

AIRWaves

The Newsletter of AIR Commercial Real Estate Association

By Brokers, For Brokers since 1960

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Brokers Beware!

Top Story

As readers of AIRWaves are aware, the newsletter strives to regularly communicate the AIR's ongoing efforts to keep Association members abreast of the latest events impacting their business. Among the most significant of these are legal decisions handed down by California courts. Through the good offices of Greenberg Glusker, AIRWaves presents an exclusive article co-authored by Greenberg Glusker Partner Lee Dresie and Associate Joshua Bird. The article, which reports on the recent case of Pinda Hall, et al. v. Rockcliff Realtors, et al., follows.

BROKERS BEWARE – NEW CASE CREATES DANGERS TO BROKERS FROM INSPECTION REPORTS

By Lee Dresie, Partner and
Joshua Bird, Associate
Greenberg Glusker

In Pinda Hall, et al. v. Rockcliff Realtors, et al., the Court of Appeal of California held a real estate agent liable for failing to notify the potential buyer's agent about dangers of which the listing agent was aware. The court further held that the agent's knowledge was imputed to the owner. (EDITOR'S NOTE: Referencing the case, Dresie said, "Even though this case arose in a residential context, these rules and the holding apply equally to commercial brokers, and is consistent with what brokers strive to do anyway in making certain that prospective buyers and tenants are made aware of all material information.")

While neither holding is new law, the underlying facts broaden an agent's responsibility beyond what seems reasonable. In particular, the agent and the owner were held potentially liable based on an innocuous statement buried in an inspection report. As a result, all California real estate agents and brokers should be aware of this case.

Pinda Hall, a real estate agent, was injured when a pull-down ladder to an attic collapsed as she was showing a home to potential buyers. Mrs. Hall sued the listing agent and the owner of the property. Based on these facts, the trial court granted summary judgment against Mrs. Hall. She appealed that decision. The Court of Appeal addressed two questions: (i) "Did the agent and the owner know (or have reason to know) that the ladder was unreasonably dangerous? (ii) If so, did they take appropriate steps to put visitors on notice?"

The owner of the house previously had the property inspected by a licensed contractor. In his report, the contractor listed the pull-down ladder among more than 50 cosmetic and substantive items under the heading "Health and Safety Required Repairs-Group 1." The listing agent admitted looking at the report, but the ladder appeared to be in good working order when he used it during a prior walk-through. Further, the property had been visited by about 100 other agents and buyers without incident.

During his deposition, the contractor said that the pull-down ladder did not appear to be dangerous. He included it in his report because he believes these devices are "crummy" products that look "poor." The contractor stated that if he believed the ladder was unsafe, he would have noted that in his report.

Some evidence suggested that Mrs. Hall was aware of the danger associated with the pull-down ladder. First, Mrs. Hall had reservations about climbing up into the bonus room,



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The Court focused on the question of whether the agent had reason to know that the ladder was a concealed danger. It determined that the answer was “yes.” Although the appellate court made clear that it was not directing the trial court to rule in favor of Mrs. Hall, it nonetheless overturned the lower court’s pre-trial dismissal of her case. The decision represents a dramatic expansion of a real estate agent’s responsibility to scrutinize inspection reports and other available material and warn invitees of any actual or potential dangers. According to the Court, those dangers include what might be implied from innocuous statements buried in an inspection report.

In light of this case, what steps should a responsible broker take to avoid or defeat this type of claim? It would not be reasonable to expect a real estate agent to discuss everything contained in lengthy reports with each prospective buyer, tenant or agent. Conversely, an injured visitor can justifiably argue that laying a 30-page report on a table at the property does not go far enough. A middle ground between these extremes, which recognizes the real world limitations on a real estate agent’s time, would be for the agent to provide property condition-related reports to potential visitors prior to their arrival at the property. This could be done via email as appointments are made, or by including access to the reports in the listing itself. However accomplished, taking the simple step of early distribution may help avoid the potential liability suffered by the agent and his property owner principal in this case.

Click [here](#) to read the entire case. For the biographies of the authors, please click the following links: [Lee Dresie](#) and [Joshua Bird](#)

Free Training on All Software Offered Member Benefit

Martin Vartanian, AIR’s capable full-time Training Director, reminds members that training programs are being offered on an ongoing basis free of charge to members. The 1 ½ to 2 hour sessions are designed to educate members on the full range of AIR’s software. This includes CDX, New iPad App eXplore, WinAIR Forms, AIRMail, and AIRSpace.

If a group of brokers or staff from your office would like to have the AIR bring training to you in-house, contact [Martin Vartanian](#) at (213) 687-8777. A number of firms have already taken advantage of this great service and been very pleased with the results.

To view the YouTube videos please click the following links: [CDX](#), [eXplore](#) and [WinAIR](#).

Casey Mungo Adds Value Member Profile

It’s one thing to understand your client’s needs as a commercial real estate broker. But, when you do so with a clear plan to add value to their business, then you’re taking your skill set to another level. That’s where Casey Mungo resides.

Casey is Vice President in the South Bay office of DAUM Commercial Real Estate Services based in Gardena. It’s the same firm and venue where Casey launched his brokerage career in mid-2005.

At DAUM Casey focuses on industrial properties with a logistics accent in both the South Bay and Mid-Counties submarkets depending on client requirements.

“I try to fully understand my client’s business, so I can add value to their operation by suggesting facilities that may add value to their business. For example, by understanding their supply chain, I seek to reduce my client’s operating costs by selecting the right location and facility for their requirement. Often the client may not have considered that they don’t need to be in a traditional locale, which can mean higher cost,” Casey said. DAUM’s Vice Chairman, Michael Collins, notes that Casey contributes even more for clients. “Casey is quality guy, is ethical and skillful,” Michael said.

This brokerage approach has paid off for Casey. Recently, he represented the tenant in closing a five-year lease for a 230,000 square foot industrial property in Wilmington. Lease consideration was in excess of \$7 million.

Casey is a graduate of California State University, Fullerton, where he earned a Bachelor of Arts degree in Business Administration. At CSUF, Casey was honored as a “Presidential Scholar” that earned him a four-year full academic scholarship. He was