# A.R.S. ABSTRACT, LTD.

## LEGAL BRIEFS

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**Date:** **May 7, 2007**

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**Deeds** – The Plaintiff claimed that the deed to it transferred under the "appurtenance clause" the right to use parking spaces on adjoining land leased by the Defendant-Grantor. There was no express leasehold assignment. The Supreme Court, Nassau County, granted summary judgment to Defendant and dismissed the complaint. ***The intention of the parties in the contract as stated was to convey "parking areas…located on the Property", and "appurtenances" passes only "such incorporeal easements or rights or privileges as are strictly necessary and essential.***

**Easements** – Plaintiffs sought an Order terminating an easement for ingress and egress in the deed to the Defendants' predecessors in title, due to the Defendants' alleged misuse and overburdening of the easement. The Supreme Court, Bronx County, granted the Defendants' motion for summary judgment. ***The misuse or over use of an easement can be enjoined; but an easement created by grant can only by extinguished by abandonment, conveyance, condemnation or adverse possession. None of which was applicable.***

**Leases** – The tenant of the basement and ground floor of a building in Manhattan which it leased as a restaurant installed and stored equipment in an adjoining vault under a revocable license in the lease. The property owner served upon the tenant a notice to vacate the vault. The Civil Court, City of New York, held that since the cost associated with moving the equipment in the vault would be prohibitive, the tenant's use of the space was "appurtenant" to the lease and the license was improperly revoked. ***According to the Court, "[a]n appurtenance is a right and privilege which is essential or reasonably necessary to the full beneficial use and enjoyment of the leased property" and "may not be revoked or otherwise terminated until the lease ends".***

**<u>Lien Law</u>** – An Action was commenced by a Subcontractor to foreclose mechanics' liens filed against Condominium Units sold in a newly constructed building. Since each deed to a Unit purchaser contained a "trust fund" provision under Lien Law Section 13(5) ("Priority of liens") and the deeds from the Developer were recorded prior to the filing of the mechanic's liens, the Supreme Court, New York County, held that the mechanics liens were invalid and ordered that they be discharged of record. ***<u>The Court also dismissed causes of action against the Developer and related Defendants claiming breach of contract and asserting claims based upon quantum meruit and unjust enrichment. They were not parties to the Subcontractor's contract with the General Contractor, and the Subcontractor's sole remedy is a claim for breach of that contract.</u>***

**<u>Lien Law</u>** – Petitioners, owners of a cooperative apartment consisting of two floors in a building in Manhattan, sought an Order discharging a mechanic's lien filed against the building naming them as Owners. They claimed that the lien should be discharged since it was not filed within four months of the date on which the last item of work was performed or material was furnished, as required by Lien Law Section 10 for property improved by a single-family dwelling. The lienor contended that the work was performed in two units and, as it worked on a multiple dwelling, it had eight months to file its lien. ***<u>The Supreme Court, New York County, held that work was done on only one unit and discharged the mechanic's lien.</u>***

**<u>Mortgage Foreclosure</u>** – A temporary restraining order, staying transfer of the deed "without prejudice to the defendants' right of redemption", was issued by the Supreme Court, Kings County the day before the foreclosure sale but not served on the bidders at the foreclosure sale. A lower court Order vacating the sale was reversed by the Appellate Division, Second Department**.** ***<u>According to the Court, "[t]o bind bidders at a foreclosure sale to such a condition [preserving the Defendants right of redemption] when they have not been notified of it would inhibit the bidding process…" In addition, there having been five bankruptcy petitions filed by the Defendants and three judgments of foreclosure and sale, the Appellate Division noted that "the equities did not favor the defendants whose 'manipulation and gaming of the system' had gone on for years".</u>***

**<u>Mortgages</u>** – In refinancing their existing home equity mortgage, the Claimants had to pay an "Early Closure Fee" under a provision in the mortgage requiring them to reimburse the lender's closing costs if the credit line was terminated

within the first thirty-six months. The mortgage also allowed for prepayment at any time without penalty. ***Justice Straniere of the Civil Court, Richmond County, ordered that the lender reimburse the closing costs the Claimants were required to pay to refinance, holding that the payment of those amounts was a prepayment penalty. The Court also held that the lender had engaged in a deceptive business practice in violation of General Business Law, Section 349.***

**Recording Act** – The grantee of a deed to land in Kings County subject to a tax lien foreclosure moved for leave to intervene in the Action and for an order vacating the judgment of foreclosure and sale, claiming that he was unaware of the tax lien sale since he was not named and served as a party defendant. Naming the grantee as a Defendant in the Action and service upon the Grantee would have been necessary if the deed to him was recorded prior to the filing of the notice of pendency to foreclose. The deed was delivered to the City Register on June 23, 2004 and recorded on July 12, 2004 at 3:27 pm. The filing of the notice of pendency to foreclose the tax lien was filed on July 12, 2004 at 1:50 pm, before the deed was recorded. The Supreme Court, Kings County, vacated the judgment, granted leave to intervene, included the Grantee as a party Defendant, and stayed the Referee from delivering a deed pending a further Order of the Court. ***The Court held that the deed was recorded when it was delivered to the City Register's Office for recording, which was prior to the filing of the notice of pendency. According to Real Property Law Section 317 ("Order of Recording"), "[e]very instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefore, and is considered recorded from the time of such delivery").***

**Restrictive Covenants** – A property in Manhattan was conveyed by The City of New York as an Urban Development Action Area Project ("UDAAP") under the Urban Area Action Area Act. The deed to the Grantee-Sponsor recited that "the project to be undertaken by Sponsor consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by existing zoning". The deed also required the Grantee to remedy all building violations of record within six months. The Grantee did not correct the violations and sold the property to a Developer which allegedly planned to demolish the existing building and replace it with a high rise apartment building.

The adjoining owner brought an Action against the Grantee, the City, and the Developer, seeking, among other relief, a declaratory judgment that the new owner was bound by the restrictions in the City's Deed. The City cross-claimed, seeking an Order enjoining the use of the property except in compliance with the restrictions in its deed. The Supreme Court, New York County, held that the restrictions run with the land, granted the Plaintiff's and City's motions for summary judgment. The appellate Division reversed the lower court's ruling, holding that the original parties to the deed did not intend that the covenant run with the land and that the covenant did not run with the land since it did not "touch and concern the land". The Court of Appeals reversed and reinstated the Order and Judgment of the Supreme Court. ***The Court of Appeals held that since the property was sold as an accelerated UDAAP it remained subject to restrictions in the General Municipal Law set forth in the deed. Further, the habendum clause in the deed from the City stated that the "covenants set forth in this Deed shall run with the land and... shall inure to the benefit of the City and shall bind and be enforceable against Sponsor and its successors and assigns".***

***The Court of Appeals noted that the land use restrictions could expire by their own terms on completion of the Project, or they might be extinguished in an action brought by the current or a future owner under Real Property Actions and Proceedings Law, Section 1951 ("extinguishment of non-substantial restrictions on the use of land").***

**Trespass** – The City Court, City of New Rochelle, awarded judgment to the Plaintiff in an Action to recover expenses incurred in removing debris from a tree on the Plaintiff's land which fell onto Defendant's property during a storm. The Defendant returned the tree debris to the Plaintiff's property. According to the Court, "absent actual or constructive notice of a tree's disease or defect, the tree's owner is not responsible for damage caused when his or her tree falls onto an adjacent property due to wind, storm or other natural causes". ***There being no evidence that the Plaintiff had actual or constructive notice that the tree was defective before it fell, the Defendant was responsible for removal of the debris and was a trespasser onto the Plaintiff's property.***