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N.Y. Real Property Law Journal

A publication of the Real Property Law Section of the New York State Bar Association

Actions Speak Louder Than Deeds: How a Neighbor's Silence Rewrote Property Lines

The Job of a Co-op/Condo Lawyer

Court Reforms Guaranty To Correct a Single Word Scrivener's Error and Saves Lender Millions

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Message From the Chair

The state of the real estate markets, historically cyclical, will be hard to predict in the near term. While there is still much volatility in interest rates (both from institutional lenders and private equity funds) there seems to be a heightened appetite for risk-taking by those seeking to propel the markets after a long period of trepidation. Movements by local governments, including loosening zoning and building requirements to encourage housing development and to repurpose abandoned commercial and industrial property, promise to stabilize and open up avenues for investment. At the same time, the new missives being hurled by the federal administration at our international trade partners and adversaries alike, promise disturbances to markets even before they land. The role of the attorney in navigating a challenging world cannot be overestimated as transactions become more complex, but perhaps less regulated, at least at the federal level. New disclosure requirements to the government of ownership in the purchasing entity, if they come into play, may mean restructuring transactions to ease the burden of compliance. New technologies that promise efficiency in decision-making and data gathering must be employed with guarded enthusiasm. As property casualty insurers are leaving communities due to increased threat of natural disasters, the attorney may be called upon to craft alternative risk-shifting arrangements that comport with law and public policy. The Real Property Law Section works to help attorneys stay abreast of such developments in the real property world through the coverage of issues by its many experienced practitioners in a vast array of CLEs and publications, and in particular, the articles and columns in this journal. The RPL Section is also committed to engaging with the public and law students in face-to-face talks as we show by the work of our featured members.

Shelby D. Green

Actions Speak Louder Than Deeds: How a Neighbor's Silence Rewrote Property Lines

By Adam A. Elashker

Ed's Note: This article is one of many insightful pieces published throughout the year on Commentaries on New York Real Property Law, a blog maintained by St. John's Law student members of the New York Real Property Law Journal. Members of the Real Property Law Section are encouraged to explore the full range of content at https://commentariesonnyrealpropertylaw.substack.com.

I. Introduction

On May 8, 2024, in *Czenszak v. Iasello*, the New York Supreme Court, Appellate Division, Second Department, reaffirmed that property boundaries are determined not only by the language of recorded deeds but also by the practical realities of long-term neighborly conduct. The case involved a narrow, triangular strip of land – approximately 4.2 feet wide – lying between the metes-and-bounds boundary specified in the deeds and a physical marker that both parties had relied on for over a decade: a cinder block wall ("the wall").[1]

By recognizing the wall as the boundary both parties had consistently accepted, the Court rejected the rigid confines of recorded deeds in favor of real-world practice. It did so relying on the "practical location doctrine" – a doctrine that is little understood but occasionally used to resolve boundary disputes under New York law.[2]

Although the deeds technically described a different boundary, both parties' uninterrupted use of the wall for over a decade created a de facto boundary. The key legal question was whether the formal, written boundary or the long-established, real-world use of the wall should control. The Court held that the tangible evidence of the wall – combined with more than 10 years of mutual acquiescence – overrode the recorded boundary.[3]

Central to this decision is the doctrine of practical location, which prevents a party from relying on a strict legal description when longstanding, mutually accepted practices have taken shape. The ruling underscores that actual boundary practices – shaped by prolonged, mutual agreement – can sometimes override the language of deeds.

II. Historical and Doctrinal Background

A. Traditional Framework

Traditionally, property boundaries were established through land surveys and the legal descriptions contained within deeds mirroring such descriptions. These methods aimed to create predictability and certainty in property transactions, safeguarding against future disputes. Deeds have long been viewed as the primary evidence of ownership, providing legal clarity and protection.[4] However, sometimes deeds alone do not capture the reality of land use, leading to conflicts between the written boundary lines and the boundaries formed through practical, longstanding, real-world use.

B. Emergence of De Facto Practices

Over time, neighbors' actual use of land may deviate from the technical descriptions in deeds. In many instances, a physical marker – like the wall in *Czenszak* – becomes the accepted boundary through consistent and long-term usage, even if it conflicts with the recorded line.[5]

Although early legal principles such as adverse possession focused on boundary disputes under hostile and exclusive occupation, New York's legal structure recognized the need for a doctrine accommodating mutual, non-adversarial practices.[6] Accordingly, the doctrine of practical location emerged to address cases where neighbors' long-term, cooperative conduct creates a de facto boundary.[7] Under New York law, if a physical marker – like the wall in *Czenszak* – is

Adam A. Elashker is a 3L student at St. John's University School of Law and an articles and notes editor for the *N.Y. Real Property Law Journal*. This article builds upon and gives due credit to earlier work done by *Journal* students, including Dereck J. Chavez, "The Practical Location Doctrine: Your Neighbor Can Steal More Than Just Your Wifi"; Patrick J. Naczi, "*Czenszak v. Iasello*: The Doctrine of Practical Location, Its History and How It Is Applied Today in New York"; and Nicholas Treibman, "When a 'Fake' Boundary Becomes Real: *Czenszak v. Iasello* and the Doctrine of Practical Location" (all articles on file at St. John's Law School).

mutually accepted by neighbors (or their predecessors) for more than the 10-year statutory period, it becomes conclusive evidence of the legal boundary.

C. Core Elements of the Doctrine of Practical Location

Two essential elements constitute the doctrine: (1) a clear and permanent physical marker and (2) mutual acquiescence for a period exceeding 10 years by the parties or their predecessors.[8] The doctrine also has an estoppel effect: once a boundary has remained unchallenged for a significant period, a party cannot later contest it based solely on technical deed descriptions. Courts have described the doctrine's "self-sustaining" proof as conclusive evidence of a property's actual boundary, barring future disputes grounded purely in recorded technicalities.[9]

III. Analysis: *Czenszak v. Iasello*

A. Factual Overview

The disputed area in *Czenszak* was a triangular strip of land between a deed-based boundary and a cinder block wall ("the wall"). For over a decade, the neighbors and their predecessors treated the wall as the real dividing line, even though the deeds showed that the border ran farther north. This created a contested area of about 4.2 feet at its widest point between the surveyed line and the wall.[10]

B. Plaintiffs' Claim

The plaintiffs (Czenszak) sought declaratory relief and an order to quiet title, arguing that the long-term use of the wall should prevail over the boundary described in the deeds. They claimed that both parties' consistent reliance on the wall for more than a decade was conclusive evidence of the actual dividing line.[11]

C. Defendants' Claim

In contrast, Iasello ("the defendants") argued that the recorded boundary – as laid out in the deeds – was the lawful property line. They moved for summary judgment to dismiss the plaintiff's' complaint and asserted a counterclaim seeking a judgment that they owned the disputed property.[12] Their primary argument was that any deviation from the literal deed description was an error in legal interpretation.

D. Commencement of Action and Motion for Summary Judgment

The plaintiffs initiated the lawsuit in the Supreme Court of Suffolk County, New York, seeking to quiet title and obtain declaratory relief under RPAPL Article 15. The defen-

dants moved for summary judgment to dismiss the claim for declaratory relief, which the Court denied.[13] After thoroughly reviewing the record, the Court "searched the record, and awarded summary judgment to the plaintiffs, in effect, declaring that the plaintiffs own the disputed property under the doctrine of practical location."[14] This decision confirmed that the wall was recognized as the de facto boundary.

E. Ruling on Appeal

On appeal, the Appellate Division, Second Department, affirmed the lower Court's ruling, emphasizing the equitable foundation of the practical location doctrine. The Court underscored that longstanding, uninterrupted boundary practices are conclusive evidence of the correct boundary, even if they conflict with the technical descriptions in recorded deeds. Specifically, the Court clarified that "[p]ursuant 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.'"[15]

IV. Judicial Reasoning: Integrating Physical Evidence With Equitable Principles

A. Reliance on Physical Evidence

The Court first emphasized the tangible evidence of the permanent cinder block wall, which both parties had treated as the boundary for over a decade. This visible marker clearly showed that the property's actual use diverged significantly from the formal boundary described in the deeds. By highlighting the wall's longstanding, unchallenged presence, the Court recognized that real-world usage can be decisive in establishing property lines.[16]

B. Mutual Acquiescence

Next, the Court found that the parties' longtime, unchallenged use of the wall created a "silent contract" that redefined the property line. This unspoken mutual agreement, formed over more than 10 years, satisfied the mutual acquiescence element of practical location by showing that both sides implicitly accepted the wall as the actual boundary. As the Court noted, "the parties' respective predecessors in interest mutually acquiesced to the wall being the boundary line for the adjoining properties for a period of more than 10 years, rather than the boundary line set forth in the deeds."[17] This historical conduct provided strong evidence that a longstanding practice had established an unofficial, yet legally binding, boundary.

C. Precedent and Equitable Considerations: Estoppel Impact

The Court also acknowledged that while precise legal standards are important, the everyday realities of land use must be factored in. Citing precedents such as *Jakubowicz v. Solomon* and *Baldwin v. Brown*, the Court highlighted that deeds and surveys, though intended for clarity, do not always reflect the land's actual usage.[18] The Court noted that "an unknown or disputed boundary line and an agreement between adjoining owners fixing the true boundary line are not required elements for the doctrine of practical location to apply."[19] In contrast, "practical location and long acquiescence in a boundary line are conclusive . . . because they are of themselves proof that the location is correct."[20] By underscoring equitable considerations of practical location, the Court recognized that enduring, real-world practices can be as compelling – if not more so – than written records.

V. Implications for Real Estate Practice

A. For Property Owners

The *Czenszak* ruling reminds owners that long-term, unrecorded practices can shift property boundaries. Property owners should ensure their deeds align with the property's actual daily use. Regular boundary checks and open dialogue with neighbors can help identify discrepancies between the recorded boundary and a de facto marker that has emerged over time. Documenting longstanding practices – through written records, photographs, or maintenance logs – can be invaluable if disputes arise.

B. For Legal Practitioners

The decision highlights the need for a thorough evidentiary approach in boundary disputes. Attorneys must be prepared to present historical documents, expert surveys, photographs, and affidavits to illustrate the parties' long-term, mutual recognition of de facto boundaries. In real estate contracts, drafting precise boundary descriptions and dispute-resolution clauses can help prevent future conflicts. By ensuring that contracts capture both the technical aspects of boundary lines and the realities of actual land use, legal practitioners can help clients avoid expensive litigation and secure outcomes aligned with how the property is utilized.

C. For Title Insurers

Czenszak also clarifies that title insurers cannot rely solely on deed language or survey diagrams. They must consider how properties are actually used in practice. Title insurers should gather evidence such as photographs, affidavits, and maintenance records indicating consistent boundary practices. By incorporating this broader perspective into their underwriting assessments, insurers can achieve more accurate risk evaluations and make better policy decisions.

VI. Conclusion

As New York's urban landscapes evolve, the doctrine of practical location will likely play an even more significant role in property disputes, particularly in densely populated areas where strictly enforcing precise boundaries is difficult. In neighborhoods undergoing rapid gentrification, long-established informal boundaries may clash with newly enforced deed descriptions, raising disputes that demand a balance between formal legal definitions and equitable considerations. Similarly, shared use arrangements – such as driveways, fences, or gardens that have been mutually accepted for years – may require courts to value real-world usage over rigid deed specifications. Recognizing de facto boundaries encourages stability, aligns property lines with actual use, and fosters harmonious neighborhood relations, ultimately benefiting both individual landowners and the broader community.

The *Czenszak* decision is a landmark reaffirmation of the doctrine of practical location, allowing neighbors' longstanding, unspoken acquiescence to redefine property boundaries. This case illustrates an ongoing tension in New York property law: reconciling fairness and community practice with the precise language of deeds. By emphasizing clear physical markers, mutual acquiescence, and estoppel, the Appellate Division, Second Department, has found a way to harmonize legal formalities with practical realities, ultimately providing a more equitable framework for resolving boundary disputes.

Endnotes

1. *Czenszak v. Iasello*, 227 A.D.3d 772 (2d Dep't 2024).
2. *Id.*
3. *Id.*
4. Maureen E. Brady, *The Forgotten History of Metes and Bounds,* 90 Yale L.J. 1423 (1981), available at https://www.yalelawjournal.org/pdf/Brady_t8fwe24t.pdf.
5. *Id.*
6. James H. Backman, *The Law of Practical Location of Boundaries and the Need for an Adverse Possession Remedy*, 1986 BYU L. Rev. 957 (1986).
7. Dillon D. Malone, *Applying the Doctrine of Adverse Possession to Copyright Law: A Call for Economic Efficiency, Certainty, and Fairness through Legislative Reform*, 66 Drake L. Rev. 955, 957 (2008) (citing Charles C. Callahan, Adverse Possession 50 (1961)).
8. *Id.*
9. *Czenszak v. Iasello*, No. 2021–03340, 618558/19, 212 N.Y.S.3d 123, 126, 2024 N.Y. Slip Op. 02519, 2024 WL 2035451 (N.Y. App. Div. 2d Dep't May 8, 2024).
10. *Id.*
11. *Id.*
12. *Id.*

13. *Id.*
14. *Czenszak v. Iasello*, No. 2021–03340, 618558/19, 212 N.Y.S.3d 123, 126, 2024 N.Y. Slip Op. 02519, 2024 WL 2035451 (N.Y. App. Div. 2d Dep't May 8, 2024).
15. *Id.*
16. *Id.*
17. *Czenszak v. Iasello*, No. 2021–03340, 618558/19, 212 N.Y.S.3d 123, 126, 2024 N.Y. Slip Op. 02519, 2024 WL 2035451 (N.Y. App. Div. 2d Dep't May 8, 2024).
18. *Id.*
19. *Id.*
20. *Czenszak v. Iasello*, No. 2021–03340, 618558/19, 212 N.Y.S.3d 123, 126, 2024 N.Y. Slip Op. 02519, 2024 WL 2035451 (N.Y. App. Div. 2d Dep't May 8, 2024), *citing Baldwin v. Brown*, 16 N.Y. 359, 362; *see Jakubowicz v. Solomon*, 107 A.D.3d 852, 968 N.Y.S.2d 112.

By William McCracken

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The Job of a Co-op/Condo Lawyer

In my time acting as outside general counsel to cooperative and condominium boards, I have become increasingly convinced that the job has been getting harder and harder. Admittedly, this feeling could be just a variation on the so-called Socratic paradox, that the more I learn about the role, the more I realize what I do not know.[1] People who develop expertise in a field often comment on the humbling irony that greater knowledge tends to reveal greater ignorance.[2]

Psychological explanations aside, I sincerely believe that representing co-ops and condos has become objectively more challenging in recent years. This is because one aspect of the role – legal compliance – has mushroomed.

Some context here is required. Legal compliance is just one of the areas of law that a co-op and condo board lawyer must master.[3] One constant is the lawyer's role as the primary advisor on corporate governance issues. This requires, among other things, familiarity with the building's by-laws and how elections need to be administered.[4] These matters can have their moments of high drama, but the base of knowledge required is relatively consistent and predictable.

Another ever-present part of a co-op or condo attorney's job is conflict resolution.[5] This can include litigation, but the bulk of this work involves disputes, complaints, and flashpoints that never see the inside of a courtroom. Although no matter is ever exactly like any other, the techniques and approaches used by lawyers in resolving conflicts tend to be the same.

Legal compliance – the job of advising boards about new statutory and regulatory initiatives and what is required to comply with them – is one area that unquestionably has been transformed in recent years. The number and complexity of new laws that co-op and condo boards have had to respond to has not only fundamentally changed building management but also the demands on outside counsel.

I submit that without extensive remedial education, an attorney practicing 20 years ago would be unable to practice in today's regulatory environment. Indeed, an attorney practicing just five years ago would have a lot of catching up to do. That is not to say that lawyers today are any smarter, but only that they would have a massive head start on anyone not already familiar with the flood of new and increased laws and regulations of recent years.

A good example of the growing scope and complexity of regulatory compliance is Local Law 11.[6] Local Law 11 is known even to laypeople as New York City's incredibly complicated façade repair law that is responsible for ballooning capital expense budgets and ubiquitous sidewalk sheds.[7]

Until the passage of Local Law 10 in 1980, there was no uniform law governing the maintenance of building facades at all, and Local Law 10 was (at least from today's perspective) a modest and uncomplicated initiative.[8] Local Law 10 was replaced by Local Law 11 in 1997, but it wasn't until Local Law 11 was rebranded in 2013 as the Façade Inspection and Safety Program (FISP) that the compliance requirements really took off.[9] Now, with each successive five-year cycle, FISP has become so complex and demanding that it unquestionably dominates the typical building's capital improvement process and long-term financial planning.[10]

Local Law 11 has simultaneously transformed our legal practice. Once upon a time, contractor agreements could be negotiated by little more than filling in a pre-prepared AIA form. Now, a typical façade contractor agreement has extensive riders and insurance requirements that must be vetted and approved by multiple experts. Once upon a time, a building could get permission to access and protect a neighbor's property with little more than a (metaphorical or actual) handshake. Now, access agreements have become increasingly burdensome as, among other things, the length of projects increase because of regulatory requirements and the insurance requirements have become more and more onerous.

The story of Local Law 11 has unfolded over several decades. But other significant legal compliance demands have appeared practically overnight. Think of Local Law 97, the law mandating the reduction of carbon emissions. Even though that law had several antecedents prior to its passage in 2019, the substantive and technical requirements dictated by Local Law 97 officially coming into effect in 2024 are creating an entirely new field of law that co-op and condo boards will rely upon their counsel to explain to them.

Legislation like Local Law 11 and Local Law 97 are a challenge in part because they create an entire system of compliance rules and obligations. In addition to these systemic regulatory initiatives, however, buildings must also digest and respond to an entire catalog of newly implemented one-off measures. For example, in 2018, the State of New York began requiring co-ops and condos to disclose certain "interested party transactions" each year to their shareholders and unit owners. The same year, the City of New York began requiring co-ops to formally adopt smoking policies and incorporate them into their governing documents.

In more recent years, we have seen the passage of legislation introducing new requirements for lead paint certifications, bedbug reports, hurricane evacuation zones, floodplains and history of flood damage, elevator licensing, garage inspections, parapet inspections, gas line inspections, natural gas detectors, fire sprinklers, all-electric construction, electric vehicle charging stations, and lithium-ion batteries. That list does not include the extensive new regulations governing affordable housing tenants, short-term rentals, good cause eviction, prevailing wage rules, or new restrictions on hiring or housing discrimination. Nor does it include the unprecedented filing and disclosure regime triggered by the Corporate Transparency Act.

Not only do co-op and condo lawyers need to stay on top of all of these developments, but they must also cope with the fact that few of these new mandates were written with co-ops or condos specifically in mind. This creates uncertainty and ambiguity as to the scope and applicability of many of these new laws to co-ops and condos. Suffice it to say, explaining all of this to layperson boards is not an easy task.

For larger, well-resourced buildings, the challenges (if not the cost) of complying with all of these new laws and rules have been somewhat obviated by the larger management companies building out their in-house compliance departments. For smaller, less well-resourced buildings, however, the flood of new legislation may overwhelm their management companies and lawyers.

None of this should be read as a lament for a simpler, bygone era. There is no question in my mind that most, if not all, of this new legislation, in one form or another, is sensible and appropriate for larger societal reasons. Nevertheless, it is important to recognize the explosion of new compliance demands on co-ops and condos, and the need for their attorneys to rise to the challenge of a new regulatory environment and adapt their practice accordingly.

Endnotes

1. Viktoriya Sus, *"All I Know Is That I Know Nothing": What Did Socrates Mean?*, The Collector (Jan. 21, 2023), https://www.thecollector.com/all-i-know-is-that-i-know-nothing-socrates/.
2. *Id.*
3. *The Crucial Role of an Attorney for Condo Association*, The Law Off. of James L. Arrasmith (Aug. 27, 2024), https://www.jlegal.org/blog/the-crucial-role-of-an-attorney-for-condo-association/.
4. *Id.*
5. *Co-op and Condo Mediation*, New York City Bar, https://www.nycbar.org/serving-the-community/free-low-cost-legal-services/co-op-and-condo-mediation/ (last visited Nov. 18, 2024).
6. N.Y.C. Admin. Code §§ 27-129 (Local Law 11 requires regular inspections, repairs, and maintenance of buildings in New York City).
7. N.Y.C. Dep't of Buildings, *Department of Buildings Launches Study to Reevaluate Façade Inspection Regulations in New York City* (May 30, 2024), https://www.nyc.gov/site/buildings/dob/pr-facade-local-law-11-insp.page.
8. *Id.*
9. *Id.*
10. *Id.*

By Bruce J. Bergman

Foreclosure Notice: Lender Fails Again! (Those Envelope Requirements)

Bruce J. Bergman, author of the four-volume treatise, *Bergman on New York Mortgage Foreclosures* (LexisNexis Matthew Bender), is a member of Berkman, Henoch, Peterson & Peddy, P.C. in Garden City. He is a fellow of the American College of Mortgage Attorneys and a member of the American College of Real Estate Lawyers. His biography appears in *Who's Who in American Law* and he is listed in "Best Lawyers in America" and "New York Super Lawyers."

These articles continue to make the point that foreclosing lenders fail so much of the time to demonstrate delivery of a proper pre-foreclosure notice. It has happened yet again (one of so many instances) in a recent case: *HSBC Bank USA, NA v. Schneider*.[1]

The 90-day pre-foreclosure notice pursuant to RPAPL 1304 is of course required in every residential foreclosure.[2] Most often the foreclosing party's problem is in *proving* to the court's satisfaction the mailing based upon the records maintained. The minutiae of this goes on at some length although in the end there is a methodology that foreclosing plaintiffs can and should adopt. (As a separate observation, there is case law on this point.)

In the recent case, though, the court returns to the "separate envelope issue." So there will be no confusion, one aspect – not discussed in this case – is adding to the 1304 notice envelope some additional material concerning the default or a borrower's rights. This has been addressed more recently in a major case from the Court of Appeals banishing the so-called "Kessler Doctrine."[3] In the new case, however, the court focuses upon an issue that had previously been disposed of. The requirement is that the 1304 notice must be sent separately, that is, in different envelopes, to each of the borrowers. Mindful that this is an established principle, it should be apparent to all foreclosing parties that if there are two borrowers (even if they are husband and wife), two separate notices must be sent in two separate envelopes.[4] Likewise, if there were three borrowers it would be three separate notices in three envelopes.

In the new case, the foreclosing plaintiff enclosed two 90-day notices in a single envelope jointly addressed to both of the defendants.[5] The court found it easy to rule that such a methodology was improper (citing previous appellate decisions on the subject), thereby affirming dismissal of the foreclosure action against the borrowers.[6] Lender anguish about such punctilious impositions – especially in the absence of empirical data to support the need for the strictness – will understandably continue. But judicial analysis on the subject is hardly elusive or fluid.

The result is obviously serious because the plaintiff lost probably two years, and must begin the foreclosure again. Given the lucidity of the rule in this regard, lenders should never stumble in assuring that the 90-day notice be sent in separate envelopes to each borrower.

Why Do Courts Continue on Their Own To Dismiss Foreclosures?

Such court actions are called "sua sponte" and there can be no definitive answer as to why such orders continue to issue. As a refresher, this unfortunate event in mortgage foreclosure actions is dismissal of the case, or the compelling of some other measure by the court, on its own, without a motion having been made for that relief. This seems like some emotional response, and why it occurs is puzzling indeed, because the underlying principles are well-known and well-accepted.[7]

The power of a court to dismiss a complaint sua sponte is to be used sparingly and even then only when extraordinary circumstances exist to warrant dismissal. And due process is denied to a party if not given the opportunity to respond to a court's intent to dismiss the case or compel some other action. In short, in the absence of the truly extraordinary, this should never happen.

But it has, many times, and continues to be seen, as a new case reminds.[8] What happened in this matter, which is perhaps typical of sua sponte invocations, is that a plaintiff commenced a foreclosure and the borrower defaulted in appearance. An order was entered granting plaintiff's motion for a default judgment against the defendant and an order of reference.[9] Ultimately (actually almost two years thereafter), the trial court required a status conference, at which time it directed the foreclosing plaintiff to "file an application for a judgment of foreclosure and sale by June 7, 2017."[10] When the plaintiff failed to do so, the court sua sponte directed dismissal of the complaint and cancellation of the notice of pendency![11]

The plaintiff moved to vacate the dismissal order but the trial court denied that effort, which led to an appeal – eliciting the expenditure of unfortunate time and expense for the foreclosing plaintiff.[12] The Appellate Division reversed, which is typically the invariable result. The ruling was the usual: a court's power to dismiss an action sua sponte is to be used sparingly and "only when extraordinary circumstances exist to warrant dismissal."[13] As noted, this is standard and commonplace.

As to specifics, the Appellate Division held that the plaintiff's failure to move for the judgment of foreclosure and sale, as directed by the status conference order, was simply not a sufficient ground to allow sua sponte dismissal of the complaint and cancellation of the lis pendens.[14]

So in the end the plaintiff prevailed, but, of course, as noted, at the cost of much unnecessary time and expense. Despite regular reversals time after time of sua sponte dismissals of foreclosures, such cases nonetheless arise. It seems apparent that this corner of frustration will continue to be imposed upon foreclosing plaintiffs in the future.

Endnotes

1. *HSBC Bank USA, NA v. Schneider*, 216 A.D.3d 1148, 191 N.Y.S.3d 68 (2d Dep't, 2023).
2. *Id.*
3. *Bank of America v. Kessler*, 39 N.Y.3d 317, 186 N.Y.S.3d 385 (2023).
4. *HSBC Bank USA, NA*, 216 A.D.3d 1148.
5. *Id.*
6. *Id.*
7. For an in-depth review of this subject, see 1 Bergman on New York Mortgage Foreclosures, LexisNexis/Matthew Bender (Rev. 2023) § 2.32.
8. *Deutsche Bank Trust Company Americas v. Martinez*, 214 A.D.3d 704, 185 N.Y.S.3d 232 (2d Dep't, 2023).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 705.
13. *Id.*
14. *Id.*

Scholarship Spotlight: Connor Blancato

For years, the Real Property Law Section of the New York State Bar Association has helped shape the future of the legal profession through its scholarship program, which has provided critical financial support to law students pursuing careers in real property law. Through the generosity of the section and the friends and family of past Section Chairs Lorraine Power Tharp and Melvyn Mitzner, these scholarships have helped many students overcome financial barriers and pursue their professional aspirations. Both Lorraine Power Tharp and Melvyn Mitzner left lasting marks on the legal community. Tharp, also a former president of NYSBA, was a passionate advocate for gender equality, public service, and the advancement of the legal profession. Mitzner, widely respected for his legal scholarship and mentorship, was known for his collegial spirit and deep knowledge of real estate law. Their legacies live on through these scholarships, which continue to open doors for aspiring attorneys.

Now the program is being recast as the Real Property Law Section Memorial Scholarship in recognition of all departed members of the section who also have left their mark (and this legacy) on the profession generally, and the practice of real estate law. With an enhanced scholarship program and your support, the RPLS commitment to supporting future attorneys is stronger than ever.

The Memorial Scholarship consolidates the Tharp and Mitzner awards into an expanded initiative, which increases both the number of scholarships and the funding available to students. Beginning in 2026, the program anticipates awarding annual scholarships of $7,500 to each of three recipients, an increase that reflects the section's ongoing dedication to fostering the next generation of real estate practitioners.

We invite members of the legal community to support this important initiative by contributing to the Scholarship Fund. Administered through the New York Bar Foundation, a 501(c)(3) entity, donations help ensure that talented students, regardless of financial need, can pursue careers in real property law and carry forward the values championed by Tharp, Mitzner and so many other beloved and respected departed colleagues.

To join us in this effort, or to learn more about how you can make a difference, please contact Mindy Stern (mstern@ssrga.com) or Ira Goldenberg (lgoldenberg@goldenbergselkerlaw.com).

Connor Blancato, the seventh recipient of the Mitzner scholarship, was recently interviewed by Prof. David Reiss, Cornell Law School & Cornell Tech. A transcript of their Q&A follows.

Connor Blancato

Q. Can you describe your path to law school, and what drew you to the practice of real estate?

A. I graduated from Loyola University Maryland with a degree in history and a minor in political science. I've always enjoyed reading and writing and the study of law was a good fit for my strengths, so I attended Brooklyn Law School immediately after graduation. During my 1L year, I took a special interest in my property and real estate classes and had some great professors like Ira Goldenberg, Brian Lee, and Debra Bechtel. During my 2L year, I had externships at the New York City Housing Development Corporation and the Department of Housing and Urban Development, which cemented my interest in the affordable housing practice area, and allowed me to explore the industry outside of the classroom and gain real world experience. Later that year, I joined the staff of Brooklyn Law School's *Journal of Law and Policy* and authored a note on the Low-Income Housing Tax Credit (LIHTC), and how state and local governments award LIHTCs through Qualified Allocation Plans.

Q. How were you involved with the bar [association] during and after law school? What benefits did you receive from such participation?

A. Debra Bechtel encouraged me to apply for the NYSBA Real Property Law Section Melvyn Mitzner Scholarship. The application gave me the chance to describe myself, my experiences in my new career, and explain why I was pursu-

ing a career in real estate and affordable housing financing. Richard Singer (who is the founding partner of Hirschen Singer Epstein LLP and my future boss) is heavily involved in the State Bar Association and he reached out after the scholarship announcements. We connected and discussed my background and the affordable housing industry as a whole. Ever since he has been a generous mentor and when a position at Hirschen Singer & Epstein LLP became available, I was excited to apply. I have been there ever since.

Q. What benefits did you receive from being a recipient of the Melvyn Mitzner Scholarship?

A. Besides networking opportunities and my first job, the NYSBA Real Property Law Section Melvyn Mitzner Scholarship was a great introduction to the New York State Bar Association. After receiving the scholarship and graduating law school, I became interested in serving on bar committees and subcommittees and have done so ever since. Today, I serve on the Scholarship Committee, helping select annual recipients, so my involvement has come full circle. I enjoy meeting other professionals in a more casual setting and engaging with attorneys at title companies, developers, not-for-profits, lenders and government agencies in discussions outside of the office. It broadens my knowledge, keeps me up to date with current events and builds my network. The New York State Bar Association helps develop strong relationships with individuals who I later encounter in the course of my work at Hirschen Singer & Epstein LLP.

Q. What is the focus of your practice and how did the Mitzner scholarship help you realize your goal of entering that area of practice?

A. I represent clients entering into transactions utilizing the LIHTC program every day, so my law school experiences and my note set me up for my scholarship application and my first job. Looking back, there is a clear set of links starting with my classes to my professors, to my externships, to NYSBA and finally, to a career at a great law firm. NYSBA helps me build connections that opened many doors for me, and has allowed me to take advantage of many opportunities.

Court Reforms Guaranty To Correct Single Word Scrivener's Error and Saves Lender Millions

By Imrajdeep Sahota

Ed's Note: This is the inaugural edition of EC Observations, a new column offering insights into current issues raised within the Executive Committee of the New York State Bar Association Real Property Law Section. Each installment will highlight a topic of particular relevance or concern to real estate practitioners in New York, drawn directly from discussions among the section's leadership. The goal is to bring readers closer to the conversations shaping the field – to surface key questions, share informed perspectives, and provide context that can support your practice.

Introduction

A single-word drafting error in a guaranty agreement nearly rendered a multimillion-dollar obligation meaningless and unenforceable – until the Appellate Division stepped in to correct it. One lender's inattention to detail in its contract almost cost it millions.[1]

A $135 million construction loan was in default and the Lender commenced a foreclosure action. Years of litigation ensued. Lender walked away from its collateral and converted its foreclosure action to a plenary action against the Guarantor of the agreement.

Both Lender and Guarantor moved for summary judgment. Guarantor's primary argument was based on the wording of the guaranty. The guaranty, as written, imposed full recourse liability only on the Borrower, not on the Guarantor, thereby insulating him from personal liability.

Lender admitted that the agreement so provided but pled that this was a mere scrivener's error, and that the agreement should have provided for full recourse against the Guarantor instead of the Borrower. Lender explained that this error occurred because it mistakenly lifted the full recourse provision directly from the loan agreement and placed it into the guaranty without changing "Borrower" to "Guarantor."

Recognizing this clear mistake, Lender sought reformation to reflect the parties' true intent and to prevent an illusory result. Lender pointed to other provisions in the guaranty which held Guarantor liable for certain other bad acts.

The lower court found the language ambiguous and declined to correct the mistake, despite the overwhelming uncontroverted evidence of a scrivener's error.[2]

The Appellate Division reversed, holding that enforcing the contract as written would produce a result that was not only commercially unreasonable but also illogical in that the borrower would be guaranteeing its own debt, rendering the guaranty meaningless in the context of a single asset borrower. Borrower had no assets other than the property, on which Lender already held a mortgage.

The Appellate Division corrected the language to ensure that the guaranty operated as the parties intended, rather than being rendered meaningless by a simple drafting mistake. It rationalized the decision by stating "a guaranty must be read . . . in a manner that accords the words their fair and reasonable meaning and achieves a practical interpretation of the expressions of the parties."

Case Summary

A scrivener's error[3] is an unintentional, inadvertent, mistake, like a typo or misspelling, that is made by someone who is writing or copying something. When drafting, parties often – sometimes in haste – copy provisions from other documents.

In January 2007, Bersin Properties borrowed from lender Nomura for funding to renovate and re-lease a shopping mall in Monroe County. The loan, which was later sold to NCCMI, was a $135 million construction loan, of which Lender had advanced $44 million. The loan was a typical non-recourse loan, limiting Lender's remedies for non-payment to foreclosure – unless specific triggering events set forth in the guaranty, such as bankruptcy or interference with remedies, occurred. These are called "bad acts." Should such a bad act take place, there would be guarantor recourse, as spelled out in the guaranty. Congel was Bersin's

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principal and stepped in as the "bad acts" guarantor of the loan. His guaranty was called an "indemnity agreement." He was called an "Indemnitor" (same as a guarantor).

The guaranty mirrored the loan agreement, as respects "loss" recourse and "full debt" recourse. In drafting the guaranty, Lender merely lifted provisions from the loan agreement. For the full debt recourse provision, Lender copied the language from the loan agreement stating:

> the Debt shall be fully recourse to **Borrower** . . . if Borrower defaults hereunder in any way and Borrower or Guarantor contests or in any way interferes with, directly or indirectly, any foreclosure action. . . .[4]

Borrower defaulted on the loan and many years of litigation ensued. Lender eventually walked away from the collateral and converted its foreclosure action to a plenary action on the guaranty.

Guarantor and Borrower asserted multiple defenses, and both sides moved for summary judgment regarding Guarantor's personal liability under the guaranty. Lender argued that Borrower triggered full debt recourse liability against Guarantor when Borrower contested the foreclosure action. Lender admitted the scrivener's error and sought reformation of the contract. Lender explained the guaranty provision should have said "Indemnitor" instead of "Borrower." Lender contended that if the provision was enforced as written, it would lead to an absurd result.

The lower court ruled in favor of Guarantor, finding that the language created ambiguity. The court declined to reform the contract. It found that the provision was ambiguous because there was a tension between "fully recourse to Borrower" and the remainder of the guaranty.[5] It additionally stated that there was a high burden for identifying absurdity or unenforceability in the guaranty, which Lender did not meet. The court refused to substitute "Indemnitor" for "Borrower" in the provision.[6]

The First Department reversed. According to the First Department, Lender should prevail under the guaranty by virtue of an obvious scrivener's error which Lender acknowledged it made. The scrivener's error rendered the guaranty "absurd" and unenforceable. That would be an unjust, untenable, result.

The Court explained that allowing a single asset borrower essentially to guarantee its own indebtedness was illogical and "relegated the provisions to meaningless surplusage."[7] It stated that "[a] contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties."[8]

The Court identified other references in the guaranty to Guarantor's obligations and liabilities and determined that there was clear and intrinsic proof that the use of the phrase "recourse to Borrower" instead of "recourse to Indemnitor" was an obvious scrivener's error. The Court explained that the plain words of a contract provision could not be interpreted to produce a result so absurd and contrary to the reasonable expectations of the parties. The Court chose to give effect to the parties' agreement and intent rather than rendering it meaningless due to a typographical mistake.

Takeaways

This case underscores two key principles, one cautionary, one comforting: (1) meticulous contract drafting and proofreading are essential to avoid costly disputes and calamitous, unintended results, and (2) courts will intervene to correct an obvious drafting mistake when necessary to uphold the intent of the parties to the agreement.

Drafting professionals must exercise caution when copying provisions from other contracts, as even a minor oversight can lead to years of litigation, damages, embarrassment, and risk. They must draft with precision and care, mindful that the adage "measure twice and cut once" applies each time. Proofreading is an indispensable tool in the drafting of contracts.

Endnotes

1. *NCCMI, Inc. v. Bersin Properties, LLC*, 226 A.D.3d 88, 208 N.Y.S.3d 27 (1st Dep't, 2024).
2. *NCCMI, Inc. v. Bersin Properties, LLC*, 74 Misc. 3d 1221(A), 162 N.Y.S.3d 921 (N.Y. Sup. Ct., N.Y. Co. 2022).
3. Derived from the term "clerical error," it is an error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination – especially a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading. ERROR, Black's Law Dictionary (12th ed. 2024).
4. *Bersin Properties*, 74 Misc. 3d 1221(A) at *3.
5. *Id.* at *6.
6. *Id.*
7. *Bersin Properties,* 226 A.D. 3d at 96.
8. *Id.*

CLE Conversations: Advanced and Hot Real Estate Topics

By Michelle Mullin

NYSBA's Real Estate CLE Programs

Throughout the year, the New York State Bar Association collaborates with the Continuing Legal Education Committee of the Real Property Law Section to schedule and organize CLE presentations on topics that would be of interest to real estate practitioners and target an audience with varied levels of experience. Some of these programs are individualized and target a particular cutting-edge subject matter while others, like the Annual Meeting CLE and the Advanced and Hot Real Estate Topics seminar, recur annually. Our recent January 2025 Annual Meeting CLE included a discussion led by the Housing Court Task Force reporting their statistical findings on the significant delays in housing courts and proposed solutions to address this issue; bias in real estate; a presentation on the settlement from the class action lawsuit *Burnett v. National Association of Realtors*, and a discussion on selected advanced issues in escrow account management and alternative payment arrangements.

In addition, one of the most highly regarded recurring programs within NYSBA's real estate law offerings is the Advanced and Hot Real Estate Topics seminar. This program is designed for experienced practitioners and focuses on timely, cutting-edge issues in real estate law, offering expert analysis and practical takeaways.

Advanced and Hot Real Estate Topics Series

In the 1980s and 1990s, Steven Alden, a now retired partner from Debevoise & Plimpton, participated in many PLI and ACREL programs. After Mr. Alden became a member of the NYSBA Real Property Law Section Executive Committee, he agreed to chair a program covering advanced real estate topics and current issues, including acquisitions and dispositions, financing, workouts, development, and joint ventures. Today, this program is known as the Advanced and Hot Real Estate Topics seminar. The program has always been unique due to its focus on advanced topics and current issues and its appeal to experienced real estate lawyers.

In 2010, as Mr. Alden neared retirement, Lawrence Wolk, a leader of the Real Property Law Section CLE programs, agreed to begin chairing the Advanced and Hot Real Estate Topics program. About seven years ago, Mr. Wolk recruited Joel Binstock, managing principal at The York Group, LLC, as an active member of his team and his co-chair. Mr. Wolk says that Mr. Binstock's involvement has been instrumental to the success of this program, helping expand its focus on hot topics and emerging issues.

What sets this seminar apart is its level of engagement. Unlike traditional CLEs, where moderators simply introduce speakers, Mr. Wolk and Mr. Binstock challenge presenters with questions that encourage deep discussion and practical insights. Their goal is for every attendee to leave with actionable knowledge.

On December 3, 2024, the NYSBA Real Property Law Section held its annual Advanced and Hot Real Estate Topics CLE seminar. Seven distinguished practitioners presented on six different cutting-edge topics in real estate law.

- Robert Sein, Esq., professor and director of the Mattone Institute at St. John's University School of Law, discussed current ethical issues in real estate transactions, including updates to the New York Property Condition Disclosure Act (PCDA) and the implications of AI in legal practice. He also touched on climate-conscious lawyering and cybersecurity challenges.
- Hope Plasha, Esq., partner at Patterson Belknap Webb & Tyler LLP, covered strategies for managing problematic commercial tenants and landlords outside of litigation, highlighting the importance of due diligence and key lease negotiation tactics.
- Richard S. Fries, Esq., partner at Sheppard Mullin, spoke about lender remedies in distressed loan situations, focusing on the power of acceleration clauses, New York's election of remedies rules, and lender liability concerns. After the event he commented, "The Advanced Real Estate program has something for everyone interested in real estate law. I mix in scalding hot tips, judicial sympathy and judicial scrutiny, and even the occasional ode to my mother when I cover the topic of debt forgiveness."

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- Jay Neveloff, Esq. & Nicole Levin Mesard, Esq., partners at Kramer Levin and Debevoise & Plimpton LLP, provided insights on structuring joint ventures, emphasizing capital contributions, profit distributions, and due diligence when entering a deal. They underscored the importance of understanding market conditions, lease expirations, and environmental concerns. In the words of Mr. Neveloff, after the event, "there is simply no doubt that there is a lack of real estate CLEs directed at attorneys that cover issues that are sophisticated, current (and sometimes even cutting edge) and presented by experienced practitioners. The advanced program does that and I believe that over the years it has been very well received."
- Matthew A. Kelly, Esq., counsel at Debevoise & Plimpton, examined AI governance and compliance in real estate, addressing risks such as algorithmic pricing, deep fakes, and data privacy issues.
- Joel I. Binstock, Esq., managing principal at The York Group, LLC, focused on lease negotiation strategies, helping tenants avoid overcharges and improve lease terms. He stressed the importance of normalizing clauses and avoiding default lease language that may disadvantage tenants.

Once again, this year's seminar featured top-tier speakers, invaluable insights, and highly relevant topics. All presenters tackled complex issues, equipping attendees with practical guidance for their practice.

Looking Ahead

The Advanced and Hot Real Estate Topics seminar continues to be a cornerstone of NYSBA's CLE offerings, ensuring that real estate practitioners remain informed and prepared. With the real estate industry evolving rapidly, keeping up with regulatory, technological, and market changes is more important than ever. Members are encouraged to take advantage of NYSBA's upcoming CLE opportunities to stay ahead in the field and gain access to expert analysis, networking opportunities, and practical knowledge essential for navigating today's legal landscape.

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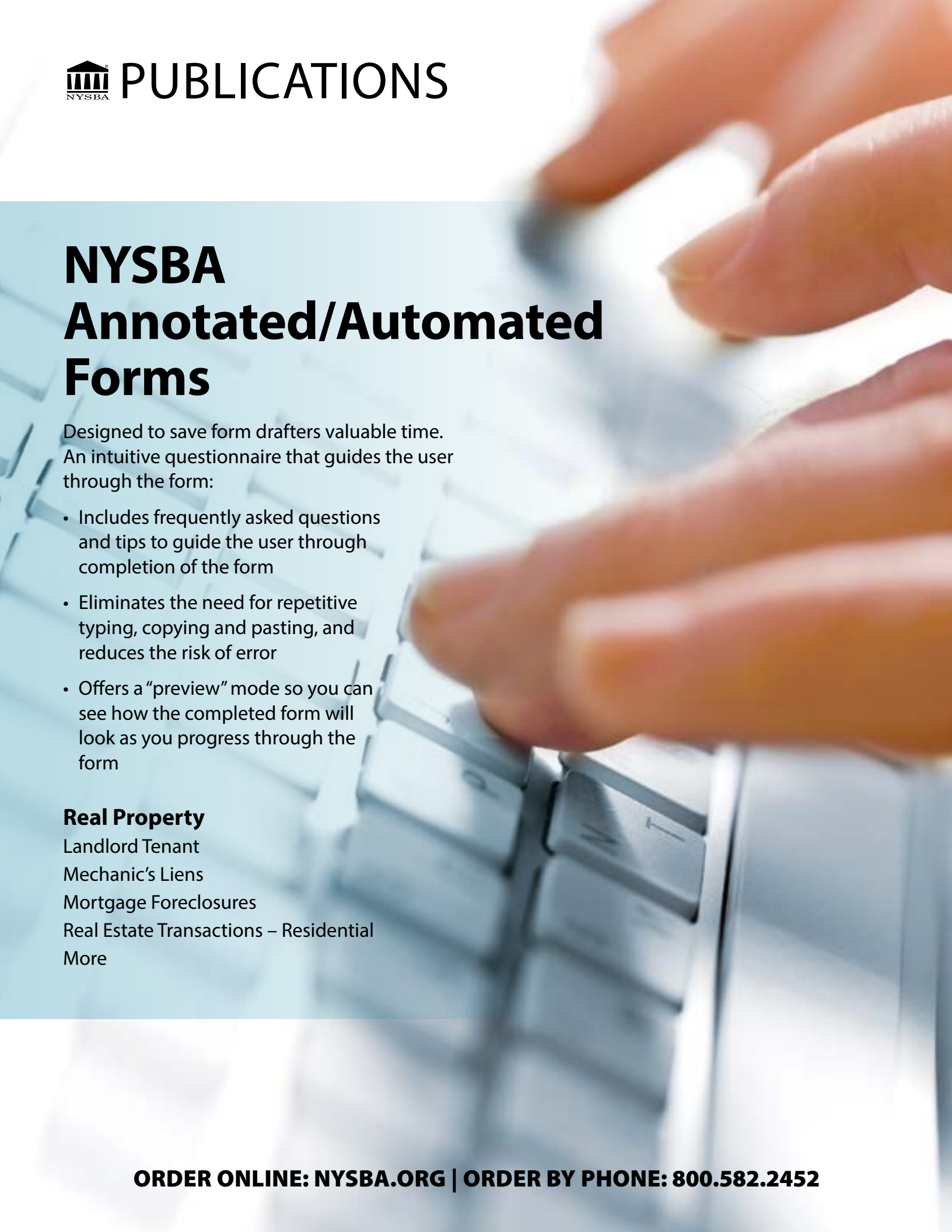

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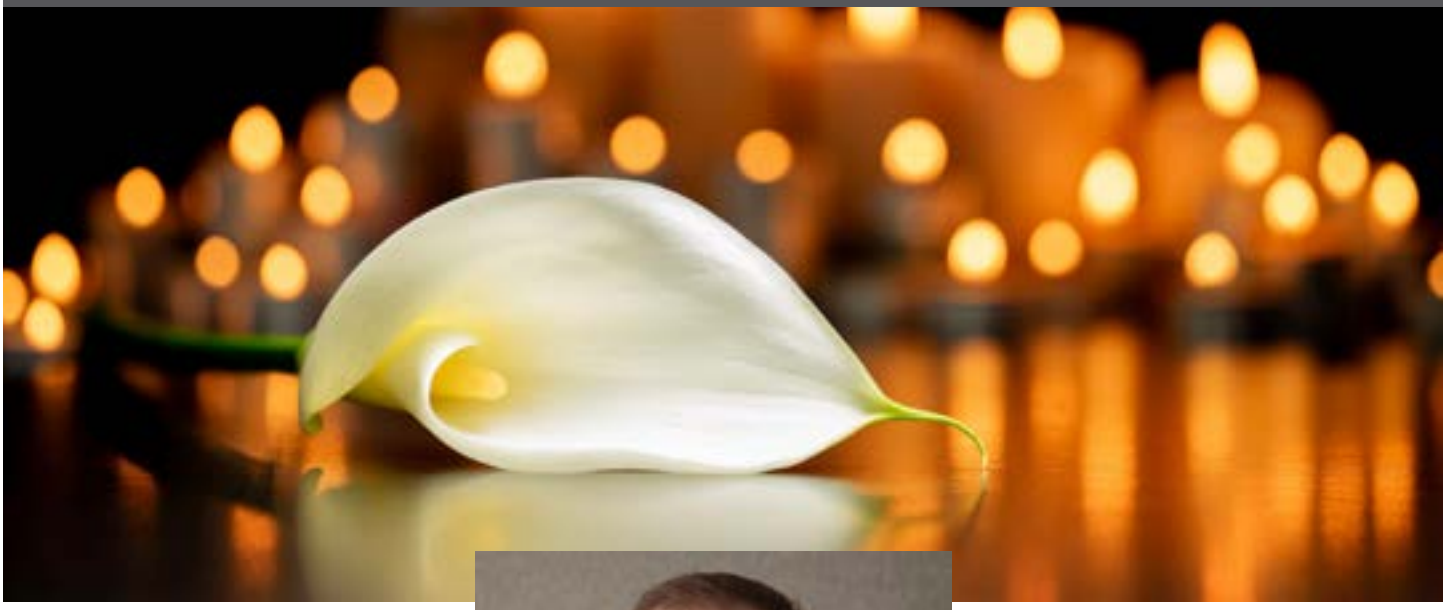
In Memoriam: Ariel Weinstock



The legal community has lost a remarkable colleague, mentor, and friend with the passing of Ariel Weinstock, who most recently practiced as a partner at Katsky Korens. His impact on the profession – and especially on the Real Property Law Section of the New York State Bar Association – was profound and enduring.

Ariel was the kind of lawyer who set the standard. His deep knowledge of real property law was matched only by his generosity in sharing it. Whether he was navigating complex legal issues, mentoring younger attorneys, or shaping policy through the bar, Ariel brought clarity, precision, and purpose to everything he did.

His commitment to the bar association went far beyond attendance. Ariel was a driving force behind countless initiatives, programs, and publications. He served on committees, led working groups, and was the person everyone turned to when something needed to get done – and done right. He didn't seek recognition, but his presence anchored the section. He had the rare ability to move discussions forward, bridge differing viewpoints, and always keep the focus on what served the law and the public best. He most recently served as the section's budget officer. In addition, he served as the section's delegate to the NYSBA House of Delegates.

To say he will be missed is an understatement. Ariel was irreplaceable – not just because of his expertise, but because of who he was. He brought integrity, insight, and an unwavering work ethic to everything he touched. He made the Real Property Law Section stronger, and all of us better.

We extend our deepest condolences to Ariel's family, friends, and colleagues. His contributions will continue to shape our work, and his memory will remain a lasting part of this community.

The Fang Holdings Case: New York Supreme Court Extends Long-Arm Jurisdiction Over Foreign Real Estate Portal

By Piero Sauñe Casas

The New York Supreme Court decision in *Oasis Investments II Master Fund Ltd. v. Mo* (the Fang Holdings Case)[1] sets a precedent for New York courts to establish personal jurisdiction over foreign companies that exploit New York markets to defraud investors. This ruling opens new avenues for litigation, empowering the state to hold alleged wrongdoers accountable.

Previously, foreign defendants who appeared to have minimal contacts with the state could argue that the courts lacked jurisdiction due to their foreign status and absence of a physical presence in New York. This defense will now be less effective, as the ruling suggests that even if a company is neither incorporated in New York nor has its principal place of business there, transactions involving schemes that manipulate the New York market – such as spinning off a company's valuable assets into a new subsidiary to benefit company officers at the investors' expense – can establish a substantial connection between New York and the claims of fiduciary duty breaches. This connection is sufficient to establish personal jurisdiction.

In this case, the court expanded the "minimum contacts" rule, allowing the New York State Supreme Court to deny the defendant's motion to dismiss. The defendants, officers of Fang Holdings Limited, a foreign company incorporated in the Cayman Islands with its principal place of business in China, were found to have subjected themselves to New York's jurisdiction. The ruling was based on allegations that the defendants' actions, manipulating New York markets, are connected to the claim that they breached their fiduciary duties, which led to the looting of Fang Holdings. These activities provided the necessary basis for establishing jurisdiction under CPLR 302(a)(1).[2]

When a New York court exercises personal jurisdiction over a non-domiciliary defendant, two conditions must be satisfied: (i) the court must have long-arm jurisdiction over the defendant pursuant to CPLR 302 and (ii) the exercise of such jurisdiction must comply with due process requirements.[3] Failure to establish either condition will prevent the action from proceeding. Additionally, long-arm jurisdiction permits adjudication only of issues that arise from or relate to the controversy that established jurisdiction.[4] Thus, the lawsuit must stem from the defendant's contacts with the forum.[5]

Under CPLR 302(a)(1), a New York court may exercise specific jurisdiction over a non-domiciliary who, either personally or through an agent, (i) "transacts any business within the state" or (ii) "contracts anywhere to supply goods or services in the state."[6] A single transaction can satisfy this requirement, provided the defendant's activities were purposeful and there is a substantial relationship between the transaction and the claim asserted.[7] Whether the activity conducted within the state is sufficient to constitute the "transaction of business" under this section depends on the facts of each case. This determination cannot be made by applying a mechanical formula but must instead consider what is fair and reasonable under the circumstances.

Fang Holdings Derivative Action Background

The plaintiffs initiated this lawsuit on May 29, 2023, alleging various breaches of fiduciary duties by Vincent Tianquan Mo and Richard Jiangogn Dai (collectively, the defendants). The defendants moved to dismiss the case on several grounds, arguing that the plaintiffs failed to establish personal jurisdiction, that the forum was non-convenient under CPLR 327 and that the action was time-barred under CPLR 202.[8] This article will focus solely on the issue of personal jurisdiction.

The plaintiffs contended that their breach of fiduciary duty claims arose from the defendants' use and manipulation of the New York financial market in a multi-step transaction designed to loot Fang Holdings and enrich themselves. The transactions allegedly undertaken by defendants included: (i) Fang's spin-off of its valuable wholly owned subsidiary, China Index Holdings Limited, as a separate publicly traded entity in New York; (ii) Fang's purchase of China Index Holdings' shares both on the New York market and from affiliates of defendants; (iii) Fang's delisting from the New York Stock Exchange, which further depressed the value of China Index Holdings shares on the New York market, enabling the defendants to buy back the shares at a reduced price; and (iv) Fang's participation in a take-private transaction, during which

defendants forced Fang to pay approximately $130 million to acquire a 35.8% minority interest in China Index Holdings – a company that Fang had fully owned just a few years prior – all for the personal gain of the defendants.[9]

The defendants argued that their motion to dismiss was warranted because CPLR 302(a)(1) does not apply when there is no articulable nexus between the causes of action in the complaint and the defendants' activities in New York.[10] They contended that the transactions involving Fang Holdings did not serve as the nexus for the causes of action asserted in the plaintiffs' complaint.

Renren Inc. and Its Impact on Fang Holdings

In determining whether there was an articulable nexus or substantial relationship between Fang Holdings' transactions and the alleged breaches of fiduciary duty, the court looked to the precedent set in *Renren Inc*. for guidance.[11] In *Renren Inc.,* the defendants similarly sought dismissal based on a lack of personal jurisdiction.[12] However, the court held that the defendants' alleged involvement in a multi-step transaction designed to strip Renren Inc. of its most valuable assets by manipulating the New York markets constituted transacting business in New York under CPLR 302(a)(1). The court further concluded that this exercise of jurisdiction was consistent with due process, thereby making jurisdiction in New York proper.[13]

Renren Inc. was also a foreign company, headquartered in China, and was often referred to as the Chinese equivalent of Facebook.[14] The company experienced significant growth, especially after Facebook was banned in China. Seizing this opportunity, the defendants took Renren Inc. public on the New York markets, assuring investors that it would not become an investment company. However, as Renren's profits soared, the defendants reversed course, transforming the company into an investment company and devising a plan to capture its profits for their own benefit.[15]

At this point, the defendants in *Renren Inc*. initiated a multi-step transaction scheme. First, they announced a plan to spin off Renren Inc.'s investments by selling the assets to a wholly owned subsidiary, Oak Pacific Investment, for a nominal consideration of just 5% of its book value. Next, they executed a private placement of Oak Pacific Investment's shares, presenting investors with a Hobson's choice: either accept a cash dividend based on a grossly understated valuation or receive shares of the company, but only if they met the stringent criteria of having a net worth of at least $1 million and $5 million in investments.[16]

During the motion to dismiss, the court determined that the defendants' use of the Oak Pacific Investment spin-off in New York amounted to market manipulation that served the officers' interests rather than just a routine spin-off. The court found that these actions created a substantial connection between the defendants' transactions and the breach of

fiduciary duty claims. Therefore, jurisdiction under CPLR 302(a)(1) was deemed proper.[17]

Connection Between Both Cases

The similarities between the Fang Holdings and *Renren Inc*. cases are remarkable. In both instances, the complaints allege that the defendants breached their fiduciary duties and sought to establish personal jurisdiction based on the defendants' transactions in New York – transactions that allegedly involved market manipulation through a spin-off scheme to defraud investors. The similarities set an easy path for the ruling of the courts, as the actions by both defendants involved a clear articulable nexus or substantial relationship between the transactions and the claims asserted, thereby justifying jurisdiction under CPLR 302(a)(1).

Primary Actors and the Assertion of Personal Jurisdiction Over Mo and Dai

The defendants further argued that while the plaintiff might have jurisdiction over Fang Holdings, it does not extend to them personally.[18] They argued that, as citizens of the People's Republic of China with insufficient contacts with New York, they are not subject to New York's personal jurisdiction.[19]

Under CPLR 302(a)(1), personal jurisdiction can be asserted over company officers if they are deemed "primary actors" in the relevant transactions.[20] To be a primary actor, a corporation needs to engage in purposeful activities in New York related to the transaction with the defendant's knowledge and consent. Personal jurisdiction over the defendant can then be established.[21] This applies if the defendant benefited from the transaction and exercised some degree of control over the corporation.[22]

The plaintiff's complaint provided enough information to establish the defendants as primary actors in Fang Holdings. They engaged in significant activities, including signing misleading securities filings on behalf of Fang Holdings and executing agreements related to the China Index Holdings' take-private transaction (Dai served as chairman of Fang Holdings during the China Index Holdings transaction). Given their involvement, control over the company and the benefits they derived, the court found grounds to reject their argument and assert personal jurisdiction over them individually, as well as over Fang Holdings as an entity.

Conclusion

Now that a precedent has been set, it remains to be seen how courts will apply it in future cases. What kind of impact will it have and how should attorneys prepare to plead or defend their cases? Only time will tell.

Piero Sauñe Casas, a third-year law student from Lima, Peru, graduated cum laude from Manhattanville College in 2021 with a bachelor's in political science. At St. John's University, he is actively engaged in several organizations, including his role as editor-in-chief of the *New York Real Property Law Journal*. He is also a member of the Real Property Law Society, the Latin American Law Students Association, and a Fellow of the Mattone Family Institute for Real Estate Law. Piero wrote this article for his Advanced Topics in Real Estate Law class. It was first published in the *NYSBA Journal* (Winter 2025).

Endnotes

1. 82 Misc. 3d 1242(A) (Sup. Ct., N.Y. Co. 2024).
2. *Id.*
3. N.Y. Civil Practice Law and Rules 302 (CPLR); *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 528 (2019).
4. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).
5. *Bristol-Myers Squibb Co. v. Superior Ct. of California*, 582 U.S. 255, 262 (2017).
6. CPLR 302(a)(1).
7. *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988).
8. *Oasis Invs. II Master Fund Ltd. v. Mo*, 82 Misc. 3d 1242(A) (Sup. Ct., N.Y. Co. 2024).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Renren, Inc. v. XXX*, 67 Misc. 3d 1219(A) (Sup. Ct., N.Y. Co. 2020).
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Oasis Invs. II Master Fund Ltd. v. Mo*, 82 Misc. 3d 1242(A) (Sup. Ct., N.Y. Co. 2024).
19. *Id.*
20. *Coast to Coast Energy, Inc. v. Gasarch*, 149 A.D.3d 485, 487 (1st Dep't 2017).
21. *Id.*
22. *Retail Software Servs., Inc. v. Lashlee*, 854 F.2d 18 (2d Cir. 1988).

Member Spotlight: David C. Mineo

David C. Mineo is a graduate of Canisius University and received his J.D. from John Marshall Law School after having attended his final year at the University at Buffalo School of Law. He currently is chief compliance officer at Madison Title, located in Lakewood, NJ.

Q. What sparked your interest in real estate law? Please tell us how you entered this practice area.

A. I was not always interested in real estate law. While in school I enjoyed my real property classes and the teachers who taught them. One professor wrote the textbook we used, and I was impressed by his practical teaching method with real world examples. I also had internships in immigration and mental health law and thought about working in other areas.

My first job was with Travelers Insurance in their claims department. I gained experience handling cases that were in litigation in New York City and also directed the ADR program. At the same time I also started to handle closings for family and friends. I enjoyed the process of working toward a successful closing while learning how to avoid any issues that could come up during the closing process. After many closings, I still like to represent clients during what can be a stressful time, especially for first time buyers.

Forward ahead eight years, I was asked by attorney Frank Carroll if I would be interested in a claims counsel position at Chicago Title Insurance Company. I did not hesitate to accept the opportunity to trade in looking at medical records and sometimes gross photographs to reviewing abstracts and surveys. My experience with real estate closings was a good background for handling title insurance claims.

I was able to advance within the claims department and was promoted to VP/manager. I hired a team of lawyers and support personnel to handle claims throughout New York State and the New England area. When the claims department reconfigured to a central location in Omaha, I was asked to open a claims office in Mississauga, Ontario to handle Canadian claims. It was an exciting time forming a team to handle claims and learning about the market. Reta Coburn, president of FNF Canada, was a great mentor to me. I learned the different closing practices across Canada and helped to grow the market share. During this time I was promoted to SVP and also called to the Ontario Bar, having been pushed to do so when I was on the final extension of my loaned executive work visa.

I left Chicago Title Canada after nine years, returning to Buffalo where I was hired as part-time counsel for the Erie County Water Authority and also continued my real estate practice. After three years I started with Holland Land Title & Abstract Company. I recently started working for Madison Title as their chief compliance officer.

Q. Can you tell us about the matters you handle daily?

A. Drawing on my real estate, title insurance and regulatory compliance experience, I oversee regulatory compliance and risk management to safeguard organizational integrity. Madison Title is a large multistate agent, and I ensure compliance with RESPA, CFPB guidelines, ALTA Best Practices, and state insurance regulations.

Q. What advice would you give law students interested in real estate law or practicing lawyers interested in transitioning to this area of practice?

If you are still in law school, take as many real estate courses as possible. If your school has a legal clinic, volunteer to gain practical experience in the real estate area. Let others know of your interest and connect with family or friends who work in the area. Practical experience is always a plus so see if there are any internships available. Most lawyers would be honored to help a law student gain experience. Shadowing a lawyer through the closing process will enhance what you learned in school.

Q. What are the advantages of being a part of the Real Property Law Section of NYSBA?

A. Section membership has allowed me to keep up to date with developments in real estate law. Membership provides a way to interact with a community of professionals. Closing practices vary by county and section members are willing to help answer questions. You can also gain leadership skills. There are many committees to join, and you have the opportunity to become a committee chairperson.

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The Real Property Law Section encourages members to participate in its programs and to volunteer to serve on the committees listed below. Please contact the Section officers or committee chairs for further information about the committees.

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Real Property Law Section
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Upcoming Events

Save the Dates!

Evolving Discrimination Laws for Owners and Managing Agents

Wednesday, May 22, 2025
4:30 p.m. – 6:00 p.m.
Webinar

1.5 MCLE CREDITS

Reviewing Triple Net Leases as a 1031 Replacement

Tuesday, June 3, 2025
12:00 p.m. – 1:00 p.m.
Webinar

1.0 MCLE CREDIT

Real Property Law Section Summer Meeting 2025

Thursday, July 17 – Sunday, July 20, 2025
Crystal Springs Resort
Hamburg, New Jersey

6.5 MCLE CREDITS

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Events

Feb. 25, 2025: RPL Roadshow at St. John's University Law School
(L-R): Dan Zinman, Mindy Stern, Lisa Stenson Desamours

March 29, 2025: Off-Campus Mixer
(L-R) : Katie Burke, Jonathan Carelli, Noorali Soomro, James Doheny, Piero Sauñe Casas, Adam Elasher, Victoria Knapik, Natalie Mcintosh, Julia Bryant

March 29, 2025: Admitted Students' Day at St. John's Law
(L-R): Deep Patel, Victoria Knapik, Sara Malekan

Oct. 19, 2024: RPLJ Kickball Tournament
(L-R): Noorali Soomro, Piero Sauñe Casas, Julia Bryant, Franscheska Rodriguez, Daniela Ras, Deep Patel, Natalie Mcintosh, Emilio Teta, Nicholas Treibman, Laura Zaweski, Ryan Stempel, Mar Ziarno, Imraj Sahota, Patrick Naczi, Yan Lee

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Meeting registration is now open!

Visit the event page for updates on topics, speakers, sponsorship opportunities, and other important information.

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