



# SAFE HARBOR TITLE

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## Contracts of Sale

The purchasers under a contract for the sale of real property in Brooklyn sent a notice to the seller setting a time of the essence closing date. In response, the seller purported to cancel the contract, in a letter asserting that he was unable to transfer title as required. The purchasers commenced an Action for specific performance; the Supreme Court, Kings County, granted the Plaintiffs' motion for summary judgment. The Supreme Court's Order was affirmed by the Appellate Division, Second Department. According to the Appellate Division,

"...the contract did not permit the defendant [seller] to cancel the contract where the defects in title were either waived by the plaintiffs or if the defendant had expressly agreed to remove, remedy, or discharge such defects [citation omitted]. The record demonstrates that the defendant had expressly agreed to discharge or remedy all mortgages, government violations and orders, and taxes, and the plaintiff timely waived the remaining encumbrances against the property. Therefore, the defendant's purported cancellation of the contract prior to the law date set by the plaintiffs' time of the essence closing notice was not a valid cancellation, but an anticipatory repudiation of the contract [citations omitted]"

*Herzog v. Marine, 2019 NY Slip Op 01574, decided March 6, 2019*



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## Equitable Subrogation / "Voluntary Payment" Doctrine

Nicolas Auvray and Milton Rainford, real estate investors, paid the NYCTL 2014-A Trust and the NYCTL 2015-A Trust (collectively, "the Trusts") amounts required to prevent the foreclosure of tax liens on a certain property. They then assigned any rights accruing to them from the payment of the tax liens to All Saints 2081 LLC ("2081 LLC"). 2081 LLC sought a ruling that it was an equitable subrogee and, as such, held an equitable lien on the property with the same priority as the original liens held by the Trusts.

The Supreme Court, New York County, dismissed all claims asserted by 2081 LLC, holding that 2081 LLC was not entitled to equitable subrogation or to an equitable lien due to application of the voluntary payment doctrine. That doctrine "bars recovery of payments voluntarily made with full knowledge of the facts and in the absence of fraud or mistake of material fact or law [citations omitted]". The tax lien payments were voluntarily made by the investors, not to protect their interests. At no time have they had any interest in the property.

*All Saints Cooperative Realty Corporation v. All Saints Co Realty Corporation, 2019 NY Slip Op 30684, decided March 18, 2019.*



- John C. Meyer.....President
- Gina Lundy.....Vice President
- Deanna Whitney.....Vice President
- Lori Colletti.....Of Counsel



# Lien Law / Itemization

Petitioner, the owner of real property against which a mechanic's lien was filed, moved to have the Supreme Court, Kings County, require that a mechanic's lienor provide a revised itemized statement pursuant to Lien Law Section 38 ("Itemized statement may be required of lienor") or, alternatively, that the Court dismiss the lien. The Court denied the motion, the Respondent mechanic's lienor sufficiently itemized all labor costs by submitting statements setting forth the date, name, hours worked and rate of pay for each worker and provided an itemized list of all materials. There is no authority requiring the lienor to provide "supplier purchase orders and/or invoices detailing the quantity, price and date of delivery of all materials", as requested by the Petitioner.

*Matter of Red Hook 160 LLC v. Borough Construction Group LLC, 2019 NY Slip Op 30827, decided March 19, 2019.*

GOING DOWN TO PA-QUA-TUCK,  
GONNA JOIN IN  
A ROCK AND ROLL BAND

**BRADSTOCK**  
XXVI

2 DAYS OF MUSIC  
BANDS ON  
3 STAGES

8/31 & 9/1  
CAMP-PA  
QUA-TUCK  
2 CHET SWEZEY RD,  
CENTER MORICHES, NY  
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# Eminent Domain / "Prior Public Use"

The City of Yonkers adopted a resolution to condemn, in furtherance of an Urban Renewal Plan, property in Yonkers owned by New York City and used as a bus depot by the Metropolitan Transportation Authority and the MTA Bus Company. New York City commenced a proceeding pursuant to Eminent Domain Procedure Law Section 207 ("Judicial review") to review Yonkers' determination. The Appellate Division, Second Department, although finding that there were legitimate public purposes to support the proposed condemnation, held that the condemnation was prohibited under the doctrine of "prior public use". "Under the doctrine of prior public use, land already devoted to a public use may not be condemned absent legislative authority for the particular acquisition at issue [citations omitted]".

Land that is devoted to a public use may be condemned without legislative authority when the new use does not materially interfere with the existing public use. The Appellate Division found that condemning this property in furtherance of the Urban Renewal Plan would materially interfere with the existing use of the property as a bus depot.

*Matter of City of New York v. Yonkers Industrial Development Agency, 2019 NY Slip Op 02087, decided March 20, 2019.*



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