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THE RISLEY NEWSLETTER

JUSTICE AND THE AMERICAN DREAM

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Justice And The American Dream

It is tragic when justice is denied. Injustice visits havoc and torment. But there is nothing sweeter than justice achieved. The joy and relief are huge. This simple truth is self-evident, but difficult to achieve. Judicial decisions are not always self-evident. This was the case of Jim and Nora Steele.[1] It's a story of, not one judge, but five making not one, but six right decisions, and each one was far from self-evident.

In 1996 the Steeles took over the management of a 41 unit apartment complex in Van Nuys CA. The apartments were in disrepair, there were many vacancies. The owner owed the Department of Water and Power $27,000, was behind on the mortgage payment, and near bankruptcy. To avoid disaster, the owner needed money and a professional manager, so he asked the Steeles to take over the complex. They entered into a Management and Option to Purchase Agreement, and the Steeles began the long hard job of repairing, improving, redecorating, paying DWP, the bank, and even the owners lawyers fees. They did much of the work on the apartments themselves. They borrowed $100,000 on their home. They devoted their lives to turn the property around. Within two years, the repairs were completed, the vacancies filled, and the delinquent debt eliminated. The Management Agreement was atypical. Rather than operating the apartment units for the owner's benefit, it permitted the Steeles to operate it on their own account. That is, they collected the rent from the tenants, and properly kept it as their own, subject to paying the Mortgage, taxes, and the utilities. They payed the owner an option fee, but nothing more. In effect, they were the owners, subject to a future conveyance upon exercising their option.

In August 2001, the Steeles exercised their Option and opened escrow at Wilshire Escrow in Los Angeles to complete the sale. They applied for and obtained permission to assume the existing first mortgage .[2] When the owner refused to carry back a $200,000 second deed of trust, required by the Option Contract, the Steeles raised an additional $200,000 cash. This was added to the $100,000 already in escrow. However, the owner backed out of escrow. Three weeks later he sold the property to a cohort, named Gomez.[3]

Almost immediately Gomez sent notices to all tenants in the 41 unit complex. "I am the new manager and owner, from now on pay your rent to me." Gomez set up a card table at the entrance to the complex and told the tenants, as they came home from work, that he was the owner. He changed the

name on the utilities, and the washer and dryer rental agreement. He told the Steeles to get out, but they refused. They could not just lose their money, their hard work, and their friends $200,000. "We have to find a lawyer," and were referred to the Risley office.[4]

Immediately, work on a suit began.[5] The only way to stop Gomez was a restraining order asking the court for immediate relief.[6] The suit and an ex-parte application for a restraining order was filed in Van Nuys on May 8, 2002. A hearing was held by Judge Richard Adler the same day. The owners and the Gomez Attorney was present and argued against the TRO, but he failed. The court ruled for the Steeles, and granted the TRO. The Judge told Gomez "to stop interfering with the operation of the complex, stay away from the property, and stop talking to the tenants". Justice prevailed, at least temporarily. As is customary, a followup hearing was set for May 21. On May 21, Risley appeared and argued for the injunction. He was vigorously opposed, but Judge Adler issued the injunction. It was an important ruling. Justice prevailed a second time.

Unfortunately, as fate would have it, the Steeles legal difficulties continued. This time from another source. The bank had not approved of the sale to Gomez, so it filed a seperate suit to foreclose their mortgage. The bank lawyers called the Risley office and said: "We are going downtown tomorrow at 9 a.m. We will ask the judge in Dept. 59 to appoint a receiver", we replied, "ok, we will be there". The next morning Mr. Risley appeared in Department 59, without much hope of success, and urged the court not to appoint a receiver.

The argument went like this: "Look Judge, there is no default, the payments have been made by my clients since 1996 on time and are current. Since the injunction issued by Judge Adler in Van Nuys, the monthly payments have been put into a special account and are available to the bank." The bank lawyer replied: "Judge, its true the payments have been made and are current, but the owner has violated the "due on sale clause" contained in their Trust Deed. The bank wants nothing to do with the new owner, whom they have not approved." Judge Mitchell, in Department 59 saw no need for a receiver, when the payments to the bank were not in default, so denied the Bank's request. Justice prevailed a third time, by a second judge. But this was only temporary. As in all cases like this, the court set a hearing in 2 weeks for the banks Order to Show Cause (OSC). At the OSC hearing, the Court confirmed its earlier ruling and denied the banks Motion. Justice prevailed a fourth time.

But the most serious event was about to occur. By its rights, under the mortgage, the bank recorded a Notice of Default, and 90 days later it recorded a Notice of Sale, to take place at the doorstep of the Downey courthouse October 22. If the foreclosure proceeded the Steeles money and six years of hard work would be wiped out. So we moved to enjoin foreclosure by the bank. This is easier said than done.

At about the same time we asked the Presiding Judge of the entire Los Angeles Superior Court to officially declare the two cases "related" so that both cases would be heard in a single courtroom by a single Judge. After a 2 month wait, the presiding judge said the cases were related. Justice prevailed a fifth time by a third Judge. Unfortunately, the presiding judge vacated the hearing to enjoin the banks sale which we had scheduled in Department 59, and required that it be rescheduled before Judge Ruth Essegian (4th Judge) in Department "Z" in Van Nuys. When Mr. Risley appeared in her court on our ex parte applications in Van Nuys, Judge Essegian was departing for vacation in Europe. So she rescheduled our application with a colleague in Department "Q", Judge Richard Wolfe (the 5th Judge), who agreed to hear the case in Judge Essegian's absence. The issue was no less critical than the others, namely to enjoin the bank from foreclosing. On October 16, Judge Wolfe granted Risley's motion for an injunction. Justice prevailed a sixth time, by a 5th Judge.

The case is not over. Trial remains. There is much to do. And who knows how many more judges will have a hand in the outcome? But most would agree, given the favorable rulings by so many judges on 6 occasions, that the Steeles are likely to win the trial. Then justice will finally have been done.[7] How Sweet it will be.

Realistic Investment Expectations

From 1950 to 1995, equities averaged real returns of 8.9%, including reinvested dividends. One-third of those were posted during the late 1990s. The last two years have seen the broad indexes post losses as the market struggled with the excesses of the late 1990s. While stocks will probably recover by year-end, there will not be a mad rush back to 20%-plus returns. On the contrary, we are entering a new era of more tempered expectations for market performance.

Going forward, equity returns will remain somewhat below the historical norm through the end of the decade, averaging in the high single digits annually. The U.S. economy has returned to a period of trend-line growth, complemented by sustained low inflation, with average real growth, which means low nominal growth in a historical context.

Research data going back to the 1940s indicates that corporate earnings (as measured by the S&P 500 Index), are constrained by nominal GDP growth under most circumstances. Corporate earnings are a major determinant of stock prices. For 45 years, from 1950-1995, nominal GDP grew an average rate of 7.5% and S&P earnings grew at 7.3%. During the same period, the S&P 500 Index produced an average annualized return of more than 14%. The differential between earnings growth and market returns can be attributed to declining interest rates and declining equity risk premiums (return premium over a risk-free investment).

Today, with interest rates at 40-year lows, they will drive market returns ahead of earnings growth. Resolution of geopolitical concerns may help lower risk premiums and provide a market catalyst, but that is not likely to happen in the near term.

Cyclical markets didn't change during the late 1990s; rather, there was a confluence of a number of positive developments: 1) declining interest rates, 2) higher reported corporate profits, and 3) elevated growth expectations, which led to a period of extraordinary robust returns. As a result, investor expectations were recalibrated upward. Today's more sober times require a sober reassessment of long-term gains that can be realistically anticipated.[8]

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1 - The names are fictitious to protect the innocent, but the story is true.

2 - The Steeles had been paying the mortgage to the Bank since they took over in 1996.

3 - This name is also fictitious.

4 - The Steeles were referred by their Landlord/Tenant Lawyer, Frank Whitehead who assisted on the case and made several court appearances with Mr Risley.

5 - The Complaint was for specific performance, fraudulent conveyance, breach of contract, fraud, fraud and deceit, quiet title, an injunction, and breach of the covenant of good faith and fair dealing and unjust enrichment.

6 - Immediate relief is obtained with an "ex parte" application for a Temporary Restraining Order (TRO) and Order to Show Cause (OSC) for a Preliminary Injunction, and other supporting documents.

7 - It would only be logical for the reader to ask; how did the Steeles get into so much difficulty? There probably is no simple answer, but the problem would have been avoided if they had recorded the option agreement in 1996. If they had done so, Gomez could not have become a bfp, and probably could not have taken title later on. A bfp is a bona fide purchaser for value, a person without knowledge of any other claims asserted against the property. Actually, later "discovery" has determined that the Gomezes were in fact not bfp's because they entered into a written conspiratorial agreement with the owner, acknowledging the existence of Steeles and agreeing to indemnify the owner, and hold him harmless against all claims by Steele, including claims for punitive damages, attorney fees and the like.

8 - This article was excerpted from the Third Quarter 2002 US Bank Newsletter.