of the CC&Rs and remove the subjectivity that often is at the root of view issues.
4. Maintenance issues. In many cases, the Association is responsible for maintaining landscaping in the front yards of the private lots. When too many trees were planted during the development phase, or trees were planted in the wrong places, a Board suddenly can be faced with costly and widespread tree removal or pruning. Some Associations have taken the position that “maintaining” is not “removing and replacing.” In other cases, Associations have taken the position that landscaping maintenance does not include tree pruning or removal.

After our rainy summer, tree growth has brought some of these issues to the forefront. Unfortunately, there are no bright line rules that apply to all situations. A Board of Directors needs to study the pertinent governing documents, consult professionals, be fiscally prudent and enter into conversations with community members to establish a sound tree policy.

The Rules are the Rules

By Michael J. Monroe, Esq.



In an Arizona Court of Appeals case decided September 25, 2012, a buyer's agent learned the hard way that as a professional agent one has to follow the rules or there can be a steep price to pay.

In the case of *Young v Rose* CA_CV 10-0786 a real estate agent was dealing with a purchaser interested in acquiring a property in the \$4,000,000 range. The agent had been dealing with the purchaser for over 18 months. The exclusive real estate agent contract in question expired.

The agent sent an e-mail to the purchaser advising the purchaser to sign a new buyer-broker agreement. The purchaser signed and returned the agreement by e-mail. The agent wrote back by e-mail and said "thank you".

The purchaser subsequently acquired a property through another real estate agent resulting in the first agent suing for breach of the exclusive buyer-broker agreement which the purchaser had signed but which neither the agent nor the broker signed. The purchaser claimed that although he had signed, since neither the agent nor the broker signed the exclusive buyer-broker agreement, there was not an enforceable contract. The purchaser argued that Arizona Revised Statutes § 32-2151.02(A)(4) required both parties to sign such an agreement.

The agent argued that Arizona Revised Statute §32-2151.02(A)(4) was merely regulatory and would not bar a civil claim since the purchaser, the party to be charged, had signed the agreement. Further the agent tried to claim that the purchaser's signature satisfied the statute of frauds. The agent made a further argument that by responding with a "thank you" that was the equivalent of a signature. The court was not impressed with either argument. The court noted that while the statute of frauds only requires that the party to be charged (sued) need sign the written document, Arizona Revised Statute §32-2151.02(A)(4) deals specifically with real estate professionals and mandates that such agreements must be signed by both parties. Since it was only signed by the purchaser, the agent could not sue based on the fact there was an "agreement".

The court indicated that based on the status of the case the court would not address whether the "thank you" e-mail sent by the agent to the purchaser upon receipt of the employment agreement signed by the purchaser was the equivalent of a signature by the agent. However, the court did announce that to be considered a signature the agent would first have to prove that the parties agreed to conduct the transaction by electronic means which is determined from the context and surrounding circumstances, including the parties' conduct. There was not sufficient evidence before the court to make such a decision. The court did state that there must be evidence demonstrated of intent to authenticate the specific writing at issue. No such evidence was present in this case and it was sent back to the trial court for further hearing to determine whether there was evidence of such intent to authenticate the agreement.

The morale to this story is agents need to make certain that exclusive buyer-broker agreements are signed by both parties. Imagine the attorney fees expended for this case so far and it is not over. It all could have been avoided by the agent/broker simply signing the employment agreement when it arrived and sending a copy back to the purchaser. The agent/brokers would have been enjoying a substantial commission instead of spending their time in court.

Sixth Annual Tucson Classics Car Show—One of the Largest Shows in Southern Arizona

Saturday, October 13, 2012 10 a.m.—4 p.m.

Hosted by [The Rotary Club of Tucson](#)

St. Gregory College Preparatory School
3231 N. Craycroft Road
Spectator Admission is only \$5
For More Information: 440-4503

Event proceeds will benefit:

Reading Seed (a literacy program for students in grades 1 through 3 with over 1,000 volunteers);

The Pima Council on Aging (provides handyman assistance and meals for homebound seniors formerly known as Mobile Meals); and

YWCA (provides vocational training for women entering the workplace for the first time or returning to the workplace).



Photo courtesy of Barbara Lasky

MARK YOUR CALENDAR—Tucson October Events

1-28—[Nightfall at Old Tucson](#)

1-27—[Danny Lyon—The Bikeriders Portfolio](#)

1-31—[Gaslight Theatre—Phantom of the Opera OR A Pain in the Mask](#)

6-31—[Henri Matisse](#)

8-31—[Apple Annie's Arizona Centennial Corn Maze](#)

12—[TSO Rocks the Fox—Music of Michael Jackson](#)

12-14—[Tucson Meet Yourself Folklife Festival](#)

13-31—[Beginning Bird Walks](#)

13-14—[Tohono Chul Fall Plant Sale](#)

18—[Mars, The Moon, and Not Mars](#)

19,20,26-28—[Halloween Howl at Colossal Cave](#)

19—[Jazz Under the Stars](#)

19-21—[83rd Annual Helldorado Days](#)

20—[The Bisbee 1,000 Great Stair Climb](#)

20-21—[Willcox Wine Country Fall Festival](#)

20-21—[The Price of Passion](#)

20—[Tango—Dance Extravaganza](#)

21—[Shaolin Warriors](#)

21—[A-Mountain Half Marathon](#)

23-24—[Juilliard String Quartet](#)

26—[World Margarita Championship](#)

26-27—[Arizona Wildcats Hockey](#)

27—[Not So Spooky Halloween](#)

27—[Rainwater Harvesting Workshop](#)

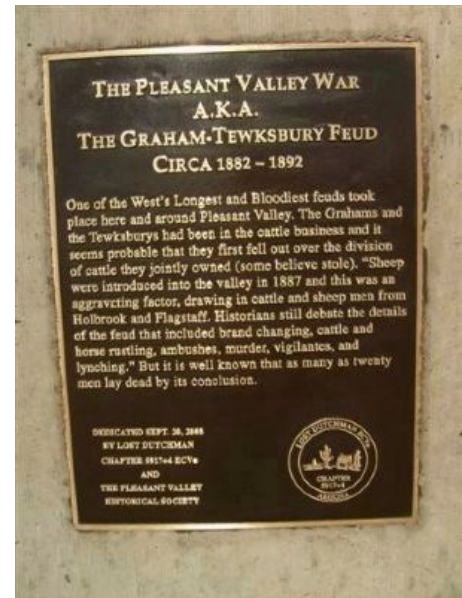
Nov. 2-4 [26th Tucson Celtic Festival & Scottish Highland Games](#)



Dragonfly Photo Courtesy of Barbara Lasky

ARIZONA FASCINATING FACTS

The worst range war and family feud in the West, which claimed the lives of dozens of ranchers, ironically occurred in a place called Pleasant Valley, Arizona.



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EXPERIENCE THE DIFFERENCE

MMGM is a real estate and business law firm. The attorneys and staff at Monroe McDonough Goldschmidt & Molla believe that each client must experience the difference that genuine care and concern can make. We strive to achieve the client's objectives while delivering unwavering personal service in an honest, aggressive and comprehensive manner. We refer to this as our Clients for Life program. MMGM provides outstanding counsel and unparalleled representation in the following areas of the law:

Real Estate Law - Personal Injury
Appeals - Arbitration and Mediation Services
Business Law and Entity Formation
Civil and Commercial Litigation - Construction Defect
Contracts - Estate Planning—Probate Law
Homeowner Association (HOA) Law
Motor Vehicle Warranty Defense
Product Liability - Transactional Law

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PROFESSIONAL*

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