

First American Title Insurance Company of New York

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CURRENT DEVELOPMENTS

This is another in a series of bulletins issued to clients of First American on cases, legislation and other matters of interest. A copy of any item can be requested by email to Michael J. Berey, Senior Underwriting Counsel, at mberey@firstam.com or by contacting your account representative at 212-922-9700. Current Developments is available on the Internet at www.titlelaw-newyork.com, by facsimile, and by email on request.

Acknowledgments – Bankruptcy courts in Ohio and New Jersey have held that mortgages not acknowledged in accordance with the requirements of local law do not import constructive notice to subsequent bona fide purchasers or encumbrancers. The court in New Jersey classified the mortgagee's claim as unsecured. In *Re Bucholz*, 224 B.R. 13 (Bkrcty. D.N.J. 1998); *Simon v. Chase Manhattan Bank (In Re Zaptocky)*, 1999 WL 219206 (Bankr. 6th Cir., 1999).

Bankruptcy – The United States Bankruptcy Court, Southern District of New York, has held that unpaid post-petition, pre-rejection rent payable under Bankruptcy Code Section 365(d)(3) does not constitute a super-priority administrative expense claim to be paid before other administrative expense claimants. The court indicated that on liquidating the debtor's estate the claim for rent would be treated equally with the other administrative expense claims (subject to specific provisions in the Code affording priority to other administrative claims). In *Re Microvideo Learning Systems, Inc.*, 232 B.R. 602, decided April 28, 1999.

Battery Park City Authority/Common Charges – The Court of Appeals has affirmed the determination of the Appellate Division, First Department, that the lien of a first mortgage on a condominium unit in the Hudson View Towers Condominium at Battery Park City has priority over ground rent due the Battery Park City Authority,

collected by the condominium's Board of Managers from unit owners as common charges. The court's holding is based on application of Condominium Act Section 339-z and its interpretation of provisions of the ground lease and the condominium's organizational documents. *The Dime Savings Bank of New York, F.S.B. v. Battery Park City Authority*, decided June 3, 1999 and reported in the New York Law Journal on June 4, 1999. Contact Stephen Farber at 212-850-1402 for further information.

Continuing Legal Education – The First American Title Insurance Company of New York has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York for the period of May 10, 1999 – May 10, 2002.

Cooperatives – The Appellate Division, First Department, in a case decided May 27, 1999, has held that a cooperative corporation is prohibited under Business Corporation Law Section 721 from indemnifying directors for bad faith acts violating Civil Rights Laws in connection with the approval of prospective unit purchasers. *Biondi v. Beekman Hill House Apartment Corporation*, reported in the New York Law Journal on June 3, 1999.

Financing Statements – New York's Department of State has advised that UCC Financing Statements need no longer be submitted in a multi-part format since the index card portion and the filer acknowledgment sheets are no longer used by that office. Only one copy of the form (the original or Part I of the standard form) and any attachments to the statement are required. A computer generated image of the first page of the filing is returned as an acknowledgment. For further information contact Jean Partridge at 914-428-3433.

Hospitals – The Court of Appeals, in the case *Council of the City of New York v. Giuliani*, decided March 30, 1999, has held that the operation of hospitals in New York City organized under the Health and Hospitals Corporation Act (Unconsolidated Laws, Section 7381 et seq.) cannot be subleased to private entities without legislative action. (93 N.Y. 2d 60; 1999 WL 179257 (N.Y.)).

International Title Policy – First American Title Insurance Company, of California, has announced the establishment of its International Commercial Division and the availability of owner’s and lender’s forms of an International Title Insurance Policy. These policies, with coverage similar to that issued in the United States and Canada for commercial transactions, will afford title insurance to purchasers, lessees and lenders dealing with real property in a number of foreign countries. For information contact Michael Berey at the New York International Policy Underwriting Center at 212-922-0647 or Bruce Clay at 212-922-9700.

Leases – The Court of Appeals has held in the case 1 No. 112 Graubard Mollen Horowitz Pomeranz & Shapiro vs. 600 Third Avenue Associates, decided June 10, 1999, that a *Yellowstone* injunction does not supersede a lease provision requiring the payment of interest on rent arrears in the event of a default. Interest on rents paid into escrow by court order during litigation on the leasehold is payable to the lessor when the injunction is vacated. A *Yellowstone* injunction, according to the court, “does not nullify the remedies to which a landlord is otherwise entitled under the parties’ contract”. The case was reported in the New York Law Journal on June 11, 1999.

Mortgages – The Supreme Court, Dutchess County, in the case Poughkeepsie Galleria Company v. Aetna Life Insurance Company, has held that insofar as a mortgagor has no common law right to prepay a mortgage, a prepayment premium in a nonresidential commercial mortgage is valid and enforceable. 680 N.Y.S. 2d 420, decided September 30, 1998.

Usury – The Bankruptcy Court, Eastern District of New York, has held that an otherwise usurious loan is not saved from the consequences of New York’s usury laws by a “usury-avoidance” provision in a mortgage. The provision in question limited the amount of interest charged to the legal rate and provided that any excess interest paid would be applied to the principal balance. The case Federal Home Loan Mortgage Corporation v. 333 Neptune Avenue Limited Partnership, was reported in the New York Law Journal on April 29, 1999.

June 17, 1999