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ARTICLE**ARE “FREE LOOK” PROVISIONS IN REAL ESTATE
PURCHASE CONTRACTS STILL VIABLE?:****An Analysis of *Steiner v. Thexton******By Liana C. Epperson****

For many years, the prevailing practice in the real estate industry, particularly in a buyer’s market, has been to provide a purchaser of development property a period of time to conduct due diligence and process entitlements and to allow such purchaser to terminate its purchase contract for any reason or no reason at all, in the purchaser’s sole discretion, and receive a full refund of any earnest money deposits.

On March 18, 2010, the Supreme Court of California reversed a 2008 decision by the California Court of Appeal for the Third District, *Steiner v. Thexton*, in which the Court of Appeal had held that such a real estate purchase contract was nothing more than an unenforceable option to purchase, which was void for lack of consideration where the buyer retained absolute and sole discretion to elect not to continue with the deal.

The Court of Appeal’s decision had fundamentally changed the structure of real estate purchase and sale transactions in California. While buyers still desired lengthy contingency periods and discretionary termination rights in their transactions, after the Court of Appeal’s

* *Steiner v. Thexton*, 48 Cal. 4th 411, 106 Cal. Rptr. 3d 252, 226 P3d 359 (2010).

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decision, they were faced with the risk that their purchase and sale contracts would be deemed revocable offers by sellers, as was the case in *Steiner*. Therefore, California attorneys promptly revised their real estate purchase contract forms to require non-refundable deposits as consideration for a buyer's discretionary termination rights in contingent transactions.

The Supreme Court reversed the Court of Appeal, but did so in a manner which reinforces, rather than negates, the essential requirement that the buyer provide some consideration for the so-called "free look" in order to have an enforceable contract to purchase. The Supreme Court expressly limited its holding to the questions of (1) whether the subject contract was an option, and (2) whether a buyer's part performance constitutes consideration rendering an option contract irrevocable. While it agreed with the Court of Appeal that the contract granting the buyer "absolute and sole discretion" to terminate the contract was merely an option to purchase, the Supreme Court concluded, based on the specific facts of the case, that the option was supported by sufficient consideration to render it irrevocable.¹

FACTUAL BACKGROUND

In 2003, Martin A. Steiner ("Steiner"), a real estate developer, offered to purchase a 10-acre portion of a 12.29-acre parcel of land owned by Paul Thexton, as Trustee of the FAS Family Trust ("Thexton") for \$500,000.² Because Thexton desired to retain approximately two acres for his personal residence, a sale of the 10-acre property would require a subdivision of the parcel.³ Steiner offered to apply for and obtain the county's approval of the parcel split and any and all permits required for Steiner's proposed development of several residences on the property.⁴ Thexton initially declined Steiner's offer.⁵

Prior to entering into a written agreement with Steiner, Thexton received and rejected another proposal, from a party who had offered to purchase the property for \$750,000.⁶ Thexton declined this offer because the party had insisted that Thexton be responsible for procuring the necessary parcel split and obtaining other approvals and permits to consummate the contemplated transaction.⁷

Thexton then contacted Steiner, and the parties negotiated the terms of the purchase and sale contract.⁸ A document labeled "Real Estate Purchase Contract" (the "Contract"), was executed by the parties on September 4, 2003.

Under the terms of the Contract, Thexton was required to sell the 10-acre parcel for \$500,000 by September 2006, if Steiner decided to purchase the property after pursuing, at his own expense, the required approvals and permits for the parcel split and contemplated development of the property from the County of Sacramento.⁹ Paragraph 7 in the “Contingencies” section of the Contract expressly provided that Steiner could, at any time from the date of execution of the Contract until the close of escrow, in his sole and absolute discretion, elect to cancel the transaction, in which event, the Contract would become null and void.¹⁰ In accordance with the terms of the Contract, Steiner also deposited \$1,000 with an escrow agent. This deposit was to be applied to the purchase price at the close of escrow.¹¹ In the event of a termination of the Contract, the deposit would be returned to Steiner.¹²

After Steiner and Thexton executed the Contract, Steiner began pursuing the necessary county approvals and, together with his partial assignee, the Siddiqui Family Partnership, ultimately spent approximately \$60,000 in the efforts to procure the parcel split and obtain other approvals.¹³ In May and August of 2004, Thexton cooperated with Steiner’s efforts by signing, among other things, an application to the county planning department for a tentative parcel map.¹⁴ However, in October 2004, Thexton instructed the escrow agent to cancel the escrow, and told Steiner that he no longer wanted to sell the property.¹⁵

Notwithstanding Thexton’s expressed intention not to proceed with the sale of the property, Steiner proceeded with the final hearing to obtain approval for a tentative map.¹⁶ Steiner also filed suit seeking specific performance of the Contract.¹⁷

PROCEDURAL BACKGROUND

Following a bench trial, the trial court refused to grant specific performance and entered judgment in favor of Thexton, concluding that the Contract was unenforceable against Thexton “because it is, in effect, an option that is not supported by any consideration.”¹⁸ The trial court found that the Contract constituted an ongoing, revocable offer to sell the property, which Thexton could withdraw at any time prior to its acceptance or exercise.¹⁹

The Court of Appeal affirmed, finding that although the Contract was an option, Steiner had given no consideration for the option and, therefore, the Contract was void and unenforceable.²⁰

The Supreme Court agreed that the Contract was an option; however, the Court concluded that sufficient consideration existed to render the

option irrevocable.²¹ The Court reversed the Court of Appeal's judgment and remanded the action for further proceedings.²²

QUESTIONS PRESENTED

The questions presented by the facts in the *Steiner* case are as follows:

1. **Was the Contract a bilateral agreement or a unilateral option?** A bilateral contract is one in which there is a mutuality of obligations and, pursuant to which, a termination is permitted only if a contingency fails.²³ The Court previously held that a mutuality of obligations is adequate consideration for a real property purchase contract.²⁴ For the reasons discussed below, the trial court, the Court of Appeal, and the Supreme Court all agreed that there was no mutuality of obligations set forth in the Contract, at its inception, and the Contract was merely an option.

Option contracts are either revocable or irrevocable. A revocable option is essentially an offer to enter into a binding obligation, which may be withdrawn at any time prior to acceptance by exercise of the option. An irrevocable option is an option that is supported by consideration.

2. **If the Contract was deemed to be an unilateral option, was it supported by consideration?** Because the courts concluded that the Contract was, in fact, an option, the critical issue in the *Steiner* case was whether Steiner gave sufficient consideration to render the Contract an irrevocable option enforceable against Thexton.

California Civil Code section 1605 defines consideration as:

Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

In order to establish consideration, two elements must be present:

(a) A party must confer (or agree to confer) a benefit or suffer (or agree to suffer) prejudice.²⁵

(b) The benefit or prejudice must have induced the other party's promise.²⁶ In other words, "the benefit or prejudice 'must actually be bargained for as the exchange for the promise.'"²⁷

DECISION OF THE LOWER COURTS

Thexton argued that the Contract was an option unsupported by consideration, merely resulting in a revocable offer.²⁸ The trial court agreed and found that the Contract was a unilateral option, unsupported by consideration, because there was no mutuality of obligations and Thexton did not receive any benefit in exchange for the benefit granted to Steiner (nor was Steiner prejudiced in any way).²⁹

On the one hand, Thexton promised to sell the property to Steiner at the stated price of \$500,000 for up to three years from the date of execution of the Contract.³⁰ On the other hand, Steiner could either (i) accept the offer by satisfying or waiving the contingencies and paying the balance of the purchase price or (ii) do nothing and cancel the transaction in his sole and absolute discretion.³¹

While the Contract imposed an obligation on Thexton to remain ready, willing and able to sell the property, Steiner could cancel the transaction at any time, for any reason, including if he had found a better deal.³² Because of the unilateral nature of the Contract, which, the trial court stated is a “classic feature of an option,” the trial court found that the Contract was an option, rather than a bilateral agreement.³³

The trial court rejected Steiner’s argument that the Contract required that he pay for, and expeditiously process, the application for a parcel split and that his efforts and expense constituted sufficient consideration to support an irrevocable option.³⁴ The trial court reasoned that, at the time the parties entered into the Contract, Steiner was not obligated to undertake any work or expense and had the unconditional right to terminate the Contract at any time.³⁵ Because Thexton did not receive anything of value in exchange for his grant of the option, and Steiner did not suffer any prejudice at the time he entered into the Contract, the option was revocable. Simply stated, the trial court found the Contract to be an revocable offer that could be withdrawn at any time by Thexton.

The trial court further rejected Steiner’s claim that his efforts supported the application of the doctrine of promissory estoppel.³⁶

The Court of Appeal affirmed for the reasons given by the trial court.³⁷

DECISION OF THE SUPREME COURT OF CALIFORNIA

As noted above, the Court considered only whether the Contract was an option, and if so, whether the option was supported by consideration and, therefore, irrevocable. After completing its two-step analysis, the

Court concluded that the Contract was an option supported by sufficient consideration, which rendered it irrevocable by Thexton and enforceable by Steiner.

A. Despite Its Form, The Contract Was An Option.

In the case of *Johnson v. Clark*, 174 Cal. 582, 586, 163 P. 1004 (1917), the Court previously held that “[w]hen by the terms of an agreement the owner of property binds himself to sell on specified terms, and leaves it discretionary with the other party to the contract whether he will or will not buy, it constitutes simply an optional contract.” Upon lapse of time, an offer will either be withdrawn or accepted; and, if accepted, a bilateral contract will arise.³⁸

The Court said that it was of no consequence that the Contract at issue in the *Steiner* case was labeled “Real Estate Purchase Contract,” because the law looks at the substance of the contract, not its purported form.³⁹ The title of a contract is not dispositive.⁴⁰ The common form of purchase and sale contract, which binds both parties upon entering into the contract (even if certain contingencies allow one or both parties to terminate the contract upon a failure of a condition precedent), is clearly distinguishable from the Contract at issue.⁴¹ Because Steiner had no obligation whatsoever under the Contract, and could terminate the Contract, in his sole and absolute discretion, the Court agreed that the trial court and the Court of Appeal correctly construed that there was no mutuality of obligations and the Contract was a unilateral option. The Court explained that it was well-settled law that when the terms of a contract bind the seller of the property to specific terms, but grant the buyer the right to determine, in its discretion, whether or not the buyer will complete the purchase transaction, the contract constitutes a unilateral option.⁴²

The Court next addressed and rejected the claim made by amicus curiae (the California Association of Realtors) that the Contract was really a bilateral contract subject to a contingency (i.e. the contingency being the approval of a parcel split and issuance of permits necessary for Steiner’s development of the property).⁴³ Again, because the Contract permitted Steiner to cancel the transaction even if the contingencies stated therein were satisfied, the Contract was distinguishable from a bilateral contract, which provides for a mutuality of obligations and permits a cancellation only if the contingency fails.⁴⁴

B. Steiner's Part Performance Provided Sufficient Consideration To Render The Option Irrevocable.

After concluding that the Contract was, in fact, an option, the Court then focused on whether there was consideration to render the option irrevocable.⁴⁵ “An option is transformed into a contract of purchase and sale when there is an unconditional, unqualified acceptance by the optionee of the offer in harmony with the terms of the option and within the time span of the option contract.”⁴⁶ In this case, the option never ripened into a bilateral agreement because Steiner had not satisfied or waived all of the contingencies and deposited the balance of the purchase price into the escrow account.⁴⁷ However, even if an option has not yet ripened into a purchase and sale agreement, it may be irrevocable for the negotiated period of time, if sufficient bargained-for consideration is present.⁴⁸

As noted above, an option can be either revocable or irrevocable. In determining whether sufficient consideration rendered Steiner's option to purchase the property from Thexton irrevocable, the Court considered whether Steiner conferred or agreed to confer a benefit or suffered or agreed to suffer prejudice that was bargained for by Thexton in exchange for the option.⁴⁹ The Court concluded that there was sufficient consideration in this case.

The trial court explained that the promise to undertake the parcel split was illusory because Steiner had the right to terminate the Contract at any time and for any reason.⁵⁰ Neither the trial court nor the parties disputed that Steiner had undertaken substantial steps to obtain the parcel split and incurred significant expenses in the process. However, the trial court found that such performance was immaterial because, the trial court reasoned, the adequacy of consideration must be determined at the time an agreement is entered into by the parties, and, in this case, Steiner had no obligations at the outset.⁵¹ Nonetheless, the Court concluded, as a matter of law, that Steiner's “part performance of the bargained-for promise to seek a parcel split created sufficient consideration to render the option irrevocable.”⁵² The Court agreed that Steiner's initial promise was illusory at the time the parties entered into the Contract, however, the Court said the illusory aspect of the promise could be cured by part performance.⁵³ Examining the underlying facts (most notably that Thexton had rejected a substantially higher offer, in the amount of \$750,000, from another party, because he did not want to go through the expense, risk and burden of seeking the parcel split), the Court held as follows:

[B]oth elements of consideration were present. First, the effort to obtain the parcel split clearly conferred a benefit on Thexton *and* constituted prejudice suffered by plaintiffs. Second, the promise to pursue the split was plainly bargained-for and induced Thexton to grant the option. Accordingly, plaintiffs' part performance cured the illusory nature of their promise.⁵⁴

The Court found support for its conclusion in existing case law.⁵⁵ In its summary, the Court expressed that while it is true that where there is an exchange of promises, but one party's promise is illusory, there is generally no consideration.⁵⁶ However, the illusory nature of the contract may be cured and the contract will be enforceable, if the promisor has rendered part performance.⁵⁷ In this case, Steiner expended substantial efforts and money to perform the bargained-for promise to obtain the parcel split. Such part performance by Steiner, of Thexton's bargained-for benefit, essentially cured Steiner's illusory promise.

The Court also addressed the following two points:

1. **The trial court's focus on the adequacy of consideration as being determined at the time the parties entered into the contract was not the relevant inquiry in this case.**⁵⁸ According to the Court, the cases relied upon by the trial court were distinguishable from the *Steiner* case because, in those cases, the sellers claimed that the agreed-upon purchase price was inadequate at the time the buyers attempted to exercise their options, due to an increase in value of the properties.⁵⁹ The issue in those cases was the adequacy of the purchase price, which was agreed-upon when the parties entered into the purchase and sale agreements.⁶⁰ The issue in the *Steiner* case was "not whether the agreed-upon consideration for the purchase was adequate, but whether consideration existed at all to support the Contract."⁶¹

2. **The Court acknowledged that a seemingly different result was previously reached in *Prather v. Vasquez*.**⁶² According to the Court, however:

Even if *Prather* were correct, it is factually distinguishable. There can be no dispute that Steiner's promise to seek the parcel split induced Thexton's offer of the option. Moreover, the parcel split itself, unlike the development approval sought in *Prather*, was necessary to Thexton's ability to sell the property because he wanted to retain two acres of the parcel.⁶³

The Court stated that the Steiner's "substantial efforts and expenditures to perform the bargained-for promise to seek a parcel split cured the initially illusory nature of the promise and rendered the option irrevocable."⁶⁴ In essence, the Court found that even if a contract is deemed illusory at its inception, the defect can be cured by part performance of a bargained-for promise. Once Steiner incurred costs in connection with its efforts to pursue a parcel split, Steiner's promise ceased to be illusory and the option became irrevocable. As noted above, Steiner's offer to obtain a parcel split, at his sole cost and expense, was a critical factor in Thexton's decision to enter into the Contract. Part performance by Steiner, the Court held, satisfied the consideration requirement to convert a revocable offer into an irrevocable option.

ADDITIONAL ARGUMENTS BY STEINER

The Court briefly addressed and rejected the following additional arguments made by Steiner:

1. **In the event of ambiguity, the law presumes a bilateral contract.**⁶⁵ While this is a correct statement of existing law, the Court found that no ambiguity existed in the *Steiner* case.⁶⁶ The Contract was, in fact, a unilateral option contract.

2. **The Contract did not unilaterally bind Thexton.**⁶⁷ The Contract explicitly required Thexton to keep the offer open for three years while imposing no obligations on Steiner.⁶⁸

3. **The agreement obligated Steiner to act expeditiously and this obligation constituted consideration given by Steiner.**⁶⁹ The Court stated that, even if true, this was irrelevant to its determination that the Contract constituted an option, because Steiner's unfettered right to terminate the Contract overrode any other obligation Steiner may have had under the Contract.⁷⁰

4. **The Court should apply the covenant of good faith and fair dealing to narrow the escape clause and give Steiner only a limited power to terminate the agreement.**⁷¹ The Court stated that the covenant of good faith and fair dealing cannot trump the Contract's express language, which provided Steiner with the unfettered right to terminate the Contract.⁷²

THE COURT DECLINED TO RESOLVE THE FOLLOWING ISSUES

The Court declined to resolve the following issues:

1. **Whether an initial, refundable deposit that is delivered into escrow constitutes consideration based on the buyer's loss of use**

of those funds.⁷³ The trial court concluded that Steiner's payment of a \$1,000 deposit into escrow did not constitute consideration, because Steiner was entitled to a full refund of the deposit, if he chose not to proceed with the transaction.⁷⁴ The Court acknowledged that by depositing the funds into escrow, Steiner gave up the use of the funds for up to three years.⁷⁵ Such loss of use or control over the funds may constitute a prejudice to Steiner.⁷⁶ The Court noted, however, that having reached its conclusion that consideration was established based on Steiner's part performance under the Contract, it did not need to analyze the effect of the deposit placed into escrow by Steiner.⁷⁷

2. **Whether the Court would have reached a different result if the land entitlement work had been performed exclusively for Steiner's benefit.** As noted above, Thexton wished to retain a portion of the 12.29-acre parcel for his personal residence.⁷⁸ He was aware that if he wished to sell any portion of the property to Steiner or any other party, a parcel split would be required.⁷⁹ Because he did not wish to obtain the parcel split himself, he specifically requested that Steiner bear the burden of doing so.⁸⁰ If Steiner had not procured county approvals for the parcel split, but only sought approvals and permits for his contemplated development of the 10-acre parcel, perhaps the Court would have reached a different conclusion.⁸¹ However, since those were not the facts of the case, the Court did not rule on this issue.

3. **Whether the legal theory of promissory estoppel would have required enforcement of the Contract.** Again, because the Court found sufficient consideration to render the option irrevocable, there was no need for the Court to analyze this issue.⁸²

4. **Whether any act, no matter how small, would be deemed to be sufficient part performance to render an option irrevocable.**⁸³ Steiner spent approximately \$60,000 to complete 75%-90% of the work needed to obtain the parcel split and other county approvals.⁸⁴ Because there was substantial performance of the bargained-for promise, the Court did not determine the level of performance that would otherwise be deemed necessary.

In a footnote, the Court expressed that because the remedy of specific performance was equitable in nature, the lower court should consider whether ordering specific performance was warranted or whether other relief would suffice.⁸⁵ In a separate footnote, the Court indicated that bilateral contracts subject to a contingency are not affected by the holding of the *Steiner* case.⁸⁶

CONCLUSION

Contracts that give buyers the right to terminate for any reason, which are not supported by adequate consideration, are unilateral option agreements, which may be terminated by sellers at any time prior to the buyers' performance.

Parties should exercise caution, in drafting purchase and sale contracts, to avoid inadvertently creating revocable options that are unsupported by consideration and unenforceable. If mutuality of obligations, rendering an instrument a bilateral agreement, is not clearly established, especially in situations where contracts include broad and express language permitting buyers to terminate in their sole discretion, the parties should specifically document the buyer's obligation to give adequate consideration for the benefit received.

Two alternatives for reaching this outcome are as follows:

1. **Payment of monetary consideration.** To avoid ambiguities and the potential risk that a contingency period in a contract will be deemed to be an option period, rendering the contract a revocable offer to sell by the seller, the parties should require that the buyer make a payment of a relatively small fee as independent contract consideration in exchange for its discretionary rights under the contract. So long as there is some value in the consideration, any amount will do. "Generally, some value means any value whatsoever, even that of a peppercorn, a tomtit, or one dollar in hand."⁸⁷

2. **Establish an obligation on the buyer to perform.** The imposition of an affirmative duty to perform on the buyer, which confers a benefit on the seller or a burden on the buyer, will establish mutual consideration to render the contract as a bilateral agreement.

In summary, a real estate purchase contract, or any other contract for that matter, should be carefully drafted to avoid the risk of a determination that it merely sets forth illusory promises. If an instrument fails to set forth the elements required to establish a bilateral contract, it should, at a minimum, satisfy the requirements of an irrevocable option (i.e., must be supported by consideration). The foregoing recommendations are relatively simple to document and should be included in every standard form contract.

As discussed above, the Court declined to resolve the issue of whether it would have reached a different decision if Steiner's part performance under the Contract was intended to benefit Steiner exclusively

(i.e., if Steiner had only procured permits for the development of the land, and not sought approvals for a parcel split). Because Thexton directly benefited from Steiner's efforts to subdivide the property, which efforts gave Thexton the opportunity to retain a portion of the 12.29-acre parcel for his residential property and market the remainder for sale, the Court held that Steiner's part performance cured his initially illusory promise and rendered the option irrevocable.

In most real estate purchase transactions, however, a buyer does not perform acts that benefit the seller during the contingency period, unless the buyer is expressly required to do so. If no such requirement exists in an otherwise revocable option contract, the buyer's failure to perform any bargained-for act benefiting the seller during the contingency period, could render the contract void and unenforceable. Even if a buyer is prejudiced by taking certain actions and incurring costs during the contingency period, such prejudice will not constitute consideration, unless it was bargained-for by the seller. Thus, the Court's holding in the *Steiner* case may be limited by the atypical and distinguishable set of circumstances presented therein. It is, therefore, advisable that buyers implement the preventative measures described above, as a matter of course in every purchase and sale transaction, to avoid the potential pitfalls identified in the *Steiner* case.

NOTES

1. *Steiner v. Thexton*, 48 Cal. 4th 411, 106 Cal. Rptr. 3d 252, 226 P3d 359 (2010).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Steiner v. Thexton*, 77 Cal. Rptr. 3d 632 (Cal. App. 3d Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 36, 193 P3d 281 (Cal. 2008) and judgment rev'd, 48 Cal. 4th 411, 106 Cal. Rptr. 3d 252, 226 P3d 359 (2010).
6. *Id.* at 377.
7. *Id.* at 377.
8. *Id.* at 377.
9. *Steiner v. Thexton*, 48 Cal. 4th 411, 106 Cal. Rptr. 3d 252, 226 P3d 359 (2010).
10. *Id.* at 365.
11. *Id.* at 411, n.12.
12. *Id.*
13. *Id.* at 411, n.4.
14. *Id.*
15. *Steiner v. Thexton, supra*, 48 Cal. 4th 411.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Steiner v. Thexton, supra*, 163 Cal. App. 4th at 369.
20. *Steiner v. Thexton, supra*, 48 Cal. 4th at 412.
21. *Id.* at 411.

22. *Id.*
23. *Id.* at 413.
24. *Bleecher v. Conte*, 29 Cal. 3d 345, 213 Cal. Rptr. 852, 698 P.2d 1154 (1981).
25. *Steiner v. Tbexton, supra*, 48 Cal. 4th at 414.
26. *Id.*
27. *Id.*
28. *Steiner v. Tbexton, supra*, 163 Cal. App. 4th at 375.
29. *Steiner v. Tbexton, supra*, 48 Cal. 4th at 412.
30. *Id.* at 411.
31. *Id.* at 412.
32. *Id.* at 413.
33. *Id.* at 412.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.* at 419.
42. *Steiner v. Tbexton, supra*, 48 Cal. 4th 411 citing *Jobnson v. Clark*, 174 Cal. 582, 586, 163 P. 1004 (1917).
43. *Id.* at 413.
44. *Id.*
45. *Id.* at 414.
46. *Id.* at 414 citing *Erich v. Granoff*, 109 Cal. App. 3d 920, 167 Cal. Rptr. 538 (2d Dist. 1980).
47. *Id.* at 414.
48. *Id.*
49. *Id.*
50. *Id.* at 415.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 415, n.12.
55. *Id.* at 416. See, for example, *Burgermeister Brewing Corp. v. Bowman*, 227 Cal. App. 2d 274, 38 Cal. Rptr. 597 (3d Dist. 1964) and *Kowal v. Day*, 20 Cal. App. 3d 720, 98 Cal. Rptr. 118 (2d Dist. 1971).
56. *Steiner v. Tbexton, supra*, 48 Cal. 4th 411, 416.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Pratber v. Vasquez*, 162 Cal. App. 2d 198, 327 P.2d 963 (2d Dist. 1958) (the Court held that the buyer's effort to seek development approval did not constitute consideration as it was not bargained-for).
63. *Id.*
64. *Id.*
65. *Id.* at 413.
66. *Id.*
67. *Id.* at 413, n.9.
68. *Id.*
69. *Id.*
70. *Id.* at 413.

71. *Id.* at 413, n.9.
 72. *Id.* at 413, citing *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.*, 2 Cal. 4th 342, 374, 6 Cal. Rptr. 2d 467, 826 P.2d 710 (1992).
 73. *Id.* at 417, n.12.
 74. *Id.*
 75. *Id.*
 76. *Id.*
 77. *Id.*
 78. *Id.* at 415.
 79. *Id.*
 80. *Id.*
 81. *Id.* at 417, n. 11.
 82. *Steiner v. Thexton, supra*, 48 Cal. 4th 411.
 83. *Id.* at 417, n. 10.
 84. *Id.*
 85. *Id.* at 417, n. 14.
 86. *Id.* at 417, n. 8.
 87. *Walters v. Calderon*, 25 Cal. App. 3d 863, 876, 102 Cal. Rptr. 89 (1st Dist. 1972).

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