

CLIENT ADVISORY

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THE INFERENCE OF NEGLIGENCE FROM BURST WATER PIPES

The Latin phrase “*res ipsa loquitur*,” or “the thing speaks for itself,” refers to the legal doctrine that negligence of a defendant may be inferred if the damage complained of does not normally happen in the absence of someone’s negligence and the defendant had exclusive control over the agency or instrumentality of the injury. In **Goode v. Bay Tower Apartments Corp.**, NYLJ Sept. 10, 2003, p. 22, col. 2 (Civil Ct. Queens Co.) the court applied this rule to the landlord’s liability for a burst water pipe in the wall of a tenant’s apartment.

To support her claim of the landlord’s negligence, the tenant in the **Goode** case contended that the landlord had historically only fixed pipes in response to leaks and did not attend to routine maintenance, despite actual notice of the deteriorated condition of the pipes. She pointed to past problems with pipes, including a burst pipe in a prior apartment she had occupied in the same building.

The court accepted the tenant’s testimony that the landlord had actual notice of the deteriorated condition of the pipes, as well as constructive notice of the pipe in question, and found that she had made a *prima facie* case of negligence. In addition, however, it also found that the negligence of the landlord could be presumed under the *res ipsa loquitur* doctrine, since the landlord had exclusive control of the pipes. The court therefore awarded the tenant judgment for the water damage to her clothing and other personal property.

THE PITFALLS OF THE HOMESTEAD EXEMPTION

The so-called “homestead exemption” in New York’s **Civil Practice Law and Rules, § 5206**, exempts from the satisfaction of a money judgment a house, cooperative apartment, condominium or mobile home, “not exceeding ten thousand dollars in value,” that is owned and occupied by the judgment debtor as a principal residence (unless the judgment was recovered wholly for the purchase price of the home). Where the homestead exceeds ten thousand dollars in value, the statute permits a judgment creditor to petition the court for an order directing a sale, upon which the court may allocate the proceeds among the parties to approximate their interest in the property.

In **Sunset View Association, Inc. v. Olsen**, NYLJ Sept. 10, 2003, p. 20, col. 5 (Sup. Ct. Kings Co.), a cooperative corporation (“the Corporation”) obtained a judgment by default against a tenant-shareholder for arrears in maintenance payments totaling \$5,657.00. A City Marshal executed the judgment by levying on the tenant-shareholder’s stock in the Corporation, which was then sold for \$6,676.11 at a Marshal’s auction at which the successful bidder was the Corporation itself. When the Corporation discovered after the sale that the “Homestead Act” applied, it petitioned the Supreme

Court for permission to resell the shares, which it anticipated would bring considerably more than the amount it had paid.

The court's response was to invalidate the auction sale, holding that the Corporation only was "seeking to have this court legitimize nunc pro tunc what was illegal in the first instance so that it can be permitted to now do the unconscionable." In the court's view, affirming the Marshal's auction and permitting the former tenant to recoup only the \$10,000 exemption following the resale of her shares would allow the Corporation to be unjustly enriched. The Court directed the Corporation to proceed to a sale in which the property would be accurately appraised, adequate notice would be given and the proceeds would be divided properly between the Corporation and the tenant-shareholder.

THE REQUIREMENT OF NOTARIZED PROXIES INVALIDATED

In Brodsky v. Board of Managers of Dag Hammarskjold Tower Condominium, NYLJ Sept. 10, 2003, p. 19, col. 5 (Sup. Ct. N.Y. Co.), the by-laws of the condominium only required proxies to be made in writing, "signed and dated by the designor and delivered to the secretary. . . ." However, the Condominium Board had previously adopted a resolution requiring that all proxies be notarized and, if the unit owner was a corporation, accompanied by legal opinions and corporate resolutions in support of the proxy. Perhaps because of these stringent requirements, there had not been a quorum at any annual meeting for a number of years and the members of the Board had been designated by the existing Board members, rather than elected by the unit owners.

When an insurgent group demanded that an annual meeting be called to conduct an election for all nine members of the Board, the Board refused to conduct an election for more than three directors, on the ground that the by-laws provided for staggered terms. After the meeting, at which the three opposition candidates appeared to have been elected, special counsel engaged by the Board concluded that there had been no quorum because proxies for a substantial number of units either (a) had been notarized by one of the candidates for election himself, or (b) were otherwise defectively notarized.

The Court concluded that the imposition by the Board of additional requirements for proxies was impermissible unless the by-laws were amended (for which a two-thirds majority of the unit owners was required). It held that since notarization of the proxies was not required, a quorum had been present. In addition, the court observed that there was no basis for invalidating the proxies notarized by one of the candidates himself, since he was not a party to the instrument. The three candidates were therefore held to have been elected.

In addition, the Court held that none of the existing members of the Board were properly holding office, since according to the by-laws, any vacancy filled by the members of the Board themselves would serve only "until a successor will be elected at the next annual meeting of the Unit Owners." Thus, the court ordered that the remaining six positions should have come up for election at the meeting.