FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Sidewalk Responsibility

A pedestrian injured herself by tripping on a "curb valve" located in the front lawn of a single-family home, and brought an action for damages against the title owner and others. She alleged, as it is commonly said, that the title owner is responsible for the hazardous conditions on his property.

The title owner moved for summary judgment alleging that he did not have a duty to maintain the sidewalk because he did not cause the defect or owned, installed or maintained the curb valve. The curb valve was in fact owned by National Grid and was supposed to allow the company to shut off or turn on the gas line to the property.

The supreme court, Richmond County, did not grant dismissal, but the Appellate Division, Second Department, reversed. "Generally, liability for injuries sustained as a result of a dangerous condition on a public sidewalk is placed on the municipality, and not on the owner of the abutting land. The exceptions to this rule are when the landowner actually created the dangerous condition, made negligent repairs thereby causing the condition, created the dangerous condition through a special use of the sidewalk, or violated a statute or ordinance imposing liability on the abutting landowner for failing to maintain the sidewalk. In New York City, an owner of single-family residential real property that is owner-occupied and used exclusively for residential purposes, such as the subject premises, does not have a statutory duty to maintain sidewalks abutting that property." *Crawford v. City of New York,* 2012 WL 3969805 (N.Y.A.D. 2 Dept., 9/12/2012, internal citations omitted).

Encroachment and Breach of Contract

Buyer and seller entered into a contract to buy a single-family home with the usual clause by which the seller undertook to deliver "such title as any title insurer, or any agent in good standing with its underwriter, will be willing to approve and insure […]". The buyer subsequently ordered a new survey of the property. The survey revealed that a fence at the rear of the property extended over the property line by 28 feet, at a length of 160 feet across the backyard. The buyer's insurance company raised the exception and refused to insure the property free and clear of that encroachment, which, in turn, caused the buyer to refuse to close.

The seller brought an action to declare its entitlement to the down payment, given the fact that the buyer refused to close. The supreme court, Rockland County, denied the buyer's motion to dismiss, and the buyers appealed. The Appellate Division, Second Department, reversed holding "[t]he buyers established their prima facie entitlement to judgment as a matter of law dismissing the complaint . . . by demonstrating that the sellers were unable to deliver title as provided in the contract of sale [. . .]." *Candullo v. Nicosia,* 2012 WL 4372963 (N.Y.A.D. 2 Dept., 9/26/2012).

Adverse Possession

Property owner brought action against his home owners association to declare his ownership over a portion or real property adjoining his home. The facts showed that the homeowner had used and improved the land first as a driveway and

eventually, in 1982, built a shed and subsequently installed electrical wiring pursuant to a municipal permit. The supreme court, Rockland County, ruled for the homeowner and the Appellate Division, Second Department, affirmed. *Tolake Corporation v. Altobello*, 98 A.D.3d 734, 950 N.Y.S.2d 394 (2nd Dept., 8/29/2012).

Notably, the case was resolved citing the pre-2008 adverse possession law, even though there is no word about when the suit was brought. It appears that the Appellate Division, Second Department, has adopted the —in our opinion correct-- view that adverse possession settled upon the running of the 10-year statutory term. In other words, it should not matter when the action is brought, as the current adverse possession statute invites us to consider. Whether the old law or the 2008 law applies is to be determined by the running of the 10-year period: if the 10-year period run prior to 2008, then the prior law applies; if the 10-year period was completed in 2008 or later, then the new law applies.

Freedom of Information Law

The Appellate Division, Second Department, recently decided a case of great interest regarding the extent of the duty of municipalities to comply with requests pursuant to the Freedom of Information Law. The case concerned an individual who submitted "numerous voluminous requests to the County of Rockland for disclosure of public records . . . These requests were made in a series of e-mail messages sent over the course of four months. The County received as many as eight separate e-mails in a single day, and each e-mail contained a multitude of separate requests for information." (*Matter of Weslowski v. Vanderhoef*, 2012 NY Slip Op 06303; internal citations omiited.) The case, which we recommend for reading, addresses matters such as how much time municipalities should devote to addressing requests for information, how much they can charge for requests, and what information must be produced. The case is viewable here:

http://scholar.google.com/scholar_case?case=14320803912671338 82&hl=en&as_sdt=2&as_vis=1&oi=scholarr