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NATIONAL COMMERCIAL SERVICES

Current Developments

By Michael J. Berey
Senior Underwriting Counsel – New York
First American Title National Commercial Services

Bankruptcy

The United States District Court for the Northern District of New York, affirming the ruling of Chief Judge Robert E. Littlefield, Jr., the Chief Bankruptcy Judge for the Northern District of New York, held that a pre-bankruptcy petition in rem tax foreclosure sale can be avoided as a fraudulent transfer under Bankruptcy Code Section 548 ("Fraudulent transfers and obligations"). The Bankruptcy Court avoided the foreclosure sale, which occurred due to the non-payment of $2,406.45 in real estate taxes, as a constructively fraudulent transfer, and it permitted the Trustee appointed in the prior owner's Chapter 7 bankruptcy to recover the value of the property from Clinton County under Code Section 550 ("Liability of transferee of avoided transfer"). Although the United States Supreme Court's 1994 decision in BFP v. Resolution Trust Corp. (511 U.S. 531) held that mortgage foreclosure sales result in "reasonably equivalent value" and cannot be avoided under Code Section 548 as a matter of law when state foreclosure laws are followed, according to the District Court, "[t[he County does not cite any binding case law to support its assertion that the Supreme Court's holding in BFP applies to tax foreclosures like the one at issue… and [t]here is simply no indication that Congress intended to carve out an exception [from the application of Code Section 548] for valid in rem state tax foreclosure proceedings."

The property was assessed by the County for $42,000 and sold at auction for $25,500. The Trustee asserted that the Debtor's Estate was entitled to recover the assessed value of the property at the time of the fraudulent transfer less the amount of the debt owed to the County. The Bankruptcy Court held that the Trustee could recover damages equal to the amount realized by the County on its sale of the property at auction after taking title in the tax proceeding, less outstanding property taxes and expenses. The District Court concluded that "the bankruptcy court's determination that $25,500 was a reliable estimate of the property's market value at the time of the tax foreclosure is not clearly erroneous." Clinton County Treasurer v. Wolinsky, signed May 22, 2014, is reported at 511 B.R. 34 and 2014 WL 2139269.

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Bankruptcy/Sale "Free and Clear"/Leases

Under Subsection (f) of Bankruptcy Code Section 363 ("Use, sale or lease of property"), a Bankruptcy trustee may sell real property "free and clear of any interest" in the property (other than the Debtor's Estate) if (1) applicable nonbankruptcy law permits the sale free and clear of the interest; (2) the entity with the interest consents to the sale free and clear of its interest; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest. However, even if a Bankruptcy Court finds that one of these conditions is met, under Code Section 363(e) the Court shall prohibit or condition the sale "to provide adequate protection" to an entity with an interest in the property. Further, when the Debtor is a lessor and the interest is an unexpired leasehold rejected by the Trustee, Code Section 365 ("Executory contracts and unexpired leases") allows a lessee to retain its rights for the balance of the lease term. In Precision Industries, Inc. v Qualitech Steel SBQ, LLC (327 F. 3d 537) (2003), the Seventh Circuit Court of Appeals held that the lessee's possessory rights were extinguished by the "free and clear" sale of a lessor-debtor's fee estate. The United States District Court for the Southern District of New York, in Dishi & Sons ("Dishi") v. Bay Condos LLC, found that Code Section 363(f) authorizes a free and clear sale, extinguishing a tenant's rights, if one of the five conditions listed above are satisfied.

Dishi, the successful bidder at the Bankruptcy auction, asserted that the sale of the Debtor's property free and clear of the lessee's interest was permitted by applicable bankruptcy law. The District Court held that this condition refers "only to situations where the owner of the asset may, under nonbankruptcy law, sell an asset free and clear of an interest in such asset" [citation omitted]." Since the purchaser at the auction sale was on notice of the lease, that purchaser took title subject to the lease under New York law.

Alternatively, Dishi argued that the sale free and clear of the tenant's interest was authorized because the tenant could be compelled to accept a money satisfaction of its interest. The Court, however, held that this condition "refers only to those situations where the trustee, as owner of the property, could compel the interest holder to accept a money satisfaction of its interest." The parties agreed that the other conditions in Section 363(f) did not apply.

According to the Court, "…Section 363(f) will rarely permit such a sale [free and clear of a lessee's interest], and consequently, the lessee's rights will generally be enforceable against the transferee of the property." The lessee was entitled to remain in possession under its lease. This decision, signed on May 28, 2014, is reported at 2014 WL 2199819.

Contracts of Sale

On December 6, 2012, the Defendant signed and sent the Plaintiff a marked-up Letter of Intent for the sale of the Defendant's property. The Plaintiff revised the Letter, which it emailed to the Defendant on December 7, 2012. The revision was rejected by the Defendant's principal, who stated that he would contact the Plaintiff "to discuss where we go." On December 10, 2012, the Plaintiff accepted the terms of the December 6 Letter. The Defendant had, however, entered into a contract to sell the property to another party. The Plaintiff brought an Action for specific performance.

The Appellate Division, First Department, affirmed the ruling of the Supreme Court, New York County, granting the Defendant's motion for summary judgment dismissing the complaint. The Plaintiff' counteroffer on December 7 extinguished the original offer of December 6, and the Plaintiff could not unilaterally revive the original offer by later accepting that offer. "If instead [of clearly and unequivocally accepting the offeror's terms] the offeree responds by conditioning acceptance on new or modified terms, that response constitutes both a rejection and a counteroffer which extinguishes the initial offer." Thor Properties, L.L.C. v. Willspring Holdings LLC, decided June 12, 2014, is reported at 2014 WL 2609330.

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Contracts of Sale

The law date under a contract for the sale of real property passed. The sellers' attorney set a new closing date with time of the essence. The purchaser did not appear on the new closing date; instead, his attorney delivered a letter stating that the sellers were in breach for failing to obtain a valid certificate of occupancy as required by the contract. The purchaser's attorney did not consent to an adjournment, as permitted under the contract, to enable the sellers to cure the objection, on the ground that the sellers had declared that time was of the essence. The purchaser demanded return of the downpayment. The Supreme Court, Nassau County, granted the purchaser's motion for summary judgment. The Appellate Division, Second Department, reversed and granted the sellers' motion for summary judgment on their counterclaims, which were for the sellers to retain the down-payment as liquidated damages for the purchaser's breach of contract.

The sellers being given no prior notice of the alleged defect, the purchaser was "…required to appear at closing and tender her performance." The sellers were ready, willing and able to close. Further, "…under these circumstances, the sellers were entitled to a reasonable adjournment to allow them to address the purchaser's objection, notwithstanding the fact that they had declared that time was of the essence." Martocci v. Schneider, decided July 16, 2014, is reported at 2014 WL 3445305.

Contracts of Sale/Property Condition Disclosure Act

Under Section 464 ("Revision") in Real Property Law Article 14 ("Property Condition Disclosure in the Sale of Residential Real Property"), "[i]f a seller of residential real property acquires knowledge which renders materially inaccurate a property condition disclosure statement provided previously, the seller shall deliver a revised property condition disclosure statement to the buyer as soon as practicable…"

Sellers represented in a Property Condition Disclosure Statement ("PCDA") that there was no material defect in the property's sewer system. Two weeks before the closing, however, the sellers' broker was notified that the leach field encroached onto the adjoining property. The broker did not advise the sellers of this condition. On learning of this condition after closing, the buyers sued to recover expenses they incurred in having the leach field moved. The Civil Court, City of Canandaigua, held that this condition was material, the broker's knowledge was imputed to the sellers, and, the sellers not having delivered a revised PCDA before closing, they were liable for the costs incurred by the buyers up to the jurisdictional limit of the court. Kier v. Wilcox, decided May 29, 2014, is reported at 2014 WL 2504547.

Deeds/Forgery

Petitions filed in Surrogate's Court, Richmond County, by the Administrator of the Estates of two decedents alleged that a no consideration deed to the decedents' property was forged. The property was re-conveyed twice; the last grantee financed his purchase with two mortgages, one of which was assigned to HSBC Bank USA, N.A. ("HSBC"). The Administrator sought declaratory judgments annulling and vacating the deeds and discharging the mortgages for the benefits of the Decedents' estates. The Appellate Division, Second Department, affirmed the Surrogate's Court's denial of HSBC's motion to dismiss the petitions as to it, holding that the Administrator's allegations were sufficient to state a cause of action to declare HSBC's mortgage null and void. According to the Court, "'[a] deed based on forgery or obtained by false pretenses is void ab initio, and a mortgage based on such a deed is likewise invalid [citation omitted]."Matter of Marini, decided July 2, 2014, is reported at 2014 WL 2958458.

Equitable Subrogation

The Plaintiff owned property in Queens encumbered by two mortgages made to Emigrant Mortgage Company, Inc. ("Emigrant"). She conveyed the property to Defendant Leslie in 2005; Leslie financed his purchase with mortgage loans from Defendant AmTrust Bank ("AmTrust"). Proceeds of the AmTrust mortgages satisfied the Emigrant mortgages. In 2006, Leslie transferred the property to Defendant Thompson, who financed her

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purchase with a mortgage loan from AmTrust. In 2008, AmTrust obtained a judgment of foreclosure and sale.

The Plaintiff, in an Action to quiet title, sought a judgment that the deeds to Leslie and Thompson, and the mortgages executed to AmTrust, were void. She alleged that she executed the deed to Leslie relying on representations, by Leslie and others, that she was refinancing her mortgages. AmTrust counterclaimed for imposition of an equitable lien on the property in the amount of the proceeds of the loans to Leslie which were applied to satisfy Emigrant's mortgages and other liens on the property, or imposition of an equitable lien in the amount of the proceeds of the loan to Thompson which satisfied the mortgages executed by Leslie, and a money judgment against the Plaintiff for the balance of the loans to Leslie above the amount applied to satisfy the Emigrant mortgages, plus interest. The Supreme Court, Queens County, denied AmTrust's motion for summary judgment.

The Appellate Division, Second Department, affirmed the Order of the lower court, as modified to award summary judgment to AmTrust on its counterclaim for an equitable lien in the amount applied to satisfy the Emigrant mortgages. According to the Court, "…there is no indication that AmTrust was on notice of or participated in the alleged fraud by giving Leslie the mortgage loan [citation omitted]. Thus, even if the Thompson and Leslie deeds and mortgages are void, AmTrust would still be entitled to be equitably subrogated to Emigrant's rights against the Plaintiff to the extent that AmTrust's funds were allocated to satisfy the Emigrant mortgages." As to AmTrust's other counterclaims, there remained triable issues of fact. Harris v. Thompson, decided May 14, 2014, is reported at 985 N.Y.S. 2d 713.

Fiduciaries

On April 12, 2011, a townhouse in Brooklyn was sold by the Executor of the Estate of its owner for $670,000; the purchaser re-sold the townhouse on April 15, 2011 for $1,300,000. The Estate's residuary legatees and New York State Attorney General's Charities Bureau, in a proceeding brought by the Executor to settle his accounts as fiduciary, objected to the sale of the real property for below its fair market value. Surrogate Torres, of the Surrogate's Court, Kings County, found that the Executor "breached his fiduciary duty by selling the property below its fair market value of $1.3 million, by failing to sell the property on terms that were most advantageous to the estate beneficiaries, and by failing to exercise good business judgment in the sale of the property." The Court surcharged the Executor $630,000 plus 6 percent interest from April 12, 2011 to the date of remittance. Mahler, as Executor of the Estate of Billmyer, decided April 18, 2014, was reported in the New York Law Journal on April 28, 2014.

Lien Law

Lien Law Section 59 ("Vacating of a mechanic's lien…"), authorizes service on a mechanic's lienor of a notice requiring it to commence an Action to enforce its lien by a date certain or to show cause why the lien should not be vacated and canceled. The notice is to be served "either personally or by leaving it [at] his last known place of residence, with a person of suitable age, with directions to deliver it to the lienor." Service of the notice was made, instead, by certified and first class mail. The Supreme Court, Bronx County, denied the application to discharge the mechanic's lien because service of the notice was not property made. "[T]he service of notice provision in [the] Lien Law must be strictly followed." Matter of the Application of Eastchester Church, Inc., dated July 2, 2014, is reported at 2014 WL 3115839.

Marital Property

In an Action for a divorce and ancillary relief, the Supreme Court, Orange County, issued a judgment directing, inter alia, that the marital residence be sold, with the net proceeds of the sale to be divided equally after payment of all marital debts and the payment to the wife of $7,000 for her one-half interest in household furnishings and other items. The Court did not afford the husband the option of purchasing the wife's interest in the property. The Appellate Division, Second Department, modified the judgment to delete the provision directing the sale of

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the property. According to the Appellate Division, "…the Supreme Court improvidently exercised its discretion in directing the sale of the marital residence without first offering the defendant [husband] the option of retaining exclusive occupancy of the marital residence by purchasing the plaintiff's interest therein [citations omitted]."

The Appellate Division afforded the Defendant three months, after service upon him of a copy of the Court's decision and order with notice and entry, to pay off the marital debts on the property, including the mortgage and home equity loan. The Appellate Division also required the Defendant to advise the Supreme Court, in writing, within that time frame, whether he intended to exercise the option to purchase his wife's interest. If the Defendant did not so advise the Court or failed to pay off the marital debts, the property would be sold in accordance with the lower court's ruling. Lamparillo v. Lamparillo, decided Aril 23, 2014, is reported at 985 N.Y.S. 2d 101.

Mineral Rights

Section 23-0303(2) of the Environmental Conservation Law, known as the "Supersession Clause" of the Oil, Gas and Solution Mining Law, provides that "[t]he provisions of this article ["Mineral Resources"] shall supersede all local laws or ordinances relating to the regulations of the oil, gas and solution mining industries…" In a decision upholding zoning amendments prohibiting the extraction of oil and gas, including hydrofracking, in the Towns of Dryden, in Tompkins County, and Middlefield, in Otsego County, New York State's Court of Appeals held that the supersession clause "does not preempt the home rule authority vested in municipalities to regulate land use." Wallach v. Town of Dryden, decided June 30, 2014, is reported at 2014 WL 2921399.

Mortgage Foreclosure

Judge Schack, Supreme Court, Kings County, denied the foreclosing Plaintiff's ex parte application for an order of reference and for leave to enter a default judgment against certain Defendants. The Court further, sua sponte, directed the dismissal of the complaint with prejudice for lack of standing and canceled the notice of pendency. The Appellate Division, Second Department, modified the lower court's Order to delete the provisions directing dismissal of the complaint and cancellation of the lis pendens. According to the Appellate Division, "…the Supreme Court was not presented with any extraordinary circumstances warranting sua sponte dismissal of the complaint and cancellation of the notice of pendency." Bank of New York v. Mulligan, decided July 16, 2014, is reported at 2014 WL3444067.

Mortgage Foreclosure/Condominium Units

TThe foreclosure of a first mortgage on a residential condominium unit was commenced in May 2010. The Condominium's Board of Managers filed a notice of appearance. The Board moved for leave to withdraw its notice of appearance and to file an answer, and for an Order compelling the Plaintiff to pay the common charges which accrued on the Unit during the pendency of the foreclosure; the Board alleged that these charges accrued due to the Plaintiff's delay in prosecuting the Action. The Supreme Court, Westchester County, denied the Board's motion in its entirety. According to the Court, the Board's counterclaim was an attempt to convert a request for sanctions for delay in prosecuting the foreclosure into a cause of action, but a cause of action to impose sanctions is not recognized in New York. Second, "the Board has not identified any basis, either in statute, common law or contract, under which a junior lien holder can recover damages from a senior lien holder for not enforcing its rights more promptly." In addition, "requiring the plaintiff to pay the defendant homeowners' accruing common charges to the Board as damages would, in effect, improperly subordinate the plaintiff's mortgage to the Board's [common charge] lien." Bank of America, N.A. v. Brooks, decided June 13, 2014, is reported at 43 Misc.3d 1234 and 2014 WL 2696624.

Mortgage Foreclosure/Lost Notes

In an Action to foreclose a mortgage the Defendant asserted, as an affirmative defense, the Plaintiff's lack of standing; the Plaintiff, the assignee of the note and mortgage from JPMorgan Chase Bank ("Chase"), never possessed the original note or mortgage. The Defendant moved for an Order dismissing the Action; the Plaintiff

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also filed a motion for summary judgment. The Supreme Court, Bronx County, denied both motions, without prejudice, with leave to renew. There was no evidence submitted that the note was either assigned to the Plaintiff by a writing or that the note was physically delivered to the Plaintiff before the foreclosure was commenced. Chase's lost note affidavit, delivered to Plaintiff on the transfer of the loan, did not state the terms of the note as required by UCC Section 3-804 ("Lost, Destroyed or Stolen Instruments").

Further, the allonge executed by Chase in favor of the Plaintiff was not affixed to the Note, required by UCC Section 3-202 ("Negotiation") ("[a]n endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof."), and the documents assigning the loan to Plaintiff, notarized in Texas, including the lost note affidavit, did not include a certificate of conformity required by CPLR Section 2309 ("Oaths and affirmations") ("[a]n oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state…"). SBC 2010-1, LLC v. Al-Flamingo Realty LLC, decided May 23, 2014, reported at 2014 NY Slip Op 31661 is posted at
https://www.nycourts.gov/reporter/pdfs/2014/2014_31661.pdf

Mortgage Foreclosure/"Rooker-Feldman Doctrine"

In an Action commenced, pro se, in federal district court, the Plaintiff moved for a temporary restraining order and/or a preliminary injunction enjoining the mortgagee from enforcing a judgment of foreclosure entered by a New York state court. The United States District Court for the Western District of New York denied the Plaintiff's motion for the failure to establish a likelihood of success on the merits. According to the Court, the Plaintiff's claims are "likely precluded by the Rooker-Feldman doctrine, which provides that the [United States] Supreme Court is the only federal court authorized to exercise appellate jurisdiction over state court judgments." Jones v. Phelps Corporation, signed May 22, 2014, is reported at 2014 WL 2195944.

Mortgage Recording Tax

The Advisory Opinion Unit of New York State's Department of Taxation and Finance issued an Advisory Opinion on the application of mortgage recording tax to a purchase money mortgage securing more than $500,000 encumbering three separate but adjacent units intended to be combined by the mortgagor into a single apartment. According to the Department, the applicable rate of tax is $2.175 per $100 of principal indebtedness secured, the rate applicable to a mortgage on a one-to-three family dwelling and on an individual residential condominium unit when the principal indebtedness secured is $500,000 or more. The Opinion notes that if the units are not combined, additional mortgage recording tax will be owed, which would be computed at $2.80 per $100 of the principal indebtedness secured. Advisory Opinion TSB-A-14(1)R, dated July 2, 2014, is posted at
http://www.tax.ny.gov/pdf/advisory_opinions/mortgage/a14_1r.pdf

Mortgages/Securitization

Plaintiffs claimed that the assignments of the notes and deeds of trust on their homes in California to four REMIC Trusts governed by New York law were invalid because the assignments to the Trustees were executed and recorded after the securitization transactions creating the Trusts took place. They asserted that as New York's Estates, Powers and Trusts Law Section 7-2.4 ("Act of trustee in contravention of trust") provides that "every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void", the assignments were invalid and the Trustee of the REMIC trust, in each case Deutsche Bank National Trust Company, did not have standing to foreclosure. The United States District Court for the Southern District of New York dismissed the complaint for the failure to state a claim and for lack of standing; the United States Court of Appeals for the Second Circuit affirmed.

The Court of Appeals held that since "…unauthorized acts of a trustee may [under New York law] be ratified by the trust's beneficiaries, such acts are not void but voidable; and that under New York law such acts are voidable

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only at the instance of a trust beneficiary or a person acting in his behalf. Plaintiffs here are not beneficiaries of the securitization trust; the beneficiaries are the certificateholders." Rajamin v. Deutsche Bank National Trust Company, decided June 30, 2014, is reported at 2014 WL 2922317.

Recording Act

In 2002, pursuant to a divorce settlement, Kenneth, the sole record owner, conveyed to Julia title to their marital residence. Julia obtained a mortgage loan which, in 2003, was refinanced with Full Spectrum Lending, Inc. ("Full Spectrum"). The mortgage, but not the deed, was recorded. Kenneth then, in violation of the stipulation of settlement in the divorce proceeding, conveyed title to his brother David, who obtained a mortgage from Defendant Option One Mortgage Corporation. MERS, the mortgagee of record for the Full Spectrum loan, commenced an Action in August 2006 to quiet title and foreclose its mortgage; the lis pendens was also indexed against Kenneth's name, Dutchess County having a grantor-grantee index.

On the date that the foreclosure was commenced, David re-conveyed the property to Kenneth, who four days later obtained a mortgage loan which was assigned to Deutsche Bank National Trust Company ("Deutsche Bank"). In October 2006, the Supreme Court, Dutchess County, granted MERS' motion to vacate the deed from Kenneth to David. The Court held that Julia was the owner of the property and that the Full Spectrum mortgage had priority over other liens. Deutsche Bank moved for leave to intervene in the foreclosure and for summary judgment declaring that its mortgage was superior to the Full Spectrum mortgage. The Supreme Court granted Deutsche Bank's motion for leave to intervene and held that its mortgage had priority over the Full Spectrum mortgage. The Appellate Division, Second Department, reversed and remitted the case to the Supreme Court, Dutchess County, for entry of a judgment that the Full Spectrum mortgage has priority over the Deutsche Bank Mortgage.

According to the Court, the Full Spectrum mortgage was a valid mortgage interest on Julia's equitable interest in the property. Despite the failure to record the deed from Kenneth, by virtue of the stipulation of settlement in the divorce proceeding Julia held at least an equitable interest in the property. Further, Deutsche Bank, whose mortgage was recorded after the Full Spectrum mortgage and the filing of the notice of pendency, was bound by all proceedings in the foreclosure, including the Order vacating the deed from Kenneth to David. Lastly, Deutsche Bank failed to demonstrate that it was a bona fide purchaser for value.

> "Here, notwithstanding the absence of the alleged quitclaim deed [from Kenneth to Julia], Julia was residing at the subject premises at all relevant times and allegedly was paying the taxes on the subject property at those times. Julia' occupation of the premises was inconsistent with the purported ownership of the premises by [David], her former brother-in-law. A proper inquiry by Deutsche Bank would have disclosed, at the least, Julia's equitable interest in the subject property based on the stipulation of settlement executed by Julia and Kenneth in connection with their divorce action [citations omitted]."

Mortgage Electronic Registration Systems, Inc. v. Pagan, decided June 16, 2014, is reported at 2014 WL3445546.

Religious Corporations

Subsection 2 of Religious Corporations Law Section 12 ("Sale, mortgage and lease of real property of religious corporations") provides that the sale of real property by an incorporated Protestant Episcopal Church requires "the consent of the bishop and standing committee of the diocese to which such church belongs." The Defendant, St. Michael's Protestant Episcopal Church, an incorporated Protestant Episcopal Church within the Episcopal Diocese of New York entered into a Memorandum of Understanding ("MOU") for the sale to Plaintiff and development

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of property owned by the Church. The consent of neither the bishop nor the standing committee of the Diocese was obtained. Notwithstanding, in reliance on the MOU, the Plaintiff took various actions related to the project, including clearing and excavating the site and beginning to install a foundation. Four years after execution of the MOU, the Church advised the Plaintiff that other offers for the property had been received.

The Plaintiff commenced an Action for a ruling that the MOU was enforceable, a judgment directing specific performance of the MOU, a permanent injunction enjoining the sale of the property to anyone else, and damages. Holding that absent Diocese approval the MOU did not, as a matter of law, constitute a binding contract to convey real property, the Supreme Court, New York County, granted the Defendant-Church's motion for partial summary judgment, dismissing the above-referenced causes of action. Since the MOU was an enforceable contract governing the Plaintiff's preparatory work for the contemplated sale, a cause of action could not be maintained for unjust enrichment or quantum meruit. MG West 100 v. St. Michael's Protestant Episcopal Church, decided June 3, 2014, is reported at 43 Misc. 3d 1231 and 2014 WL 2587206.

Suffolk County/Recordings

The Office of the County Clerk, Suffolk County, issued a Memorandum dated July 23, 2014 advising that "[e]ffective September 1, 2014, all documents presented for recording [to that office] requiring a Real Property Transfer Report must use Form RP-5217-PDF." The form must be printed on legal size paper (8 ½ x 14). RP-5217-PDF is posted on the County Clerk's website at http://suffolkcountyny.gov/Departments/CountyClerk/Recording/Forms.aspx

The Memorandum states that that "[h]andwritten additions or annotations on the RP-5217-PDF will not be accepted…" However, the New York State Land Title Association reported that for Suffolk County "[a] signed Real Property Transfer Report may include handwritten annotations providing it is accompanied by a correct and complete typed copy of the form," and the Suffolk County Clerk's office has further advised that it will allow "minimal hand written changes to the form…"

Tenants-in-Common

In a proceeding to partition and sell real property owned by tenants-in-common, the Supreme Court, Onondaga County, held that the Defendant tenant-in-common was not liable to the Plaintiffs tenants-in-common for rent since he had not excluded them from the property. The Court also held that the Defendant was entitled to an increased percentage of the sales proceeds for payments he made for real estate taxes and property repairs. The Appellate Division, Fourth Department, affirmed. According to the Appellate Court, "[m[]ere occupancy alone by one of the tenants does not make that tenant liable to the other tenant(s) for use and occupancy absent an agreement to that effect or an ouster [citations omitted]." Further, "a tenant in common is entitled to be reimbursed for the share of the taxes paid by him for the benefit of other tenants in common [citation omitted]. Additionally, a tenant in common is entitled to be reimbursed for money expending in maintaining, repairing and improving the property, if such maintenance, repairs, and improvements were undertaken in good faith and were necessary to protect or preserve the property [citations omitted]." Cooney v. Shepard, decided June 20, 2014, is reported at 2014 WL 2782032.

Michael J. Berey
Senior Underwriting Counsel - New York
No. 159. July 29, 2014
mberey@firstam.com

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