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Real Property—Restrictive Covenant

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Landlord and Tenant—Owner Liability

By statute,[9] stairways in factory buildings must be provided with proper handrails, which are to be a protection against slipping and falling downstairs.[10] The owner of a "tenant-factory building"[11] is responsible for the observance of this requirement whether or not he is an occupant.[12]

In *De Casiano v. Morgan*,[13] the plaintiff claimed that she was unable to break her fall down a flight of stairs because the handrail was flush against the wall and could not be gripped. In the lower courts[14] she recovered against the lessee of the building, but the complaint against the owner was dismissed because no actionable negligence was shown. The Court of Appeals reversed the dismissal, holding unanimously that whether or not the landlord provided a "proper" handrail was a question of fact that should have been submitted to the jury.

Restrictive Covenant

In *Single v. Whitmore*[15] plaintiff gave defendant an option to purchase any one of several rectangular lots; a setback restriction of thirty-five feet "from the front of the lot" was included in the contract, the front being originally one of the short sides of the rectangle and the only side which abutted on a street. Subsequently the plaintiff redelineated the lots; consequently, when the lot in question was conveyed it abutted on two streets and the former short sides had become long sides. In reversing the Special Term and the Appellate Division[16] the Court held that the defendant had not violated the setback restriction by building less than thirty-five feet from the side of the lot which had originally been intended as the "front," and which was now the long side.

A covenant restricting the use of land is to be construed strictly against the grantor who imposed it.[17] Before a serious interference with one's right of property is justified, something more than a doubtful right must be shown by the one seeking to impose such limitations.[18] Where a restrictive agreement is reason-

9. N. Y. LABOR LAW § 272(2).
10. *Cahill v. Kleinberg*, 233 N. Y. 255, 259, 135 N. E. 323, 324 (1922).
11. "Tenant-factory building" means a building separate parts of which are occupied and used by different persons, and one or more of which parts is used as a factory. N. Y. LABOR LAW § 315(2).
12. N. Y. LABOR LAW § 316(2).
13. 308 N. Y. 526, 127 N. E. 2d 321 (1955).
14. 283 App. Div. 1037, 131 N. Y. S. 2d 874 (1st Dep't 1954).
15. 307 N. Y. 575, 122 N. E. 2d 918 (1954).
16. 285 App. Div. 915, 125 N. Y. S. 2d 464 (4th Dep't 1953).
17. *Reformed P. D. Church v. M. A. Building Co.*, 214 N. Y. 268, 108 N. E. 444 (1915).
18. *Clark v. N. Y. Life Ins. and Trust Co.*, 64 N. Y. 33 (1876).

ably capable of two constructions, the construction which limits the restriction, rather than the one which extends it, should be adopted.[19]

In construing the restriction, the Court was influenced by the fact that plaintiff's interpretation would result in over fifty-five per cent of the total area of the lot being unavailable for building, while defendant's interpretation would render only twenty-two per cent of the lot unusable. Plaintiff's contention that the front of the lot could be determined as the side toward which the building faced was rejected, apparently because "the front of a building is not determined by the position in which that building is erected on the lot."[20]

After finding that the defendant had not violated the setback restriction, as correctly construed, the Court supplied a second ground for reversal;[21] the parties had executed a bilateral release.[22] There would seem to be a construction problem here also, but if so it was ignored. The Court seems to have gone a little out of its way in this case to express its views on the narrow constitution of restrictions, perhaps for the benefit of the lower courts, which had not hesitated to grant the plaintiff his injunction.

Percentage-of-Sales Lease

In every contract there exists an implied covenant of good faith and fair dealing.[23] In *Mutual Life Insurance Co. of New York v. Tailored Woman, Inc.*,[24] defendant leased the first three floors of a building on a percentage of gross sales basis and later leased the fifth floor on a straight rental basis. The tenant moved its fur department from the lower floors to the fifth floor. The Court dejected the landlord's claim that this breached implied covenants against diversion of sales, and decided that all that was necessary was for the tenant to conduct a women's clothing store of the same general character as when it entered the lease. The landlord also claimed that the percentage rental was to be paid on sales made "on, in and from the demised premises," and since customers entered through the lower floors these sales were "from" the lower floors. The Court held that sales made to customers sent to the fifth floor by salespeople on the lower floors

19. *Schoonmaker v. Heckscher*, 171 App. Div. 148, 157 N. Y. Supp. 75 (1st Dep't), *aff'd* 218 N. Y. 722, 113 N. E. 1066 (1916).

20. 307 N. Y. 575 582, 122 N. E. 2d 918, 922 (1954). See *Rollins v. Armstrong*, 251 N. Y. 349, 167 N. E. 466 (1929).

21. A third ground for denial of injunctive relief was the failure to prove damages; the uncontradicted expert testimony was to the effect that the house as built actually enhanced the value of neighboring property.

22. "And whereas the parties now desire to release each other from any *future* liability arising from said agreement . . . the parties . . . hereby release each other . . . from all *future* liability . . ." (italics supplied.)

23. *Kirke La Shelle Co. v. Armstrong Co.*, 263 N. Y. 79, 188 N. E. 163 (1933).

24. 309 N. Y. 248, 128 N. E. 2d 401 (1955).