FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Landlocked Property and Access Easements

In 1953, when the NYS Thruway was built, parcels of land in the Town of Ulster were split in half by the highway running north-south, and some resulting parcels on the easterly side became landlocked. One of the parcels, let's call it A, obtained easements from its northerly neighbors, let's call them parcels B and C (though there might have been more) to access a public street. The plaintiff purchased parcel B (i.e. the conduit between A to C, where C had direct access to the public road) in 2005. Prior to closing, he had performed the usual due diligence of retaining counsel, obtaining a title report (and title insurance at closing), and a survey, and was informed that B had access to via the easement. After closing he had the zoning successfully amended for his pipeline business, apparently relying on the easement.

After the closing, though we do not know how, plaintiff learned that his parcel did not benefit from the easement. Plaintiff brought actions against the surveyor, his attorney and the title underwriter, which had rejected his claim. Supreme Court granted plaintiff's motion for summary judgment and the Appellate Division, Third Department, affirmed.

The easements did not inure to the benefit of B. A had negotiated and obtained each one of them from B and C (and perhaps others). The only grantee listed on the easements was A. Hence, they only benefitted A.

One of the defendants contended that the grant of the easement to parcel A implied a reservation for the other parcels. The Court rejected this view under the principle that a "deed to a stranger" is invalid. A conveyance from grantor to grantee, where the grantee covenants that the grantee will maintain a private road open, does not create rights in the neighbor, because the neighbor is not a party to the conveyance.

The defendants also rejoined that, parcel B being landlocked, parcel C was under a legal duty to provide access to the public street under the common law theory of easement by necessity. The Court rejected this argument observing that the elements of the theory were lacking. An easement by necessity is imposed when the landlocked parcel and the access parcel were united in interest prior to a subdivision. In this case, the subdivision was caused they NYS Thruway. Parcels B and C had not been united interest. Therefore, C did not have a duty to provide access to B.

Lastly, the Court found no evidence of use that would support an easement by prescription. While it is not recited in the opinion, it appears that parcel B may have remained undeveloped or unused between 1953 and 2005. *Colgan v. Brewer,* 2011 1797577 (N.Y.A.D. 3rd Dep't., May 12, 2011).

Tax Consequence of Merging Cooperative Apartments Corps.

The NYS Department of Taxation and Finance issued an opinion regarding the applicability of real estate transfer tax to the merger of two cooperative apartment corporations. Both coops had been developed by the same sponsor. They each was a residential tower of practically identical size and design, they were joined

by a common base where they shared a common entrance, a lobby and fundamental building systems. The applicants wished to merge the two coops for operational efficiency and inquired if transfer tax would apply. The opinion concluded that the merger would trigger transfer tax as it would be a transfer of a controlling interest from the coop that would be dissolved into the survivor. Moreover, the opinion also noted that the re-issuance of stock certificates and leases for each apartment would also trigger transfer tax. *TSB-A-11(1)R (February 22, 2011).*

Legal Representation by Title Insurer

A property owner brought an action against his neighbor to stop the imminent building of a private road across his property and to quiet title. The owner's title insurer subsequently approved the hiring of counsel who took over the representation. The owner was dissatisfied with the representation of the insurer-appointed counsel, and hired his own counsel -a succession of four different firms-, and eventually succeeded in defending his own title. While that action was pending, the owner brought a second action to compel the title insurer to pay for the legal representation in the first action. The title insurer had paid all legal invoices of its appointed counsel only.

The Court rejected the title insurer's argument that the duty to defend under the title policy only arose when the insurer was the defendant and not the plaintiff. It also appears that the Court rejected the argument that the owner's hiring of his own -unapproved- attorney was necessarily a breach of the title policy. However, the question was not answered since the Court found unresolved issued of fact as to whether the owner was justified in hiring unapproved counsel, and as to whether the owner had cooperated with the insurer and kept it informed, as per the terms of the policy. *Busch v. Fidelity Nat'l Title Ins. Co.*, 2011 WL 1797259 (N.Y.A.D. 3rd Dep't, May 12, 2011).