

Law Offices  
James J. Falcone  
300 Capitol Mall, Suite 1800  
Sacramento, California 95814-4717

916/442-4204

January 26, 2013

**In California Slander of Title, Attorney Fees are considered as a pecuniary loss on their own- no other financial loss is required**

A California slander of title suit is a claim that someone published a false statement about real estate which harms the properties value or salability. One of the requirements of the claim is that there be a direct pecuniary loss. In a recent decision, thought the plaintiff suffered no harm other than the lawsuit, incurring attorney fees in bringing this lawsuit were considered actual damages.

In Sumner Hill v. Rio Mesa, A subdivision was built on bluffs overlooking the San Joaquin River in Madeira County. Owners in the subdivision has unrestricted private access to the river across other property using Killkelly Road. Killkelly Road was shown on the amended Subdivision Map as a dedicated public road. Property owners who believe they are victims of a slander of title should consult an experienced Sacramento and Yolo real estate attorney to see what their options are. In a recent decision, a defendant (the slanderer) was surprised that the plaintiff had no pecuniary loss other than the attorney fee involved in the lawsuit, and that was enough to make their case.

The other property, which Killkelly Road crossed, was sold, and the new owner planned a new subdivision. They were unaware of the neighbor's right to use the road. One day the new owner saw someone in a truck on the road, who told him that all the owners in the subdivision had the right to use it. Panic ensued.

The other owner recorded a Civil Code section 813 Notice of Permission To Use Land. This prevents the use from turning into a public dedication, and allows the owner to impose reasonable restrictions on the use- time, place, and manner. Locked gates went up, and the lawsuit began. The bluff-top subdivision owners claimed, among other things, slander of title. They claimed that, by recording the Notice of Permission, defendants slandered the title of plaintiffs' easement rights to use Killkelly Road. Slander of title is a false statement that disparages title to property, injuring its salability.

The elements of the claim:

1. A publication;
2. Without privilege or justification;
3. Falsity; and

January 26, 2013

Page 2

#### 4. Direct pecuniary loss.

In a slander of title case, pecuniary loss includes impairment of the value or salability of the property PLUS the expense of measures reasonably necessary to counteract the publication, including litigation, to remove the doubt cast on the title. That means attorney fees are included as being considered pecuniary loss.

This is unusual in California, which goes by the American Rule for attorney fees- the parties are generally responsible for their own fees. In rare instances, such as here, attorney fees are considered part of the underlying harm.