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Personal And Real Property—Referendum Unnecessary for Acquisition of Property Pursuant to Local Finance Law

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circumstance present in this case: that there were a number of tenants having diverse businesses in the same building. Generally, cases involving evaluations of fixtures have been concerned with situations in which the building condemned was occupied by one type of business such as a factory or warehouse. The Court found that the unique situation existing in this case warranted a departure from the established methods of evaluation in eminent domain actions. Support for this position can be found in the following statement:

Indeed, we think that it is an undue simplification to extract from the books any "Unit Rule" whatever, in the sense of general authoritative directions. What has happened, so far as we can see is that, as different situations have arisen, the courts have dealt with them as the specific facts demanded.¹⁴

In view of the above statement, combined with the obvious injustice that would result to the claimants if the unit rule were adhered to, the Court was drawn to the conclusion that it would be just and proper in the present cases to evaluate the fixtures separately, and that in determining their value evidence of the reproduction cost less depreciation was sufficient.

Though the decision in the instant case does not stray far from former decisions regarding the evaluation of fixtures, it does create a new rule. The results obtained in the instant case do seem just and proper, but the same result could have been reached without developing a new rule of law. If the issues had been viewed as involving the admission of evidence, the Court could have resolved the case by relying upon existing decisions. The Court has previously held that a tenant, if the owner of the fixtures, is entitled to recover their value,¹⁵ and it has also held that, in determining the amount by which the fixtures enhance the value of the land, evidence of their reproduction cost less depreciation is admissible.¹⁶ By combining these two propositions the same result could have been reached. Nevertheless, the present decision indicates that the Court is not disposed toward inertness. The Court has probably reached an adequate solution to the ever growing problem of determining condemnation awards in situations where there are a number of distinct businesses being conducted on one parcel of condemned land by various tenants.

William F. Kirk

REFERENDUM UNNECESSARY FOR ACQUISITION OF PROPERTY PURSUANT TO LOCAL FINANCE LAW

On July 14, 1959, the town board of Islip, passed a resolution to acquire certain real property within the town limits for the purpose of establishing a public parking lot and bathing beach. Concurrently, the board resolved to finance the acquisition by the issuance of town bonds in the amount of \$12,000

14. *United States v. City of New York*, 165 F.2d 526, 528 (2d Cir. 1948).

15. *Matter of City of New York (Allen St.)*, 256 N.Y. 236, 176 N.E. 377 (1931).

16. *Matter of City of New York (Allen St.)*, *supra* note 15.

with a maturity of less than five years pursuant to the New York Local Finance Law, and passed a bond resolution to that effect. Condemnation proceedings were initiated in the Supreme Court. That court awarded \$12,500 to the owners of the property and \$5,000 as consequential damage to property across the street. The town took an appeal from the award of consequential damages to the Appellate Division, and the property owners cross-appealed from the entire award. The Appellate Division, in a memorandum decision, reversed the order of the Supreme Court and dismissed the petition on the ground that the condemnation proceeding was jurisdictionally defective for failure of the town board to submit the matter to referendum as required by the New York Town Law.¹ The court affirmed the findings of fact below and would have affirmed the order if it had not been otherwise objectionable. The Court of Appeals, all justices concurring, reversed the order of the Appellate Division. *Held*, a referendum was unnecessary when the acquisition was to be made pursuant to the Local Finance Law and the expenditure financed by the issuance of bonds of less than five years' maturity. The issue of consequential damages was one of fact, affirmed by the Appellate Division, and not for the Court of Appeals to review. *Matter of Town Bd. of Town of Islip*, 12 N.Y.2d 321, 189 N.E.2d 808, 239 N.Y.S.2d 541 (1963).

The law governing the conduct of town affairs is found mainly in the Town Law. The Local Finance Law is controlling as to the financial dealings of a municipality. Prior to the enactment of the Local Finance Law, town officials were required to look to the provisions of many of the different Consolidated Laws.² The intent of the legislature to make the Local Finance Law the exclusive authority in fiscal matters is clearly set forth in the Law itself.³ Subsequent amendments to various of the Consolidated Laws which might be construed to conflict with the Local Finance Law left no doubt that the legislature desired to bring other laws into harmony with it.⁴ Municipalities are further guided by written opinions issued from the Office of the State Comptroller⁵ answering specific inquiries regarding fiscal problems and interpretation of law. This perhaps accounts for the relative paucity of litigation on questions of local finance. One of the few areas left in doubt was the question of the necessity of obtaining voter approval by referendum prior to making certain expenditures.

1. In the matter of Town Board of Town of Islip, 17 A.D.2d 654, 230 N.Y.S.2d 293 (2d Dep't 1962).

2. Among the Consolidated Laws affected by the Local Finance Law are: Conservation, County, Education, General City, General Municipal, Highway, Optional County, Public Housing, Railroad, Rapid Transit, Second Class Cities, Social Welfare, Town and Village Laws.

3. § 176.00. Local finance law to be the exclusive law:

Except as otherwise provided in this article, all statutes, local laws, ordinances, rules and regulations, insofar as they relate to the matters herein contained, are hereby superseded, it being the legislative intent that this chapter shall constitute the exclusive law on such matters.

4. See, e.g., N.Y. Sess. Laws 1943, ch. 710, § 1.

5. See Opinions of the State Comptroller Relating to Municipal Government (1945-date) (hereinafter Op. St. Compt'r).

At the time of the town board's action (1959), section 81 of the Town Law⁶ provided, among other things, that a proposal for the acquisition of lands for public parking places and public parks or playgrounds be submitted at a town election. It further provided that nothing in that section should be construed to prevent the financing of a project pursuant to the Local Finance Law. Section 220 of the Town Law⁷ similarly provided for a permissive referendum on the same subject matter. It, too, allowed financing to be made pursuant to the Local Finance Law. Section 35.00, Local Finance Law,⁸ called for a permissive referendum on a bond resolution; however, resolutions authorizing the issuance of bonds with a maturity of less than five years were exempted from the referendum requirement. This section further prohibited referendums on expenditures for which it was proposed to issue obligations. No apparent conflict was found by the New York State Supreme Court in a case involving construction of a public building with surplus funds. The town board refused to submit the matter to referendum, even though it was properly petitioned

6. At the time of the town board's resolutions the pertinent portions of the cited sections of the Town Law were as follows:

§ 81. Election upon proposition

The town board may upon its own motion and shall upon a petition . . . cause to be submitted at a . . . town election, a proposition:

1. In any town:

(d) To establish . . . public parking places, public parks or playgrounds, acquire the necessary lands therefor

5. . . .

Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section.

7. § 220. General town improvements

Upon the adoption of a resolution therefor, subject to a permissive referendum, . . . the town board may:

4. Establish . . . public parking places, public parks or playgrounds, acquire the necessary lands therefor

5. . . .

[The second part of this paragraph contains exactly the same language as section 81, paragraph 5, *supra* note 6.]

8. As of the date of the town board's resolution, the pertinent portions of section 35.00 were as follows:

Sec. 35.00. Bond resolution subject to referendum . . .

(b). . . .

1. A bond resolution adopted by the finance board of a town of the first class shall be subject to a permissive referendum. . . .

The foregoing provisions of this paragraph (b) shall not apply to a bond resolution authorizing the issuance of bonds:

(1) With a proposed maturity of not more than five years to be measured from the date of the bonds or from the date of the first bond anticipation note issued in anticipation of the sale of such bonds, whichever date is the earlier.

(c). The expenditure of money for which it is proposed to issue obligations shall not be subject to a permissive or mandatory referendum in any town.

to do so. The court held that the town board's action fell within the purview of section 35.00, Local Finance Law, even without resorting to the fiction of financing the expenditure with an unnecessary five-year bond issue.⁹ In a case involving a town board of trustees' acquisition of real property with funds existing for such a purpose, the Appellate Division found that the board had exceeded its jurisdiction in not complying with sections 81 and 220 of the Town Law. Section 35.00, Local Finance Law, was considered inapplicable because, in the court's opinion, there was no element of financing involved.¹⁰ This decision was cited by way of comparison in the Appellate Division's opinion in the instant case. Finally, the Supreme Court considered the case of a town's failure to submit to referendum a proposition to acquire lands for a park where the moneys were to come from a specific fund created for that purpose. The court looked to both of the above cases and reluctantly followed the latter decision, even though it favored the reasoning in the former opinion.¹¹ The key factor seemed to be the lack of an "element of financing." It was in this posture that the instant case went to the Court of Appeals.

Lacking any cases directly in point, the Court looked to the language and history of the statutes. Sections 81 and 220, Town Law, were identically amended twice prior to the effective date of the Local Finance Law. The earlier amendment provided:

Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing, in whole or in part, of any expenditure enumerated in this section pursuant to the local finance law.¹²

The later amendment changed the last sentence to read:

However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section.¹³ (Emphasis supplied by the Court.)

The emphasized language indicated to the Court that the legislature intended that the listed expenditures could be authorized by a method alternative to referendum, to wit, according to the provisions of the Local Finance Law. It was noted that the effective date of the later amendment was September 2, 1945, while the Local Finance Law became effective on September 1, 1945,¹⁴ thereby further indicating that the amendment was meant to harmonize the Town Law with the Local Finance Law. In order to determine whether, as the Appellate

9. *Glezen v. Town Bd.*, 192 Misc. 658, 81 N.Y.S.2d 236 (Sup. Ct. 1948) (cited with approval in the instant opinion).

10. *Knapp v. Fasbender*, 278 App. Div. 970, 105 N.Y.S.2d 780 (2d Dep't 1951).

11. *Town of Huntington v. Lustig*, 226 N.Y.S.2d 169 (Sup. Ct. 1962).

12. N.Y. Sess. Laws 1943, ch. 710, pt. 1, § 2619.

13. N.Y. Sess. Laws 1945, ch. 838, § 59.

14. N.Y. Sess. Laws 1942, ch. 424.

Division reasoned, section 35.00 of the Local Finance Law only eliminated the necessity of a referendum on the financing aspect and not on the actual acquisition, the Court examined subdivision (c) of that section: "The expenditure of money for which it is proposed to issue obligations shall not be subject to a permissive or mandatory referendum in any town."

The Court found that the purpose of this provision was to eliminate the possibility of a double referendum in situations where the financing scheme required a referendum. When real property was the subject matter, the term "expenditure" must be equated with "acquisition," thereby obviating the requirement for any referendum when financed by five-year bonds. Finally, the legislative intent, as expressed in section 176.00, Local Finance Law, resolved any doubts the Court may have had in regard to the possible conflict of the two laws. Viewed in its narrowest sense, the holding of the instant case resolves the question of the necessity of a referendum when an expenditure is to be financed by a five-year bond issue. In practice, town boards, under the guidance of State Comptroller opinions, have operated in this manner since 1946.¹⁵ However, there are indications that the ruling might apply to expenditures to be financed out of current income or by funds existing for such purposes. Since 1959, the legislature has further amended sections 81 and 220, Town Law, to provide an exemption from referendum of expenditures financed in whole by surplus funds.¹⁶ State Comptroller opinions have gone so far as to look with approval upon a plan whereby, if an expenditure for which it is proposed to issue twenty-year bonds is defeated in a referendum, the town could go ahead with the project, using five-year bonds, despite voter disapproval.¹⁷

The Appellate Division's reliance in part on its earlier decision, which it cited by way of comparison,¹⁸ might have been tempered by a careful reading of a Court of Appeals opinion in a case of the same name, involving different issues.¹⁹ The Court, referring to the Appellate Division's statement that the town board of trustees did not have the power to acquire real property without compliance with sections 81 and 220 of the Town Law, said ". . . the decision in *Knapp v. Fasbender*, . . . was in error to the extent that it held that the board of trustees was without the power to acquire lands for a beach or a recreation project."²⁰ This could indicate that even if a municipality would be required to hold a referendum, its failure to do so would not render the condemnation proceeding void for lack of jurisdiction. The trend is to give town boards more immediate control over expenditures. This removes from the electorate the right to express its wishes in a direct manner; however, this

15. See 2 Op. St. Compt'r 227 (1946).

16. N.Y. Sess. Laws 1962, ch. 909, § 2; cf. Op. St. Compt'r 336 (1947).

17. 17 Op. St. Compt'r 155 (1961); cf. 12 Op. St. Compt'r 133 (1956).

18. *Knapp v. Fasbender*, 278 App. Div. 970, 105 N.Y.S.2d 780 (2d Dep't 1951).

19. *Knapp v. Fasbender*, 1 N.Y.2d 212, 134 N.E.2d 482, 151 N.Y.S.2d 668 (1958).

20. *Id.* at 226, 134 N.E.2d at 489, 151 N.Y.S.2d at 678.

limitation is not as onerous as may appear. The town board is limited to the issuance of relatively short-term obligations, and in the case of spending from current funds, the amounts must of necessity be within reason.

Courtland R. LaVallee

ORDER OF PREFERENCE BETWEEN ARTISAN'S STATUTORY LIEN AND CLAIM OF
CONDITIONAL VENDOR

The plaintiff, assignee of a conditional sales contract, brought an action for conversion, based on the alleged wrongful sale by defendant-repairman of an automobile baled to him for necessary repairs by the conditional buyer. It was contended by plaintiff that since the conditional buyer had defaulted in his payments prior to the bailment, absolute title to the automobile was in plaintiff as the conditional seller's assignee; therefore, defendant's rights under its artisan's lien were subordinate to plaintiff's. The defendant pleaded a valid and prior lien under section 184 of the N.Y. Lien Law. From a judgment against the defendant-repairman and an affirmance thereof by the Appellate Division¹ the defendant appealed. *Held*, reversed. By ordering repairs on an automobile, a conditional buyer, in default, but in possession, could and did create a valid and prior lien in favor of the repairman. *Motor Discount Corp. v. Scappy & Peck Auto Body, Inc.*, 12 N.Y.2d 227, 188 N.E.2d 907, 238 N.Y.S.2d 670 (1963).

The common law uniformly confers a lien in favor of the artisan who, by his labor, skill or materials, adds value to the chattel of another at the direct or implied request of the owner.² In attempting to apply this principle to the currently popular installment plan purchase of automobiles, disagreement has often resulted from a question which seems inevitably to follow: does the lien of a repairman who has made repairs at the order of the conditional buyer take precedence over the conditional seller's claim to the property in question? The general rule established by the common law is that a lien prior in time to another claim is entitled to prior satisfaction out of the security unless it is intrinsically defective or is destroyed by some act of the holder.³ This stems from the fact that a lien is a qualified property right which can under common law principles be created only by consent of the general owner of the property in question.⁴ Since the conditional seller of a chattel who reserves title in himself until the price is paid is regarded as the owner at common law,⁵ it follows that his right would prevail over a subsequent lien claimant. Despite the common law rule,

1. *Motor Discount Corp. v. Scappy & Peck Auto Body, Inc.*, 14 A.D.2d 847 (1st Dep't 1961) (without opinion).

2. *Brown*, Personal Property 516 (1955); 37 Mich. L. Rev. 273 (1938).

3. A frequently cited leading case to this effect is: *Rankin v. Scott*, 25 U.S. (12 Wheat.) 175 (1827). See also Restatement, Security § 76 (1941); Annot., 36 A.L.R.2d 201 (1954).

4. *Hollingsworth v. Dow*, 19 Pick. (Mass.) 228 (1837); Restatement, Security § 75(2) (1941).

5. *Brown*, *op. cit. supra* note 2, at 534.