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Property—Lease of Incompetent's Real Property Must Not Be More Than Five Years from the Execution Date

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FORMER OWNER OF REALTY LACKED STANDING TO APPLY FOR CANCELLATION OF TAX SALE

A county treasurer shall not convey lands sold for taxes if he discovers that the sale was invalid for any reason or ineffective to give title to the real property sold.[68] If the defect is discovered after the conveyance, on application of any person having an interest therein at the time of the sale, he shall cancel the sale.[69]

In *Saxton v. Hose*,[70] the former owner sued the county treasurer to cancel the sale. Special Term granted summary judgment dismissing the action for failure to join the purchasers at the tax sale as necessary parties.[71] The Appellate Division affirmed, stating as an additional ground for affirmance that the alleged defect, failure to designate a newspaper for publication of the notice of sale, was a defect in the original levy of the tax and the period for contesting the validity of the levy had expired.[72]

In a per curiam decision, the Court of Appeals held that although a triable issue was presented because the record did not contain evidence conclusively establishing the purchasers to be necessary parties,[73] and although the alternative basis for decision relied upon in the Appellate Division was incorrect, the order should be affirmed. Applying decisions under Section 40-c of the Tax Law, identical to Section 40-c of the Suffolk County Tax Law here in question, holding that only the purchaser at the tax sale had an interest in the property,[74] the Court held that only the purchaser could apply to cancel a defective sale. Therefore, the former owner had no standing under the statute to apply for cancellation.

Bd.

LEASE OF INCOMPETENT'S REAL PROPERTY MUST NOT BE MORE THAN FIVE YEARS FROM THE EXECUTION DATE

The committee of an incompetent leased certain real property to the defendant. The first five-year lease, to commence on the expiration of an existing lease, May 1, 1955, was entered into on December 22, 1953 without court approval. A second five-year lease, to commence on August 1, 1958, was entered into on June 26, 1958 without court approval. The present action, *Vernon v. Sarra, Inc.*,[75] was instituted to have the leases declared invalid on the ground that the termination dates of the leases were more than five years from

68. N.Y. Tax Law § 140 (now N.Y. Real Prop. Tax Law § 1026); Suffolk County Tax Act § 40-c.
69. Ibid.
70. 8 N.Y.2d 335, 207 N.Y.S.2d 661 (1960).
71. 15 Misc. 2d 392, 179 N.Y.S.2d 419 (Sup. Ct. 1958).
72. 9 A.D.2d 778, 193 N.Y.S.2d 152 (2d Dep't 1959).
73. See People ex rel. Cooper v. Registrar of Arrears, 114 N.Y. 19, 20 N.E. 611 (1889).
74. People ex rel. Staples v. Sohmer, 206 N.Y. 39, 99 N.E. 156 (1912); People ex rel. Witte v. Roberts, 144 N.Y. 234, 39 N.E. 85 (1894).
75. 9 N.Y.2d 94, 211 N.Y.S.2d 180 (1961).

the execution dates in direct contravention to the New York Civil Practive Act.[76] Although there had been no cases construing the language of this particular statute, the Supreme Court, relying on cases which had interpreted similar language in other New York statutes,[77] held both leases invalid.[78] The legislative purpose behind this statutory enactment was to safeguard the incompetent's property from being leased for long terms, unless a responsible neutral, the court, deemed it in the best interests of the incompetent. "No such facile device to defeat the statute can be permitted as results from dividing the tenancy into two or more leases, one for five years and the other to begin in the future when the former one ends."[79] The Appellate Division affirmed with no opinion,[80] and the Court of Appeals, citing only *In re Trapasso Oldsmobile*,[81] affirmed.

Judges Burke and Froessel, concurring, held the first lease invalid on grounds identical to those stated by the majority but would distinguish the second from the first lease, the second being invalid for a totally different reason. The first lease was entered into *sixteen months* prior to the expiration of the then existing lease so that the effect of the leases was that the lessee would remain in possession of the premises for six years, four months in direct contravention of the statutory mandate. On the other hand, the second lease was entered into *thirty-five days* prior to the commencement of a new five-year term. By accepting the interpretation of the majority, the concurring judges argued that all reasonable negotiations by the committee before the expiration of an existing lease are thus forbidden by statute. This result is impractical and unreasonable.

Even though the result may be impractical and unreasonable, it is submitted that a five-year lease executed thirty-five days and one executed sixteen months before the expiration of an existing agreement should not be distinguished. Such a distinction on the basis of the necessity to allow a reasonable time to negotiate a new lease is not called for by the statute and would lead to countless litigation to determine what is a reasonable time for negotiation. The solution would appear to be a four-year lease executed within a year prior to the existing agreement, for any five-year lease executed prior to

76. N.Y. Civ. Prac. Act § 1377:
But a committee of the property cannot alien, mortgage, or otherwise dispose of real property, except to lease it for a term not exceeding five years, without the special direction of the court. . . .

77. Application of Trapasso Oldsmobile, 2 A.D.2d 166, 153 N.Y.S.2d 753 (4th Dep't 1956) (Construing Section 21 of Membership Corporations Law); 39 Cortlandt Street Corporation v. Lambert, 209 App. Div. 575, 205 N.Y. Supp. 161 (1st Dep't 1924) (Construing Section 106 of New York Real Property Law). See also In re Trapasso Oldsmobile, 4 N.Y.2d 133, 173 N.Y.S.2d 10 (1958).

78. 21 Misc. 2d 747, 192 N.Y.S.2d 971 (Sup. Ct. 1959).

79. 39 Cortlandt Street Corporation v. Lambert, supra note 77 at 580, 205 N.Y.S. at 164.

80. 10 A.D.2d 696, 199 N.Y.S.2d 426 (1st Dep't 1960).

81. Supra note 77.

the date of actual commencement is clearly invalid under the majority's interpretation of the statute.

The concurring judges found the second lease invalid because of the inclusion in the lease of additional space occupied at the time of the execution by another tenant, a point mentioned by neither the lower courts not the majority. If the second lease had not attempted to lease additional space, it would have been valid, the first lease being void *ab initio*; however, this was not the case. The landlord-plaintiff, in order to secure an order of eviction against the then occupying tenant, had to show "a bona fide offer to enter into a lease with a prospective tenant . . . for a term of five years or more";[82] however, the lease, in order to comply with Section 1377 of the New York Civil Practice Act, could not be for more than five years. In an effort to comply with both statutes, the parties stipulated that the old lease in existence should extend until the eviction of the occupying tenant, and that the new lease should then commence and run for five years. Such a provision, as the concurring judges held, is clearly violative of the five-year requirement of Section 1377, and the entire lease, contingent on the provision, is invalid.

Bd.

INTERVIVOS GIFT OF STOCK REQUIRES TRANSFER PRIOR TO DONOR'S DEATH

In re Szabo's Estate once again raises the issue whether a decedent had made a valid gift *inter vivos* to petitioner of stock assigned by decedent prior to her death to petitioner and herself as joint tenants.[83] Decedent was the owner of 122 shares of A.T. & T. stock. Upon being informed of a 3 for 1 split, she executed an assignment to petitioner and herself on the back of a certificate representing 50 shares. In addition, she directed her representative to have the company place petitioner's name as joint tenant with right of survivorship on all her shares. However, she also directed that the transfer of the stock was not to be made until the new certificate resulting from the split was available. Decedent died prior to that time and the transfer was not made until after her death.

Petitioner proceeded under Section 206-a of the Surrogate's Court Act to compel decedent's representative to turn over the certificate for 366 shares.[84] Had decedent made a valid *inter vivos* gift of any or all of the stock so that petitioner was entitled to ownership as a surviving joint tenant? The Court reiterated the old doctrine concerning the requisites for *inter vivos* gifts and concluded that the element of sufficient delivery was missing.[85] If the delivery vests the donee with control and dominion over the property it is sufficient.[86] In the case of stock certificates a symbolic delivery will suffice because as the

82. N.Y. Unconsol. Laws § 8528(kk) (McKinney 1953).
83. 10 N.Y.2d 94, 217 N.Y.S.2d 593 (1961).
84. N.Y. Surr. Ct. Act § 206-a.
85. Matter of Van Alstyne, 207 N.Y. 298, 100 N.E. 802 (1927).
86. Vincent v. Rix, 248 N.Y. 76, 161 N.E. 425 (1928).