Case Law Summaries

NY CASE LAW SHORTS

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PRACTICE AREAS

REAL ESTATE

New York Court of Appeals

February 21, 2012
Total Rent Abatement/Deminimis Entry By Landlord: Tenant operated a movie theater and landlord entered the premises without consent in order to install a cross beam to stabilize construction of upper floors. The beam caused a change in foot traffic and detracted from theater asthetics. Tenant, claiming a partial eviction by the landlord, refused to pay any rent and sought an injunction to remove the beam. At a bench trial, it was established that the total leased space was between 15K-19K square feet and that the beam occupied 12 square feet. The Supreme Court entered judgment for the landlord, stating that the deminimis taking did not justify full rent abatement. The Appellate Division recited the rule that any unauthorized taking permits a full rent abatement and that there is no recognized "deminimis taking" exception. However, the Court, under these circumstances, sent the case back for a determination of actual damages. Thereafter, tenant's experts failed to establish actual damages and the Supreme Court did not award any damages to tenant. The Appellate Division sustained. The Court of Appeals also sustained and further, carved out a deminimis exception…"Plaintiff would like us to adopt an all or nothing rule that would allow for full rent abatement. However, applying the principle that a 'landlord is not permitted to apportion his own wrong' (Fifth Ave. Bldg Co., 221 NY at 373) and a rule that any minimal intrusion warrants a total abatement to a case such as this, involving only a trivial taking, 'has little but age and inertia to recommend it' (Friedman on Leases § 29:2.4 at 29-15 [5th ed])." "That the flow of foot traffic was minimally impeded and the cross-bracing was unattractive was merely a trivial interference with the tenant's use and enjoyment of the premises. The interference by the landlord here is thus de minimis and '[n]either injunctive nor monetary relief is warranted' (Wing Ming Props. [U.S.A.] v Mott Operating Corp., 79 NY2d 1021, 1023 [1992])." Eastside Exhibition Corp. v 210 E. 86th St. Corp., 2012 NY Slip Op 01321, Court of Appeals, February 21, 2012.

February 21, 2012
In Rem Tax Foreclosure/Constitutional Due Process/Notice of Foreclosure Action Notice vs. Notice of Redemption: Owner of vacant land moved in 2000 but continued to receive tax bills at the prior address. In 2004, owner reported the change of address in person at the assessor's office while paying the taxes. Thereafter, Owner failed to pay the 2006 tax. County filed its delinquency list and in 2007, began an in rem foreclosure and provided notice by publishing the foreclosure in five newspapers over a two month period; posting notice at the courthouse and in two other conspicuous places; and sent notice by certified mail to the owner. However, the county had failed to update the 2004

address and the notice was returned as unclaimed. Owner did not respond to the action and a judgment was entered for the county and a deed was delivered. Thereafter, the county sent certified mail to old address advising the owner of its right to repurchase the property. The mail was returned to the county again. The property was sold at auction and the owner sought to set aside the sale. The Supreme Court ruled, as the parties conceded, that the published foreclosure notice satisfied constitutional due process but that the subsequent redemption notice was insufficient. Owner argued that 1) the county's redemption policy created a constitutionally protected property right and 2) that the mailed notice of the redemption violated that right - owner maintained that the county had an obligation to take other steps to provide notice after receiving the returned mail. Owner cited a US Supreme Court case wherein the Court overturned a sale because the state received undeliverable mail during its taking process but failed to take "additional reasonable steps". The Appellate Division sustained but the Court of Appeals reversed, distinguishing the US Supreme Court case in that the notice provision at stake there was for the actual taking process itself, whereas the issue with notice in the instant case pertained to the redemption process, not the action. As to the owner's argument that the county's redemption policy created a property right, the Court stated that such policy was a county courtesy…"Put another way, the release option was a courtesy extended to the previous landowner, but its mere availability should not be equated with the establishment or guarantee of a property right. As reflected by the plain language of the local law and the mailed notice, a release option 'may' be offered and '[t]he Finance Office cannot guarantee that the Legislature will approve the sale.'" Matter of Matter of Orange County Commr. of Fin. (Helseth), 2012 NY Slip Op 01324, Court of Appeals, February 21, 2012.

New York Case Law Shorts by Johnny D. Hall. Questions or Comments? email: johnny@hallesq.com

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