

Case Law Shorts

June 25, 2013

Case Law Shorts 6/25/13 *New York Appellate Division, Second Dept.*

Boundary Line Dispute/Curb, Hedge and Fence/"Doctrine of Practical Location": Plaintiff and defendant share a common boundary line. Defendant's driveway curb encroaches onto Plaintiff's property along with a hedge and a fence. Plaintiff moved for summary judgment to establish the boundary as set forth in the deeds and for an injunction. Defendant opposed arguing that the "Doctrine of Practical Location" established the boundary line along the line of encroachments. The Supreme Court, Westchester County, denied vs. plaintiff and the Second Dept. sustained... "Pursuant to the doctrine of practical location, '[a] practical location of a boundary line and an acquiescence therein for more than the statutory period is conclusive of the location of such boundary . . . although such line may not in fact be the true line according to the calls of the deeds of the adjoining owners' (McMahon v Thornton, 69 AD3d 1157, 1160 [internal quotation marks omitted]; see Katz v Kaiser, 154 NY 294, 298; Baldwin v Brown, 16 NY 359, 362-364; Kaneb v Lamay, 58 AD3d 1097, 1098). '[A]pplication of the doctrine requires a clear demarcation of a boundary line and proof that there is mutual acquiescence to the boundary by the parties such that [*2]it is definitely and equally known, understood and settled" (McMahon v Thornton, 69 AD3d at 1160, quoting Robert v Shaul, 62 AD3d 1127, 1128; see Tesone v Hoffman, 84 AD3d 1219, 1220)." The Court stated that there is a question of fact as to whether plaintiff's predecessor acquiesced to the use for a period of more than 10 years. Jakubowicz v Solomon, Appellate Division, Second Department, 2013 NY Slip Op 04578, June 19, 2013

[opinion](#)

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Action to Set Aside Deed Executed by Managing Member: LLC had three members. Managing Member executed a deed to another LLC that managing member also managed. The two other members, representing a majority interest in LLC, voted to replace managing member and thereafter, executed a deed for the same premises to purchaser. Purchaser discovered managing member's deed to other LLC and brought suit for specific performance. The two other members joined plaintiff's request for specific performance and to set aside the deed to other LLC. Other members maintained that managing member did not have authority to effectuate the conveyance. The Supreme Court, Kings County, denied plaintiff's motion for summary judgment and the Second Dept. sustained citing the language in the operating agreement... "The Limited Liability Company Law states that '[e]xcept as provided in the operating agreement,' a vote of at least the majority in interest of the members entitled to vote is required to approve a transfer of substantially all of the assets of a limited liability company (Limited Liability Company Law § 402[d][2]; see Manitaras v Beusman, 56 AD3d 735, 736). Here, article 11 of the operating agreement for Brothers LLC expressly authorized the managing member to 'make decisions relating to: the . . . sale . . . or other disposition of the Property.' Accordingly, contrary to the Ward defendants' contention, they failed to make a prima facie showing that the transfer of the property by Lewis, as the managing member, was unauthorized under the operating agreement or Limited Liability Company Law § 402(d)(2)." Ahmed v Fulton St. Bros. Realty, LLC, Appellate Division, Second Department, 2013 NY Slip Op 04564, June 19, 2013.

[opinion](#)

-Johnny D. Hall, Esq.