



Cullen and Dykman Prevails on Appeal Resulting in Extinguishment of Life Estate

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As a result of the successful completion of a mortgage foreclosure in 2007, a major financial institution's subsidiary had obtained a remainder interest in real property located in Huntington, New York. The life estate was created by deed dated and recorded prior to the mortgage. For a number of years, the property occupant and holder of the life estate in that property refused to pay any real property taxes or hazard insurance premiums. In order to protect its remainder interest, the financial institution was forced to make those disbursements.

In 2011, Cullen and Dykman commenced an action in the New York State Supreme Court in Suffolk County on behalf of the financial institution and its subsidiary seeking (1) to recover damages from the occupant for restitution, unjust enrichment, and waste as a result of property taxes and hazard insurance premiums it was forced to pay on behalf of the life tenant, and (2) to extinguish the occupant's life estate in the property as a result of his continued failure to pay taxes. Following the filing of an answer and preliminary discovery, the firm filed an application seeking a number of different forms of relief, including summary judgment, which application was opposed by the occupant's counsel and ultimately denied by the court. The firm appealed.

On January 14, 2015, the Appellate Division Second Department sided with Cullen and Dykman and issued an Order in favor of the financial institution and its subsidiary by granting summary judgment on their causes of action seeking damages for restitution and unjust enrichment and on their cause of action seeking extinguishment of the occupant's life estate due to waste. In doing so, the Appellate Division noted that:

Under these circumstances, the remainder interest in the subject property is in constant danger of forfeiture in a tax lien sale, unless the plaintiffs continue paying the property taxes and hazard insurance premiums the defendant is otherwise obligated to pay. The plaintiffs, therefore, demonstrated, *prima facie*, that the defendant was unjustly enriched by the plaintiffs' payment of these expenses for the defendant, and that equity warrants extinguishing his life estate in the subject property.

This decision demonstrates Cullen and Dykman's utilization of novel litigation approaches when it comes to resolving what may appear to be impossible objectives in its unwavering commitment to fighting for its clients.

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