

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Central Justice Center  
700 W. Civic Center Drive  
Santa Ana, CA 92702

**SHORT TITLE:** CAL-TEX ACQUISITION IV, LLC vs. NQR, CORP

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

**CASE NUMBER:**  
**30-2020-01166386-CU-UD-CJC**

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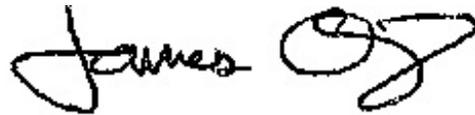
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\_\_\_\_\_, Deputy

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 11/20/2020

TIME: 03:51:00 PM

DEPT: C25

JUDICIAL OFFICER PRESIDING: Kimberly A. Knill

CLERK: Brittany Gray

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2020-01166386-CU-UD-CJC** CASE INIT.DATE: 10/20/2020

CASE TITLE: **CAL-TEX ACQUISITION IV, LLC vs. NQR, CORP**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Unlawful Detainer - Commercial

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EVENT ID/DOCUMENT ID: 73413408

EVENT TYPE: Under Submission Ruling

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**APPEARANCES**

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There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 11/17/2020 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Please see the attached order.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

CAL-TEX ACQUISITION IV, LLC,  
Plaintiff,  
v.  
NQR CORP., et al.,  
Defendants.

30-2020-01166386

ORDER

Hon. Kimberly A. Knill

Dept. C25

Plaintiff seeks a judgment of possession against defendant for property plaintiff owns at 41 Columbia, Aliso Viejo, California.

**Summary of Facts**

On or about 4/15/2020, plaintiff and defendant entered into a written purchase and sale agreement (PSA) whereby defendant agreed to purchase the property from plaintiff through an escrow to close thirty days after the waiver or expiration of certain contingencies. (Ex. 9, ¶¶ 1.1, 2.1) The expected closing date was 6/30/2020. (Ex. 9, ¶ 28)

Miles Woodlief, a member of plaintiff LLC, testified he granted defendant limited access to the property during the escrow period to inspect and review the property and undertake repairs. Don Price, the managing member of plaintiff LLC, testified to the same. Both also testified there was never a written or oral lease with defendant.

1 Price testified defendant's grant of limited access is consistent with paragraph 14 of  
2 the PSA, which provides as follows:

3 "At any time during the Escrow period, Buyer, and its agents and representatives,  
4 shall have the right at reasonable times and subject to rights of tenants, to enter upon  
5 the Property for the purpose of making inspections and tests specified in this  
6 Agreement, subject to Seller's acceptance of a mutually agreeable entry agreement  
7 with Buyer and a certificate of insurance naming Seller as additional Insured on  
8 Buyer's liability insurance policy. No destructive testing shall be conducted, however,  
9 without Seller's prior approval which shall not be unreasonably withheld. Following  
10 any such entry or work, unless otherwise directed in writing by Seller, Buyer shall  
11 return the Property to the condition it was in prior to such entry or work, including the  
12 re-compaction or removal of any disrupted soil or material as Seller may reasonably  
13 direct. All such inspections and tests and any other work conducted or materials  
14 furnished with respect to the Property by or for Buyer shall be paid for by Buyer as  
15 and when due and Buyer shall keep the Property free and clear of any mechanic's or  
16 materialmen's liens arising out of such inspection, testing or entry on Property. Buyer  
17 shall indemnify, defend, protect and hold harmless Seller and the Property of and  
18 from any and all claims, liabilities, losses, expenses (including reasonable attorneys'  
19 fees), damages, including those for injury to person or property, arising out of or  
20 relating to any such work or materials or the acts or omissions of Buyer, its agents or  
21 employees in connection therewith."

22 Pursuant to the grant of limited access, on some unknown date defendant's principal  
23 was given a key to the property by Cheryl Brown, an employee of a ministry associated with  
24 the property. Defendant entered the property and began making some changes. The  
25 extent of the work performed by defendant is unclear. It was either repairs or  
26 renovations/improvements, or both. The parties agreed defendant could install some type  
27 of temporary signage outside the building, and the signage was installed. However,  
28 according to Woodlief, defendant was never authorized to commence business at the  
property or to gain possession while escrow was pending. There is also evidence Norman  
Quintero, a principal with defendant, took and supplied to Price photographs of work being  
done by defendant on the property. The photos were not offered into evidence, but Price  
testified the photos showed clean-up and repair of water damage to a wall, not renovations.

The PSA expired without defendant being able to close escrow for reasons unclear  
and irrelevant to the instant case. On 8/30/2020 (Ex. 12), 9/2/2020 (Ex. 13), and 9/4/2020

1 (Ex. 14), Woodlief wrote to defendant's attorney demanding defendant immediately leave  
2 and vacate the property. On at least one unknown date, defendant barred plaintiff's access  
3 at the gate, preventing the owner from entering.

4 Defendant failed to vacate in response to the letters, and on 9/27/2020, defendant  
5 was served with a 5-day notice to quit/vacate (Ex. 1). Defendant failed to vacate in  
6 response to the notice to quit/vacate, and on 10/20/2020, plaintiff filed its verified complaint  
7 for forcible detainer.

### 8 9 **Applicable Law**

10 Code of Civil Procedure (CCP) section 1160(a)(2) provides, "Every person is guilty of  
11 a forcible detainer who either: . . . (2) Who, in the night-time, or during the absence of the  
12 occupant of any lands, unlawfully enters upon real property, and who, after demand made  
13 for the surrender thereof, for the period of five days, refuses to surrender the same to such  
14 former occupant."

### 15 16 **Contentions**

17 Plaintiff contends it gave defendant a limited license pursuant to the PSA to inspect,  
18 review, and undertake repairs to the property, it did not grant possession for any other  
19 purpose, but it merely gave a nonpossessory right to use the property as specified between  
20 the parties. Plaintiff contends defendant overstayed its permissive limited occupation of the  
21 property and at some point became a trespasser because it did not leave the property when  
22 requested.

23 Defendant contends Price emailed Quintero on 6/29/2020 giving Defendant  
24 "immediate occupancy of the building to commence renovations" of the property. The email  
25 was not offered into evidence. Defendant contends CCP section 1160 is inapplicable  
26 because the required elements are not present. However, defendant fails to specify how  
27 CCP section 1160 does not apply. Defendant insists it paid plaintiff \$100,000, but the  
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1 evidence is unclear as to why. Price testified a third party loaned defendant \$100,000, and  
2 the money was received by another one of Price's companies in anticipation of the sale of  
3 the property. Defendant also argues it has spent several hundred thousand dollars on  
4 renovations. Defendant failed to offer evidence in support of its argument.

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6 **Analysis**

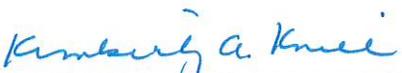
7 This case does not fit squarely within a typical forcible detainer action. The court  
8 observes defendant did not *initially* unlawfully enter the property, because plaintiff gave  
9 defendant permission to enter for a limited purpose. (See CCP § 1160(a)(2).) However,  
10 defendant does not own the property, is not a tenant under any written or oral lease, has no  
11 possessory right to the property, and refused to leave when asked. Therefore, the court  
12 concludes at some point defendant became an unlawful occupant or trespasser, which the  
13 court finds amounts to unlawful entry for purposes of CCP section 1160(a)(2). Defendant  
14 currently occupies the property without the owner's permission or consent and failed to  
15 surrender possession after demand was made. The owner's only recourse is to obtain a  
16 court order of possession.

17 Plaintiff has met its prima facie case for forcible detainer. Defendant has not  
18 established any defense. Even if defendant paid plaintiff sums in connection with the PSA  
19 or expended sums on improving the property, these facts have no bearing on the only issue  
20 before the court, which is possession.

21  
22 **Conclusion**

23 The court orders judgment for plaintiff against defendant for possession of the  
24 property. Plaintiff to submit a proposed judgment.

25  
26 11/20/2020

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KIMBERLY A. KNILL  
Judge, Orange County Superior Court