



**CB Title Agency of NY, LLC**  
140 Mountain Avenue – Suite 101  
Springfield, NJ 07081  
P: 973-921-0990 • F: 973-921-0902  
www.cbtitlegroup.com

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**Date:** January 8, 2009  
**To:** All Clients and Friends  
**From:** Cliff Bernstein  
**Re:** Recent Cases of Interest

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**NEW YORK  
RECENT CASES OF INTEREST FOR REAL ESTATE LAWYERS**

**Snyder Fulton Street, LLC v. Fulton Interest, LLC**

**12/2/2008**

**Second Department**

**Real Property Law; Tenants in Common; Action for Partition; Physical Division; Owelty Award; Sale; Applicability**

Plaintiff and defendant owned a commercial building, which was encumbered by a ground lease, as tenants in common. Plaintiff brought an action for partition and sale of the property, in response to which the defendant raised an affirmative defense that the property should be physically partitioned. At a nonjury trial, both parties presented expert testimony as to how the property could be physically divided, the costs of doing so, and a comparison of the values of the building before and after partition. Based upon evidence that the physical partition could be accomplished, but that the values of the remaining parcels when combined would be at least \$1.2 million less than if the building were not divided, the Supreme Court directed the actual partition of the property in accordance with the respective interests of the parties, and designated three commissioners to divide the property so that the parties would receive, as nearly as possible, the worth of their respective interests in the total market value of the property, subject to the payment of an owelty, if necessary, to either party. Order directing the physical partition of the property is reversed, and matter remitted for the entry of an amended order directing the partition and sale of the property. RPAPL §915 provides that the actual physical partition of property is preferred, unless it is demonstrated that the physical partition would cause great prejudice to the owners, in which case the property must be sold at public auction. In contrast to the determination of the Supreme Court, the Appellate Division finds that the resulting \$1.2 million loss of value to the \$77 million property, if physically divided, would constitute a great prejudice to the plaintiff. *Snyder Fulton Street, LLC v. Fulton Interest, LLC*. Decided 12/2/08.

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