> *"bound herself to make a bona fide attempt to obtain court approval of the contract [citation omitted]… Pursuant to SCPA Section 1912 ["Effect of death of fiduciary"], …[the death of the prior administrator] does not terminate any pending proceeding for court approval, which would ordinarily move forward once defendant was appointed as the Administrator de bonis non…[T]he defendant 'stepped into the shoes' of the deceased administrator and cannot provide a relevant reason for her failure to fulfill her statutory fiduciary duties."*

Southampton Equities LLC v. Anekwe, 2021 NY Slip Op 32518, decided November 30, 2021, is posted at https://www.nycourts.gov/reporter/pdfs/2021/2021_32518.pdf.

Contracts of Sale/Default

Three contracts of sale executed by the Plaintiff-purchaser and the Defendants-sellers required that the Sellers obtain assignments of existing mortgages. The assignments had not been obtained when the Defendants issued time of the essence letters or on the dates set for the closing. The Appellate Division affirmed the ruling of the Supreme Court, New York County, which had granted the Plaintiff's motion for summary judgment as to liability for breach of contract. According to the Appellate Division, First Department, "[h]aving thus breached the contracts, defendants were not in a position to place plaintiff in default [citation omitted]." However, the lower court's Order was modified to direct the return of the contract deposits to the Plaintiff as liquidated damages as provided for in the contract since the Plaintiff did not seek specific performance. IHG Harlem I, LLC v. 406 Manhattan LLC, 2021 NY Slip Op 06761, decided December 2, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_06761.htm.

Contracts of Sale/Tortious Interference

Plaintiff entered into a contract to purchase land in the Village of Upper Nyack from James Carson for $2,470,000. The closing did not take place on the scheduled closing date. Then the Village of Upper Nyack passed a resolution authorizing the Mayor to purchase the same property on behalf of the Village for public use if proof was shown that the contract with the Plaintiff was terminated. An action brought by the Plaintiff for specific performance was settled and discontinued with prejudice, and the property was sold to the Village for $2,500,000. The Plaintiff also commenced an action for damages against the Village alleging tortious interference with contractual relations, tortious interference with business relations or prospective advantage, and prima facie tort. The Supreme Court, Rockland County, granted the Defendant Village's motion to dismiss the causes of action for prima facie tort and tortious interference with business relations or prospective advantage.

As regards the cause of action for prima facie tort, the Plaintiff could not "show that the sole motive in acquiring the property was to injure Plaintiff, particularly given the Village's long standing desire to purchase the property to be used as public space." As to the cause of action for tortious interference with busines relations or prospective advantage, "it cannot be said that the [Village] was solely motivated by malice to inflict injury upon Plaintiff, where there are other municipal considerations such as the desire for public space. Additionally, it cannot be said that the purchase price offered for the property by the Village…was so extreme or unfair as to be considered malicious." Hellman v. Village of Upper Nyack, 2019 NY Slip Op 34250, decided January 2, 2019 was posted to the New York Slip Opinion Service on November 19, 2021 at https://www/nycourts.gov/reporter/pdfs/2019/2019_34250.pdf.

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Deeds/Mortgage Rescue Scheme

In 2011, an attorney (since suspended from the practice of law and indicted for defrauding homeowners in financial distress who signed over their properties to him) paid the Defendant $8,000 to induce him to convey his home to the Defendant. The Plaintiff was told that the funds would be applied to assist the Plaintiff and his family in relocating and to relieve the Plaintiff of the indebtedness secured by mortgage being foreclosed. The Plaintiff, an immigrant who claimed he had little understanding of English, and his family were then evicted by the Defendant and the mortgages were not satisfied. The Plaintiff, claiming unjust enrichment, sought to quiet title under RPAPL Article 15, to obtain a declaratory judgment that the deed transfer was void.

The Supreme Court, Kings County, granted the Plaintiff's motion for summary judgment as to the causes of action for a declaratory judgment and to quiet title. The Court held that the deed was null and void and held that the Plaintiff was the rightful owner of the property. The City Register's office, on service on it of the Court's Order and Judgment with notice of entry was directed to cancel the deed and note the Judgment on the real estate records. An action to quiet title, the Court noted, is governed by a ten-year statute of limitations under CPLR Section 212(a) ("Actions to be commenced within ten years"). Guliyev v. Shore Parkway Investors Corp. 2021 NY Slip Op 32124, decided October 29, 2021 is posted at http://www.nycourts.gov/reporter/pdfs/2021/2021_32124.pdf.

Easements by Implication

There is a common boundary line between Parcel A and Parcel B. When the parcels were in common ownership, a driveway on Parcel B was used to access a garage on Parcel A. The Defendant, the owner of Parcel B erected a fence to prevent the owner of Parcel A, the Plaintiff, from using the driveway. The Supreme Court, Queens County, held that the Plaintiff's land had the benefit of an easement by implication. The Appellate Division, Second Department, reversed the lower court's Order and remitted the case for entry of a judgment that the Plaintiff's land did not have an easement by implication. According to the Court, "'An easement may be implied from pre-existing use upon severance of title [if]…the use [is] necessary to the beneficial enjoyment of the land retained.'" In this case, however,

> *"[t]he plaintiff did not establish that the use of the driveway on Lot B was a reasonable necessity to the beneficial use of the land and not a mere convenience. It is undisputed that Lot A is not landlocked and that the plaintiff can access Lot A without using the driveway on Lot B…Since access to off-street parking is a mere convenience, the plaintiff has no easement by implication based on the preexisting use over the defendant's driveway."*

Bonadio v. Bonadio, 2021 NY Slip Op 06830, decided December 8, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_06830.htm.

Easements/RPAPL Section 1951

Plaintiffs, the purchasers of property subject to an easement of record for a walking and recreational trail, after learning of plans to construct a trail over the easement commenced an action under RPAPL Section 1951 ("Extinguishment of non-substantial restrictions on the use of land") to quiet title and extinguish the easement. Under Section 1951,

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> *"[n]o restriction on the use of land created at any time by…[a] negative easement…shall be enforced… or determined to be enforceable, if, at the time the enforceability…is called into question, it appears that the restriction is of no actual and substantial benefit to the persons seeking its enforcement or seeking a determination or determination of its enforceability, either because the purpose of the restriction has already been accomplished or, by reason of changed conditions or other cause, its purpose is not capable of accomplishment, or for any other reason."*

The Appellate Division, Third Department, affirmed the ruling of the Supreme Court, Saratoga County, denying the Plaintiffs' motion for summary judgment and granting the cross-motion of the Defendant, the holder of the beneficial interest under the easement, for summary judgment. According to the Appellate Division, RPAPL Section 1951 applies to a negative easement, an easement that "'restrain[s] servient landowners from making otherwise lawful uses of their property' [citation omitted]" and "the subject easement was an affirmative easement because it forced plaintiffs to permit defendant to construct and maintain a walking trail. Accordingly, RPAPL 1951 does not apply."

The Appellate Division also noted that the Plaintiffs had not established that the Defendant by non-use of the easement intended to abandon it. Gale v. Town of Wilton, 2021 NY Slip Op 06735, decided December 2, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_06735.htm.

Electronic Notarization

On December 22, Governor Hochul signed into law Chapter 767 of the Laws of 2021, effective on the 180th day after enactment, allowing licensed notaries to perform notarial acts using Remote Online Notarization ("RON"). An electronic notary, who is required to "register the capability to notarize electronically with the Secretary of State", must be located within New York State…regardless of the location of the document signer." New York's Secretary of State is charged with issuing regulations establishing "standards, practices, forms, and records relating to" electronic notarizations. A link to the legislation (Senate Bill 1780-C/ Assembly Bill 0399-B) is set forth below.

The Governor's Memorandum approving the legislation indicates that further legislation will be enacted to authorize the Department of State to create the system which will enable notaries to register to perform electronic notarizations.

Bill Search and Legislative Information | New York State Assembly

Mortgage Foreclosures/Default

Denial of the Defendant's motion to vacate an Order and judgment of foreclosure and sale, entered on default by the Supreme Court, Nassau County, was affirmed by the Appellate Division, Second Department. "A defendant seeking to vacate a judgment pursuant to CPLR 5015(a)(1) ["Relief from judgment or order"] must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action [citations omitted]…Since the defendant failed to show a reasonable cause for his default, it is unnecessary to consider whether the defendant had a potentially meritorious defense…" Emigrant Savings Bank v. Burke, 2021 NY Slip Op 05952, decided November 3, 2021, is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_05952.htm.

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Mortgage Foreclosures/Erroneous Satisfaction

One of the mortgages consolidated into the lien being foreclosed was inadvertently satisfied of record. The Defendants asserted that due to the recording of the satisfaction there was no mortgage to foreclose. The Supreme Court, Rockland County, denied the Defendants' cross-motion to dismiss the compliant, cancelled the satisfaction and entered a judgment of foreclosure and sale. The Appellate Division, Second Department, affirmed the lower courts rulings; there was no "'detrimental reliance on the erroneous recording.'[citations omitted]." Bank of America, N.A. v. Schwartz, 2021 NY Slip Op 06602, decided November 24, 2021 is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_06602.htm.

Mortgage Foreclosures/Interest on Judgment

The successful bidder at a foreclosure sale refused to close on the scheduled closing date, claiming that he was unable to obtain satisfactory title insurance. Under the Terms of Sale, "[t]he failure of the Purchaser's title insurance [company] to be ready to close in accordance with the Terms of Sale is not a valid reason to adjourn the closing date and constitutes a default."

The time to close was extended and the bidder then indicated he would close, but he rejected the Plaintiff's insistence that he pay interest on the judgment. The Plaintiff moved for an Order holding the bidder in default, directing forfeiture of the deposit and authorizing the re-auction of the property. The Supreme Court, New York County, directed that there be a closing within 30 days of the filing of its Order, with the bidder paying accrued interest on the judgment. If the bidder did not close within that period the sale would be vacated, the bidder's deposit would be forfeited and the Referee would re-auction the property. According to the Court,

> *"…the Court may direct him to pay accrued interest based as part of its equitable powers [citations omitted]. Under the circumstances, requiring Plaintiff to forego its judicially awarded interest or, potentially, for the owner of the equity of redemption or subordinate lienors to bare the additional costs in the form of a reduced surplus, would be inequitable. Based on the Court's determination, supra, [the bidder's] failure to close was not justified and he should be responsible for the results of same. Moreover, the fact that the appellant could now be overpaying for the property does not provide an equitable basis to void the sale [citation omitted]."*

The bidder claimed that the filing of a notice of pendency for a quiet title action affected the marketability of title. However, the lis pendens had expired and was not extended, the action did not impact the lien of the mortgage, and it was dismissed with prejudice. RCN Capital Funding, LLC v. Gordon, 2021 NY Slip Op 32601, decided November 24, 2021, is posted at https://www.nycourts.gov/reporter/pdfs/2021/2021_32601.pdf.

Mortgage Foreclosures/Necessary Parties

The Appellate Division, Second Department, affirmed the denial by the Supreme Court, Rockland County, of that branch of the Defendant's motion to dismiss the complaint for the failure to join a necessary party. The individual in question had conveyed the property to the Defendant and the Plaintiff had waived its right to seek a deficiency judgment against that person. Nationstar Mortgage, LLC v. Foltishen Institution, 2021 NY Slip Op 06620, decided November 24, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_06620.htm.

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Mortgage Foreclosures/Notices - RPAPL Section 1304

RPAPL Section 1304 ("Required prior notices") requires that "a lender, an assignee or a mortgage loan servicer [commencing] legal action against the borrower, including [a] mortgage foreclosure" send a notice, in the form specified in Section 1304, to the borrower at least ninety days before litigation on a "home loan" is commenced. In Wilmington Trust Company v. Prashad, 2021 NY Slip Op 06645, decided November 24, 2021, the Appellate Division, Second Department, reversed the Order of the Supreme Court, Nassau County, granting the foreclosing mortgagee's motion for summary judgment and for an order of reference because the Plaintiff had failed to demonstrate, prima facie, that it had strictly complied with Section 1304. According to the Appellate Division,

> *"[p]roof of mailing [the notice] is established with proof of the actual mailings, such as affidavits of mailing or domestic return receipts with attendant signatures, or proof of a standard office mailing procedure designed to ensure that the items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure [citation omitted]…[Here, however, the affiant] did not aver that he had personal knowledge of the mailing and, while he stated that it was his employer's [the loan servicer's] practice to make such mailings within one day of the date of the notice, he failed to sufficiently describe a standard office procedure designed to ensure that items are properly addressed and mailed [citation omitted]. Further, the copies of the notices themselves do not evidence actual mailing [citation omitted]."*

This decision is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_06645.htm.

In U.S. Bank National Association v. Krakoff, 2021 NY Slip Op 06209, decided November 10, 2021, the Appellate Division, Second Department, reversed entry of a judgment of foreclosure and sale by the Supreme Court, Nassau County, holding that the Plaintiff had not established compliance with the notice requirements of RPAPL Section 1304. Affidavits of officers of the Plaintiff's servicing agent did not "attest that they personally mailed the notices or that they were familiar with the mailing practices and procedures [of the company which mailed the notices]. Therefore, they failed [to] establish proof of standard office practice and procedures designed to ensure that items are properly addressed and mailed." In addition, a single 90-day notice was mailed to both borrowers. This decision is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_06209.htm.

Similarly, in 2010-3 SFR Venture, LLC v. Schiavoni, 2021 NY Slip Op 06143, decided November 10, 2021, the Appellate Division, Second Department, reversed entry of a judgment of foreclosure and sale by the Supreme Court, Suffolk County, because the Plaintiff had not established, prima facie, its compliance with RPAPL Section 1304. The affidavit submitted on behalf of the Plaintiff's loan service did not aver that the affiant had personal knowledge of the mailing of the 90-day notice or that the affiant was familiar with the mailing practices of the company which mailed the notice. Further, the affidavit did not state that notice was served in a separate envelope without any other mailing or notice and no proof was submitted that the notice was mailed by first-class mail, as required by Section 1304. This decision is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_06143.htm.

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Mortgage Foreclosures/Referee's Report

The Appellate Division, Second Department, overturned the Supreme Court, Suffolk County's grant of the Plaintiff's motion to confirm the Referee's report and for a judgment of foreclosure and sale. "The referee's computation as to the amount due and owning to the plaintiff were not substantially supported by the record [citations omitted]. An affidavit of an assistant vice president of the plaintiff…constituted inadmissible hearsay and lacked probative value because the business records purportedly relied upon in making the calculations were not produced [citations omitted]." Bank of America, N.A. v. Barton, 2021 NY Slip Op 05939, decided November 3, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_05939.htm.

In JPMorgan Chase Bank, N.A. v. Bracco, 2021 NY Slip Op 06839, decided December 8, 2021, the Appellate Division, Second Department, reversed entry of a judgment of foreclosure and sale by the Supreme Court, Nassau County, and remitted the case for issuance of a new referee's report "because the referee's computations as to escrow disbursements and advancements and property inspection fees were premised upon unproduced business records." This decision is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_06839.htm.

Mortgage Foreclosures/Standing

Affirming entry of a judgment of foreclosure and sale by the Supreme Court, Kings County, the Appellate Division, Second Department, ruled that the Plaintiff had established, prima face, that it had standing by attaching the note, endorsed in blank to the summons and complaint when the action was commenced. According to the Appellate Division,

> *"'[t]here is simply no requirement that an entity in possession of a negotiable instrument that has been endorsed in blank must establish how it came into possession of the instrument in order to be able to enforce it' [citations omitted]. Moreover, it is unnecessary to give factual details of the delivery in order to establish that possession was obtained prior to a particular date [citation omitted]."*

Bank of America, N.A. v. Dedkevich, 2021 NY Slip Op 05941, decided November 3, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_05941.htm.

In Deutsche Bank National Trust Company v. Smartenko, 2021 NY Slip Op 05948, decided November 3, 2021, the Appellate Division, Second Department, in affirming the grant of the Plaintiff's motion for summary judgment by the Supreme Court, Nassau County, held that the Plaintiff had standing. "[I]t was in physical possession of the note, endorsed in blank, which was annexed to the complaint, at the time the action was commenced [citations omitted]…Further, since the mortgage 'passes with the debt as an inseparable incident' [citations omitted], the validity of an assignment of the mortgage is irrelevant to the issue of standing [citations omitted]." This decision is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_05948.htm.

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Mortgage Foreclosures/Subordinate Interests

An action was commenced to foreclose a mortgage on six properties in Brooklyn. New York City's Department of Housing Preservation and Development ("HPD") was named a party defendant as the holder of a mortgage executed on the same day as the mortgage being foreclosed. In an Order dated April 21, 2021, the Supreme Court, New York County, dismissed the action as against HPD, holding that the HPD mortgage was equal in priority and not subordinate to the Plaintiff's mortgage. The Court's Opinion stated that "an equal mortgage should be treated similar to a superior mortgage since it is not extinguished by the foreclosure of plaintiff's mortgage as a matter of law."

The Plaintiff thereafter sought leave to file an amended complaint to name NYC and HPD as defendants due to their being parties to a Regulatory Agreement, related to the HPD mortgage, which was subordinate to the Plaintiff's mortgage under the terms of a Subordination Agreement. The City and HPD countered that, pursuant to the Subordination Agreement, the Regulatory Agreement is not subordinate to the mortgage "until all conditions with the Subordination Agreement are met, including but not limited to, the sale of the Premises in foreclosure."

The Court granted the Plaintiff's motion for summary judgment on its action to foreclose its mortgage, subject to the Regulatory Agreement until the properties encumbered were sold at the foreclosure sale, as set forth in the Subordination Agreement. Zebra Stripes Catchall LLC v. Quincy Marcus 504 Development Corp., 2021 NY Slip Op 32167, decided November 1, 2021, is posted at https://www.nycourts.gov/reporter/pdfs/2021/2021_32167.pdf.

Mortgages/Capitalized Interest

The Supreme Court, New York County, held that a mortgage otherwise senior in lien to the mortgage being foreclosed was subordinate to the Plaintiff's mortgage to extent of amounts added to the obligation secured by the senior mortgage by a loan modification agreement. Relying on Real Property Law Section 291 ("Recording of conveyances"), the senior mortgagee contended that the addition of interest and other charges to the principal did not impair the priority of its lien. The relevant part of RPL 291 ("Recording of conveyances") is the following:

> *"[n]otwithstanding the foregoing, any increase in the principal balance of a mortgage lien by virtue of the addition thereto of unpaid interest in accordance with the terms of the mortgage shall retain the priority of the original mortgage lien as so increased provided that any such mortgage instrument sets forth its terms of repayment."*

According to the Court,

> *"[t]hat section is inapplicable here as it expressly refers to increases in principal to 'a mortgage', singular, and makes no reference to subsequent agreements. Most significantly, that section is limited to instruments where the 'terms of the mortgage' provide for addition to principal and that the mortgage contains the repayment terms. The 1998 mortgage contains neither provision. Even if the Court were to find the provision applicable, it only references increases in principal for 'unpaid interest', not escrow advances and attorneys' fees that are also claimed here."*

Home Loan Investment Bank, F.S.B. v. Padilha, 2021 NY Slip Op 32222, decided November 5, 2021, is posted at http://www.nycourts.gov/reporter/pdfs/2021/2021_32222.pdf.

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Pandemic/"CEEFPA"

In an action to enforce a lien against a manufactured home, the Defendants, purportedly pursuant to New York State's COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEFPA"), as amended (Chapter 381 Laws of 2020; Chapter 104 Laws of 2021), provided a "hardship declaration" to the Sheriff serving a seizure order. A hardship declaration may, under CEEFPA, delay eviction proceedings and stay foreclosures until "at least August 31, 2021". The Supreme Court, Clinton County, holding CEEFPA does not apply to manufactured homes, directed the Sheriff's Department to enforce the Court's Order of Seizure. According to the Court, "CEEFPA does not apply to chattel, such as a manufactured home…[T]he legislation was intended to apply to commercial and residential real property [citation omitted]." Centier Bank v. Beshaw, 2021 NY Slip Op 51189, decided December 10, 2021, is posted at https://www.nycourts.gov/reporter/3dseries/2021/2021_51189.htm.

Pandemic/Leaseholds

A landlord sued its tenant for rent owed and for use and occupancy. The tenant, which vacated the premises in September of 2020, asserted that the pandemic and related shutdown orders abrogated his ability and, therefore, his obligation to pay rent and/or use and occupancy. The Supreme Court, Kings County, granted the lessor's motion for summary judgment, stating that "Tenant has provided no authority to support his contention that the COVID-19 pandemic abrogates Tenant's obligation to pay rent and/or use and occupancy." 39th Investors LLC v. Krivoruk, 2021 NY Slip Op 32274, decided November 9, 2021, is posted at http://www.nycourts.gov/reporter/pdfs/2021/2021_32274.pdf.

In Ruxton Tower Limited Partnership v. Central Park Taekwondoo, LLC, 2021 NY Slip Op 32583, decided September 3, 2021, the Defendant is the tenant under a lease entered into in 2010 which, as extended, expires in 2025. The Defendant, which operated a martial arts school, continued to pay rent through August 2020 but, due to the Governor's Executive Orders requiting the closing of gyms and fitness facilities as of March 16, 2020, the Defendant surrendered possession as of August 31, 2020. The Plaintiff commenced an action to recover, inter alia, rent owed since August 2020. The Supreme Court, New York County, granted the Plaintiff's motion to dismiss the Defendant's counterclaims and various affirmative defenses.

The Court held the Defendant was not entitled to a rent abatement; the lease's casualty clause "does not contemplate loss or use of the premises due to a pandemic or attendant government lockdown." Second, as to the claim of frustration of purpose, while the lease required that the premises be used as a Taw Kwon Do School, the lease also provided that the premises could be used "for any permitted use that does not violate the terms of any other lease within the building…and does not directly compete with the business of any other tenant within the building…" Further, as to the claim of frustration of purpose, "the parties did not contract to excuse the defendant's rent payments if it were shut down due to government orders…" and "[a] five-month closure [under the Executive Orders until the tenant surrendered the premises] out of a fifteen-year lease did not frustrate the overall purpose of the lease."

As to the claim of impossibility of performance, the conditions allegedly rendering the tenant's performance impossible were foreseeable and the means of performance under the lease were not "destroyed by the pandemic and shutdown orders." Lastly, the Defendant claimed that the lease should be reformed because of the parties mutual mistake of not providing for the possibility of a pandemic in the lease. No facts were pled "supporting an inference that the alleged mistake existed at the time of contract." Counterclaims seeking to recover attorneys' fees and expenses pursuant to the lease were also dismissed. This decision is posted at https://www.nycourts.gov/reporter/pdfs/2021/2021_32583.pdf.

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Partition

The Supreme Court, Westchester County, held that a partition action should not be stayed pending appointment of a guardian ad litem for the deceased life tenant, also a Defendant in the action, against whom monetary claims had been asserted. Citing subsection (b) of CPLR Section 1015 ("Substitution upon death"), the Court found that the death of the life tenant "does not affect the merit of this partition action…[and, therefore,] "the action should proceed without a substitution and with the decedent's death merely noted on the record [citation omitted]." Under Section 1015(b), "[u]pon the death of one or more of the plaintiffs or defendants in action in which the right sought to be enforced survives only to the surviving plaintiffs or the surviving defendants, the action does not abate. The death shall be noted on the record and the action shall proceed." McMahon v. Wangenstein, 2021 NY Slip Op 51124, decided December 1, 2021, is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_51124.htm.

In an action to partition real property owned as joint tenants by a divorcing couple the Supreme Court, New York County, awarded the Defendant spouse only 20% of the amount of the appreciation of the property during the period of the joint tenancy. The Appellate Division, First Department, affirmed the lower court's ruling. That the parties were joint tenants did not, in a partition action which is equitable in nature entitle the Defendant as a matter of law to 50% of the apartment's current value. According to the Appellate Division, "…that plaintiff made all of the financial contributions toward the apartment during the joint tenancy, paying for carrying costs, mortgage, and extensive renovations, among other things, to warrant defendant 20% of the apartments increase in value during the joint tenancy for his non-monetary contributions [citations omitted]." Gulick v. Beckett, 2021 NY Slip Op 06081, decided November 9, 2021, is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_06081.htm.

Rye, Westchester County/Sewer Laterals

The City of Rye, pursuant to its Local Law 4-2021, announced that beginning January 1, 2022 it will be enforcing the requirement under the local law that each property owner intending to transfer title to real property in the City obtain a Discharge Compliance Certificate from the City's Building Department. A certification from a licensed plumber that the private sewer line (the "lateral") leading from the building on the property to a public sewer line has been inspected, accompanied by a video recording of the lateral to allow the Department to determine if a "corrective measure" is to be completed, must be submitted. A Notice issued by the Building Department on November 17, 2021, Local Law 4-2021, and a Sewer Discharge Compliance Application are located at the following links:

637727545003476700 (ryeny.gov)

LF1344513.pdf (ecode360.com)

Permit Type (Check Applicable Box): (ryeny.gov)

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Uniform Commercial Code/Mezzanine Loans

The Appellate Division, First Department, affirmed the ruling of the Supreme Court, New York County, dismissing a cause of action claiming that the process for the auction sale for the enforcement of a security interest for a mezzanine loan was not commercially reasonable. The Appellate Division noted, among its other findings, that a period of two months between the dates of the default and the auction was not insufficient as a matter of law; the requirement that the sale contract be executed and the deposit under the contract be paid at the auction was not commercially unreasonable; and it was not unreasonable to select a bidder with a deposit check in-hand over one that did not. Further, the modification of the contract with the successful bidder to allow extra time for HUD approval was allowed by bidding instructions that "the Secured Party may elect to accept any comments to the contract of sale from the [successful bidder] in its discretion. The resale price two years later did not establish that the price paid at the auction was "'so inadequate as to shock the court's conscience'… absent a showing that these were indicative if the value at the time of the auction." Atlas MF Mezzanine Borrower LLC v. Macquarie Texas Loan Holder LLC, 2021 NY Slip Op 06070, decided November 9, 2021, is posted at http://www.nycourts.gov/reporter/3dseries/2021/2021_06070.htm.

Michael J. Berey
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