



SAFE HARBOR TITLE

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Regulation 208 - Game Back On!

On January 15, 2019 the Appellate Court ruled in favor of the New York Department of Financial Services which, unfortunately, reverses the Trial Court order with minor amendments. Although the Appellate Court's order remands the case to the Trial Court for further proceedings, Regulation 208 should, once again, be considered effective, with the *exception* of two sections listed below:

- 1) Section 228.5(a) (1)-(3), imposing 200% caps on patriot, bankruptcy and municipal/departmental searches (not conducted and billed by a municipality); and
- 2) Section 228.5(d) (1)-(2) - prohibiting direct payments by applicants to closers (gratuities) and restrictions on closers charging for remitting payoffs.

Closer gratuities and pick ups saved!

Equitable Title / Installment Sale Contracts

In 2013, the Plaintiffs entered into a contract to sell real property to the Defendant. The contract of sale provided for the Defendant to make a down payment, take possession of the property and pay the balance of the purchase price over thirty years, at the end of which period the Plaintiffs would deliver a warranty deed. The Defendant was required to pay insurance premiums and real estate taxes until title was conveyed. If the Defendant defaulted in his payment obligations, and the default was not cured, the Defendant would forfeit all monies paid as liquidated damages.

In 2015, the Plaintiffs became aware that the Defendant was using the premises to grow marijuana. The Plaintiffs alleged that they had incurred expenses due to damage to the property and commenced an Action to recover damages for breach of contract. In 2016, the Defendant ceased making payments under the contract of sale; after the Defendant failed to cure his default, the Plaintiffs moved for summary judgment.

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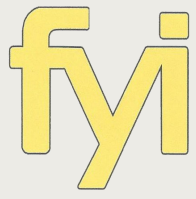


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Notices of Pendency / Foreign Actions

Although litigation was not commenced in New York State, the Plaintiffs in a lawsuit filed in an Illinois state court involving five parcels in Stony Point, New York e-filed a notice of pendency against each parcel in Rockland County. The Supreme Court, Rockland County, granted the Defendants' motion to dismiss the notice of pendency. Under CPLR Section 6501 ("Notice of pendency..."), "[a] notice of pendency may be filed in any action in a court of the state of the United States in which the judgment demanded would affect the title to, or the possession, use or enjoyment of real property...". The Court held that "of the state" in Section 6501 referenced New York courts. Therefore, "[p]laintiffs have improperly invoked a provisional remedy that is not available to them because they do not have any actions pending in any court in New York".

New Planet Energy Development, LLC v. MBC Contractors, Inc., 2018 NY Slip Op 28281, decided September 11, 2018.

Equitable Title / Installment Sale Contracts

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The Supreme Court, Rockland County, granted the Plaintiffs' motion. The Appellate Division, Second Department, reversed the lower court's Order. According to the Appellate Division,

"[t]he defendant, having executed a contract for the purchase of real property from the plaintiffs, and having made substantial payments to the plaintiffs pursuant to the contract, held equitable title to the property...Under these circumstances, upon the defendant's default in making payments under the contract, the plaintiffs could not seek relief pursuant to the provisions of the rider that provided for the contract to be deemed null and void, the premises vacated, and the defendant to forfeit all monies paid as liquidated damages. The plaintiffs were required to proceed to foreclose the defendant's equitable title or bring an action at law for the purchase price". [citations omitted]

Russell v. Pisana, 2018 NY Slip Op 05789, decided August 15, 2018.

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