

A.R.S. ABSTRACT, LTD.

LEGAL BRIEFS

From: John A. Kazazis
jkazazis@arsabstract.com

Date: September 27, 2007

Adverse Possession –Plaintiffs Homeowners moved for a declaration of ownership by adverse possession of the subject real property. Defendant, Nassau County cross moved for dismissal claiming it had superior title to the property it took under a tax deed in May 1989. Plaintiffs asserted they have been in possession of the property continually and exclusively from 1981 under an unrecorded quitclaim deed. The court found plaintiffs made a prima facie showing of entitlement to summary judgment by demonstrating their adverse possession of the property that ripened into good title no later than June 1999. The County argued a municipality could not lose title to real property by adverse possession when it held the property in its governmental capacity. ***The court found the County never intended to use the property and always intended to sell it, stating the property was held in a proprietary capacity, and no immunity attached. It ruled plaintiffs established good title by adverse possession, declaring plaintiffs the owners of the subject property.*** Ammirati v. Van Wicklen.

Deeds/Warranty of Title – The warranty deed to the Plaintiffs failed to mention an easement that had been granted but not yet recorded over part of the premises being conveyed which was intended to benefit an adjoining property. In an action for breach of the warranty and covenants in the deed to the Plaintiffs, the Appellate Division, Third Department, affirming the Order of the Supreme Court, Otsego County, held that ***the Plaintiffs’ “actual knowledge of the easement prior to taking title presents no defense to***

A.R.S. ABSTRACT, LTD.

the alleged breach of their deed covenants". In addition, according to the Appellate Division, the Plaintiffs were entitled to recover the legal fees they incurred in the lawsuit they brought against the owners of the adjoining property, in which the easement was upheld, since they had a reasonable basis to presume that cause of action would be successful. Webster v. Ragona.

Judgments – Under Civil Practice Law and Rules ("CPLR") Section 5014, an action may be commenced in the year prior to the expiration of ten years from the first docketing of a money judgment to renew the judgment for an additional ten years. If granted, the renewal judgment takes effect "upon the expiration of ten years from the first docketing of the original judgment". In a matter decided by the Supreme Court, New York County, a judgment creditor commenced an action on October 22, 2001 to renew his judgment docketed on October 23, 1991 against the owner of a condominium Unit. The Court granted the application for a renewal judgment in 2005, to October 23, 2001. Petitioners made a loan to unit owner in 2003 secured by a mortgage on the unit, believing it to be a first lien on the Unit. ***The Court stated a judgment creditor may renew the lien of the judgment for an additional 10 years by simply commencing an action during the year prior to the expiration of 10 years since the first docketing of the judgment. It ruled the renewal action was commenced prior to the expiration of the original lien, finding the granting of the renewal judgment nunc pro tunc as of 10/23/2001 proper*** Greenpoint Mortgage Funding, Inc. v. Gletzer.

Marketable Title – The Terms of Sale for a tax lien foreclosure on property located in Kings County Provided that the premises were to be sold subject to "covenants, restrictions and easements, if any, of record". A title search conducted after the sale disclosed a Right of Reverter held by The City of New York. The City refused to waive its Right of Reverter and two title companies declined to insure over that interest. The successful bidder then moved for an Order directing the Trust to cure the title defect or, alternatively, vacating the sale and requiring the refund of the deposit paid at the sale. ***The Court ruled the City's right of reverter rendered title unmarketable, noting that the movant was entitled to receive marketable title from plaintiff. This conclusion found support in the terms of sale requiring plaintiff to provide title insurance, at purchaser's expense, if purchaser raised written objections of title. As plaintiff was unable to convey marketable***

A.R.S. ABSTRACT, LTD.

title and/or obtain title insurance, plaintiff breached its obligation under the terms of sale, entitling the movant to vacatur of the foreclosure sale and return of its deposit. NYCTL 1998-1 Trust v. Mayfield.

Mechanics' Liens/Civil Court – Judge Singh of the Civil Court, New York County, has held that the Civil Court has the jurisdiction to hear a motion to discharge a mechanic's lien for not being timely filed because the motion was brought as part of an action in the Civil Court to foreclose the lien. Under Lien Law, Section 19(6) ("Discharge of lien for private improvement"), an application to discharge a mechanic's lien is to be made in the Supreme Court, or to a County Judge of the county in which the notice of lien is filed. However, the Civil Court of New York City has jurisdiction of an action to foreclose a mechanic's lien not exceeding \$25,000 which is filed against property in the County in which the action is brought. ***According to the Court, since the Plaintiff-mechanic's lienor "has submitted itself to the jurisdiction of the Civil Court...it would be illogical to require defendant to bring a separate proceeding in Supreme Court seeking to summarily discharge the mechanic's lien"***. Hamilton Air Company, Inc. v. Gould.

New York City/Emergency Repair Liens – Plaintiff commenced an action under RPAPL Article 15 ("Action to compel the determination of a claim to real property") for a declaratory judgment holding that emergency repair liens for costs incurred by the City of New York for work done at property purchased by the Plaintiff were unenforceable. Under Article 15, the cause of action would not be barred by a statute of limitations. The City brought a motion to dismiss, contending that Plaintiff was required to proceed by means of an Article 78 proceeding, subject to the four month statute of limitations of CPLR Section 217(1) ("Proceeding against body or officer...four months"), which would have barred the cause of action. The Supreme Court, Kings County, denied the City's motion. ***According to the Court, "not only does the City fail to demonstrate that controlling authority required Plaintiff to proceed by way of Article 78, but it fails to provide any reason why it should be required"***. Brooklyn LLC v. The City of New York.

Property Condition Disclosure Act – On a Property Condition Disclosure Statement the Seller-Defendants answered "No" to certain questions and the

A.R.S. ABSTRACT, LTD.

Plaintiff-Buyer's home inspector did not report that the property had any material defect. However, after closing the Buyer allegedly discovered material defects in the property. The Plaintiff asserted causes of action in fraud and for breach of contract. The Appellate Division, Second Department, reversing in part the ruling of the Supreme Court, Westchester County, held that the cause of action for breach of contract should have been dismissed since the contract provided that the premises had been inspected and was being sold "as is". However, it held that the Supreme Court properly denied the motion to dismiss the cause of action alleging fraudulent concealment. **According to the Court, "the alleged false representations in the Disclosure Statement support a cause of action alleging fraudulent misrepresentation in that such false representations may be proof of active concealment"**. Simone v. Homecheck Real Estate Services, Inc.

Restrictive Covenants – The deed conveying real property in Port Chester, NY to the Plaintiff, and the deed to the Plaintiff's grantor, each provided that the premises would not be used as a bakery for a period of fifty years. The deeds recited that the restriction was a covenant running with the land and enforceable by the grantor and its devisees, heirs, successors and/or assigns as the owner of a certain other property in Port Chester, NY being used as a bakery. Plaintiff sought an Order either extinguishing the restrictive covenant pursuant to RPAPL Section 1951 ("Extinguishment of non-substantial restrictions on the use of land"), on the grounds that it was of no actual or substantial benefit, or nullifying the covenant under General Business Law Section 340 ("Contracts or agreements for monopoly or in restraint of trade illegal and void"), also known as the "Donnelly Act", on the grounds that the restriction was an invalid agreement in restraint of competition. The Supreme Court, Westchester County, granted the Defendant's motion to dismiss. **As to the claim that the restriction was of no actual or substantial benefit, the Court held that the covenant benefited the Defendant by preventing competition from a particular location in Port Chester. As to the Donnelly Act claim, the Court held that a restriction limiting what business may be engaged in did not ipso facto violate public policy, and, in any event, no Donnelly Act claim was stated because there was no agreement between competitors to restrain trade.** Neri's Land Improvement LLC v. J.J. Cassone Baker Inc.