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Property—Tax Sale—Statute of Limitations for Setting Aside

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It is well settled that where the covenant of quiet enjoyment is expressly conditioned upon the tenant's payment of rent and his performance of the obligations of the lease, his failure to pay such rent or perform such obligations is a bar to the maintenance of any action upon the covenant for interference with the quiet enjoyment of the premises; this is true whether the tenant's claim of a breach of the covenant is based on an actual²¹ or a constructive eviction.²² The Court also pointed out that section 234 of the Real Property Law²³ was not only not retroactive,²⁴ but also that the plain meaning of the statute does not suggest that the covenant of quiet enjoyment may not be conditioned upon the performance by the tenant of his covenants in the lease.

Tax Sale—Statute of Limitations for Setting Aside

The statute of limitations for tax deed conveyances is presently but temporarily found in Tax Law sections 131 and 132.²⁵ They provide in pertinent part that after two years from the date of the record of a tax sale conveyance, the presumption of regularity of the sale and all proceedings prior thereto shall become conclusive. Section 132 further provides all such conveyances and proceedings shall be subject to cancellation within five years from the last date of redemption by reason of three situational defects, one of which is any defect in the proceedings affecting the jurisdiction upon constitutional grounds.

In *Kiamesha Dev. Corp. v. Guild Properties, Inc.*,²⁶ the plaintiff owner brought this action to cancel a tax deed conveyance to the defendant purchaser, by reason of a jurisdictional defect, two years after the deed recording but before five years from the last date of redemption. The Appellate Division decided that the two year provision of these statutes barred the instant action even if the defects shown here were jurisdictional. The court relied on a statement in *Werking v. Amity Estates*,²⁷ which was construed as meaning that jurisdictional defects as well as mere irregularities were bound by the two year period. The Court of Appeals reversed, holding that their statement in *Werking* was misinterpreted and so construed would completely nullify the intention of section 132 which explicitly allows for cancellation within five years by reason of jurisdictional defects.

21. *Silken v. Farrel*, 306 N.Y. 585, 115 N.E. 827 (1953).

22. *Baitzel v. Rhineland*, 179 App.Div. 735, 167 N.Y. Supp. 343 (1st Dep't 1917); *Meyer v. Schulte*, 160 App.Div. 236, 144 N.Y. Supp. 1023 (1st Dep't 1913).

23. N. Y. REAL PROPERTY LAW §234 provides:

Every covenant, agreement . . . exempting the lessor from liability for damages for injuries to person or property caused by or resulting from the negligence of the lessor . . . shall be deemed to be void as against public policy.

24. *Weiler v. Dry Dock Sav. Inst.*, 284 N.Y. 630, 29 N.E.2d 938 (1940).

25. N. Y. TAX LAW §§131 and 132 have been repealed. Now see §§1018 and 1020 of the REAL PROPERTY TAX LAW, effective October 1, 1959.

26. 4 N.Y.2d 373, 175 N.Y.S.2d 63 (1958).

27. 2 N.Y.2d 43, 155 N.Y.S.2d 633 (1956).

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Another problem presented was the standard to be applied in determining when property is unidentifiably described so as to constitute a jurisdictional defect. The test has been set out as

[w]hether the description is sufficiently definite to enable the owner and all persons interested to know and ascertain, by inquiry at the appropriate office or examination of the assessment rolls, what premises are assessed, and to identify them with reasonable certainty, so that it may fairly be said that a particular tract or parcel of land is the parcel or tract assessed, and to which the purchaser on the tax sale is entitled to possession.²⁸

In the present case the property had had the same tax description and the tax had been paid on that description for many years. The plaintiff had employed a tax searcher who located the property, but erroneously did not discover the 1942 tax unpaid. The Court took into consideration the special knowledge of persons who had been able to locate or identify the property, the abstract adequacy of geographical description for due process, and, because of the nature of tax sales, the reluctance of the courts to divest the owner's title unless the statutory requirements are strictly observed.

The owner had also argued that the purported tax deed was void because the tax certificate was made out to a non-existent corporation which came into existence only a matter of days later. The Court agreed, holding as an alternative ground to the main rationale of the case, that there was no grantee in existence to whom the tax certificate could run. On the analysis of the evidence, the Court rejected the claim of the defendant that the corporation was *de facto* in existence at the time the deed was delivered.²⁹

Indian Lands—Claim for Misappropriation Dismissed on Showing of Release

When the New York State Power Authority appropriated Barnhart's Island in the St. Lawrence River, the St. Regis Tribe of Indians brought an action for compensation for their rights in the island. The Indians claimed they had a recognized title in the island; that they had never been compensated for its extinguishment; that an 1856 payment allegedly made for such compensation could not be so considered for it was not in compliance with the Indian Intercourse Act of 1802.³⁰

28. *People v. Sohmers*, 150 App.Div. 8, 134 N.Y. Supp. 543 (3d Dep't 1912), *aff'd* 206 N.Y. 39, 99 N.E. 156 (1912); *Shea v. Campbell*, 71 Misc. 230, 128 N.Y. Supp. 508 (Sup.Ct. 1911).

29. *Kiamesha Dev. Corp. v. Guild Properties*, 4 N.Y. 2d 378, 388, 175 N.Y.S. 2d 63, 70 (1958).

30. 25 U.S.C. §177. The applicable provision of this statute provides that dealings in respect to Indian lands must be had with the consent and approbation of United States Commissioners appointed to supervise the negotiations.