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Oregon Cases

Elliott Forest Not for Sale: Oregon Supreme Court Upholds Constitutionality of ORS 530.450

The Elliott State Forest will remain in state ownership as part of the Oregon common school fund. In *Cascadia Wildlands v. Oregon Department of State Lands*, 365 Or. 750 (2019), the Oregon Supreme Court affirmed the court of appeals' reversal of a final order by the Department of State Lands approving the sale of the 788-acre East Hakki Ridge parcel to Seneca Jones Timber Company.

The issue in *Cascadia* was the constitutionality of ORS 530.450, which prohibits the State Land Board from selling certain common school fund lands including the East Hakki Ridge parcel. Article VIII of the Oregon Constitution created the State Land Board, which oversees DSL, to sell lands in the Oregon common school fund and manage the proceeds of sale for the benefit of public schools. Article VIII was amended in 1968 to direct the State Land Board to manage common school fund lands for the "greatest benefit of the people" of Oregon.

The court first determined that ORS 530.450 does not conflict with the constitutional directive in Article VIII. The court rejected DSL's and Seneca Jones' argument that the statute conflicts with the Constitution by restricting the power of the State Land Board to carry out its duty to sell common school fund lands. Even though Article VIII gives the State Land Board power to sell common school fund lands, it also limits the State Land Board's powers and duties as may be "prescribed by law." The court held that, because the legislature *confers* and *prescribes* those powers and duties, it may *dictate how* the State Land Board exercises them. In enacting ORS 530.450, the legislature

constitutionally restricted the sale of the Elliott State Forest by defining the powers and duties of the State Land Board.

DSL and Seneca Jones also argued that ORS 530.450 violates the separation of powers doctrine by unduly burdening the State Land Board's core constitutional function to use common school fund lands to "derive the greatest net profit for the people" of Oregon. The court disagreed because Article VIII authorizes the State Land Board to manage common school fund lands for the "greatest benefit of the people." It does not require the State Land Board to sell all common school fund lands and does not prohibit the legislature from deciding that retaining such lands will provide long-term benefits to education. The court explained that ORS 530.450 does not unconstitutionally tread on executive branch functions because it does not remove or reassign the State Land Board's power to manage common school fund lands and the proceeds therefrom.

Cascadia Wildlands v. Oregon Department of State Lands, 365 Or. 750 (2019).

Kirk Maag and Max Yoklic

Court of Appeals Does Not Hammer Down Nail-and-Mail Service

A recent case struck down a tenant's too-clever-by-half argument that (1) when using nail-and-mail service for a termination notice, the landlord must adduce evidence at trial that the place specified in the rental agreement for service from tenant to landlord must be accessible 24 hours a day and (2) a second eviction notice in as many months waives landlord's right to terminate the tenancy on the first eviction notice. The Oregon Court of Appeals disagreed and found for the landlord — offering instruction to landlord–tenant lawyers throughout the state.

Tenant moved into an apartment complex in the summer of 2011. The rental agreement stated that notice to a tenant would be deemed served on the day and time such notice was both mailed by first class to the tenant and "attached in a secure manner to the main entrance of that portion of the premises of which resident has possession." This "nail-and-mail" service is standard in most multi-unit rentals. Tenants too had the ability to provide notice to the landlord by posting on the mail office door on the compound.

Time passed. Tenant timely paid rent until April 2019, when she skipped paying entirely. On the 29th of that month, the landlord sent Tenant a 72-hour notice of termination by first class mail and attached a copy of the notice on her apartment door. Tenant again failed to pay either the April rent or the May rent, and so the landlord filed an FED on May 9. On May 18, the landlord mailed a second termination notice to Tenant and again attached it to her door. That notice stated that Tenant owed one month's rent and gave her until May 22 to pay. After Tenant failed to pay her May rent (although she offered to pay $1 in cash or $100 in money order), the landlord amended its FED complaint to include the second termination notice.

At the hearing, Tenant argued that the landlord had failed to meet its prima facie burden to show that the landlord could use nail-and-mail service to give her notice of intent to terminate; she also argued that the second termination notice reinstated the rental agreement and thereby invalidated the first termination notice. The trial court disagreed with both arguments and found in favor of the landlord.

The appellate court affirmed, finding that evidence that the place specified in a rental agreement for service from tenant to landlord is accessible 24 hours a day is not required if said place is on the exterior door of a building open to the complex. The court reasoned that in such a circumstance, it is obvious that the place specified is accessible 24 hours a day. Without confronting the issue of waiver, the court also found that if the landlord did waive the right to terminate the rental agreement by issuing a second termination notice, the error was harmless because the uncontroverted evidence at trial was that Tenant did not tender any amount of rent.

Nail-and-mail continues to be an effective method of conveying a termination notice to tenants.

Crown Property Management, Inc. v. Cottingham, 229 Or. App. 553 (2019).

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