March 2008
Issue 42

Inside this issue

James Bond: License To Sue..... 1

How Disastrous Is Intro 627? 2

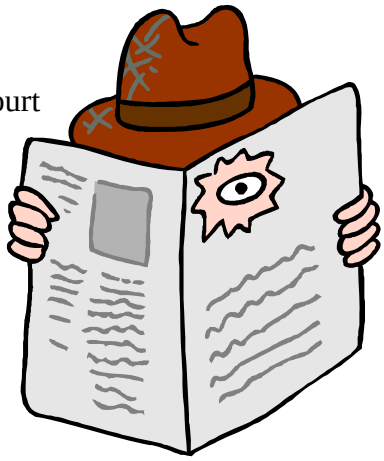
Welcome: Alfonso DeCicco 2

Service Was Not A Family Affair 3

Woman Keeps Apartment (Despite Being Married To A Jerseyite)..... 4

FINKELSTEIN NEWMAN FERRARA LLP
225 Broadway, 8th Fl.
New York, NY 10007
212-619-5400
www.fnfllp.com
www.nyreblog.com

JAMES BOND: LICENSE TO SUE



In *Sultan v. Connery*, New York County Supreme Court Justice Marcy Friedman addressed an array of claims that had been filed against Sean Connery (of James Bond fame), his family, lawyers, and contractors for repair work performed on the Connerys' condominium. Playing the role of "Dr. No," Justice Friedman dismissed a large chunk of the case and chastised the parties for their "slash and burn" tactics.

(We wouldn't have expected less from the former "spy.")

The Sultans and Connerys share a two-unit Manhattan condominium townhouse. In 2001, the Connerys undertook renovations to their unit and sought the Sultans' approval to repair the roof. Eventually, the parties submitted their dispute to arbitration and the arbitrator allowed the Connerys to proceed with the work, but directed that the Sultans be compensated for damage incurred during the renovation process.

Dissatisfied with that outcome, the Sultans filed a series of civil lawsuits and a summary eviction proceeding against the Connerys. (Those cases were dismissed for various defects.)

The Connerys countered with six lawsuits of their own against the Sultans -- seeking to enforce the arbitration award, appoint a receiver, and evict the Sultans. Particularly galling to Justice Friedman was the Connerys' attempt to start a suit in Nassau County, rather than in Manhattan where the property was situated. And, the Connerys reportedly violated a court rule by failing to list all of the parties' related litigation on a form which had been filed with the court when one of the lawsuits had been filed.

In the latest chapter of this saga, the Sultans sued the Connerys and their contractors for personal injury and property damage resulting from the 2001 repair work, and also asserted a claim against the Connerys' lawyers for frivolous litigation practices. The Connerys, on the other hand, asked the court to dismiss the case, to prohibit the Sultans from filing additional litigation, and for an award of sanctions.

While the Court dismissed most of the relief sought by the Sultans, either for failure to state a legally cognizable basis for relief or because the matters had been addressed in prior litigation, a few claims against the Connerys, and some of their contractors, were allowed to survive.

Interestingly, the Court sanctioned the Sultans and their counsel for frivolous practices, and awarded attorneys' fees to the contractors whose work had been performed prior to 2001. (Since a "time bar" or "statute of limitations" applied, any relief sought against those parties was not viewed as meritorious.)

Justice Friedman declined to award attorneys' fees to the Connerys, or to reimburse their counsel for the latter's own defense costs. And, while the Court refused to prohibit the Sultans from

con't on pg. 3

HOW DISASTROUS IS INTRO 627?

We've been getting a lot of calls (from concerned citizens and members of the press) asking about Intro 627 -- a new anti-harassment bill -- and many are wondering whether our friends over at the New York City Council have "lost it."

While we're all for empowering the powerless, and believe the bill was well-intentioned, we share the opinion expressed by the Rent Stabilization Association (RSA) and other interested groups that this bill goes a bit "too far."

While no one should ever be "harassed," how that term is defined will likely remain a major bone of contention for some months and years to come.

Intro 627 wants "any act or omission" which causes a tenant to vacate an apartment or relinquish "any rights" to trigger an array of penalties, including monetary fines, an award of attorneys' fees, and the imposition of a "scarlet letter" against the building -- a "class c hazardous violation" -- which could not be removed from the City's records.

Owners can also expect to take a hit if a tenant can establish "other acts or omissions" which interfere with that individual's "comfort, repose, peace or quiet."

Would the conduct of an owner's attorney comprise a form of "harassment?" Arguably.

How about the "acts" of neighboring tenants (who make too much noise, for example), would that expose owners to liability? You bet!

If not unconstitutionally vague and ambiguous, the bill is riddled with problems that are certain to make tenant-landlord lawyers a whole lot of money.

Join us in opposing the bill. Send a letter to Honorable Jessica Lappin at 336 East 73rd Street, Suite C, New York, NY 10021.

If you have any questions or comments about the above 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.

WELCOME: ALFONSO DECICCO, ESQ.

Alfonso DeCicco, a graduate of St. Francis College (NY), received his law degree from New York Law School in 2000. Mr. DeCicco was an executive board member of the New York Law School Moot Court Association and competed in two national moot court competitions. While in law school, Mr. DeCicco also served as an intern for both the Hon. Thomas V. Polizzi of the Supreme Court of New York and the Consumer Unit of the Legal Aid Society.

Prior to joining Finkelstein Newman Ferrara LLP, Mr. DeCicco represented several major commercial landlords and tenants in various real-estate and commercial matters. Mr. DeCicco has also assisted clients with an array of commercial contracts, including promissory notes, equipment leases and brokerage agreements.

Mr. DeCicco, is admitted to practice in the State of New York, the United States District Courts for both the Eastern and Southern District, and the United States Supreme Court.

SERVICE WAS NOT A FAMILY AFFAIR

If you love soaps, you are going to want to read the Appellate Term's decision in *Bakht v. Akhtar*.

In that holdover case, Shirin Akhtar was being evicted by her in-laws. Although she was only a tenant-at-will (who had never had a lease in her name nor paid rent), Shirin refused to vacate when asked to do so, and, when litigation ensued, she challenged the court's jurisdiction over her person by objecting to the service of the pleadings.

Apparently, the process server believed he had resorted to substituted service by leaving copies of the Notice of Petition and Petition with Afruz Bakht, Shirin's father-in-law and a co-respondent.

It appears the process server was unaware that Afruz and Shirin weren't getting along and that they were "hostile" co-tenants. (Afruz wanted Shirin out so that his son could return to the home.)

When a Civil Court Judge ordered Shirin's eviction, the Appellate Term, 2nd and 11th Judicial Districts, reversed that outcome on appeal and dismissed the holdover case.

While it's usually permissible to serve someone who resides or is employed at the premises sought to be recovered, the AT2 would not uphold the attempt in this instance due to the estranged nature of the group's relationship. Here's how the appellate court phrased it:

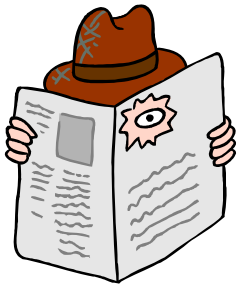
> A conflict of interest may be found where, as here, the recipient of service and the intended respondent are related, but their interests in the proceeding are opposed ... whether this conflict is known to the process server or not .... Despite the fact that Afruz Bakht was a co-respondent in the present proceeding, all of the Bakhts, according to appellant, including the co-respondents, wanted her out of the house so that her estranged husband, Mohammad J. Bakht, could return and live there. Their interests were thus aligned against hers. It must be noted in this regard that none of the tenants, other than appellant, offered any testimony in the proceeding or even appeared in it.
>
> Under the circumstances presented, there is a conflict of interest between the recipient of service and the appellant such that the recipient was not a person of suitable discretion for purposes of RPAPL 735 (1). Accordingly, substituted service of the petition and notice of petition on Afruz Bakht did not constitute good service upon appellant.

A lone dissenter, Hon. Michelle Weston Patterson, wasn't persuaded by Shirin's arguments and would have affirmed the lower court's determination. Justice Patterson did not believe the trial evidence established the existence of an "acrimonious" relationship with Afruz and thus would have upheld the service effort since the parties lived at the same address, their interests were sufficiently aligned, and Shirin admitted receiving copies of the pleadings by regular and certified mail.

What a relative mess!

JAMES BOND: LICENSE TO SUE

cont'd from pg. 1



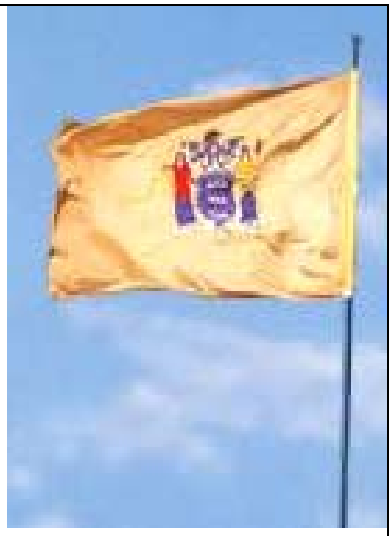
further litigation, it ordered the parties to disclose all prior lawsuits to the court clerk should either side opt to file another case in the future.

Finally, and most importantly, Justice Friedman urged the parties to mediate their differences in order to "restore normalcy to this most unfortunate situation in which the neighbors have wholly lost the ability to cooperate" with the other.

While that was certainly sound advice, it ain't likely to bond, James Bond.

If you have any questions or comments about the above articles, 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.

WOMAN KEEPS APARTMENT (DESPITE BEING MARRIED TO A JERSEYITE)



In *60 West 57 Realty, Inc. v. Durante*, 60 West 57 Realty brought a nonprimary-residence holdover proceeding against Loretta Durante.

The case was based on the allegation that Durante "made only sporadic use of the subject West 57th Street stabilized apartment for the one-year period from October 2001 to October 2002, during which [Durante] was married to a New Jersey domiciliary."

The New York County Civil Court sided with 60 West 57 Realty, and awarded the landlord possession of the apartment. On appeal, the Appellate Term, First Department, reversed.

The AT1 concluded that the evidence clearly demonstrated that Durante had lived in the subject apartment eight years prior to her "short-lived" marriage, and that she had no ownership or proprietary interest in her former husband's New Jersey home (or any other property for that matter).

During the marriage, Durante "kept most of her furniture and personal belongings in the apartment, did not sublet the apartment, and received her mail there." In addition, the AT1 found that Durante resumed full-time occupancy unit by October of 2002 at the latest, which was six months prior to the expiration of her renewal lease.

In view of that history, and the "settled principle that a husband and wife can maintain two separate primary residences," the AT1 was of the opinion that the landlord failed to establish its nonprimary residence claim and dismissed the case.

Good night, Ms. Durante, wherever you are!

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.

FINKELSTEIN NEWMAN FERRARA LLP
225 Broadway, 8th Fl.
New York, NY 10007
212-619-5400
www.fnfllp.com

March to a different drummer.

www.nyreblog.com