

# JACKIN' WITH EFFECTIVE DATES



## *COUNSEL'S CORNER*

Pursuant to a Lease of September 3, 2004, Sidney Wicks leased various commercial properties in Addison Texas to Transcontinental Realty Investors. On May 17, 2006, Sidney formed the Sidney Wicks Revocable Trust and assigned all of his properties to the Trust. The assignment was not made in the traditional form of Deed, but rather in a more general form of “Assignment and Declaration,” which presumably was not recorded with the Dallas County Clerk.

TRI began making rental payments to the Trust on receipt of the Assignment and Declaration.

On December 2, 2010, Sidney filed a lawsuit against TRI for breach of the Lease, then later amended it to substitute the Trust as the Plaintiff instead of Sidney. TRI answered the lawsuit by contending that the Trust lacked standing to assert claims, stating that Sidney should have been the correct party – not his Trust – as Sidney failed to convey his property interests by Deed.

TRI's point was that the 2006 Assignment and Declaration is not effective in Texas to transfer ownership in real estate. Only Deeds in Texas would suffice for that purpose. And, if the Assignment and Declaration is ineffective, then the Trust lacked standing or capacity to sue TRI as only Sidney would have that right.

On July 1, 2011, the trial court granted the Trust's Motion for Judgment, finding that there were no material issues of fact in controversy, and that the Trust was entitled to Judgment by operation of Texas law.

The trial court did not deal with damages though, and reserved that issue for a jury trial to be conducted more than one year later.

On September 6, 2011, Sidney executed and recorded a General Warranty Deed which transferred his real estate to the Trust. On the same date Sidney also executed an “Assignment and Assumption of Lease.” Both the Assignment and the Deed stated that although the documents were signed on September 6, 2011, they each had an “effective

date” of May 17, 2006. *Over five years prior to the date that each was executed and the Deed recorded.*

Having already won Round One, the issue of damages owed by TRI to the Trust proceeded to a jury trial. In October 2012 the jury determined in Round Two that TRI owed the Trust \$1 million plus interest, attorney’s fees and expenses.

The trial court converted the jury’s award to Final Judgment. TRI appealed.

TRI again claimed that the Trust lacked standing in Court. That Sidney failed to timely sign and record a Deed to the Trust. That using an artificial “effective date” was not lawful. And that Sidney would have been the proper party in interest at the time of the lawsuit. Not the Trust.

The Trust countered by arguing that there was no provision in Sidney’s Lease with TRI requiring that an assignment would only be effective upon execution. And, consequently, Sidney was not prevented from executing the docs in 2011, with a 2006 “effective date.”

The Appellate Court agreed with the Trust. Sidney’s Trust won and Transcontinental Realty Investors lost. See *Transcontinental Realty Investors, Inc. v. Sidney Wicks, Trustee of the Sidney Wicks Revocable Trust*; No. 05-13-00362-CV; Texas Court of Appeals; 5<sup>th</sup> District; August 5, 2014.

Lessons learned:

1. I see this issue often. Parties want to make documents “effective” as of a date that is not identical to the date the documents were actually signed, notarized and / or recorded. Title companies see this daily. In my world, the documents and the Settlement Statements very rarely line up 100% with the actual date of closing / funding / recording.
2. This appellate decision makes clear that, at least in Texas and assuming there is no prohibition against it in documents already signed by the parties, using an artificial “effective date” can be lawful.
3. Practice Point: Although using an “effective date” that does not exactly line up with the “execution date” may be Ok generally, I suspect it may not be acceptable for tax purposes, including federal income tax, Texas franchise / margin tax, Texas sales tax, and even local ad valorem tax. Be careful and get professional advice before you go jackin’ with effective dates.

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