



# Why You Shouldn't Let the Home Buyer Move in Early . . .

The matter comes up periodically: Should a seller allow a buyer to occupy the home before the close of escrow?

The answer is generally, "NO!", but why?

To answer this question, we will consider the case of *Marvell v. Marina Pizzeria* (1984) 155 Cal.App.3d Supp. 1.

## The Facts

To keep things simple, I will summarize the facts without all the intermediary parties, because this blog post is intended for the general public, and the details of the case can be complex. Read the case for full details.

Marvell started a business in Chatsworth, CA. They leased space, equipment, and furniture, and within a month of setting up the business, they entered into a contract to sell the business. Through the contract to sell, Marina Pizzeria became the operators of the leased space. As a term of the agreement between Marvell and the buyers, they agreed to let the new business owners move in prior to the close of escrow, and if escrow failed to close, then they would handle matters at that point to get the property back.

After 17 months, escrow had not yet closed, and Marvell decided that they wanted the property back. At no point did Marvell ever seek to terminate or cancel the escrow, but they attempted to evict Marina Pizzeria claiming that they allowed the property to fall into disrepair, and this constituted a breach of the purchase agreement.

## Issue

In *Marvell v. Marina Pizzeria* (1984) 155 Cal.App.3d Supp. 1, the court must determine: Does the unlawful detainer law even apply to Marina Pizzeria?

All parties agree that Marina Pizzeria is not a tenant of Marvell. However, Marvell claims that Marina Pizzeria is a licensee and that they have lawfully revoked the license. But, how does the court feel about this argument?

## **Rules**

To establish that unlawful detainer applies, the person filing the claim must show the court that the case falls clearly within the bounds of the statute. The statute applies to landlord-tenant relationships, and licensor-licensee relationships, so if the plaintiff can establish that there is a licensor-licensee relationship, then unlawful detainer actions apply. However, the law is clear that unlawful detainer actions do not apply in cases where the relationship is merely one of buyer-seller.

## **Application**

In this particular case, the court rejects the claim that Marina Pizzeria is a licensee. Marvell states that they gave permission to Marina Pizzeria to enter the land, that they then revoked the permission, and that makes Marina Pizzeria a licensee with a revoked license. But the court focuses on the source of the rights for Marina Pizzeria.

### **Is the Pizzeria a Licensee?**

Marina Pizzeria is not merely given a license (permission) to use the land. The permission is granted by contract. That contract is a purchase-and-sale agreement (as opposed to a lease), and so long as the contract granted rights, Marina Pizzeria had continued rights to remain. Thus, unlike a license, the rights of the pizzeria could only be revoked if they defaulted on the purchase agreement.

Because their rights were secured by the agreement, they were not licensees.

### **Is the Pizzeria a Tenant?**

The Pizzeria has a lease agreement. They are actually a tenant of the buyer in the purchase agreement. (Remember above that I said I would leave out some of the parties in the middle, this is one of those parties.) The buyer of the business sublet to the Pizzeria, but that contract did not list the Marvells as the landlord. Similarly,

the Marvells had no agreement with the buyers that constituted a lease; instead, they assigned their current lease, and made the assignment effective on the closing date of escrow, but escrow had not closed, so the assignment was never completed.

Furthermore, if it had completed, Marvell would still not be the landlord, because Marvell only passed its benefits as a tenant on to the buyer, who would step into Marvell's shoes. At no point did the buyer agree to pay rent to Marvell or to answer to Marvell as a landlord.

Thus, although the Pizzeria was a tenant, it was not a tenant of the plaintiff.

Does unlawful detainer apply when the occupant is not a tenant or a licensee . . .

Under *Marvell v. Marina Pizzeria* (1984) 155 Cal.App.3d Supp. 1, when there is no landlord-tenant relationship or licensor-licensee relationship, the plaintiff cannot show that the unlawful detainer action encompasses the relationship. Because the purchase agreement never established a landlord-tenant relationship or a licensor-licensee relationship, the buyer (and thus Marina Pizza) only had a seller-buyer relationship with Marvell, and seller-buyer relationships are not governed by the unlawful detainer statutes.

## **Conclusion**

It is generally a bad idea to allow a buyer to move into the home before close of escrow. In the case above, the seller could not evict the buyer, because unlawful detainer actions do not govern the seller-to-buyer relationship. However, the court specifically leaned on the fact that the relationship was not established by the purchase agreement, and if the purchase agreement had established such a relationship (at least until the close of escrow), this case might have ended differently.

What this means is that there may be a way to successfully allow a buyer to take possession early, but the seller who takes on this risk must take steps to clearly define the relationship so that there is a landlord-tenant relationship in addition to the buyer-seller relationship. Evicting the buyer will still be problematic and a headache that could have been avoided if the seller had just waited until close of escrow to transfer possession, but at least with a lease agreement in place, the seller has access to the unlawful detainer courts for a reasonably expedited eviction process.

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