

# Case Law Shorts

June 5, 2013

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Case Law Shorts 6/5/13 *New York Appellate Division, Second Dept.*

**Title Insurance/Post-Policy Event vs. Post-Closing Boundary Line Agreement and Pre-Closing Settlement Agreement:** Purchaser bought property in 2002 and bought a title insurance policy. Thereafter, in 2003, a boundary line agreement affecting the insured parcel, and several other parcels, was recorded which conveyed portions of the affected parcels to the county in exchange for the county's undertaking beach maintenance for the affected parcels. The boundary line agreement was the culmination of litigation that began in 1984 and ended with a settlement agreement in 1994. Purchaser sued title insurer for breach of contract. Insurer moved for summary judgment based upon a policy exclusion, 3(d) – defects attaching or created after the date of policy. The Supreme Court, Suffolk County, granted for title insurer but the Second Dept. reversed stating that the defect attached, not when the boundary line agreement was recorded in 2003, but when it was created in 1996. Nastasi v County of Suffolk, Appellate Division, Second Department, 2013 NY Slip Op 03824, May 29, 2013 [opinion](#)

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**Action to Set Aside Transfer of Real Property/Step Daughter vs. Wife/Undue Influence vs. Competence/Estate Planning:** Decedent executed estate planning documents that transferred real and personal property to his wife. Decedent's daughter from a prior marriage, sued to set aside the transfers maintaining that the wife was abusive and "wore" the decedent down until he signed the documents without reading them. Defendant moved for summary judgment and the Surrogate's Court, New York County denied. Defendant appealed arguing that plaintiff relied upon hearsay evidence and further supported its motion by pointing out that plaintiff affirmed decedent's competence. However, the First Dept. sustained stating that hearsay evidence, for summary judgment opposition, may be considered where "it is not the only proof submitted". Further, the Court stated that plaintiff's case sought to prove undue influence - that defendant overcome decedent's free will... "However, plaintiffs do not claim that the decedent was incompetent; the allegations are that the decedent suffered a 'cognitive impairment,' that defendant committed forgery, and deceived or abused and importuned the decedent, wearing him down to the point that he signed without reading the documents. Thus, viewed in the light most favorable to plaintiffs (see e.g. *Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]), that the decedent, after the fact, asserted that he would not have signed the documents had he known what was in them does not defeat the claim of undue influence." Bishop v Maurer, Appellate Division, First Department, 2013 NY Slip Op 03771, May 28, 2013 [opinion](#)

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**Mortgage Foreclosure/Mechanic's Lien/Bank's Breach of Contract to Fund Building Loan/Estoppel Certificates:** Bank foreclosed a mortgage and mortgagor counterclaimed for fraud and breach of contract arguing that bank orally agreed to extend a due date and failed to make continuing disbursements for construction. The Supreme Court, New York County, dismissed the counterclaims and the First Dept.

sustained. As to the fraud claim, the Court stated that mortgagor could not have reasonably relied upon any oral agreement inasmuch as the loan documents require all modifications to be in writing. As to breach of contract for failing to fund the project, the Court pointed to an estoppel signed by mortgagee disclaiming any claims or defenses. Mortgagee also maintained that bank breached by failing to provide funds to discharge a mechanic's lien – a purported bank representation for advance of funds contained in an estoppel certificate. However, the Court refused to construe the language to create any affirmative obligation by the bank. Orchard Hotel, LLC v D.A.B. Group, LLC, Appellate Division, First Department, 2013 NY Slip Op 03778, May 28, 2013 [opinion](#)

Remarks, Questions? contact [Johnny D. Hall, Esq.](#)