GETTING IN AT THE END CAN GET YOU IN THE END

By Harold I. Levine

Lawyers incur a special problem when they accept a case in the middle of the litigation, or on the eve of the expiration of a statute.

For instance, in our office, we frequently have lien claimants who come to us just before the 2-year statute runs, having relied on notices which are usually of the homemade variety, or prepared by another lawyer who is long gone. Similarly, clients may come in on the last day before a bond claim, 90 day subcontractor's notice, or 4 month general contractor's period, will run. The lawyer must protect himself vigorously in this situation, otherwise the contractor will turn a bad lien claim into a wonderful malpractice case and substitute the lawyer as a defendant.

In our office, in these last minute situations, we write a letter and have the client acknowledge it in person. The letter includes the following information:

1. The date we first saw the client in relation to the statute. In other words, the client will acknowledge that he first consulted us, for example, 8 days before the statute or notice period has run. Otherwise, he may dispute the fact and assert that the lawyer had the matter regarding the lien or bond for a considerable period of time and did nothing.

2. An acknowledgment by the client that if we are filing suit based on the client's homemade notice, or another lawyer's, that we assume no responsibility for any defects in the prior notice and we usually say that they are probably defective. We also state in our letter that if the case fails because of any lack or defect in the notices not prepared by us, we have no responsibility.

3. Where we are asked to file a general contractor's or subcontractor's notice within 14 days of the deadline, we ask the client to acknowledge in writing that we have no responsibility for the accuracy of the notice, since we do not have sufficient time to ascertain all proper parties and it may not be possible to identify and serve all parties.

Taking a case on the eve of trial or an important notice is risky. You have no idea of the problems, you are going to get hurt. If you want to take the case, tell the client in writing you will take it only if you can get an extension of 30-90 days to study the matter.

The moral is, if the client will not give you these written acknowledgements and undertakings, get rid of him.

In a recent Michigan case, a lawyer was hit with a $891,000 judgment because he filed incomplete interrogatories on the plaintiff's behalf and the case was lost because of the defective interrogatories. It turned out that the lawyer was the fourth lawyer hired by the plaintiffs, that he had taken the case only five (5) weeks before it was dismissed, and the plaintiff was unavailable for consultation until it was too late.

HUSBAND'S LEAVING NEGATES POSSESSION IN SUIT TO QUIET TITLE BY WIFE'S PARENTS

The First District Appellate Court of Illinois recently held that failure of contract vendors to be in actual possession of the subject property precluded an action to quiet title against the purchasers.

The sellers of real estate under an installment contract brought a quiet title suit against the purchasers, their daughter and son-in-law. The seller's petition to quiet title alleged that the husband had previously vacated the property and that at the time the petition was filed, the wife and the couple's children occupied the property "at the sufferance of the plaintiffs."

The husband claimed that a suit to quiet title, which the trial court allowed, was not an appropriate remedy in that it improperly allowed the plaintiffs to circumvent his statutory right under the Forcible Entry and Detainer Act (*Ill.Rev.Stat.*, c. 110, ¶9-101 et seq.) to have the judgment stayed for a certain amount of time during which he, as contract purchaser, could cure the default. The Act provides that in actions based on breach of contract where the contract-purchaser has paid more than 25% of the original purchase price, the court shall stay execution of a judgment of possession in favor of the contract- seller for 180 days during which the contract-purchaser could cure default by paying the entire amount due under the contract. The purchasers had admitted that they were in default on the installment sale contract by being behind on the monthly payments and also behind on payment of taxes and insurance, but also stated that they had paid more than 25% of the purchase price.

Based on the allegations in the parties' pleadings the court fund that the contract-purchasers rather than the contract-sellers were in possession of the property at the time the plaintiffs filed their suit to quiet title. The court noted that the plaintiffs did not allege they were in possession and that their daughter came into possession as a co-purchaser with her husband. Under these circumstances, the court found that her occupancy could not be interpreted as establishing that she held possession as an agent or tenant of the plaintiffs. Noting that a party bringing a quiet title suit must be in possession of the property at the time the suit was filed, the court vacated the judgment of the trial court in favor of the plaintiffs without prejudice to their right to file a Forcible Entry and Detainer Act suit or