



Title Topics



October

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Litigation Round-up

In case you missed them, here are summaries of some recent cases of interest to real property practitioners. If you would like to see the entire opinion, please send your request to sflatow@vested.com

REAL PROPERTY

STOREY v. DARDEN

Appellate Division, A-104-06T3, August 8, 2007, not approved for publication. (5 pages).

Law Division order that determined the parties' real property interests in the third-floor attic of an attached side-by-side duplex affirmed; each party owned a dwelling in the duplex, and the deed descriptions divided their parcels by a common wall without referring to the defendant's claimed interest in the entire attic space, including the adjoining parcel; although the Law Division determined that the testimony of the defendant's witness confirmed that the full attic was for the defendant's exclusive use, it also determined that no writing evidenced that ownership of the full attic had been transferred to the defendant and that her proofs did not overcome the N.J.S.A. 25:1-13 Statute of Frauds or otherwise establish that she had legal title to the attic or an equitable interest in it; thus, the Law Division declared that the plaintiff was the owner in fee simple of the attic space above his dwelling, as defined by his deed, and the Appellate Division was in substantial agreement with the Law Division's reasoning.

REAL PROPERTY

CHASE MANHATTAN MORTGAGE CORP. v. HARRIS

Appellate Division, A-3090-05T1, August 9, 2007, not

approved for publication. (2 pages).

Denial of the defendant mortgagor's motions to vacate a sheriff's sale and for reconsideration affirmed; the final judgment of foreclosure for the plaintiff mortgagee was entered on April 12, 2004; the mortgagee was the successful bidder at the sheriff's sale, which was held on December 7, 2005; in her unsuccessful motion to vacate the sale, the mortgagor asserted that she did not have actual notice of the sale; in this appeal, the mortgagor asserted that the mortgagee failed to offer modification programs or other assistance to her when her loan fell into default, that the mortgagee acted in bad faith, and that it suffered no actual loss; however, those arguments lacked sufficient merit to warrant a written opinion, and the record adequately supported the trial court's determinations; furthermore, the trial court correctly applied Rule 4:49-2 to deny the mortgagor's reconsideration motion.



LAND USE

YARD SALE TREASURES, L.L.C. v. TOWNSHIP OF BERKELEY

Appellate Division, A-1433-06T3, August 13, 2007, not approved for publication. (7 pages).

Dismissal of the plaintiffs' complaint in lieu of prerogative writs affirmed substantially for the reasons expressed by the trial court; relying on the assurances of the defendant Township's zoning officer - who stated that a bar and restaurant would be a permitted use on

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the site of an existing restaurant - and the issuance of a zoning permit, the plaintiffs bought the existing restaurant and renovated it to open as a bar and restaurant; the Township attorney then informed the plaintiffs that neither bars nor restaurants were permitted in the Neighborhood Business Zone in which their property was located and that the Township would not issue a certificate of occupancy; after the plaintiffs filed this action, the Township conceded that the restaurant was a prior nonconforming use, and it permitted them to operate the restaurant without the bar; nonetheless, the trial court properly concluded that the zoning ordinance does not allow restaurants or bars in the Zone and that the Township was not equitably estopped from revoking the zoning permit because it had been issued in clear violation of the ordinance.

BROKER'S COMMISSION

EXIT A PLUS REALTY v. ZUNIGA

Appellate Division, A-5406-05T2, approved for publication September 5, 2007. (18 pages).

When a real estate broker violates N.J.S.A. 45:15-17f, the listing agreement is voidable but is not automatically void. The Law Division opinion in *Winding Brook Realty v. Platzer* is disapproved.

TAXATION

VEGA v. MARKET TRUCKING CORP.

Appellate Division, A-1510-06T3, September 18, 2007, not approved for publication. (9 pages).

Final judgment of foreclosure for the plaintiff assignee of tax sale certificates issued on the defendant owner's property affirmed; the final judgment was dated October 10, 2006; a July 12, 2006 order reflected the parties' agreement that, if the owner failed to pay the redemption amount by August 2, the owner would be "absolutely debarred and foreclosed of and from all

right and equity of redemption," a final judgment would be entered, and the owner would have no right to vacate the final judgment; the owner failed to pay the amount due by August 2; on September 6, the owner moved for relief from the July 12 order, essentially contending that it now had enough money to redeem and that it therefore would be inequitable to enter a foreclosure judgment; however, the motion judge did not abuse her discretion (1) by refusing to modify or vacate the July 12 interlocutory order or (2) by entering the final judgment.

REAL PROPERTY

WASHINGTON MUTUAL, FA v. WROBLEWSKI

Chancery Division, Middlesex County, F-1865-05, approved for publication September 17, 2007. (9 pages). The defendant's satisfaction of a judgment of foreclosure does not require a discharge of mortgage but instead requires only a warrant of satisfaction of judgment.

TAXATION

SOCIETY OF THE HOLY CHILD JESUS v. SUMMIT CITY

Tax Court of New Jersey, Docket Nos. 7403-2005 and 352-2006, September 17, 2007, approved for publication. (9 pages). Property that is used in violation of a local zoning ordinance cannot qualify for tax exemption under N.J.S.A. 54:4-3.6. The holdings in *Byram Tp. v. Western World, Inc.* and *Cheyenne Corp. v. Tp. of Byram* - that land may not obtain farmland assessment where its actual use qualifies for such preferential tax treatment but where that use of the land violates local zoning ordinances or restrictions - also applies in the context of tax exemptions under §54:4-3.6.

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