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THE COUNSELOR

Forchelli Deegan Terrana LLP hopes that this issue of *The Counselor* finds you, your colleagues and your families safe and healthy. Due to the COVID-19 pandemic, this edition of our newsletter will be released in a digital format only. We look forward to returning to our mailed version, along with a digital version, once a new normal has been established.

BREAKING UP IS HARD TO DO: PARTITIONING OF REAL PROPERTY

— By *Jacqueline A. Rappel*

It is not uncommon for unmarried people to own real property together. Often it is harmonious and profitable for everyone, but what happens when it is not? Perhaps you inherited property along with your siblings but now you don't all agree on how it should be managed. Or what about that investment with your best friend that just isn't working out? The remedy may be a partition of the property.

In the absence of an agreement prohibiting it, a party who no longer wishes to be a joint owner of the property is entitled to a partitioning of the real property as a matter of right. This right to partition is quite valuable in that it provides an owner with the means of disposing of his/her interest even when their co-owners do not consent.

There are two types of partitions – “partition in kind,” in which property can be physically divided, such as where the property is vacant or comprised of multiple lots or units, and “partition by sale,” which is more common when property cannot be divided, such as a single-family dwelling. In a partition by sale the property is sold and the proceeds are divided among the owners.

A partition by sale can be voluntary, where the parties agree to market and sell the property, or perhaps one buys the other owner out, and the proceeds are divided amicably. When an amicable resolution is not feasible, however, a partition action must be commenced. In that case, the court orders the sale of the property and determines the equitable distribution of the proceeds. An accounting is done after the property is sold at which time each owner presents evidence of their contribution to the expenses of the property and rental income received if any. The Court will then determine how much each owner will receive from the proceeds of the sale, with only “necessary” expenses being reimbursable.

Any property that has multiple owners, commercial or residential, can be the subject of a partition action. It is essential that property owners be represented by experienced counsel in these matters in order to safeguard and protect their rights.



Jacqueline A. Rappel,
Partner

FIRM MENTIONS

NEWSDAY

Daniel P. Deegan was:

- featured in article, "Long-delayed \$47M Kings Park sports, medical complex to get tax breaks."
- quoted in article, "Designer, fabric wholesaler moving from Bethpage to Melville."

LONG ISLAND BUSINESS NEWS

Alexander Leong was featured in "WHO's WHO in Intellectual Property & Labor Law."

FDT was mentioned in the article, "Home furnishings firm plans \$16.8M relocation."

NEW YORK REAL ESTATE JOURNAL

Anthony P. DeCapua was featured in the 2020 Ones to Watch Spotlight.

SUFFOLK LAWYER

Joseph V. Cuomo & Keith Belfield's (2019 FDT Diversity Fellow) article, "Practical Tips for Drafting Agreements from 'Whole Cloth,'" was published.

CARCOMPLAINTS.COM

FDT was mentioned in, "Toyota Fuel Pump Recall Not Good Enough." Led by Elbert F. Nasis, FDT is one of three firms representing the plaintiff in the class action lawsuit.

AWARDS, PRESENTATIONS & EVENTS



Gerard R. Luckman participated on a Bankruptcy & Corporate Restructuring panel and **Douglas W. Atkins** gave a presentation on the firm's Tax Certiorari practice group during the Institute of Management Accountant's (IMA) monthly dinner meeting.



Stephanie M. Alberts, Danielle B. Gatto, Virginia A. Kawochka and **Kristina E. Sornchai** attended the *Herald's* Top Lawyers of Long Island reunion breakfast at The Heritage Club in Farmingdale.



FDT's **Women's Initiative** hosted a professional development Speed Networking event.



Gabriella E. Botticelli and **Brenna R. Strype** attended an exciting "Women in Sports" event, featuring Elizabeth Maringer (Senior VP & Assistant General Counsel: NBA), Beckie Scott (Olympic skier), and Moira

Weinberg (VP & Deputy General Counsel: MLB).



Joseph V. Cuomo and **Lisa M. Casa** attended the Association of Corporate Counsel's (ACC) Winter Gala: Villainous – A Night in Gotham at Gotham Hall in New York City.



Robert B. Moy and **Jane Chen** attended the Asian American Bar Association of New York's (AABANY) Annual Dinner, "Stronger Together – Unity in Diversity," at Cipriani Wall Street in New York City.



Kristina E. Sornchai participated in the Marcum Workplace Challenge Kickoff Breakfast.



Gregory S. Lisi and client, Beyond Air, Inc., rang the NASDAQ closing bell on March 2, 2020.



BANKING & FINANCE

John P. Bues successfully negotiated and represented a firm client in facilitating a \$5,250,000 building loan closing for the construction of a luxury hotel and restaurant in Northport Village.

Steven G. Gaebler negotiated and closed a \$3,850,000 cooperative mortgage loan on behalf of Citibank, N.A. for the purchase of commercial cooperative units at Hunts Point Cooperative Market.

James C. Ricca negotiated and closed:

- a \$52,000,000 mortgage refinance on behalf of an institutional lender for an office building in Midtown Manhattan.
- a \$21,000,000 mortgage modification on behalf of New York Community Bank for a historical landmark in Manhattan.

James C. Ricca and **Lindsay Mesh Lotito** negotiated and closed:

- a \$6,650,000 mortgage loan and \$500,000 revolving line of credit on behalf of Valley National Bank for a cooperative apartment building in Westchester.
- a \$14,500,000 mortgage on behalf of an institutional lender for two multi-family buildings in Harlem.

Lindsay Mesh Lotito negotiated and closed two mortgage loans totaling \$16,265,000 on behalf of New York Community Bank for two neighboring apartment complexes in Brooklyn.



CONSTRUCTION

Through aggressive advocacy, **Anthony P. DeCapua** obtained over \$1 million in payments for a general contractor client without filing claim or suit, despite an ongoing dispute and unfounded termination threats from a public entity owner.

In an action brought on behalf of a general contractor against its subcontractor, **Joseph P. Asselta** and **Raymond A. Castronovo** obtained summary judgment on liability concerning the subcontractor's material

breach of the parties' subcontract.

Joseph P. Asselta, David A. Loglisci and **Raymond A. Castronovo** won partial summary judgment on a claim under a contract for construction consulting fees. In addition to securing an immediate money judgment, they obtained favorable legal rulings from the Court that will enable them to pursue further recovery for the client at trial.



EMPLOYMENT & LABOR

Gregory S. Lisi, Frank W. Brennan and **Alexander Leong** successfully defeated an appeal and motion for reconsideration filed by the Transport Workers Union seeking to challenge the National Labor Relations Board's determination that our client's operations at Dallas-Fort Worth International Airport are subject to the jurisdiction of the Railway Labor Act and not the National Labor Relations Act.



LITIGATION

Richard A. Blumberg, Danielle B. Gatto and **Nathan R. Jones** litigated on behalf of a regional bank to save the bank from a \$1,750,000 loss. The bank held a mortgage against real property in Glen Cove, which was extinguished by the issuance of a tax deed to the defendant. An action was commenced on behalf of the bank to set aside the tax deed and reinstate the mortgage, based on various technical errors which required the Court to set it aside. The Court agreed and granted the bank's motion for summary judgment.

Russell G. Tisman obtained the dismissal of an action against an international trade show contractor client who had been sued as a result of an industrial accident when plaintiff failed to comply with a discovery order. Mr. Tisman also secured summary judgment dismissing an industrial accident lawsuit against the sponsor and organizer of the New York NOW (Gift) Show at the Javits Center, and its official service contractor.

After five years of litigation, **Andrew E. Curto, Elbert F. Nasis, and Danielle E. Tricolla** obtained an order dismissing all

claims brought against a client by its former sales agent who sought millions of dollars in future commissions after being terminated "for cause" following his repeated insubordination. In a completely favorable decision for our client, the Court granted our motion for summary judgment and awarded our client its attorneys' fees incurred in defending the lawsuit.



LAND USE & ZONING

Andrea Tsoukalas Curto successfully obtained several variances, subdivision approval and a change of zone for a client in the Town of North Hempstead to create a retail strip building on Mineola Avenue and three residential building lots on Madison Avenue in Roslyn Heights.

Jessica A. Leis successfully received the approval from the Town of North Hempstead BZA to maintain a two-family dwelling on a lot with insufficient width and setbacks. Based on the historic review of the file, the Building Department denied the pre-existing, non-conforming status of the lot. Ms. Leis presented convincing evidence to the BZA to counter the Building Department's arguments, and our client was granted the continued use.

Andrea Tsoukalas Curto and **Jessica A. Leis** successfully defended the Village of Russell Gardens in an Article 78 proceeding brought by a commercial property owner. The Petitioner had applied to the Village's Zoning Board of Appeals for a parking variance to operate a used car dealership. In affirming the denial of the variance and dismissing the petition, the Court agreed with the ZBA's well-reasoned decision that thoroughly discussed each of the five factors set forth in Village Law Section 7-712-b(3)(b), and found that the Petitioner failed to adequately address the ZBA's concerns regarding the substantiality of the variance and the use's effect on traffic and parking in the surrounding residential neighborhood.

William F. Bonesso had several successful applications including:

- securing neighborhood support for the owners of Salt Restaurant in Merrick and secured parking and other variance relief approvals from the Hempstead Board of Appeals in order to permit the restaurant's use

of its outdoor decks for dining and gathering purposes.

- securing Town of Hempstead Town Board special exception approval to permit CarMax Superstores, Inc. to redevelop the site of the former Home Depot on Hempstead Turnpike in East Meadow. The new CarMax sales and service facility will be the first CarMax approved in Nassau County and will bring a business to the site.
- securing Town of Hempstead Board of Appeals approvals to allow a Hounds Town franchise to move into facilities situated in Island Park. The facility will provide doggy daycare and boarding for dog owners throughout the area.
- Obtaining Town of Hempstead Board of Appeals approvals for a Goddard School early childhood development and learning center to be constructed and operated in Bellmore.

Additionally, **William F. Bonesso** has been instrumental in helping the Town of Hempstead resume public meetings and hearings by the Town Board and Board of Appeals during the COVID-19 Pandemic. Mr. Bonesso has worked closely with the Town Supervisor, Town Board, Town Attorney's Office and Board of Appeals Secretary providing them with legal analyses outlining the requirements the Town must meet and suggested procedures that would satisfy them.



REAL ESTATE

John P. Bues represented a client in negotiating and closing on the purchase of a \$3,680,000 single-family residence in Lattingtown.

Judy L. Simoncic and **Nathan R. Jones** represented Mount Sinai South Nassau Hospital in connection with securing municipal approvals to convert an existing office building into a multi-tenant commercial leasehold condominium. The complex transaction involved subdivision approval, creation of a leasehold condominium, and subsequent application to the Nassau County Department of Assessment for real property tax exemptions on approximately 100,000 square feet of office space. The tax exemption was granted for office space already occupied

by the hospital and the vacant office space expected to be occupied by the hospital, saving the client approximately \$550,000 in taxes for this tax year alone.

Daniel P. Deegan, Judy L. Simoncic, Nathan R. Jones and **Robert L. Renda** represented NYU Langone Hospitals in connection with securing municipal approvals to convert an existing office building into a multi-tenant commercial leasehold condominium, and in subsequently applying to the Nassau County Department of Assessment for real property tax exemptions for approximately 50,000 square feet of office space occupied by NYU Langone Hospitals, saving the client approximately \$625,000 in taxes.



TAX CERTIORARI

John V. Terrana and **Douglas W. Atkins** counseled a prominent Long Island garden apartment owner with complexes throughout the region. A particular property had stable rents, but its advanced age resulted in disproportionate expenses on a regular basis. Messrs. Terrana and Atkins were able to establish that these expenses resulted in a much lower tax assessment. Ultimately, the firm was able to secure \$450,000 in refunds for the client.

Nicole S. Forchelli resolved a property tax matter in Erie County for a large-scale industrial shipping and logistics company. The valuation methodology proffered by Ms. Forchelli was supported by a prior subject sale, the actual financial experience of the subject property, and an in-depth market analysis of comparable properties. After extensive negotiations with the municipality, Ms. Forchelli was able to successfully resolve the proceedings and obtain a real estate tax benefit of over \$160,000.

Nicole S. Forchelli and **Robert L. Renda** represented the owners of a skilled nursing facility in the City of Long Beach, seeking to minimize their tax liability, and thus freeing up capital to reinvest in the facility. Ms. Forchelli and Mr. Renda worked with commercial appraisers in formulating a valuation technique to isolate real estate value from business value. When this was applied to the tax assessment, the result was tax reductions of approximately \$550,000



TAX, TRUSTS & ESTATES

Mary E. Mongioi and **Stephanie M. Alberts**, assisted by **Brian R. Sahn** and **Peter B. Skelos**, sought revocation of Letters of Administration issued to a party claiming to be decedent's daughter. In a landmark Decision dated March 10, 2020, New York County Surrogate's Court held that neither the presumption of legitimacy nor the doctrine of collateral estoppel barred a genetic marker test of the claimant, and also permitted DNA from Decedent's autopsy to be tested against that of the claimant. This test proved with 100% certainty that claimant was not Decedent's child. As a result, our clients obtained their rightful inheritance.



VETERINARY

On behalf of a national veterinary practice consolidator, **Mary E. Mongioi** and **David J. Borkon** – assisted by **Brian R. Sahn, Robert B. Moy** and **Jeremy M. Musella** – successfully negotiated and closed on the purchase of a group of four veterinary hospitals all located on Cape Cod, Massachusetts. The combined transaction amounts totaled in excess of \$33,000,000.

Mary E. Mongioi and **David J. Borkon**, together with **Robert B. Moy** and **Jeremy M. Musella**, have assisted a firm client in the purchase of nine specialty, emergency and general practices in and around Orlando, Florida. The combined transaction amounts total in excess of \$28,000,000. **Brian R. Sahn** successfully negotiated the real estate leases associated with each of the practices.



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NOTABLE UPDATES



Andrea Tsoukalas Curto has been asked to serve as a member of the Town of North Hempstead Waterfront Business District (B-W) Steering Committee, established to create new zoning for the redevelopment of the Port Washington waterfront.



Lisa M. Casa was installed as President of the Nassau County Women's Bar Foundation through June 2021.



Lorraine S. Boss joined the Firm's Tax, Trusts & Estates practice group as a Partner on February 24, 2020.



Virginia A. Kawochka, Administrator, has been asked to serve as Co-Chair of the Nassau County Bar Association's (NCBA) newly-introduced Legal Administrators Committee.