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# C.A. Upholds Tossing Case Against West Covina Ex-Official

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This district's Court of Appeal yesterday affirmed Los Angeles Superior Court Judge Daniel J. Buckley's order throwing out multiple criminal charges against a former member of the West Covina Planning Commission.

Div. Eight clarified that a promissory note is not a loan to a public official and therefore Carlos M. Thrasher did not make a false statement by failing to disclose his $17,000 debt to a developer whose company later became a party to a proceeding before the commission.

Thrasher, president and CEO of Thrasher & Associates, a financial planning company, had signed a three-year lease to rent office space from the Eastland Tower Partnership in June 2001.

In Jan 2003, Thrasher, a military reservist, was called into active duty in Iraq and asked his landlord to hold the lease in "abeyance" for the length of his deployment.

Ziad Alhassen, whose holding company controlled the Eastland Tower Partnership, declined and demanded that Thrasher continue to pay rent or vacate the space.

Thrasher did neither, and after he returned, Alhassen demanded payment. By the end of 2004, they had negotiated an agreement regarding the past-due rent, pursuant to which Thrasher signed a promissory note to Eastland Tower Partnership for $17,165.62.

In December 2005, Thrasher was appointed to the West Covina Planning Commission and executed a document disclosing various economic interests under penalty of perjury. He did not list anything in a section asking him to identify any "loans" received during the relevant reporting period.

During Thrasher's service on the planning commission, South Hills Homes Partnership, a company controlled by Alhassen, came before the commission to request an extension of time to file a final

tract map for a proposed gated community development known as Inspiration Point.

At a meeting in January 2006, Thrasher asked that a decision on the matter be postponed to the next meeting, at which he argued against granting South Hills' request. The commission then voted to deny the extension.

In June 2007, Thrasher was charged with one felony count of perjury and three misdemeanor violations of the Political Reform Act for not disclosing the existence of his promissory note to the Eastland Tower Partnership.

If convicted of the charges, he faced up to four years in jail.

At a preliminary hearing, prosecutors argued that the note represented a loan from the partnership to Thrasher.

The magistrate judge agreed, finding the debt was "functionally the same as cash," since Thrasher, by not paying it, "derives the benefit of being able to use the $17,500 for other things." The magistrate then determined that Thrasher's omission of the note was probable cause to believe he had committed perjury.

Thrasher entered a plea of not guilty and moved to dismiss the perjury allegation, contending that the promissory note was a settlement of a debt, not a reportable loan. He also moved for dismissal of the misdemeanor charges because they were predicated on Thrasher's having received income in the form of a loan from the Eastland Tower Partnership.

Buckley granted the motions, opining that the note was not a loan and that Thrasher therefore had not made a false statement by failing to disclose the note.

Writing for the appellate court, Acting Presiding Justice Laurence D. Rubin agreed, explaining that a loan "cycles money from the lender to the borrower and back to the lender," and such cyclical activity was absent in the transaction between Thrasher and the partnership.

"Money flowed in only one direction—from Thrasher to the partnership, first as rent when due and later as satisfaction of past due rent," he said.

The deprivation of the use of the money owed under the note did not transmute the debt into a loan, Rubin continued, emphasizing that a delay in receiving payment does not make service providers into lenders.

He analogized the situation to that of a restaurant, positing that no one would suggest a restaurant had extended a loan to diners while awaiting payment for their meals because the restaurant did not have use of the money.

As for the prosecution's argument that Thrasher's debt to the Eastland Tower Partnership was a financial entanglement with Alhassen that the citizens of West Covina would reasonably want to know about in judging Thrasher's performance of his official duties, Rubin said he agreed with the factual premise, but not its legal effect.

"There may very well be gaps in the legislation regulating conflicts and disclosures for public officials," he reasoned, but Thrasher's agreement to pay back rent was not a loan "by any common understanding of the word."

Turning to the misdemeanor charges, Rubin concluded even if Thrasher's failure to pay rent for his office space could be imputed to him as income, that purported income was generated more than 12 months before he took office and therefore fell outside of the reporting period for his disclosure of economic interests and for purposes of a conflict of interest.

Rubin was joined in his decision by Justice Tricia A. Bigelow and Orange Superior Court Judge Ronald L. Bauer, sitting by assignment.

Thrasher was represented by Irvine attorney Kevin Barry McDermott, who commented that he was not surprised by yesterday's ruling.

"This is one of those rare cases which has less to do with legal issues than it does with common sense," he said. "The state's description didn't match common sense or common understanding."

David Demerjian, head of the Public Integrity Division of the Los Angeles County District Attorney's Office, said he did not believe any further appeals would be pursued, but that "legislation to perhaps further define what a loan is is something we'll certainly consider and discuss with the Fair Political Practices Commission."

Deputy District Attorneys Phyllis Asayama and Natasha S. Cooper represented the government on appeal.

The case is *People v. Thrasher*, 09 S.O.S. 5088.