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March 2019

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Deeds / False Pretenses

A decedent's estate, including real property in Brooklyn, was left to his son and to his daughter, Bernice. The son predeceased the decedent and was survived by his three adult children. Beatrice executed a deed conveying the property to herself as the sole heir and executed a mortgage on the property. The Petitioner, one of the children of the decedent's son, commenced a proceeding to invalidate the deed and the mortgage. The Surrogate's Court, Kings County, granted the Petitioner's motion for summary judgment, holding that the deed and the mortgage were void ab initio. The Appellate Division, Second Department, affirmed the lower court's ruling. According to the Appellate Division, "[a] deed based on forgery or obtained by false pretenses is void ab initio, and a mortgage based on such a deed is likewise invalid [citations omitted]."

Matter of Bowser, 2018 NY Slip Op 08927, decided December 26, 2018.



Adjoining Owner / License for Access

The owner of a building under renovation sought an Order compelling the owner of an adjoining property to provide the petitioner access to the other property to enable the digging of a trench to install of subgrade waterproofing. Under Real Property Actions and Proceedings Law ("RPAPL") Section 881 ("Access to adjoining properties to make improvements or repairs"),

"[w]hen an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make such improvements or repairs may commence a special proceeding for a license so to enter... The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry".

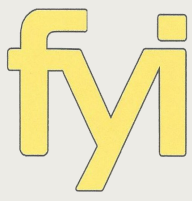
The Supreme Court, Kings County, denied the Petitioner's motion for an Order under Section 881. According to the Court, the Petitioner "has failed to demonstrate the reasonableness and the necessity for a license...In any event, the scope of RPAPL 881 is limited to granting an applicant a license to access a neighboring property to perform work on the applicant's own property".

840 Realty Group, LLC v. Wing Yee Lee, 2017 NY Slip Op 32949, decided August 18, 2017, was posted by the New York State Law Reporting Bureau on January 4, 2019.

Integrity

Commitment

Reliability



Contracts of Sale / Property Condition Disclosure Statement ("PCDS")

After the sale of a home in Broome County closed in 2008, the purchasers noted current and prior water infiltration in the basement of the house and mold and other damage to the foundation. During a flood in the region in 2011, water poured into the basement. They sued the seller for breach of contract, fraud/ intentional misrepresentation, negligent misrepresentation and, the seller having provided the buyer a PCDS under Real Property Law ("RPL") Article 14 ("Property condition disclosure in the sale of residential real property") without disclosing water damage, a violation of subparagraph "2" of RPL Section 465. Section 465.2 reads as follows:

"2. Any seller who provides a property condition disclosure statement or provides or fails to provide a revised property conditions disclosure statement shall be liable only for a willful failure to perform the requirements of this article. For such a willful failure, the seller shall be liable for the actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy".

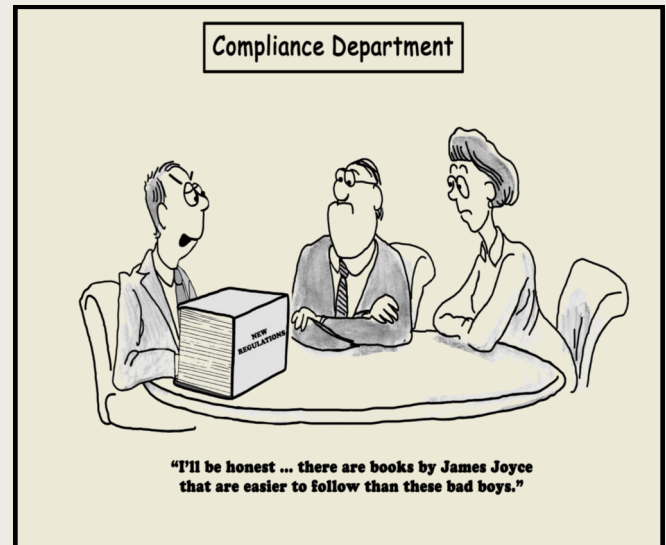
The Supreme Court, Broome County, granted the Defendant's motion for summary judgment dismissing the complaint as to him. (The Plaintiffs also sued their home inspector for malpractice). The Appellate Division, Third Department, affirmed the lower court's ruling. New York follows the doctrine of caveat emptor and the Plaintiffs had not established that the Defendant had actual knowledge of any material property defect when the Defendant signed the PCDS and at the time of the closing. Disclosures required in a PCDS are based on a seller's actual knowledge. Issues related to breach of the contract of sale were not addressed by the Plaintiffs on appeal and were deemed by the Appellate Division to be abandoned.

Kazmark v. Wasyl, 2018 NY Slip Op 08990, decided December 27, 2018.

Courtesy of First American Title

Regulation 208 SNAPSHOT

- ◆ Closer's gratuities and pickups are acceptable
- ◆ Premiums have been reduced by 5%
- ◆ Offering tickets, meals, and parties are not permitted
- ◆ No longer able to offer professional courtesies which include, but are not limited, to the following:
 - ◆ No waiving of charges on title bills
 - ◆ A nominal fee to obtain copies of documents from the Suffolk County Clerk
 - ◆ Rental of our conference room is \$25 per session
 - ◆ Cancellation Fee on any cancelled files is \$250



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