

FEDERAL STANDARD ABSTRACT

TITLE NEWS

Issue #67

May 2010

Title News

Installment Contracts and Title Ownership

Purchaser and seller entered into an installment contract, whereby purchaser would take immediate possession of the premises, but would not receive title until the purchase price was paid in full. The contract also allowed the seller to harvest certain trees no later than March 1, 2006. Nevertheless, the seller did not enter the property to harvest the trees until August of 2006. Among other claims, purchaser sued seller for trespass. The seller defended himself by arguing that, until the purchase price was fully paid, he was the legal owner of the property, and therefore he did not commit trespass by entering his property. The Appellate Division, Third Department, disagreed. The court decided that “upon execution of this contract, [purchaser] not only took possession, but acquired equitable title to the property. While the deed to the property remained in [seller’s] name, he in effect held legal title in trust ... and maintain[ed] an equitable lien on the property as security for the contract’s purchase price.” (internal citations omitted.) *Vanderwerken v. Bellinger*, 2010 WL 1710526 (N.Y.A.D. 3 Dep’t, April 29, 2010).

Mortgage Tax “Quarter Point” Exemption for State Credit Unions

Tax Law §253.1-a(a) was amended effective January 1, 2010 to create an exemption from the so-called “quarter point” for mortgages where the mortgagee is a NYS-chartered credit union, organized under Article 11 of the Banking Law. By tax memorandum dated March 30, 2010, the NYS Dept. of Taxation and Finance established the three items that must be sworn to by affidavit of the mortgagee in order to claim this exemption: (a) the mortgage must cover property containing not more than six dwelling units each with its own separate cooking facilities; (b) the mortgagee is a state credit union organized under Article 11 of the Banking Law; and (c) the mortgage is exempt from the special additional tax (*i.e.* from the “quarter-point”). Tax Memorandum TSB-M-10(1)R.

Mortgage Recording Tax Exemption for NYS Instrumentalities

The Commissioner of Taxation and Finance issued an Advisory Opinion stating that instrumentalities and agencies of New York State are exempt from the real estate transfer tax and from mortgage recording taxes. The exemption from transfer taxes is not surprising as it is provided by a specific statutory provision (see Tax Law §1405). The exemption from mortgage recording tax is surprising as there is no corresponding exemption

and that tax usually applies even against entities otherwise immune from taxation (such as churches or not-for-profits), unless a specific statutory exemption exists. The commissioner reasoned that “[i]t is well established that State agencies enjoy immunity from taxation, independent from statutory exemptions, for property used for the public interest, on the theory that imposition of a tax on a mortgage held by a State agency is equivalent in value to a tax on the agency itself in violation of its immunity from taxation.” Advisory Opinion TSB-A-10(1)R.

Corporate Dissolution and Real Estate Ownership

The real property was in the name of a corporation which had been dissolved by proclamation. The Queen County Public Administrator, on behalf of the estate for the allegedly sole shareholder and director, auctioned the property and entered into a contract of sale on behalf of the estate. After the purchaser failed to comply with the seller’s law date (*i.e.* time-is-of-the-essence date), the seller declared the purchaser in default. The purchaser commenced a proceeding to set aside the contract of sale and to recover its downpayment. The purchaser argued that

the seller was unable to convey title to the real property because it was owned by the dissolved corporation. The seller replied that upon dissolution the real estate had vested in the sole director and shareholder, whose estate it represented, and was therefore able to convey title. The Appellate Division, Second Department, agreed with the purchaser and set aside the contract. The court said “[h]ere, the Public Administrator not only failed to demonstrate that she was ready, willing and able to convey title in conformity with the contract, but her submissions established that she was in fact not able to convey title because she lacked corporate authorization to do so.” Citing Business Corp. Law §1006[a], the court continued “[a] dissolved corporation ... may continue to function for the purposes of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place.” Hence, the deed to the property could only have been made and delivered by an officer of the corporation and not by the estate of the sole shareholder. The court also noted a question of fact as to whether the decedent was indeed the sole shareholder of the corporation. *In the Matter of Hicks*, 2010 WL 1715333 (N.Y.A.D. 2nd Dep’t, April 27, 2010).

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