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THE COUNSELOR

IRA PROMOTES DEVELOPMENT OF BATTERY ENERGY STORAGE SYSTEMS AND OTHER GREEN TECHNOLOGIES

— *Judy L. Simoncic, Esq. and Gregory W. Carman, Esq.*

The recent passage of the Inflation Reduction Act (“IRA”) on August 26, 2022 represents unprecedented legislation which, among other things, includes significant investment in renewable energy technologies. The IRA provides tax credits for companies developing and producing solar panels and wind turbines, as well as the manufacturing of battery storage and other renewable energy technologies. Solar and wind technologies have been implemented for many years but battery energy storage systems, more commonly known as “BESS,” is a new evolving technology that allows for more efficient storage of energy. This technology is seeing widespread application by large corporations, developers and property owners.

BESS systems provide a wide range of power and storage capacities. A large BESS can be installed in industrial or business districts to serve local manufacturing plants and office buildings, and in some residential districts, it can supply power to entire neighborhoods. A BESS can also be downsized to service individual dwellings with small units, about the size of a standard residential central air conditioning unit.

Like most new legislation, the IRA is already having significant effects on municipal zoning codes as there are now major incentives to invest in green technologies and allow for their widespread installation. Before the IRA, only a handful of Long Island municipalities took steps to incorporate BESS provisions into their zoning codes. Among them, the Towns of Huntington, Brookhaven, and Southampton all adopted provisions allowing the installation of BESS in their industrial and business districts.

Notably, the Town of Southampton’s code allows for BESS to be installed in residentially-zoned districts, allowing taxpayers to install a lower-powered unit in their homes as an accessory use. Combined with the growing trend of installing solar panels on the roofs of residential dwellings, these residential BESS systems will ease the daily burden on the power grid along with providing a source of emergency power during the next superstorm event.

The financial benefits of the IRA are already, not surprisingly, motivating developers to incorporate BESS technology into future projects. Similarly, municipalities are looking for ways to permit the development of BESS systems through zoning code amendments. Like other renewable energy sources, BESS is certainly here to stay. Developers, homeowners and businesses alike should consider taking advantage of the IRA benefits through installation of renewable energy technologies. With the IRA, renewable energy is not only environmentally responsible but carries with it financial incentives. The experienced attorneys in our Land Use and Renewable Energy practice groups are available to answer your questions and guide you through the complicated approval process for these systems. ■



Judy L. Simoncic, Partner



Gregory W. Carman, Associate



BANKING & FINANCE

James C. Ricca and **Lindsay Mesh Lotito** negotiated and closed a \$28,156,000 deed of trust mortgage on behalf of New York Community Bank, secured by a 25-building apartment complex in Memphis, Tennessee.

On behalf of an Institutional Lender, **James C. Ricca** and **Lindsay Mesh Lotito** negotiated and closed a \$77,000,000 mortgage loan secured by a commercial building on 5th Avenue in Manhattan.

James C. Ricca, **Lindsay Mesh Lotito** and **Zachary J. Manasia**, on behalf of New York Community Bank, negotiated and closed a \$7,954,000 loan for the purchase of an apartment complex in Greece, New York.

James C. Ricca, on behalf of an Institutional Lender, negotiated and closed a \$15,750,000 mortgage loan with a mezzanine loan component for the purchase of an apartment complex in Rochester, New York.

Lindsay Mesh Lotito negotiated and closed a \$39,200,000 mortgage loan on behalf of BCB Community Bank secured by a shopping center on Route 27 in Franklin, New Jersey.

On behalf of an Institutional Lender, **James C. Ricca** and **Lindsay Mesh Lotito** negotiated and closed an \$18,000,000 mortgage loan secured by a 48.4-acre parcel of land in Branchburg, New Jersey.

Steven G. Gaebler and **Lindsay Mesh Lotito** negotiated and closed a \$17,250,000 mortgage

loan on behalf of Hanmi Bank, secured by 5 apartment buildings in Manhattan.

Steven G. Gaebler negotiated and closed a revolving line of credit in the amount of \$11,500,000 and a term loan in the amount of \$13,500,000 on behalf of an Institutional Lender secured by the Borrower's assets in both the United States and Canada.

Zachary J. Manasia negotiated and closed a \$7,050,000 first mortgage loan on behalf of Hanover Community Bank secured by three commercial properties in Collingswood, New Jersey.



TAX CERTIORARI

John V. Terrana and **Robert L. Renda** successfully recovered a six-figure property tax refund for a funeral home in Suffolk County. The case involved eight parcels of real estate and two independent businesses. By separately prosecuting the various components of the case, Mr. Terrana and Mr. Renda were able to achieve a terrific result for the Firm client.

Nicole S. Forchelli resolved a property tax matter for a renowned North Shore estate. She employed a fee simple methodology, boosted by sales of similar properties in the area. After negotiations, Ms. Forchelli obtained a real estate tax benefit of more than \$475,000 for her client.

Douglas W. Atkins authored an article "Commercial net tenants finally get a win with their

property tax burden" in the New York Real Estate Journal, regarding a recent decision of note from the state's highest court, the Court of Appeals. The Firm filed an amicus brief in the case which concerned tenant taxpayers' rights to pursue assessment reductions. The case was a victory for Firm clients and Mr. Atkins explored its ramifications in the article.



LAND USE & ZONING

Jeffrey D. Forchelli and **Gregory W. Carman** represented residents at a public hearing in connection with a dock permit application in a south shore waterfront community. Mr. Forchelli and Mr. Carman established that the applicant's "depth survey" referenced decades-old NAVD 88 Datum, which determines elevations in North America, rather than the depth of water at the proposed location. To determine the actual depth, FDT retained a licensed surveyor who took accurate measurements of the depth and prepared a hydrographic survey. With this survey, Mr. Forchelli and Mr. Carman successfully argued before the Town Board that the permit should be denied because of insufficient depth of water for a boat. Additionally, documents established that significant accretion had been occurring in the area which should preclude a dock at that location.

Andrea Tsoukalas Curto obtained approvals from:

- The Town of North Hempstead for a fleet service and rental facility with outdoor parking of vehicles in the Industrial zoning district in New Hyde Park. The

client rents vans to Amazon, Fresh Direct, USPS and other e-commerce businesses. The zoning board approved triple-decker parking lifts to increase the parking capacity at the site. The Board relied on Ms. Curto's arguments that the storage of vehicles is an integral part of the client's business, would improve site circulation and would benefit other businesses in the area by having fewer vehicles on the street.

- The Town of North Hempstead Board of Zoning Appeals for a bakery chain known as the French Workshop. Ms. Curto worked closely with Town officials and neighboring owners to address parking and site access concerns.
- The Village of Floral Park for a three-story infill office building on Jericho Turnpike. Ms. Curto worked closely with the Village Attorney and Building Superintendent to address prior conditions encumbering the site and new conditions concerning the use and parking.
- The Town of North Hempstead for a 300-foot dock for a new residence in the Village of Plandome. The application was heavily opposed by neighbors and an adjacent beach club. Ms. Curto successfully negotiated a deal with all parties involved.

Brian W. Kennedy and **Daniel S. Dornfeld** successfully secured a special exception permit and significant variances from the Town of Smithtown Zoning Board of Appeals, allowing the construction of a new warehouse. Located in the Hauppauge Innovation Park, this new building will house a state-of-the-art cold

storage facility and allow the owner to relocate this operation from New Jersey to Suffolk County.

Over substantial community opposition, **William F. Bonesso** secured variances required by Mount Sinai South Nassau from the Town of Hempstead Board of Appeals in order to renovate and re-occupy a 62,000-square-foot, 4-story office building in Wantagh to be used as part of its network of services. Mr. Bonesso presented a multi-faceted argument to the Board of Appeals and coordinated the submission of testimony and evidence from both MSSN personnel and consulting experts to secure the Board's approval. The refurbished building will provide services to the Wantagh community covering a variety of medical disciplines to assure that the residents of southeastern Nassau County have easy access to a top-of-the-line healthcare facility.



EMPLOYMENT & LABOR

Russ Tisman and **Lisa Casa** successfully moved to dismiss an action for indemnification by an employer against a payroll service provider client. The employer, who was not alleged to have underpaid its employees was sued for statutory violations by providing its employees with non-compliant wage statements. In a case of first impression, the US District Court in Manhattan held as a matter of public policy to make employers responsible for their wage reporting practices, that the Fair Labor Standards Act and

New York Labor Law did not permit employers to be indemnified for violations which do not involve the underpayment of wages.



LITIGATION

After five years of litigation, it took the jury less than 15 minutes to find in favor of our client the owner and landlord of a large commercial warehouse, who was sued by a prior tenant. The prior tenant sought hundreds of thousands of dollars from our client based upon tenant's allegation that our client destroyed tenant's inventory in order to retaliate against the tenant for failing to timely vacate the leased space. The case was tried by **Richard A. Blumberg** and **Danielle B. Gatto** in Nassau Supreme Court. In a total victory, the jury, in a 6-0 decision, determined that tenant's claims had no merit and found in favor of our client.

Nathan R. Jones and **Elbert F. Nasis**, after an in-person hearing, were successfully granted judgement awarding our client the full amount of his attorney's fees and costs of more than \$3.25 million, as the substantially-prevailing party. This judgment stemmed from the successful defense on appeal, by Jeffrey G. Stark and Mr. Jones, of the succesful trial determination in an action to enforce our client's non-compete covenant. ■

EVENTS AND SPEAKING ENGAGEMENTS

Nicole Forchelli attended the Columbian Lawyers Association's 2022 Judges' Night honoring Judges of Italian-American ancestry.

Lisa Casa was instrumental in planning and hosting a "Marketing for Lawyers" Lunch & Learn program presented by Gina Pirozzi for the Nassau County Women's Bar Foundation. Lisa, **Andrea Tsoukalas Curto**, and **Kristina Sornchai** participated in the Zoom meeting.

Mary Mongioi was invited by her veterinary industry contacts to attend a cocktail reception at the Millennium United Nations Plaza Hilton Hotel and Regenerative Cannabis Live at the United Nations.

Jerry Luckman & Lindsay Mesh Lotito attended the Institute of Management Accountants (IMA) – Long Island Chapter's Milton Zipper Financial Executive of the Year Award



Dinner. Jerry is a Board member of the IMA – Long Island Chapter.

Andrea Tsoukalas Curto and **Kathleen Deegan Dickson** attended the Women Economic Developers of Long Island's (WEDLI) breakfast featuring Suffolk County District Attorney Ray Tierney.

Elbert Nasis, Mary Mongioi, Keith Frank & Brian Kennedy attended The Greater Smithtown Chamber of Commerce's Business After Hours event.

Lisa Casa attended the MJ Unpacked, a convention for cannabis brands and retailers, and volunteered to staff the NYC Cannabis Industry Association's booth. Lisa and **Danielle Tricolla** are members of this Association.

Andrea Tsoukalas Curto participated in the Long Island Real Estate Group's (LIREG) Camp Challenge, an afternoon of networking, softball and other team competitions.

Greg Lisi, Peter Skelos, Lisa Casa, Michael Berger, Rich Guarnieri,

Danielle Auer, and spouses attended the Nassau County Bar Association's



122nd Annual Dinner Gala.

Steve Gaebler and his guests participated in The Metropolitan Mortgage Officers Society (MMOS) golf outing & dinner event. **Zach Manasia** attended the dinner as well.

Jim Ricca and **Lindsay Mesh Lotito** attended the Community Bankers' Mortgage Forum's Past President's Dinner.

Jerry Luckman attended The Accountant Attorney Networking Group's (AANG) "Party on the Patio" networking event. AANG is comprised solely of practicing accountants and practicing attorneys who service multiple clients. The purpose of the group is to facilitate networking between and among these professionals.

Elbert Nasis, Jerry Luckman & Dan



Dornfeld attended and golfed in the A World of Pink Foundation's 2nd Annual Golf Classic.

Greg Lisi & Keith Frank organized the Nassau County Bar Association's Annual Labor & Employment Law Recognition Dinner at Domus, which honored the memory of five exceptional jurists who recently passed away. **Jerry Luckman, Russ Tisman, Lisa Casa & Michael Berger** attended the Dinner.

Judy Simoncic and **Brian Kennedy** attended the LIBI General Membership Dinner.

Judy Simoncic, Dan Deegan & Dan Dornfeld attended ICSC 2022 Las Vegas, a premier gathering of dealmakers and industry experts who are driving innovation and evolution in the Marketplaces Industry. The FDT team enjoyed reconnecting with industry contacts, seeing current clients and making several new



connections. The conference, and our business development event, were a success!

Peter Skelos was a presenter at a NYS Academy of Trial Lawyers CLE webinar, "Bypassing the Backlog: Fast-Tracking with Arbitration or Mediation."

Judy Simoncic attended the Collaborate with Edge Leadership Conference's sponsors wrap-up meeting.

Rachel Partain hosted members of USA 500 Clubs, LLC for a cocktail reception and networking event. This is an exclusive member-based relationship-building organization for successful trusted advisors.

Brian Kennedy attended an HIA-LI event, "Through the Eyes of Young Professionals."

Jim Ricca attended the MBA of NY Scholarship Foundation's Networking Fundraiser.

Gabriella Botticelli attended the Addapt Dinner Group meeting. Addapt is a trade organization that helps Aerospace and Defense businesses prosper.



Doug Atkins attended the Long Island Commercial Network's breakfast meeting featuring Elisabeth Muehlemann, Economic Development Specialist - Long Island Regional Office, Empire State Development Corp.

Judy Simoncic, Danielle Tricolla and **John Gordon** attended Vision Long Island's Smart Growth Awards.

Lindsay Mesh Lotito and **Gabriella Botticelli** attended a Girl Gang x Meridian networking event. Lindsay was introduced to the organization's co-founders – who met at ICSC – by one of the Banking & Finance practice group's brokers at the MBA of NY.



Girl Gang consists of 900+ women in real estate.

Dan Dornfeld attended and FDT was a sponsor at the Second Annual Smithtown Classic in support of the Little Saint Nick Foundation.

Gianni Sbarro attended the Nassau County Village Officials Association's membership meeting.

Andrea Tsoukalas Curto and **Judy Simoncic** attended and FDT co-sponsored CIBS Summer Wellness



Luncheon with JRS Architect, P.C.

Landon Dais hosted an American Bar Association CLE, "Cannabis Law on the Cusp of Federal Decriminalization."

Judy Simoncic & Kathleen Deegan Dickson attended the Women Economic Developers of Long Island's (WEDLI) Summer Social and Installation Dinner. ■

NEWSDAY

- **Bill Bonesso** was quoted in the article "Game on! New esports gaming arena planned at Smith Haven Mall." He represents Manhattan-based Belong Gaming.
- **Dan Deegan** was quoted in the article, "Chemical Firm Plans \$10M Expansion." He represents Wego Chemical Group.
- **Dan Dornfeld** was quoted in the article, "Grumman site eyed." He is Prologis Inc.'s real estate attorney.
- **Gianni Sbarro's** welcome announcement was published in LI People on the Move column.
- **Jim Ricca's** appointment to counsel of the MBA of NY was published.

LONG ISLAND BUSINESS NEWS

- **Keith J. Frank's** welcome announcement was featured in the Movers & Shakers column.
- **Rebecca Stein's** welcome announcement was featured in the Movers & Shakers column.
- **Judy Simoncic** and **Andrea Tsoukalas Curto** were pictured in the article, "Women's leadership conference focuses on workplace", recapping the Collaborate with Edge Leadership Conference.
- **Dan Dornfeld** and **Rob Renda** were featured in WHO's WHO in Real Property & Tax Certiorari Law Special Supplement.
- **Gianni Sbarro's** welcome announcement was published in the Movers & Shakers column.

NEW YORK LAW JOURNAL PUBLISHED:

- **James Ricca's** appointment to counsel of the MBA of NY.
- **Gianni Sbarro's** welcome announcement which was featured in the roundup of recent hirings and promotions of New York attorneys.

NEW YORK REAL ESTATE JOURNAL PUBLISHED:

- **Judy Simoncic's** article, "E-Commerce and its Impact on the Industrial Development Real Estate Boom."
- **Douglas W. Atkins' article** regarding a recent decision of note from the state's highest court, the Court of Appeals. The Firm filed an amicus brief in the case which concerned tenant taxpayers' rights

to pursue assessment reductions. The case was a victory for Firm clients, and Mr. Atkins explored its ramifications in the article.

- **James Ricca's** appointment to counsel of the MBA of NY.
- **Keith J. Frank's** welcome announcement was featured in the Movers & Shakers column.
- **Rebecca Stein's** welcome announcement was featured in the Movers & Shakers column.
- The firm's office renovation was featured in the Front Section – Property of the Month: JRS Architect, P.C. reimagines expanded and renovated office for Forchelli Deegan Terrana, LLP.



- **James Ricca** was featured in the Ones to Watch Spotlight.
- **Aaron Gershonowitz's** Page 2 article, "Owners of properties affected by contamination from neighboring sites need to cooperate with investigation efforts,".
- **Gianni Sbarro's** welcome announcement in the Daily REcap e-newsletter.

ST. JOHN'S LAW MAGAZINE

- **John Terrana** was interviewed for the Center Piece article "The Mattone Institute Teams with Alumni to Make Career Connections."

PRATT'S ENERGY LAW REPORT

- **Aaron Gershonowitz's** article, "Planning for New York's Energy and Environmental Future: The Climate Council's Draft Scoping Plan," was published in the May report. ■

NOTABLE APPOINTMENTS



James C. Ricca, a partner in the firm's Banking & Finance practice group, was appointed to Counsel of the MBA of NY



Rob Renda, a partner in the firm's Tax Certiorari practice group, was appointed Vice Chair of the Condemnation Law and Tax Certiorari Committee of the NCBA.



Andrea Tsoukalas Curto, a partner in the firm's Land Use & Zoning practice group, was appointed a board member of the Commercial Industrial Brokers Society Womens Committee.



Michael Berger, an associate in the firm's Employment & Labor practice group, was appointed Co-Chair of the New Lawyers Committee of the NCBA.



Linda Tierney, the firm's Director of Office Management, was appointed Chair of the Legal Administrators Committee of the NCBA.



FDT PARTICIPATED IN THE MARCUM WORKPLACE CHALLENGE

Congratulations ... FDT's Men's Team won **The Legal Challenge** & placed fifth out of the top 10 men's teams. Team time was 1:46:33.



Meet our runners:
Michael Berger (21:07)
 Evan Mesh (27:29)
 Brian Brennan (27:58)
 Doug Atkins (29:59)

