



July 2019

e-Beacon

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State Transfer Tax Increases

New York State's Budget Bill, enacted as Chapter 59 of the laws of 2019, amended Tax Law Sections 1402 ("Imposition of tax") for the state's Real Estate Transfer Tax, and 1402-a ("Additional tax") for the Mansion Tax, and added to the Tax Law new Section 1402-b ("Supplemental tax in cities having a population of one million or more") which affects only New York City. These provisions apply to conveyances made on or after July 1, 2019; they do not affect conveyances made pursuant to binding written contracts entered into on or before April 1, 2019.

New York State's Department of Taxation and Finance has issued as a Technical Memorandum (TSB-M-19(1) R) a "Summary of Amendments to New York State's Real Estate Transfer Taxes", dated June 11, 2019. This Memorandum is posted to the Department's website at:

https://www.tax.ny.gov/pdf/memos/real_estate/m19-1r.pdf

A new Form TP-584-NYC, the "Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certification of Exemption from the Payment of Estimated Personal Income Tax for the Conveyance of Real Property Located in New York City", referenced in the TSB, is posted to the Department's website at:

https://www.tax.ny.gov/pdf/current_forms/property/tp584nyc_fill_in.pdf

Instructions for Form TP-584-NYC are posted at:

https://www.tax.ny.gov/pdf/current_forms/property/tp584nyci.pdf

A new Form TP-584.6-NYC. A "Real Estate Transfer Tax Return Schedule of Apportionment", to be attached to Form TP-584-NYC "for the conveyance of multiple real properties located in New York City" on and after July 1, 2019, is posted to the Department's website at:

https://www.tax.ny.gov/pdf/current_forms/property/tp584_6_nyc.pdf



Powers-of-Attorney / Ratification

Mortgages executed on October 8, 2007 and October 15, 2007 and a consolidation agreement, were signed on behalf of Defendant OKI-DO Ltd. ("OKI") by Edward Stein ("Stein") pursuant to a power of attorney, purportedly signed on October 4, 2007 by Dr. Kazuko Hillyer ("Dr. Hillyer"), the sole shareholder, officer and director of OKI. The Supreme Court, Suffolk County, noted that this power of attorney "revoked all previous authorizations from OKI to any purported agents".

In the foreclosure of those mortgages, OKI argued that the October power of attorney was a forgery. Dr. Hillyer had, however, given Stein a durable power of attorney in July of 2007 which authorized Stein to "take such other actions relating to said real property and the sale thereof as my attorney-in-fact may deem advisable and: Execute all Corporate transactions of OKI-DO LTD, a New York Corporation, with, on my behalf, as President".

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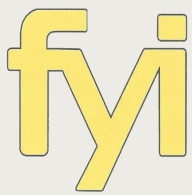


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Integrity

Commitment

Reliability



Recording Act / Intervention in Foreclosures

Regional Real Estate Defect Specialists, Ltd. acquired title to property being foreclosed on October 7, 2014 and reconveyed the property to Eastern Region Real Property Corp. ("Eastern") on February 12, 2018. A notice of pendency for the foreclosure was filed on January 7, 2013.

Eastern requested leave to intervene in the foreclosure, seeking to have the Order of Reference vacated or, in the alternative, to have the hearing on the Plaintiff's motion for a judgment of foreclosure and sale adjourned to afford it the opportunity to respond and seek dismissal of the complaint. The Supreme Court, Suffolk County, denied Eastern's motion, and the Court granted a judgment of foreclosure and sale and directed the distribution of sale proceeds. According to the Court,

"[i]n the case at bar, Eastern acquired title by Bargain & Sale Deed with notice of the lis pendens as well as the instant foreclosure matter...Eastern is certainly not a good faith purchaser for value. Eastern cannot claim the protection afforded by RPL Section 290, the New York Recording Act...[I]ts failure to be a good faith purchaser for value precludes its intervention to deny Plaintiff being granted an order of judgment of foreclosure [citation omitted]...Eastern had no interest in the subject property at or prior to the commencement of the instant foreclosure action".

U.S. Bank National Association v. Barra, 2018 NY Slip Op 33450, decided December 31, 2018.



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"Powers-of-Attorney / Ratification" Continued from Page 1

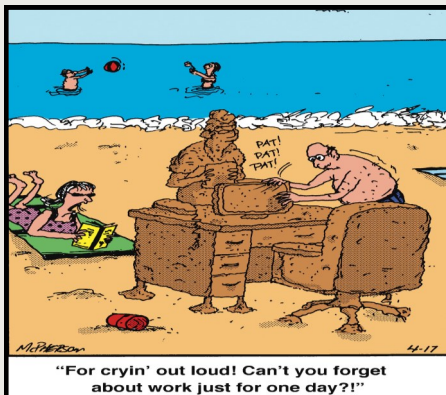
The Court held that although the Plaintiffs had failed to prove that Stein had apparent authority under the October 2007 power of attorney, Stein had actual authority to act on behalf of OKI under the July 2007 power of attorney. The Court further found that Dr. Hillyer was aware of the mortgages by no later than February of 2008 and, failing to take any action, "OKI ratified Mr. Stein's actions and became bound by it". The Court directed the Plaintiffs to submit an order of reference and a judgment of foreclosure. Sklavos v. OKI-DO Ltd., 2018 NY Slip Op 50920, decided June 18, 2018, can be found at 2019 N.Y. Misc. LEXIS 427 and at http://nycourts.gov/reporter/3dseries/2018/2018_50920.htm.

The Defendant thereafter moved under Civil Practice Law and Rules ("CPLR") Section 4404 ("Post-trial motion for judgment and new trial") to have the Court set aside its decision and to enter judgment on its behalf. The Defendant's motion was denied. According to the Court,

"[h]aving failed to demonstrate that the October 4, 2007 Power of Attorney revoked the July 3, 2007 Power of Attorney, the Defendant presented no evidence that the July 3, 2007 Power of Attorney had been revoked by Dr. Hillyer...In the absence of proof of revocation, Plaintiffs were clearly authorized to rely on the [July 3, 2007] Power of Attorney [citations omitted]".

This decision, 2019 NY Slip Op 30254, dated January 28, 2019.

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