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Date: November 2, 2009
To: All Clients and Friends
From: Cliff Bernstein
Re: Recent Cases of Interest

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

St. Lawrence Factory Stores v. Ogdensburg Bridge & Port Authority

10/20/2009

Court of Appeals

Damages; Commercial Law; Real Property Law; Contracts for the Sale of Land; Reliance Damages

In this matter involving the sale of approximately 12 acres to be developed as a shopping center, the plaintiff (developer) brought a breach of contract action against the defendant (seller) when it failed to close. As damages, plaintiff claimed the following: (1) lost profits it would have made had it built the shopping center; (2) the "benefit of the bargain," being the difference between the agreed-upon price of the property and its market value; and (3) "reliance damages," being expenses incurred in arranging financing and obtaining prospective tenants. The Supreme Court dismissed the lost profits and reliance damages claims before trial, and rejected the benefit of the bargain claim at trial. The Appellate Division affirmed both orders of dismissal. The Court of Appeals modifies by reinstating plaintiff's claim for reliance damages, and remits the matter to the Supreme Court for further proceedings. Contrary to the holding of the Appellate Division, reliance damages for breach of "a contract for the sale of land requiring the plaintiff to tender the defendant the sale price upon closing" are not limited to "only those [expenses which are] ordinarily incurred regarding such a contract, such as a title search, survey and attorney's fees." Rather, as stated in the Restatement (Second) of Contracts §349: "as an alternative to expectation-based damages (which would include lost profits and benefit of bargaining), a plaintiff may recover damages based on his reliance interest, including expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove of reasonable certainty the injured party would have suffered had the contract been performed." *St. Lawrence Factory Stores v. Ogdensburg Bridge & Port Authority*. Decided 10/20/09.

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