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FOR IMMEDIATE RELEASE:

ROSENBERG & ESTIS, P.C. VICTORY FOR MANHATTAN PROPERTY OWNER ESTABLISHES THAT THE NEW YORK CITY TRANSIT AUTHORITY CAN WAIVE COVENANTS IN ITS FAVOR THAT RUN WITH THE LAND

On February 21, 2019, the Appellate Division, First Department, unanimously held that the New York City Transit Authority (“NYCTA”) can waive and/or abandon covenants in its favor that run with the land. Nicholas Kamillatos and Jeffrey Turkel of Rosenberg & Estis, P.C. successfully represented the landlord in *New York City Transit Authority v 4761 Broadway Associates, LLC*.

In 1926, the owner’s predecessor was constructing an apartment house and wanted two subway entrances to be located on the ground floor of the building. The landlord and NYCTA’s predecessor entered into two recorded covenants that ran with the land. The first required landlord to maintain the entrances and stairways. The second required the landlord to indemnify NYCTA’s predecessor against any damages relating to those entrances.

Over the years, the NYCTA maintained the subway entrances and environs at the property. More than a decade ago, however, a subway passenger slipped and fell on the entrance stairs and sued the NYCTA for personal injuries. NYCTA, citing the indemnification covenant, claimed in that case that the property owner had to indemnify NYCTA for the damages. The trial court ruled that there was a question of fact as to whether NYCTA had abandoned the indemnity covenant. NYCTA ultimately settled that personal injury case.

Thereafter, NYCTA made repairs to the subway entrances and demanded that the owner repay NYCTA, again citing the repair and indemnification covenants. The owner objected, asserting that NYCTA had abandoned the two covenants long ago, such that the NYCTA was solely responsible to operate and maintain the subway entrances.

NYCTA then commenced an action in Supreme Court, New York County seeking a declaration that the owner was responsible for maintaining the entrances, and was further required to indemnify NYCTA for the cost of repairs.

Supreme Court, New York County (Bluth, J) denied NYCTA’s motion for summary judgment and ruled that our client’s claim that NYCTA had waived and/or abandoned its rights under the covenants was a question of fact that required a trial.

NYCTA then appealed to the Appellate Division, First Department, claiming that covenants that run with the land cannot be waived or abandoned as a matter of law. The Appellate Division

unanimously denied the NYCTA appeal in all respects, holding that covenants that run with the land can be waived and/or abandoned by the party benefitting therefrom.

“This is an important decision with citywide ramifications,” said Rosenberg & Estis, P.C. member Nicholas Kamillatos. NYCTA has many such repair and indemnification covenants, and waiver and/or abandonment can now be used by landlords as a legitimate defense to NYCTA’s repair or indemnification claims.

“In the case of *4761 Broadway*, it is our contention that the owner will prove at trial that by its long-standing conduct and communications, NYCTA has relinquished whatever rights it may have had under the terms of the covenants,” said Rosenberg & Estis, P.C. member Jeffrey Turkel.

Whether the NYCTA has waived or abandoned its claims under similar covenants at other properties is also a question of fact that must be determined as to each of those individual properties and covenants. Sometimes you can fight City Hall and win, as Rosenberg & Estis, P.C. has done so far in this matter.

About Rosenberg & Estis, P.C.

Founded in 1975, Rosenberg & Estis, P.C. is widely recognized as one of New York City’s pre-eminent real estate law firms. Rosenberg & Estis, P.C. provides full service representation and advice in every aspect of real estate, from performing due diligence and evaluating financing, to handling joint ventures, acquisitions and leasing, construction and design team agreements, land use and zoning matters, co-op and condo offering plan filings, as well as the litigations and negotiations which sometimes ensue when deal making. Rosenberg & Estis’ wealth of experience in New York real estate makes it the ideal thought partner for owners, developers, not-for-profit corporations, educational institutions, sponsors, equity investors and lenders in both real estate transactions and in all court venues.

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