Current Developments

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Bankruptcy/Mortgage Foreclosures

A foreclosure sale was held at least two hours before the property's owners filed a petition under Bankruptcy Code Chapter 13. The Debtors moved for an Order declaring that the foreclosure sale was null and void. The Debtors asserted that the sale violated the automatic stay because they were still in possession and therefore had an "equitable possessory interest" in the property. They further alleged that the transfer to the successful bidder was a fraudulent conveyance under Bankruptcy Code Section 548(a); the sale price at auction was not "reasonably equivalent value" and they were insolvent.

The Bankruptcy Court for the Northern District of New York denied the motion. It held that the Debtors had no interest in the property when the Bankruptcy petition was filed and it never became property of the Bankrupt Estate. The Court further held that the sale was not a fraudulent transfer, since there was no issue as to the manner in which the foreclosure sale was conducted. The Court cited the 1994 ruling of the United States Supreme Court in BFP v. Resolution Trust Corp. ("BFP"), reported at 511 U.S. 531, in which the Supreme Court stated that "…a 'reasonably equivalent value', for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with."

Lastly, under the ruling in BFP, a foreclosure sale may be set aside under State law if the price received is "so low as to 'shock the conscience or raise a presumption of fraud or unfairness.'" The Bankruptcy Court held that the sale at auction for 52% of the fair market value of the property, as estimated by the Debtors, did not enable the sale to be undone under New York law. In Re Cook, decided October 5, 2012, was reported in the New York Law Journal on October 15, 2012.

Easements

Current Developments dated July 18, 2011 reported the 2011 decision of the Appellate Division, Second Department, in Air Stream Corp. v. 3300 Lawson Corp., 924 N.Y.S. 2d 104. In that case, the boundary lines of two adjoining properties bisected a loading dock, one half of the loading dock being within each property. The Plaintiff, the owner of one of the parcels,

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sought a ruling that it owned the strip of land under the portion of the loading dock on the other owner's property. The Defendant counterclaimed for a judgment that it had an easement over the land under that part of the loading dock on the Plaintiff's property, and for a judgment directing the Plaintiff to remove the portion of a cement platform encroaching on the Defendant's property.

The Appellate Division reversed the ruling of the Supreme Court, Nassau County, which had held that the Plaintiff had acquired title by adverse possession and that the Defendant did not have an easement. According to the Appellate Division, the Plaintiff's possession had not been "exclusive" for the ten year period necessary to establish title by adverse possession under the law in effect when the action was commenced and the Plaintiff's use was with the Defendant's permission. The Defendant, on the other hand, had acquired an easement; a predecessor in title to the Defendant's property had been the common owner of the parcels. When that predecessor conveyed the property now owned by the Plaintiff, it reserved an easement over the strip of land for the benefit of the land now owned by the Defendant. The Appellate Division directed the Plaintiff to remove that part of the platform encroaching on the Defendant's property. The Plaintiff appealed from the Appellate Division's Order.

In a decision dated April 3, 2012 reported in 18 N.Y. 3d 972, New York's Court of Appeals reversed the Order of the Appellate Division and directed it to apply the law in Estate of Becker v. Murtagh, also decided April 3, 2012 and recorded in 19 N.Y. 3d 75. According to the Appellate Division, on reconsideration of the case, the Court of Appeals in Estate of Becker stated that possession by a person claiming adverse possession must be exclusive and a "'friendly' relationship …may render the presumption of hostility inapplicable.'" The Appellate Division then held that although the Plaintiff exercised exclusive possession and control of the property, "a friendly relationship between neighbors existed, and… [the Plaintiff's] use of that strip was with [the Defendant's] permission." Thus no adverse possession was established. Air Stream Corp. v. 3300 Lawson Corp., decided October 17, 2012, is reported at 2012 WL 4900817.

Hurricane Sandy/Transfer Taxes

New York State's Department of Taxation and Finance issued Notice N-12-11 ("Announcement Regarding Hurricane Sandy") stating, in part, the following:

> "Governor Andrew M. Cuomo has declared a State Disaster Emergency for the entire state of New York. As a result of this declaration, Commissioner Thomas H. Mattox has postponed certain tax filing and payment deadlines for taxpayers directly affected by Hurricane Sandy (the storm). The relief provided for in this notice applies to taxpayers directly affected by the storm [as set forth in the Announcement].
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> "Deadlines have been postponed for the period beginning on October 26, 2012, and ending before November 14, 2012, for:
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> — filing any returns (for taxes administered by the Tax Department);
> — paying any tax [with certain stated exceptions]
>
> …….
> …….
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> "All deadlines for performance of the above required act that fall on or after October26, 2012, and before November 14, 2012, have been postponed to November 14, 2012. Interest at the appropriate underpayment rate must be paid on tax payments received after November 14, 2012."

New York City's Department of Finance has also issued a Memorandum, ('Emergency Extensions of Filing and Payment Due Dates for Victims of Hurricane Sandy") dated November 1, 2012, stating, in part, the following:

> "For all taxes administered by the New York City Department of Finance, if any filing or payment deadline for a qualified taxpayer [as defined in the Memorandum] falls on or after October 26, 2012, and before November 14, 2012, any filing or payment made on or before November 14, 2012, will be considered timely and no late filing or late payment penalties will be imposed."

The Notice and the Memorandum are posted at:
http://www.tax.ny.gov/pdf/notices/n12_11.pdf
http://www.nyc.gov/html/dof/html/pdf/fm/fm_1202.pdf

Indian Land Claims/Onondagas

As reported in Current Developments dated August 2, 2005, a lawsuit was commenced in the United States District Court for the Northern District of New York by The Onondaga Nation (the "Onondagas") against the State of New York, then Governor Pataki, Onondaga County, the City of Syracuse, and five corporate defendants. The Complaint alleged that property owned by the Onondagas and the Haudenosaunee, a confederacy, originally consisting of five Indian nations including the Onondagas, was unlawfully acquired by the State of New York in violation of the federal Indian Trade and Intercourse Acts, the United States Constitution, The Treaty of Fort Stanwick in 1784 and the Treaty of Canandaigua of 1794. The Action sought a declaratory judgment that conveyances made by the Onondaga Nation to the State of New York under six treaties entered into in the late 1700s and early 1800s were null and void and that the land in question remained the property of the Onondagas and the Haudenosaunee.

Affected by the Plaintiffs' claim is a strip of land from ten to more than forty miles in width running from the St. Lawrence River on the north along the east side of Lake Ontario to the Pennsylvania border on the south. Properties in portions of each of the counties of Broome, Cayuga, Chenango, Cortland, Jefferson, Lewis, Madison, Onondaga, Oswego, Tompkins and Tioga are impacted. The area in question includes the cities of Binghamton, Cortland, Fulton, Syracuse, Oswego and Watertown.

The District Court for the Northern District of New York, in a decision dated September 22, 2010 and reported at 2010 WL 3806492, dismissed the suit. In a decision dated October 19, 2012, the United States Court of Appeals for the Second Circuit affirmed the lower court's ruling. According to the Court of Appeals, citing the City of Sherrill v. Oneida Indian Nation, 544 U.S. 197 (2005), and rulings of the Second Circuit, "[t]his appeal is decided on the basis of the equitable bar on recovery of ancestral land...Three specific factors determine when ancestral land claims are foreclosed on equitable grounds: (1) 'the length of time at issue between an historical injustice and the present day'; (2) 'the disruptive nature of claims long delayed'; and (3) 'the degree to which these claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury. Oneida, 617 F. 3d at 127." In this case, the action was filed approximately 183 years after the events giving rise to the claim; the "disruptive nature of the claims is indisputable as a matter of law"; and the land in question is extensively populated by non-Indians and has been developed by private persons and public entities. Onondaga Nation v. The State of New York is reported at 2012 WL 5075534.

Laches

Plaintiffs alleged that Defendant Ted Doukas "wrongfully manufactured" a deed recorded in April 2004 conveying a shopping center from decedent Claire Stein to a Doukas entity, Telcor Co., LLC ("Telcor"). In 2007 Telcor conveyed the property to Defendant Jay Realty Enterprises, Inc. ("Jay Realty"). The Plaintiffs sought a determination of claims to the property and to recover damages for fraud.

The Supreme Court, Suffolk County, denied the parties' respective motions for summary judgment; the Appellate Division, Second Department, reversed the Order of the lower court as appealed from by Jay Realty.

According to the Appellate Division, there was a triable issue of fact as to whether the deed to Telcor was forged. However, as to Jay Realty, although the Plaintiffs knew in February 2007 about the deed to Telcor, they did not assert rights to the property until this lawsuit was commenced in April 2008. Jay Realty, without knowledge of the Plaintiffs' claim, purchased the property in 2007 relying on the validity of the recorded 2004 deed. "[T]he doctrine of laches precluded the plaintiffs from asserting a claim against [Jay Realty] contesting the validity of its title…." Stein v. Doukas, decided September 19, 1972, is reported at 2012 WL 4094934.

Mechanic's Liens

Petitions to extend the terms of two mechanic's liens was submitted ex parte to the County Clerk before the liens expired. However, the petitions were received by a Justice of the Supreme Court. Westchester County, after the liens had expired. The Supreme Court ruled that it lacked the authority to extend the liens nunc pro tunc. The Appellate Division, Second Department, reversed and granted the petitions, extending the liens from the date on which they were presented to the Clerk. According to the Appellate Division, "[n]othing in the text of Lien Law Section 17 prohibits the granting of an application for an extension of the term of a lien where the application is timely filed but not presented to a judge or justice until after the expiration date." The property owner would not be prejudiced by the extension of the liens; the decision does not indicate that there were any intervening liens or other interests in the property. Matter of Navillus Tile, Inc. v. LC Main, LLC, decided September 12, 2012, is reported at 950 N.Y.S. 2d 748.

Mortgage Foreclosures/Deficiency Judgments

Under Real Property Actions and Proceedings Law Section 1371 ("Deficiency judgment"), a motion for an order confirming a sale and seeking leave to enter a deficiency judgment must be made "within ninety days after the date of the consummation of the sale by the delivery of the proper deed of conveyance to the purchaser." In M&T Real Estate Trust v. Doyle, decided by the Appellate Division, Second Department, on March 23, 2012 and reported at 941 N.Y.S. 2d 422, the Referee, as noted in his report of sale dated May 11, 2010, executed a deed to the successful bidder's assignee. Before the deed was received by the assignee's counsel, but after it was mailed, the Referee was advised that the assignee was negotiating with a potential purchaser and would not accept a deed at that time. The deed was returned to the Referee. The Referee was later requested to "re-execute [and deliver] the…deed" so that it would be "dated concurrently with its delivery." The deed was executed on August 9, 2010.

The Supreme Court, Erie County, granted the foreclosing Plaintiff's motion to confirm the report of sale and for leave to enter a deficiency judgment. The Appellate Division reversed as to that part of the motion granting leave to enter a deficiency judgment. According to the Appellate Division, "the foreclosure sale was consummated and the 90-day period commenced in May 2010 upon the delivery of the Referee's deed. Such delivery occurred within the meaning of the statute at that time inasmuch as the Referee…executed and parted with control of the deed…with the intention to pass title."

Mortgage Foreclosures/MERS

A mortgage executed to Quicken Loans, Inc. recited that MERS was acting as a nominee for the Lender "for purposes of recording this mortgage…" MERS assigned the note and mortgage to Central Mortgage Company, the Plaintiff in an Action to foreclose the mortgage. The Supreme Court, Richmond County, denied the Plaintiff's motion for summary judgment and, without prejudice, granted the Defendants' cross-motion to dismiss the complaint. Citing the Appellate Division, Second Department's 2011 ruling in Bank of New York v. Silverberg (86 AD3d 274), the Court held that MERS, not being the lawful holder of the Note, did not have the authority to assign the Note to the Plaintiff. Central Mortgage Company v. McClelland, decided September 6, 2012, is

reported at 2012 NY Slip Op 32338 and posted at:

http://www.courts.state.ny.us/reporter/pdfs/2012/2012_32338.pdf

Mortgage Foreclosures/Referee's Report

The Defendants in an Action to foreclose a mortgage asserted that since the Referee did not hold a hearing before issuing his report the Court should not confirm the Referee's report or grant the Plaintiff's application for a Judgment of Foreclosure and Sale. The Supreme Court, Richmond County, remanded the matter to the Referee for de novo proceedings and the issuance of a new report. According to the court, "[a]lthough…the Referee's failure to conduct a hearing would likely be characterized as harmless error…, and there has been no showing that he improperly calculated the amounts due, defendants should nevertheless have been afforded the opportunity to contest or contradict the Referee's computations…"

The Court denied a motion by the Receiver to remove a non-payment proceeding involving a tenant from the Richmond County Civil Court for consolidation with the mortgage foreclosure. There was no identity among the parties to the foreclosure and the parties involved in the proceeding in Civil Court, and the issue of the amount of rent due was not "intertwined" with the issues in the foreclosure. VFC Partners 4, LLC v. SYZ Holdings, LLC, decided September 5, 2012 and reported at 2012 NY Slip Op 32339, is posted at:

http://www.courts.state.ny.us/reporter/pdfs/2012/2012_32339.pdf

Mortgage Recording Tax/Federal Credit Unions

Affirming a ruling of the Appellate Division, First Department, reported at 924 N.Y.S. 2d 360, New York's Court of Appeals has held that mortgages issued by federal credit unions are subject to the State's mortgage recording tax.

Plaintiff Hudson Valley Federal Credit Union contended it is not required to pay the tax on mortgages it issues to its members by reason of the Federal Credit Union Act's exemption of federal credit unions and their property from state taxation. The Court of Appeals declined to extend the exemption from state taxation of "property" of a federal credit union to include an exemption from mortgage tax. The Plaintiff also asserted that federal credit unions, as instrumentalities of the United States, are immune from state taxation under the Supremacy Clause. The Court noted that federal credit unions, while they are federally regulated, "are wholly owned, funded and managed by their members." Hudson Valley Federal Credit Union v. New York State Department of Taxation and Finance, decided October 18, 2012, is posted at:

http://www.courts.state.ny.us/reporter/3dseries/2012/2012_06986.htm

Mortgages

In 2001, Plaintiff HSBC Bank USA ("HSBC") made a home equity loan to the Defendants-borrowers secured by a mortgage. In 2005, Fremont Investment & Loan ("Fremont") made a mortgage loan to the Defendants-borrowers. A portion of the proceeds of the Fremont loan was used to pay off the balance of the HSBC loan. However, there was no compliance with the requirement of HSBC's payoff letter that HSBC receive with payment written instructions to close the account and, while the outstanding balance of the HSBC loan was reduced to zero, the line of credit was left open. The borrowers thereafter drew on the HSBC credit line and defaulted in their payments, and HSBC brought an Action to foreclose its mortgage. The Supreme Court, Suffolk County, held that the HSBC mortgage had priority over the Fremont mortgage and it ordered the mortgage satisfaction erroneously executed by HSBC in 2010 expunged from the real estate records. The Court found that HSBC was not instructed to close the account, and Fremont did not rely on the erroneous Satisfaction of Mortgage, executed and recorded in 2010, when it made its mortgage loan in 2005. HSBC Bank USA v. Holohan, decided

October 3, 2012, is reported at 2012 NY Slip Op 32553 and posted at http://www.courts.state.ny.us/reporter/pdfs/2012/2012_32553.pdf

See also HSBC Mortgage Corporation (USA) v Puccini (Sup. Ct. Suffolk County), decided October 9, 2012 and reported at 2012 NY Slip Op 32592, posted at http://www.courts.state.ny.us/reporter/pdfs/2012/2012_32592.pdf,, and HSBC Bank, USA v. Pugkhem, 931 N.Y.S. 2d 635 (2nd Dept. 2011), in which it was held that payment of the outstanding balance of the credit line mortgages in question had to be accompanied by written instructions to close the accounts.

Mortgage/Joint Ventures

Real property owned by Bonnie Morris and David Bills was held by them subject to the terms of a joint venture agreement. A mortgage on the property was refinanced in 2005 with Washington Mutual Bank, F.A. ("WAMU"); the WAMU note and mortgage were executed by Bills and, purportedly, by Morris. An Action to foreclose that mortgage was commenced by Deutsche Bank, as Trustee for WAMU. Morris moved for summary judgment dismissing the complaint, alleging that she did not attend the closing with WAMU and did not execute the WAMU loan documents. The Supreme Court, Essex County, denied her motion, granting summary judgment to Deutsche Bank as to Morris and judgment by default against all other Defendants.

According to the Court, New York's Partnership Law applies to disputes involving property held by joint ventures, and, under the Partnership Law, "[f]or the mortgage here to be valid and enforceable against Morris, Deutsche Bank was only required to show that one of the joint venturers, either Morris or Bills, executed the mortgage loan documents…To the extent that Bills acted wrongfully in obtaining and consummating the mortgage loan from WAMU, it is clear that he was acting 'in the ordinary course of the business of the' joint venture…." No evidence was submitted that the WAMU loan was not for the benefit of the joint venture, that Morris did not agree to the mortgage loan, or that either WAMU or Deutsche Bank had knowledge or notice of any limitation on Bills' authority to execute the mortgage loan on behalf of the joint venture. Deutsche Bank National Trust Company, as Trustee v. Bills, decided October 15, 2012, is reported at 2012 WL 4868108.

Notices of Pendency

In an Action seeking the equitable distribution of marital assets, alleged to include eighteen parcels of real property, the Supreme Court, Steuben County, denied the Defendant-wife's motion to cancel the lis pendens. That ruling was reversed by the Appellate Division, Fourth Department. According to the Appellate Division, the complaint sought only the equitable distribution of assets, and "[a]t this juncture of the litigation it is unclear whether the court, in the event that it rules in favor of plaintiff, will order defendant to convey the properties to plaintiff or will instead order defendant to pay a money judgment to plaintiff. It thus cannot be said with certainty that defendant will be required to sell or mortgage the subject properties." Jolley v. Lando, decided October 5, 2012, is reported at 2012 WL 4748740.

Restrictive Covenants

A deed in 1992 conveying 1412 Jerome Avenue in the Bronx contained a restrictive covenant, running with the land, prohibiting the property from being "used as a supermarket, grocery store, meat market, beverage distribution store or to be used by any food store selling food primarily for off-premises consumption." In 2011, part of the building at 1412 Jerome Avenue was leased to Family Dollar, which intended to use the leased premises as a retail establishment. A tenant at 1434 Jerome Avenue, the adjoining property, brought an Order to Show Cause to preliminarily enjoin the owner of 1412 Jerome Avenue and its tenant from operating a retail establishment engaged in the sale of food, food products and beverages. The Supreme Court, Bronx County, granted a preliminary injunction, conditioned on the Plaintiff posting an undertaking of $280,000 to protect the owner of 1412 Jerome Avenue from its potential loss of rental income if it was ultimately determined that the Plaintiff was not entitled to an injunction. According to the Court, "[a] tenant of a successor party to a deed is

entitled to enforce a restrictive covenant contained in a deed as a third-party beneficiary."Don Bautista Food d/b/a C-Town Supermarket v. King Jerome Realty, Inc., decided September 7, 2012, was reported in the New York Law Journal on September 24, 2012.

Rockland County

According to the New York State Land Title Association, the Rockland County Clerk's Office requires that Form TP-584 ("Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certificate of Exemption from the Payment of Estimated Personal Income Tax") and Form RP-5217 ("Real Property Transfer Report") be completed online, printed and executed at closing to be accepted with the related document being recorded. TP-584 and RP-5217-PDF are to be accessed at the following web sites:

http://www.tax.ny.gov/pdf/2007/fillin/property/tp584_307_fill_in.pdf
http://www.tax.ny.gov/pdf/current_forms/orpts/rp5217.pdf

Statute of Limitations

A homeowners' association, on behalf of itself and its member homeowners, commenced an Action on December 5, 2007 against the sponsors, contractors and builders of the development, alleging that the homes in the development were defectively constructed and designed, resulting in latent defects. The Supreme Court, Westchester County, dismissed all causes of action relating to homes for which title closed prior to December 5, 2001 as barred by the statute of limitations, and the Appellate Division, Second Department, affirmed. The causes of action as to those homes accrued on the date of the completion of construction and the defendants established prima facie that construction was completed on those homes by the closing dates. Allegations of fraud do not extend the statute of limitations. Whippoorwill Hills Homeowners Association, Inc. v. Toll at Whippoorwill, L.P., decided October 17, 2012, is reported at 2012 WL 4902413.

Tax Sales/Redemption

The Plaintiffs' property, when owned by a predecessor in title, was conveyed to Suffolk County in a 1993 tax sale. The prior owner redeemed the property in 2004, and the County conveyed the property to her "SUBJECT (sic) to all covenants, restrictions and easements of record, if any." The Plaintiff purchased the parcel in 2008 and commenced an Action for a judgment declaring that a three-foot-wide strip of the driveway on the Defendants' adjoining property encroached onto their property, and seeking an injunction requiring the Defendants to remove the encroachment. The Defendants counterclaimed that they had a prescriptive easement over that portion of the Plaintiffs' property, and that they and their predecessors in title had used the driveway in its current condition on a daily basis since 1979. The Plaintiffs moved for summary judgment, arguing that the Defendants' claim to a prescriptive easement was extinguished by the tax sale and the conveyance to Suffolk County. The Supreme Court, Suffolk County, granted the motion for summary judgment.

The Appellate Division, Second Department, reversed the judgment of the lower court. Even though there was no easement of record to which the Plaintiffs' predecessor in title took "subject to" in the deed from the County, the prior owner, when she redeemed the property, reacquired "exactly what she previously owned; her property burdened with any easement that may have existed." "Moreover", according to the Appellate Division, "it is a long standing rule that private easements of light, air, and access of adjoining land owners that were lawfully acquired before the levying of a tax are not extinguished by a tax sale. [Citations omitted]." However, the Court denied the Plaintiffs' motion for summary judgment since there remained issues of facts as to whether there was a prescriptive easement. Behar v. Wiblishauer, decided October 17, 2012, is reported at 2012 WL 4900822.

Transfer Tax/Mansion Tax

Current Developments dated May 24, 2011 reported the Matter of the Petition of Michael and Frances Sacks,

decided March 10, 2011 and posted at www.nysdta.org/Decisions/822322.dec.pdf. Michael Sacks purchased a condominium unit for $900,000. The immediately adjoining unit was purchased by his wife for $625,000. There is a passageway between the units, there is one shared kitchen, and the units were, before closing, used as a single unit. New York State's Department of Taxation and Finance issued a Notice of Determination claiming that the Petitioners' owed the "Mansion Tax" imposed by Tax Law Section 1402-a ("Additional Tax"), computed on the aggregate amount of the purchase prices for the two units, together with interest thereon and a penalty (the penalty was canceled in a conciliation conference). An Administrative Law Judge held that the taxes were properly assessed and the ruling was affirmed by the Tax Appeals Tribunal. The Appellate Division, Third Department, in a decision dated September 13, 2012, has upheld that ruling. According to the Appellate Division, "[w]hile the units were purchased pursuant to separate contracts of sale, the determination as to the application of the Mansion Tax is not dependent on the form of the underlying transaction, but on the economic reality that characterizes the entire conveyance." The units were physically combined, the closings for the units were simultaneous, and payment for the units was made from funds in the Petitioners' joint bank account. Matter of Michael Sacks v. Tax Appeals Tribunal of the State of New York is reported at 2012 WL 5257729.

Transfer Tax/NYC RPTT

Trump Village Section 3, Inc. ("Trump Village"), the owner of a residential housing cooperative complex in Brooklyn subject to the Mitchell-Lama housing program, terminated its participation in the program in 2007 and, pursuant to Private Housing Law Section 35(3) ("Voluntary dissolution"), and "reconstituted" as a private cooperative corporation under the Business Corporation Law by amending its certificate of incorporation. It also amended its By-Laws and the occupancy agreement for tenant-shareholders, and amended the existing stock certificates to remove text pertaining to its participation in Mitchell-Lama. The existing stock certificates were exchanged for new stock certificates, each shareholder holding the same number of shares as before.

New York City's Department of Finance issued a Notice of Determination claiming as due Real Property Transfer Tax ("RPTT") of $21,149,592.50, including interest and a penalty. The Department claimed that when Trump Village terminated its participation in the Mitchell-Lama Program and reconstituted itself as a private cooperative corporation, there was a transfer taxable "conveyance of the underlying real property." The Supreme Court, Kings County, denied Trump Village's motion for summary judgment and awarded summary judgment to The City of New York, holding that the RPTT was properly imposed. The Appellate Division, Second Department, reversed the ruling of the lower court, granted Trump Village's motion for summary judgment, and remitted the case to the Supreme Court, Kings County, for entry of a judgment declaring that the RPTT was improperly imposed.

According to the Appellate Division, "…the City Defendants essentially contend that, by voluntarily dissolving and subsequently reconstituting, Trump Village became a new corporation and that, accordingly, the amended certificate of incorporation constituted a deed. Thus, they conclude that the purported deed was delivered at the time of execution, and that the purported deed was delivered by an 'old' Trump Village to a 'new' Trump Village. We find no support in either case law or the record for the City defendants' interpretation of the law." Trump Village Section 3, Inc. v. City of New York, decided October 3, 2012, is reported at 2012 WL 4513148.

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