

Case Law Shorts

June 18, 2013

Case Law Shorts 6/18/13 *New York Court of Appeals*

Mortgage Foreclosure/Priority/Mechanic's Liens/Failure to File Building Loan

Agreement/Acquisition Costs Not Subordinated to Mechanic's Liens: Lender agreed to provide funding to developer in two tranches, one for acquisition and one for deposit into a restricted account to pay for improvements. The lending was purportedly fashioned to accommodate non-building loan nomenclature and the lender did not file a building loan agreement. Invariably, lender declared default inasmuch as mechanic's liens were mounting and owner failed to pay property taxes. Mechanic's lienors disputed priority as the building loan agreement had not been filed and the Supreme Court, finding that the financing constituted a building loan and further rejecting lender's argument that the acquisition funds were not subordinated, applied Section 22 of the Lien Law and ordered a sale with the liens to be paid first. The Appellate Division sustained and the Court of Appeals, following one of two diverging rulings, ruled that the funds used to acquire the property were protected from the mechanic's liens... "This result is consistent with the language of Lien Law §§ 22 and 2 (3), (13) and (14), and does not contravene the statute's purpose, to give contractors and material suppliers notice of how much money a building loan makes available for construction. Section 22 does not state that the entire interest of each party to an unfiled building loan contract is subject to a later-filed notice of lien, and we do not infer such a limitation from the phrase 'either with or without the sale of land,' as did the Atlantic Bank court. As the Yankee Bank court pointed out, the subordination penalty logically applies only to funds loaned to pay for improvements." Altshuler Shaham Provident Funds, Ltd. v GML Tower, LLC, Court of Appeals, 2013 NY Slip Op 04273, June 11, 2013

[opinion](#)

-Johnny D. Hall, Esq.

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Tax Assessment/Lead Based Paint Contamination/Market Value: Petitioner sought review of city's valuation of rental houses. In support thereof, petitioner produced expert testimony and cited a favorable holding involving a lead based paint Superfund site. The Supreme Court denied the petition after finding petitioner's rental income evidence unpersuasive. The Appellate Division confirmed and the Court of Appeals sustained.. "Here, notwithstanding the alleged presence of lead paint during the tax years 2001-2004, the five properties continued to generate rental income for petitioner, and he did not otherwise demonstrate that the presence of lead-based contaminants depressed the market value of the five properties." Matter of Roth v City of Syracuse, Court of Appeals, 2013 NY Slip Op 04271, June 11, 2013

[opinion](#)

-Johnny D. Hall, Esq.