Nochumson Profiled In "The Young Lawyer"

Alan Nochumson was profiled in *The Young Lawyer*, a publication of *The Legal Intelligencer*.

In the article entitled "Taking The YLD Forward", Nochumson explains he plans to step up as Chair of the Philadelphia Bar Association's Young Lawyers' Division (YLD), where he will lead the 3,500 young lawyers who practice law in the City of Philadelphia.

Landlord Responsible For Tenant Being Caught With Pants Down

In *Brito v. MAC International, Inc.*, the Philadelphia County Court of Common Pleas sent the proverbial warning shot to all landlords in the city by holding a landlord responsible for negligently failing to evict a sexual pervert who was causing physical and emotional distress to neighboring tenants.

In *Brito*, all of the leases in the apartment building contained the following clause: "B. No disturbance to others. The tenant will not do anything to disturb other tenants." The Leases also contained two other provisions: "Tenant agrees not to conduct illegal activities on the property" and "Tenant's family and guests agree to obey all laws and rules that apply to tenant." Finally, these leases uniformly provided that, if the tenant failed to comply with the cited provisions, he could be evicted from the leased premises.

On several occasions, an individual who resided at the apartment complex located in Northeast Philadelphia was caught by neighboring tenants performing sexual deviant acts in public portions of the apartment building. The individual had a history of arrests and convictions for sexually deviant behavior and was not even a tenant in the apartment complex but was living there in his late mother's apartment under the original lease.

After receiving notice from the tenants of the sexually deviant behavior, the landlord took no action to remove the individual from the apartment complex. The tenants eventually requested that they be moved to another building or another apartment in the building away from the individual's apartment. At first, they were told by the landlord that there would soon be another apartment available, but that apartment was eventually rented to another person. The tenants soon discovered that there were many other apartments available but none were offered to them. As a result, the tenants elected to vacate from their apartment.

Soon thereafter, the tenants filed suit against the landlord pursuant to a negligence theory. After a jury trial, a verdict and damage award was entered in favor of the tenants in the respective amounts $539,000 and $40,000. After the landlord's motion for post-verdict relief was denied, it appealed the jury verdict and award to the Superior Court of Pennsylvania.

The trial court then issued an opinion for the appeal. In the opinion, the trial court focused on whether the prima facie elements of the negligence claim were established. In doing so, the trial court relied upon the following provisions of the Restatement of the Law, Second, Torts:

Section 360, which provides: "A possessor of land who leases a part thereof and retains in his own control any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee or a sublessee for physical harm caused by a dangerous condition upon that part of the land retained in the lessor's control, if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe."

Section 302B, which provides: "An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm even though such conduct is criminal."

Section 448, which provides: "The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime."

Section 449, which provides: "If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby."

After taking these provisions of the Restatement into account, the trial court concluded that the tenants sustained their burden of proving that the landlord was negligent and that the negligence was a substantial factor in causing the harm suffered by them, based upon the following evidence presented at trial: (1) the landlord was on notice that the individual and his stepfather were not tenants in the building; (2) the individual committed the sexual deviant acts that victimized the tenants; (3) the landlord took responsibility to keep the building safe but took totally inadequate steps to do so; (4) the landlord took no reasonable steps to identify the sexual perpetrator; (5) even after the individual was identified, the landlord took no steps to evict him from the building; (6) the tenants were deprived of the quiet enjoyment of their apartment; (7) the tenants were constructively evicted from their apartment; and (8) the tenants both suffered physical, emotional and monetary damages as a result of the landlord's negligence.

LESSONS LEARNED

Although the factual scenario presented in *Brito* is on the more extreme side, landlords should not lose sight of the underlying rationale behind the trial court's ruling. A liberal reading of *Brito* would suggest that landlords must protect their tenants from tortious conduct being committed by third parties in the apartment building.

In order to counteract the effects of the trial court's ruling in *Brito*, landlords should establish a written protocol for addressing tenant complaints and train their agents and employees accordingly. By establishing a complaint process with rigid guidelines and procedures, landlords will clearly reduce the likelihood of being pinned with a six-figure judgment, as was the case in *Brito*.

Alan Nochumson

Vertical Position 100%

Nochumson P.C. And Bear Abstract Services Expands Office

In only a year in business, Nochumson P.C. and Bear Abstract Services have doubled their office space to accommodate their exponential growth. Their office is now located at 1616 Walnut Street, Suite 1819, Philadelphia, Pennsylvania 19103.

Nochumson P.C. provides superior legal representation to businesses, individuals, and professionals throughout Pennsylvania and New Jersey. Bear Abstract Services offers comprehensive title insurance, title examination, and closing services for transactions ranging from simple residential agreements of sale to complex commercial projects.

Tenants Only Need To Substantially Perform Under Lease Agreements

“Just pay your rent on time.” That is what every commercial tenant is told during lease negotiations when the tenant inevitably quibbles about language included in the lease which clearly favors the landlord should the tenant commit a lease default.

In *Atlantic LB, Inc. v. Vrbicek*, the Superior Court of Pennsylvania took this one step further by refusing to evict tenants who eventually fulfilled their monetary obligations to the landlord under the lease.

In *Atlantic LB, Inc.*, a husband and wife entered into a lease purchase agreement with a corporate landlord whereby they agreed to use the premises as a restaurant. The lease required the tenants to make monthly rental and tax payments to the landlord.

Under the lease, the tenants were allowed to cure any monetary default committed under the lease within ten days after receipt of written notice of nonpayment from the landlord. The tenants were, however cautioned that “time [wa]s of the essence in regard to the performance of the duties and obligations of the parties.” Moreover, the lease specifically provided that the tenants’ right to purchase the premises from the landlord ceased if the tenants defaulted under the terms of the lease.

Only a year into the lease, the tenants began failing to make their monthly rental and tax payments on time due to financial difficulties. The parties then entered into an oral agreement whereby, until business improved for the tenants, they would pay rent semi-monthly and the delinquent taxes over six months or until the taxes were paid in full.

Within months of reaching this temporary arrangement, the tenants failed to make payments again. The landlord then sent written notice of nonpayment to the tenants for the back rent they owed under the lease. In the notice, the landlord gave the tenants the requisite ten days to cure the monetary defaults. Since the notice was addressed to the wrong ZIP code, the tenants did not receive the notice until after the 10-day cure period had already expired. Nevertheless, with the exception of some minor disputed fees, the tenants paid the landlord all of the amounts they owed under the lease.

During the next two months, the tenants failed to pay rent. The landlord then sent a second notice of nonpayment to the tenants. They did not cure this monetary default until after the landlord had already filed a complaint for confession of judgment in ejectment against them. The tenants then filed a petition to open the confessed judgment, which was granted by the trial court.

During the litigation, the tenant, in apparent connection with the potential sale of their business, attempted to exercise their right to purchase the premises as provided for in the lease. The landlord refused to transfer the premises to the tenants per the purchase option, however, claiming that the tenants had lost their right to exercise the option as a result of the repeated monetary defaults they committed under the lease.

The tenants eventually obtained a non-jury trial verdict in their favor. Among other things, the trial court found that the tenants had substantially cured the monetary defaults committed under the lease, the lease was still in full force and effect under the doctrine of substantial performance, and they thus had the right to exercise the purchase option contained within the lease.

The landlord appealed the trial court’s ruling to the Superior Court of Pennsylvania. The appeal centered on whether the doctrine of substantial performance prevented the landlord from evicting the tenants from the premises and from refusing to transfer the premises to the tenants in accordance with the purchase option.

The doctrine of substantial performance is “intended for the protection and relief of those who have faithfully and honestly endeavored to perform their contracts in all material and substantial particulars." As a result, Pennsylvania courts do not enforce forfeiture for nonpayment of rent "when the contract has been carried out or its literal fulfillment has been prevented by oversight or uncontrollable circumstances."

With that in mind, the Superior Court affirmed the trial court's ruling, thereby rejecting the landlord's argument that the trial court erred when it refused to evict the tenants in spite of their "chronic non-payment and late payment of rent and other money owed."

The Superior Court held that the doctrine of substantial performance applied given the controlling language of the agreement. Although the tenants repeatedly made late rental and tax payments, the Superior Court concluded that they "were not in actual 'default' as defined in the lease, although they came dangerously close to default."

According to the Superior Court, except for small disputed sums, the tenants cured the arrearages within 10 days upon receiving each notice for nonpayment, as per the terms of the lease. The Superior Court thus believed when the case came before the court, the tenants had substantially complied with their obligations under the lease. Because the lease continued in full force and effect, the Superior Court concluded that the tenants' option to purchase the premises, likewise, remained viable.

LESSONS LEARNED

The ramifications of *Atlantic LB, Inc.* in future landlord-tenant disputes may be surprisingly limited. In *dicta*, the Superior Court stated that its decision in *Atlantic LB, Inc.* should not "be used indiscriminately as authority in all commercial leases for nonpayment of sums due." Instead, the Superior Court "emphasize[d] the importance of careful attention to how these agreements are drafted and to the terms of the agreements as drafted."

This part of the decision seems to infer that the Superior Court would have reached a different conclusion had there been no cure provision in the lease. As such, attorneys representing landlords may think twice before agreeing to the inclusion of this type of lease provision in future leases.

The Superior Court also distances itself from the decision by stating that its role on appeal was to determine whether the findings of the trial court were supported by competent evidence. Rather than fully embracing the trial court's findings of fact, the Superior Court instead concluded that the evidence was sufficient to sustain the trial court's decision to uphold the tenants' rights under the lease.

In reaching its conclusion, the Superior Court ultimately ignored evidence showing that the tenants failed to cure the monetary defaults within the time frame set forth in the lease.

The tenant was excused from curing the monetary default contained within the first notice due to the notice being mailed to the wrong ZIP code, which apparently caused a delay in its arrival to the tenants.

Since the notice was sent via regular mail, the landlord had no way to prove when the tenants actually received the notice. This only reinforces the point that attorneys representing landlords should always send these types of notices by certified mail or some other form of delivery where the landlord can establish without a doubt when the tenant received notice.

As for the second notice, it is unclear as to whether the tenants substantially paid the amounts due under the lease before or after the landlord obtained the confessed judgment. According to the Superior Court, the landlord pointed out that the payment was made after the court filing and well beyond the cure period. If that is the case, the Superior Court's clearly abused its discretion by refusing to overturn the trial court's ruling.

Any way you slice it, the Superior Court may have created a dangerous precedent which landlords across the commonwealth may soon regret.

Alan Nochumson

Vertical Position 100%

Tenants In Pa. Have Right To Select Cable Provider Of Their Choice

Under Pennsylvania's Tenants' Right to Cable Television Act, a tenant may select a cable television service provider of their own choosing so long as the provider actually agrees to provide such service to the tenant. As a corollary, a provider cannot enter into an exclusive arrangement with a landlord to provide cable television service in a residential building, thus preventing a competitor provider from servicing otherwise willing tenants.

In that vein, the Philadelphia County Court of Common Pleas in *Viking Communications, Inc. v. SAS-1600 Arch Street, L.P.* recently refused to enforce an exclusivity clause contained within a cable television service agreement with a landlord and a cable television service provider.

SAS-1600 Arch Street, L.P., the owner of The Phoenix, an apartment building located in Philadelphia, entered into an agreement with Viking Communications, Inc., under which Viking was to provide satellite master antenna television and cable television services to tenants in the building. Under the agreement, SAS specifically granted Viking the exclusive right to provide "satellite, cable, or any other type of subscription or pay television programming, insofar as such right and services are permissible by law" and to market its services to SAS' tenants.

After the agreement was executed, a tenant, who was an executive with Comcast, demanded that he be permitted to receive cable television service from Comcast, as per the act. Subsequently thereafter, SAS and Comcast entered into an agreement permitting Comcast to provide cable television service to willing tenants in the building, "only insofar as defined and allowed under the Tenants' Right to Cable Television Act." Moreover, under its agreement with SAS, Comcast was prohibited from directly marketing or promoting its services to the tenants in the building, "except through the Comcast [s]ystem, telemarketing and direct mail pieces."

Afterward, an onslaught of tenants in the building agreed to receive cable television from Comcast instead of Viking.

Viking then brought suit against SAS for breach of contract and for the intentional interference with Viking's exclusive relationship with the tenants in the building, as well as against Comcast for inducing SAS to breach its agreement with Viking and for intentionally interfering with SAS' performance of that agreement and Viking's contracts with the tenants. In the complaint, Viking also asserted a claim for civil conspiracy against both of them. Both SAS and Comcast filed a counterclaim seeking declaratory judgment that the exclusivity provisions of the agreement between Viking and SAS were void under the act.

SAS then filed a motion for summary judgment on Viking's claims as well as the declaratory judgment action contained within its counterclaim. Comcast later joined in on the motion.

The trial court granted SAS' and Comcast's summary judgment motion, dismissed the complaint, and granted the counterclaim declaring that the exclusivity provision contained within the agreement between SAS and Viking was void under the act. After Viking appealed the trial court's decision, the trial court issued a memorandum opinion setting forth its rationale.

The trial court first rejected Viking's contention that SAS violated the exclusivity provisions of its agreement with SAS when it by entered into a separate agreement for cable television service with Comcast. In doing so, the trial court relied entirely upon the plain language of the act.

Under the statute, a landlord is required to enter into an agreement with a cable television service operator, such as Comcast, if a tenant requests the operator's services and the operator decides that it will provide such services. If the landlord refuses to do so, the landlord can be compelled by an arbitrator or a court to enter into such a contractual relationship with the operator.

Since one of the tenants, albeit a Comcast executive, requested cable television service from Comcast, the trial court found that SAS had no choice but to enter into an agreement with Comcast to provide such service to the tenant.

The trial court also pointed out that Viking recognized in the agreement itself that the exclusivity provisions were limited by what was "permissible by law", or, in other words, the Tenants' Right to Cable Television Act.

The trial court further believed that the exclusivity provisions were otherwise “contrary to the public policy expressed in the Act which prevents a landlord from denying any [cable television] system access to the premises so long as the tenant requests it and so long as it complies with negotiating requirements.”

Viking next unsuccessfully argued that SAS’ agreement with Comcast was overbroad because it permitted Comcast to install an entire competing cable television system in the building and not just wiring sufficient to provide service to tenants who requested such service from Comcast.

The trial court found that the statute “demonstrates a legislative preference for a single [cable television] installation”, under which “[a] second or subsequent installation of cable television facilities, if any, shall conform to such reasonable requirements in such a way as to minimize further physical intrusion to or through the premises.” Relying on this section of the statute, the trial court concluded that allowing Comcast to install a single cable television system that could reach all the tenants in the building was thus permissible.

The trial court finally noted that Comcast’s limited marketing in the building did not violate SAS’s agreement with Viking. At every turn, the trial court noted that normal competitive activities do not constitute tortious interference.

In its agreement with SAS, Comcast was allowed to market its services on its own cable television system, by mail, and by telephone. The trial court found SAS’ permission as “simply recognition of modern marketing realities.”

The trial court was also not persuaded by allegations that Comcast directly solicited tenants while in the building. The trial court emphasized that either no evidence existed substantiating these allegations or, even if Comcast actually behaved in such a manner, such solicitations were normal competitive activities and did not constitute tortious interference by Comcast.

This part of the trial court's ruling is the most problematic for SAS and Comcast on appeal. Comcast certainly knew of Viking's exclusive arrangement with SAS. Although Viking could not statutorily prevent any tenant in the building from selecting another cable television service provider, the statute does not immunize Comcast from civil liability if it specifically targeted and encouraged these tenants to change their cable television service provider, in spite of the existence of Viking's status as the building's exclusive cable telephone service provider. Such conduct would certainly not fall into "normal" competitive activities, as insinuated by the trial court. Rather, Comcast would be engaging in tortious interference in the most classic sense.

As illustrated by *Viking Communications, Inc.*, a landlord may not contractually obligate a tenant to a cable television service provider. The question, however, remain if a cable television service provider may actively market to that tenant in a building where another provider has an exclusive relationship with the landlord.

Alan Nochumson

Vertical Position 100%

Federal Appeal Being Handled By Nochumson P.C. Profiled In “The USA Today”

In the federal appeal, Nochumson P.C. is representing the principal of a event planning company who has allegedly been personally attacked and disparaged on a blogging website.

Condo Association Prohibited From Executing On Assessment Lien

If a condominium unit owner fails to pay a common area maintenance expense assessed against his unit by the condominium association, the delinquent assessment becomes an automatic lien on the condominium unit. In *Forest Highlands Community Association v. Hammer*, the Pennsylvania Superior Court recently explained that a condominium association cannot execute on the assessment lien without first filing a complaint.

The underlying facts of *Hammer* are somewhat unclear. After the townhouse owner in *Hammer* failed and refused to pay the homeowner association’s fees, the association filed a separate lien against the townhouse owner with the Court. The association then somehow obtained a civil judgment in order for there to be a basis for the lien. After the association filed a writ of execution with the sheriff to sell the townhouse to satisfy the money judgment, the townhouse owner filed a motion to strike the writ of execution, claiming that she had never received notice of the delinquent assessment or notice of the lien filed with the Court.

The trial court granted the townhouse owner's motion to strike the writ of execution upon finding that the record did not show that the association had secured a money judgment against the townhouse owner in advance of attempting to execute on its lien. The association appealed and the case was remanded to the Pennsylvania Superior Court from the Pennsylvania Supreme Court.

Under the Uniform Planned Community Act (UPCA), homeowner associations "ha[ve] within its arsenal of powers: 1) the ability to collect assessments for common expenses from unit owners; 2) to institute litigation in its own name on matters affecting the planned community; 3) to impose and receive payments, fees or charges for the use of the common elements of the Association; 4) to impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fees for violations of the Association; 5) to charge a capital improvement fee, annually, for the general common expense to each unit owner; and 6) to exercise all other powers that may be implemented in this Commonwealth by legal entities like the [a]ssociation."

In order to protect its rights, the UPCA provides that "[t]he association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due." An association's lien is perfected simply by recording its declaration, which also perfects the lien.

APPELLATE DECISION

Since the homeowner association in *Hammer* was duly recorded, it was undisputed that the association's lien was perfected on the day the townhouse owner failed to pay her assessments. The appeal thus centered on how the association should have executed on the assessment lien.

The association in Hammer attempted to execute on the lien without instituting a complaint. The association argued that the automatic creation of a lien upon a unit owner's property for failure to pay assessment fees dispensed with the need to file a complaint and thus allowed the association to seek repayment of the unpaid fees by means of a sheriff's sale.

The Superior Court did not believe that the association substantially complied with the requirements of UPCA to allow enforcement of Appellant's assessment lien.

Citing the UPCA, the Superior Court pointed out that an "association's lien may be foreclosed in a like manner as a mortgage on real estate" and "an association is not precluded from pursuing other avenues to obtain payment of assessments less drastic than foreclosure." Under the clear language of the UPCA, "an association can avail itself of an action in debt or in contract to collect an assessment."

In striking the writ of execution, the Superior Court held that the association should have followed the UPCA by filing a complaint, not a second and redundant lien, concluding that the association's "failure to commence the lawsuit by the filing of a complaint, in contrast to a sheriff's sale, was its downfall."

In doing so, the Superior Court rejected the association's contention "that using a sheriff's sale to recoup monies claimed due from [the owner] was the proper step to enforce its assessment lien." Rather, the Superior Court reiterated that "the first step to enforcing an assessment lien is the filing of a foreclosure complaint, action in debt or contract.

Since the association sought enforcement of the assessment lien rather than personally against the townhouse owner, the association was required to file a mortgage foreclosure complaint.

The Superior Court noted there is a world of difference between filing a second lien and a mortgage foreclosure action. The Superior Court pointed out that the procedural requirements for commencing a mortgage foreclosure action are set forth in the Pennsylvania Rules of Civil Procedure and are to be strictly followed.

By following these procedures, the Superior Court reasoned that the townhouse owner would have been unable to contest receiving notice of the action, which she claims never occurred, and would have allowed her the opportunity to question the proper amount, if any, of the assessment lien.

Under this line of reasoning, the Superior Court also found that the writ of execution violated the townhouse owner's due process rights. The Superior Court stated that the owner failed to receive notice of the alleged debt and was not given means to deny liability.

LESSONS LEARNED

The Superior Court in *Hammer* was clearly dumbfounded as to why the association attempted to execute on an assessment lien without first filing a complaint. Through its decision, the Superior Court has clearly drawn a line in the sand for any attorneys who represent condominium associations in the enforcement of assessment liens.

Alan Nochumson

Vertical Position 100%

Klyashtorny Joins Nochumson P.C.

Natalie Klyashtorny has joined Nochumson P.C.

Klyashtorny’s practice focuses in labor and employment law, commercial and general business litigation, including commercial disparagement, libel and slander, First Amendment and media law.

Taxes Are Owed For Real Estate Transfer To Partnership

Prior to purchasing real estate in Pennsylvania, an individual must decide how he intends to own the property. Will he own the property individually, or will he form a corporate entity to hold ownership of the property? The decision should not be taken lightly, as illustrated by a recent ruling handed down by the Commonwealth Court of Pennsylvania.

In *Kline v. Commonwealth* , the Commonwealth Court found that a husband and wife were obligated to pay realty transfer taxes when they conveyed real property owned by them to their limited liability partnership.

PROPERTY OWNERSHIP

In late 2003, Randal and Carol Kline transferred legal title to 27 properties they personally owned to Randcar, LLP, a Pennsylvania limited liability partnership. The Klines were the sole partners of and owned a combined 100% interest in Randcar, LLP. The Klines formed Randcar, LLP for the sole purpose of transferring the property to the partnership.

For each of the recorded deeds, the Klines claimed a 100% exclusion from realty transfer taxes and no transfer taxes were paid. "The statements of value that were filed with each deed claimed exemption from transfer tax as a 'corrective or confirmatory deed' and included the explanation: 'Grantors and the principals are one and the same, therefore no meaningful transfer of title has occurred and the transfer is therefore exempt under 72 P.S. Section 8102-C.3(4) (*see also Commonwealth v. Exton Plaza*).'"

The Pennsylvania Department of Revenue subsequently determined that none of the recorded deeds were exempt from transfer tax liability and imposed the 1% state transfer tax, plus appropriate interest, on the value of each of the transferred properties.

After a series of unsuccessful administrative challenges, the Klines filed an appeal with the Commonwealth Court.

APPELLATE REVIEW

On appeal, the Klines contended that, in light of *Exton Plaza*, a conveyance from a husband and wife to a limited liability partnership is not subject to a realty transfer tax where the husband and wife are the sole owners of the partnership.

In denying the appeal, the Commonwealth Court found the Klines' reliance on *Exton Plaza* as misguided.

In *Exton Plaza*, the Commonwealth Court found that a transfer of real estate from a general partnership to a limited partnership was exempt from transfer tax liability.

The general partnership in *Exton Plaza*, “for the purposes of becoming a single purpose and bankruptcy remote entity, converted itself into a limited partnership.” In *Exton Plaza*, the court in Kline noted that “the conveyance was from an association which had decided to change its business form to a newly formed association of another kind which continued to carry out the very same activities”.

The court in *Exton Plaza* found the transfer was “merely the ’memorialization’ of the conversion from a general partnership to a limited partnership” and concluded that the transfer was “analogous to the exclusion for correctional or confirmatory deed that does not change the beneficial interest in the property.”

The court in *Kline* was unconvinced that the realty transfer taxes were excluded as a result of the court’s ruling in *Exton Plaza*. Rather, the court believed that its subsequent decisions in *Farda v. Commonwealth* and *Penn Towers Associates, LP v. Commonwealth* were controlling.

In *Farda*, the court explicitly limited the scope of *Exton Plaza*. Similar to the Klines, Joseph and Ann Farda were husband and wife who transferred their interest in real estate to a partnership which they completely owned and controlled.

The court rejected the Fardas’ belief that, under “*Exton Plaza* . . . the transfer tax does not apply . . . because the deed did not transfer a beneficial interest to land to anyone other than to themselves, the grantors.”

In *Farda*, the court reasoned that “unlike *Exton Plaza* . . ., the Fardas, as grantors, were individuals, and not a business partnership wishing to change its business form under Pennsylvania law. The deed . . . conveyed legal title to ‘someone other than the grantors’ because the Fardas, as tenants in the entirety, are not Farda Realty, the partnership, an entity governed by the laws for foreign registered limited liability partnerships."

The court in *Farda* thus held that a transfer from a husband and wife to a partnership, which they were sole partners, was a taxable event under the Realty Transfer Tax Act.

In *Penn Towers Associates, L.P.*, the Commonwealth Court revisited its decision in *Farda*. In *Penn Towers Associates, L.P.,* Joseph Soffer had conveyed real estate to a limited partnership. He individually was the sole limited partner with a 99% interest and a limited liability company, owned entirely by him, was the general partner with a 1% interest. Soffer then recorded the deed claiming a 100% exemption from the realty transfer tax because he owned a 100% interest in the partnership and because "the deed in this transaction does not effect a transfer of a beneficial interest in the property to someone other than the Grantor."

"On appeal, Soffer also cited *Exton Plaza* in support of his argument that the conveyance was not subject to the realty transfer tax because as the sole owner . . . he effectively transferred the property to himself."

In rejecting that argument, the court explained that "in *Farda*, we distinguished the situation in *Exton Plaza* from that where the Fardas, a husband and wife as grantors, were individuals conveying certain real estate to a limited partnership of which they were the sole partners, not a business partnership wishing to change its business form under Pennsylvania law. Thus, the deed in *Farda* conveyed legal title to someone other than the grantors because the Fardas were not the same as the partnership to which they transferred the property. . . The situation in *Farda* is repeated here. Soffer, as grantor, is an individual and is different from Penn Towers, a limited partnership governed by the laws for foreign registered limited liability partnerships. Because the deed in this case, which transferred property from Soffer to Penn Towers, is a conveyance between a partnership and a partner, the transfer is subject to realty transfer tax."

Relying on *Farda* and *Penn Towers Associates, L.P.*, the court in *Kline* pointed out that the Klines were obligated to pay transfer taxes because legal title to the properties passed to an entity other than the Klines themselves.

LESSON LEARNED

In *Kline*, the court reiterated that an individual conveying real estate to a partnership is a taxable document even if the partners consist of the grantors themselves. The court's holding is just another example of its insistence on looking at the form rather than the substance of the transfer. In doing so, the court has thus decided that a previously unsophisticated individual may not change the form of ownership without being penalized for his originally imprudent decision.

Alan Nochumson

Nochumson Teaches Lawyers Across Pennsylvania About The "Fundamentals Of Real Estate

Practices”

Alan Nochumson served as a course planner and faculty speaker at the Continuing Legal Education (CLE) seminar sponsored by Pennsylvania Bar Institute entitled “Fundamentals of Real Estate Practices” which took place in Philadelphia, Mechanicsburg, and Pittsburgh, Pennsylvania.

This program was designed by Nochumson to equip the legal practitioner wishing to develop a real estate practice with the fundamental practical knowledge and information needed to begin that practice.

During the seminar, Nochumson explained the process of obtaining title insurance in Pennsylvania.