

Notices of Pendency - New Legislation

In the January and February, 2004 issues of the Bar Reporter, a Court of Appeals case was discussed which established a general “no second chance” rule under which a new (or successive) Notice of Pendency may not be filed to replace an expired or canceled Notice of Pendency, and Appellate Division cases were discussed which made an exception to that rule for mortgage foreclosure proceedings where a separate statute (Section 1331 of the Real Property Actions and Proceedings Law) requires that a Notice of Pendency be on file in order to obtain a final judgment of foreclosure.

Subsequent Appellate Division cases also approved the mortgage foreclosure exception and extended the exception to tax lien foreclosure proceedings, but applied the general “no second chance” rule to mechanic’s lien foreclosure actions. None of those cases reached the Court of Appeals.

The 2004 article noted that a bill had been introduced in the state legislature which, if enacted into law, would have abolished the “no second chance” rule in all actions in which a Notice of Pendency may be filed, not merely in lien foreclosure actions.

That bill, which was strongly opposed by the title insurance industry, found little support in the state legislature. Rather, the legislature passed a different bill (S.5584) earlier this year, proposed by the title insurance industry, adding a new CPLR 6516 which essentially codifies the limited exceptions previously adopted by the Appellate Divisions, as well as the general “no second chance” rule for all other types of action, including mechanic’s lien foreclosures. The Governor signed that bill into law as Chapter 387 of the Laws of 2005, and it took effect on August 2, 2005.

Thus, attorneys representing plaintiffs in actions in which Notices of Pendency have been

filed (other than mortgage, tax lien or condominium lien foreclosures), must be especially cautious to avoid allowing the Notice of Pendency to lapse by not completing service of a summons within 30 days after the commencement of the action (CPLR 6512) and to avoid allowing the Notice of Pendency to expire by failing to obtain and file an order extending its three-year life prior to such expiration (CPLR 6513).

The legislation, like the previous Court of Appeals decision in *Matter of Sakow*, 97 N.Y.2d 436 (2002), does not authorize any showing of “good cause” or any other extraordinary circumstance as a basis for avoiding the “no second chance” rule.

The new law applies to all actions pending on or after August 2, 2005.

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