

LOS ANGELES
Daily Journal

Lack of Precedent Doesn't Deter Lawyer Bad-Faith Waste Theory Gives Counsel \$2.8 Million Victory

By Stefanie Knapp

While preparing for his most recent trial, attorney Gary Barr had a little difficulty with his research.

Barr wanted to use a bad-faith waste argument for the case, *DAN Joint Venture v. Binafard*, CV02-4982 (C.D. Cal., verdict Dec. 27, 2002), in which he represented note holder DAN Joint Venture.

The bad-faith waste argument allows lenders to recover losses from owners who allow a property to deteriorate while using it as security. Barr's client recovered the property, 629 S. Hill St. in Los Angeles, from foreclosure in 1995.

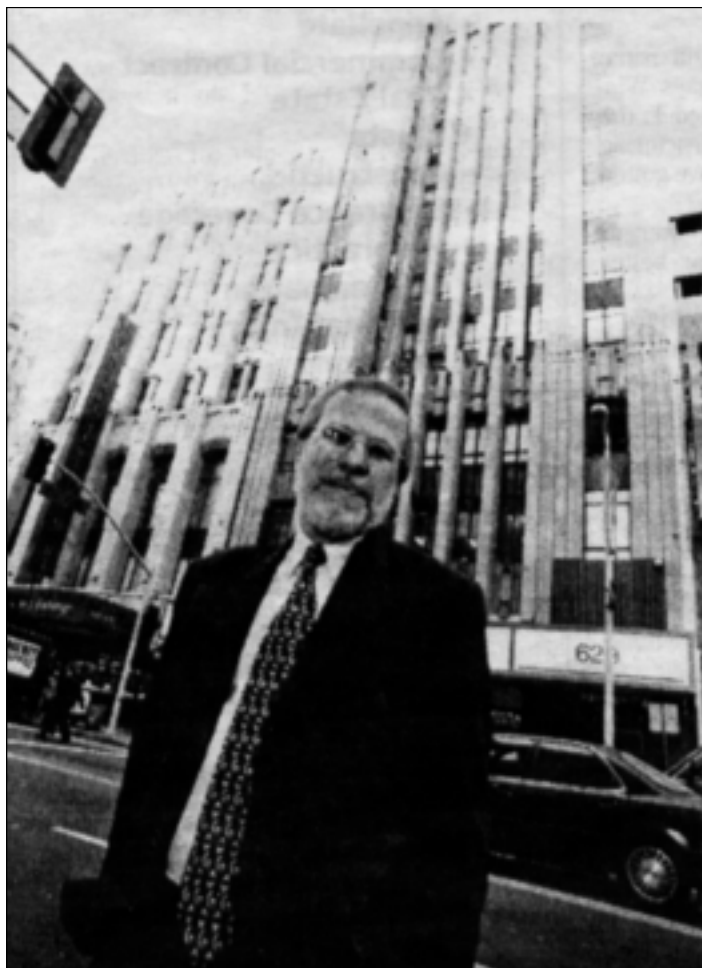
At that time, DAN Joint Venture found that the building had not been maintained properly, according to Barr, partner at Encino's Alpert & Barr. There were electrical and plumbing problems, and concrete was falling off the side of the building, leaving holes 12 to 15 feet wide, Barr says.

"The building had deteriorated significantly," Barr says. "Much more than others around it.

The problem with the research came when Barr could find only five or six reported decisions in California concerning bad-faith waste in the past 30 years.

"Going in, I thought it might be a difficult theory to prove, but as the trial went on, I lost that fear," Barr says. "It really came together."

The lack of precedent didn't seem to affect the case, as Barr won a \$2.8 million verdict in



Gary Barr's client recovered the property, seen in the background above, from foreclosure in 1995. At that time, Bar's client found out that the building had electrical and plumbing problems, and concrete was falling off the side of the building.

December.

During the time that Nasser and Doleyman Binafard owned the building from 1986 to 1995, they made \$9.9 million from the property through loans taken out on the building and tenants' rent, according to Barr. "They had milked the building," Barr says.

Located in the heart of

downtown Los Angeles' Jewelry District, the building houses jewelry retail booths, manufacturers and wholesalers.

Barr's argument was simple: The Binafards allowed the building to deteriorate and did not put any of the money they earned back into the building, and that constituted bad-faith waste.

Walter Klein of Beverly Hills' Wilner, Klein & Siegel represented the defendants. Klein didn't agree with the jury's decision.

"I think the jury was totally wrong," Klein says. "I don't think the evidence supported the decision they came down with."

Barr believed that he had two key witnesses: a former British Royal Engineer, who explained the falling concrete to the jury; and a forensic accountant, who was able to show the flow of the \$9.9 million that the defendant took out of the building.

Barr also had an appraiser testify that the value of the building on the date of foreclosure was \$4.1 million. If the building had remained in the condition it was in when the Binafards purchased it in 1986, the building today would be worth \$7.2 million. Barr asked for the difference in damages and received just slightly less.

Barr's client sold the building in 1999, but he is unaware of the value of the transaction or who purchased it.

Barr hopes that more lenders become aware of bad-faith waste and recognize it as another tool to recover their losses.

"Borrowers are under a duty to maintain the security," Barr says.

Gary L. Barr is a principal with Alpert & Barr, APLC in Encino, California where he heads the firm's civil litigation team. His trial successes include complex matters in the areas of business, commercial, construction, manufactured housing and real estate. Mr. Barr can be reached at (818) 881-5000, gbarr@alpertbarr.com.

