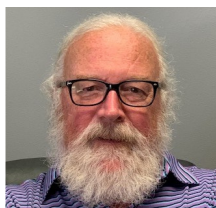


COLEMAN & HOROWITT

JANUARY 2022

COLEMAN & HOROWITT, LLP CELEBRATES IT'S 2021 SUPER LAWYERS



TOM ARMSTRONG

Selected 2015 - 16
& 2020 - 2021



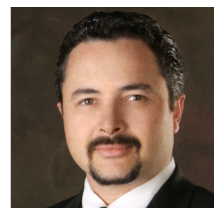
SHERRIE FLYNN

Selected 2016 - 21



DARRYL HOROWITT

Selected 2007-21
Top 100 2015-19



FRED MEINE

Selected 2015 - 21



ELIOT NAHIGIAN

Selected 2004 - 06
& 2012 - 21



SHERYL NOEL

Selected 2016 - 21



GREGORY NORYS

Rising Star



RUSSELL REYNOLDS

Selected 2017 -21



CRAIG TRISTAO

Rising Star



DAVID WEILAND

Selected 2009 - 21

Coleman & Horowitz, LLP is pleased to announce that 10 of our attorneys have been named 2021 Northern California Super Lawyers and Rising Stars.

- **Darryl J. Horowitz** has been selected for the 15th year in a row for his outstanding work in business litigation. He has also been named on the "Top 100 Northern California Super Lawyers®" list for 5 years.
- **David J. Weiland** was selected for a 13th year for his excellent work in construction litigation.
- **Eliot S. Nahigian** has been honored as a top rated Super Lawyer for a 12th year, noting his work in estate planning & probate law.
- **C. Fredrick Meine III, APC and Russell W. Reynolds** earned recognition for their work in business litigation.
- **Sherrie M. Flynn** has been recognized for her outstanding work as an intellectual property attorney and **Thomas H. Armstrong** was selected again for his top rated work in bankruptcy.

- **Sheryl D. Noel** was selected again for her noteworthy skills as a creditor/debtor rights attorney.
- **Craig A. Tristao**, a top rated environmental litigation attorney, and **Gregory J. Norys**, a top rated real estate attorney, have also gained recognition as Rising Stars in recent years.

Every year, Super Lawyers® conducts a peer review of lawyers and names the top 5% as Super Lawyers® and 2.5% of young lawyers as Rising Stars®. Selections are based on 12 indicators, including peer recognition and professional achievement in legal practice.

Coleman & Horowitz, LLP has established itself as a "Go-To" law firm for businesses and their owners. The reason is simple – **all of our lawyers, including our Super Lawyers®, go above and beyond for our clients.**

MEET OUR NEWEST ATTORNEYS

Our Firm is growing! We are happy to share that we brought on four new Associates this past year.

- **Robert Ashley** works in the litigation department practicing in real estate, business, and probate litigation as well as collection actions.
- **Andrea Chapman** works in the litigation department, practicing in complex real estate matters, business and commercial litigation.
- **Bryan Gusman** works in the intellectual property department representing clients in prosecution of patent applications, filing and maintenance of copyright and trademark applications.
- **Michelle Logan** works in the transactions department where she provides representation to clients in business transactions, estate planning, probate and trust administration matters.



Robert Ashley
Associate



Andrea Chapman
Associate



Bryan Gusman
Associate



Michelle Logan
Associate



RUSS REYNOLDS SECURES VICTORY BEFORE THE NINTH CIRCUIT COURT OF APPEALS

In a recent decision, *In re Hutchinson*, ___ F.3rd ___, 2021 DJDAR 10838 (9th Cir. 2021), the Court affirmed the Bankruptcy Court and the Ninth Circuit BAP holding that a debtor may not attempt to avoid a penalty portion of a tax lien if a trustee takes action to do so, and if the trustee is successful, the value of the avoided lien is recovered for the benefit of the estate, not the debtor. In the action, Leonard and Sonya Hutchinson, who were homeowners, failed to pay taxes. The IRS filed liens for the unpaid taxes. The liens included taxes, interest, and penalties.

The Hutchinsons filed bankruptcy claiming a homestead exemption on their home. Following the meeting of creditors, the trustee filed an application to employ counsel. The debtors then filed an adversary proceeding against the IRS and trustee to avoid the penalty portion of the tax liens under 11 USC § 522(h). The trustee filed a cross-claim against the IRS to avoid the same liens under section 724(a) and answered the

complaint of the debtors claiming the trustee had the superior right to avoid the liens. The IRS filed a motion to dismiss the debtors' complaint. The debtors argued that even if their claim to avoid the lien was dismissed, they should remain a party to the action so they might recover the value of the avoided lien for their benefit under section 522(g)(1). The Bankruptcy Court dismissed the debtors' claim and the estate would be entitled to the value of any avoided lien.

The Hutchinsons appealed. Bankruptcy cases can be appealed to the district court or to a bankruptcy appellate panel in the circuit where the bankruptcy court sits. The Bankruptcy Appellate Panel for the Ninth Circuit affirmed the holding of the bankruptcy court. The Hutchinsons then appealed to the Ninth Circuit Court of Appeals.

In upholding the lower court decisions, the Ninth Circuit held that the debtors could not avoid the penalty portion of the tax liens under 522(h) because the trustee took action under 724(a) and the debtors were not able to exempt the property under 522(b). Further, under the plain language of section 551, a transfer avoided by the trustee under section 724(a) is preserved for the benefit of the estate. Few lawyers get to argue before the 9th Circuit. Even fewer are successful in a published decision. **Well done, Russ.**

RECENT DEVELOPMENTS

- **Coleman & Horowitz, LLP has been named “2022 Class Action Defense Law Firm of the Year in California”** by Global Law Experts, a leading publication with over 300,000 business recipients. The award highlights the Firm's defense of class action matters in California.
- **David J. Weiland and Steven C. Clark** obtained a favorable arbitration decision. In the action, our client performed work for a CalTrans project. CalTrans did not pay everything the client claimed was due, contending payment was not due. After an arbitration hearing lasting nearly two weeks, our client obtained a favorable decision from the arbitrator awarding the majority of the funds sought.
- **David J. Weiland and Gregory J. Norys** obtained a \$1.425 million settlement in a lawsuit against the design engineers and construction managers overseeing the construction of a major road project for a local public agency.
- **C. Fredrick (“Fred”) Meine III** obtained a victory in a contested probate trial. In the action, Petitioners challenged a will submitted by Fred's client for probate, claiming the signature of the decedent on the will was a forgery. Fred was able to prove that the signature was valid. The court thus denied the petition and validated the will. Fred was also able to recover court costs.
- **Darryl J. Horowitz and Judith M. Sasaki** resolved an unfair competition matter. In the action, our client, a medical group, terminated the employment of one of their doctors. The departing doctor sued, claiming the remaining doctors conspired against him to slander him in the medical community and prevent him from establishing a new practice at the hospitals where our client provided medical services. We were able to negotiate a favorable settlement with the Plaintiff well before discovery was to commence in earnest and attorney's fees would have been expended.
- **Darryl J. Horowitz** obtained dismissal of an action prior to the start of trial. In the action, our client obtained a security interest in an exotic car as part of a business loan. The borrower defaulted and before our client took possession of the car, the debtor filed bankruptcy and the rights to the car were sold to the plaintiffs, subject to our client's security interest. Our client obtained possession after it obtained judgment against the debtor by writ of execution. The buyer of the rights to the car then sued, claiming their right to possession was superior. In response to an oral motion for judgment on the pleadings brought prior to trial, the court found in favor of our client.
- **Sheryl D. Noel and Robert K. Ashley** obtained a favorable settlement in a construction dispute. In the action, the Plaintiff's house sustained water damage. Our client provided water damage restoration services. A separate contractor made repairs to the home. The customer sued, claiming significant damages to their home and the theft of their personal property. Prior to trial, the court granted our client's motion for summary adjudication and dismissed all but one claim. Despite claimed damages of nearly \$1 million, prior to trial, an offer to compromise was served offering a minimal amount. Despite threats of proceeding to trial, the Plaintiff accepted the offer.
- **Andrea M. Chapman** met and conferred with Plaintiffs' counsel prior to demurring to their complaint which alleged breach of contract and specific performance, and unjust enrichment seeking \$150,000 in damages. Complaint was filed after our client had filed an Unlawful Detainer action to recover possession of his property after the tenants failed to exercise the option to purchase. Plaintiffs' counsel in the civil lawsuit also sought to consolidate the actions. Based on the meet-and-confer effort, Plaintiffs dismissed the complaint with prejudice. Plaintiffs (as tenants in the unlawful detainer action) waived going through a court trial regarding possession and accepted a cash-for-keys offer of \$3,294 and agreed to an immediate Writ of Possession in favor of our client.



COLEMAN & HOROWITT CARES

Coleman & Horowitz is committed to serving our community and those in need. Below we have listed just a few of the service projects we are proud to have participated in this past year.

- Sponsored at Cen Cal Food Bank's golf tournament
- Served food to families with Cen Cal Food Bank
- Gathered gift donations for at least 20 seniors with Santa for Seniors
- Gave gifts to 21 kids and 1 group home with Angel Tree organized by KYJO Enterprises, Inc.
- Sponsored and served at the One Table Fresno event with the Fresno Rescue Mission

THIS NEWSLETTER IS INTENDED TO PROVIDE THE READER WITH GENERAL INFORMATION REGARDING CURRENT LEGAL ISSUES. IT IS NOT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE OR AS A SUBSTITUTE FOR THE NEED TO SEEK COMPETENT LEGAL ADVICE ON SPECIFIC LEGAL MATTERS. THIS PUBLICATION IS NOT MEANT TO SERVE AS A SOLICITATION OF BUSINESS. TO THE EXTENT THAT THIS MAY BE CONSIDERED ADVERTISING, THEN IT IS HERewith IDENTIFIED AS SUCH.



499 WEST SHAW AVE., STE. #116
FRESNO, CA 93704

FORWARDING & ADDRESS SERVICE REQUESTED

ESTABLISHED IN 1994, COLEMAN & HOROWITT IS A STATE-WIDE LAW FIRM FOCUSED ON DELIVERING RESPONSIVE AND VALUE DRIVEN SERVICE AND PREVENTIVE LAW. THE FIRM REPRESENTS BUSINESSES AND THEIR OWNERS IN MATTERS INVOLVING TRANSACTIONS, LITIGATION, AGRICULTURE & ENVIRONMENTAL REGULATION AND LITIGATION, INTELLECTUAL PROPERTY, REAL ESTATE, AND ESTATE PLANNING AND PROBATE.

THANK YOU!

WE RECOGNIZE THAT NO BUSINESS CAN GROW WITHOUT REFERRALS. WE VALUE THE CONFIDENCE YOU HAVE PLACED IN US WITH YOUR BUSINESS AND REFERRALS. WE HOPE YOU WILL CONTINUE TO HONOR US WITH FUTURE REFERRALS.