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GUY ALMOST GETS EVICTED … BY IN-LAWS

Mr. and Mrs. Marini thought they were doing right by their daughter and son-in-law.

Not only did they allow the kids to live with them for the first five years of the marriage but, in 1993, the Marinis offered to buy the young couple a house which would belong to them upon the Marinis' death. All that Vincent and Anna needed to do was pay for the home's real-estate taxes and operating expenses.

Of course, none of this was in writing. But, for some eight years, Ana and Vincent complied with their side of the bargain.

In 2002, things got a bit nasty when Vincent sought to divorce Ana. The Marinis countered with an action in the Nassau County Supreme Court to eject or evict Vincent from the home and the Supreme Court (after reviewing the parties' written submissions) not only granted that request but awarded the Marinis some $3000 per month for Vincent's "use and occupancy."

Finding that Vincent may have an ownership interest in the property, the Appellate Division, Second Department, reversed.

Even when there is no written evidence of the arrangement, a person can still have an ownership interest in real estate. That kind of claim is known as a "constructive trust," and requires a claimant to prove the existence of the following elements to a judge's satisfaction:

- a confidential or fiduciary relationship;
- an express or implied promise;
- a transfer made in reliance on that promise; and
- an unjust enrichment.

Although he didn't have a deed (or other writing), the AD2 was of the opinion that Vincent had asserted a viable claim of ownership (as a result of his many years of having paid for property-related expenses and improvements), and that the lower court had erred in granting Marinis' summary judgment and ordering Vincent's removal from the home.

So, until there's a formal hearing or trial, Vincent gets to stay. (Pretty awkward, no?)

If you have any questions or comments about this article, please contact partner Jonathan H. Newman at 212-619-5400 x 205 or email him at JNewman@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

WHEN LEASE IS SILENT, LANDLORD HAS "REASONABLE TIME"

In *Locke v. Nathanson*, the Appellate Term, 9th and 10th Judicial Districts, examined how much time a landlord has to make repairs when no specific timeframe is delineated in the parties' lease.

On April 9, 2005, Alan Locke (as tenant) and Arthur Nathanson (as landlord) executed a one-year residential lease, which was to commence on June 1, 2005. Locke also provided a $2,600 security deposit, which Nathanson could use "to pay amounts owed by tenant, including damages."

Under that lease, Nathanson was required to "spackle and tape the living room, patch, paint the living room ceiling, and put a deadlock on the kitchen door."

On June 3, 2005, Locke canceled the lease and demanded the return of his security deposit because the promised repairs had not been completed. On July 8, 2005, he commenced a small claims case in the Justice Court of the Town of Minisink, Orange County, seeking the return of his security monies.

Crediting Locke's testimony that the parties had orally agreed the repairs would be finished prior to the lease's commencement date, the Justice Court ruled in the tenant's favor.

Nathanson appealed to the Appellate Term, Second Department, which overturned the award. The appellate court noted the lease's general "merger" clause -- a provision which disclaims the existence of any representations other than those contained in the lease -- precluded the introduction of any evidence "offered to contradict, vary, add to, or subtract from the terms of the writing." And, since no deadline for the promised repair work had been included in the written lease, the appellate court disregarded Locke's testimony as to the alleged oral understanding.

The court then held that "no time of performance having been fixed in the contract, a reasonable time for performance is implied." Thus, Locke "was not within his rights in cancelling the lease on June 3, 2005."

The court ordered a new trial to determine the extent of damages Nathanson sustained due to the lease's improper cancellation. Should the damages be less than the security deposit, the balance will be returned to Locke.

Looks like Nathanson had a Locke on this one.

If you have any questions or comments about the above article, please contact partner Daniel Finkelstein at 212-619-5400 x 209 or email him at DFinkelstein@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

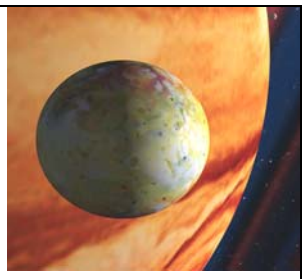
DANIEL FINKELSTEIN CELEBRATES 80th YEAR

We are pleased to announce that our senior partner, Daniel Finkelstein, recently celebrated his 80th birthday.

At a reception held at a downtown Manhattan restaurant, Dan was joined by clients, family and friends to celebrate this momentous occasion. Dan expressed his gratitude to the standing-room-only crowd and invited all to celebrate his 160th birthday at London's Palladium Theatre.

Here's to the next 80, DF!

JAGGER EVICTED FOR BEING AN ALIEN



In *Katz Park Ave. Corp. v Jagger*, Bianca Jagger -- ex-wife of the notorious Rolling Stone, Mick Jagger -- was tossed out on her ear by her landlord, Katz Park Ave. Corp (KPA).

KPA filed two lawsuits, in the New York County Supreme Court, alleging that Jagger -- a British citizen on a tourist visa -- was unable to maintain a "primary" residence in the U.S.

That court found that Jagger's acceptance of a renewal lease superseded the landlord's notice which purported to terminate her interests in a regulated apartment located on Park Avenue (here in Manhattan).

The court further concluded that KPA's non-primary residence claim was untenable because "residency," as defined by our immigration laws, was not equivalent to "primary residence" for rent regulation purposes.

On the basis of that outcome, Jagger sought to dismiss her landlord's second case. She further claimed improper service and a constructive eviction due to conditions extant in her unit. KPA sought Jagger's removal from the building, premised on her domicile in the United Kingdom. When the court denied the parties' respective requests, an appeal to the Appellate Division, First Department, ensued.

The appeal hinged on the definition of "residence" within the immigration and housing contexts. Critical to the majority's opinion was that a B-2 tourist visa, which Jagger holds, requires that the alien "maintain a permanent residence outside the United Sates that she has no intention of abandoning." Meanwhile, a New York landlord may recover possession of a regulated unit when it can be shown that the unit is not being occupied by the tenant as his or her "primary residence."

The majority arrived at the "obvious conclusion" that one cannot simultaneously maintain a permanent residence outside of the U.S. and a primary residence in New York and reversed the lower court's order and granted KPA's request for a judgment evicting Jagger from her Manhattan home.

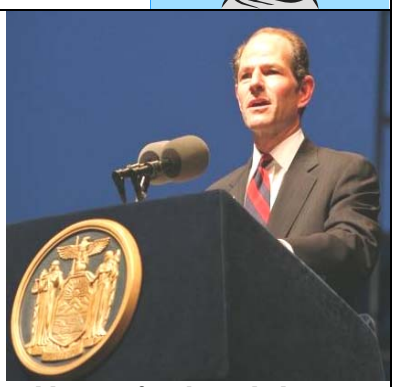
A dissenter noted that an alien's "permanent residence" refers to an affiliation with "an entire nation, but was not intended … to denote a connection with a particular unit." By contrast, the term "primary residence" in the regulated housing context looks to a number of factors unique to each particular case. As the dissenter observed:

> While this tenant's B-2 tourist visa requires her to maintain a domicile outside the United States, it does not disqualify her from maintaining a primary residence here. Thus, the bare fact that a prospective tenant holds a tourist visa is not dispositive of primary residence and is but one factor in determining primary residence ….

Poor Bianca!

Looks like she may be going up ... to the New York State Court of Appeals.

SPITZER CALLS PROPOSED LAW "RADICAL"



Yes, folks, the adverse possession saga continues.

Governor Spitzer recently rejected the Legislature's attempt to amend the law of adverse possession.

In a "Veto Message - No. 153," the Governor declined to approve the bill citing the "radical impact" it would have on the state's adverse possession laws and the "significant adverse consequences" it would have on the state's property owners.

The Message notes, in part, as follows:

> This bill could have significant adverse consequences for New York property owners. The addition of a "knowledge" element to the statute of limitations would likely result in extensive litigation of virtually every adverse possession claim, and thus would undermine the certainty that the statute of limitations was established to provide. The protections against future litigation that a statute of limitations affords will be unavailable for this class of title claims, which could also impact the availability and cost of title insurance.

The Message discloses that the amendment was opposed by the Real Property Law Section of the New York State Bar Association and the Property Rights Foundation of America. (We can't fathom why.)

If you have any questions or comments about the above article, please contact partner Lucas A. Ferrara at 212-619-5400 x 211 or email him at LFerrara@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

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