



NOVEMBER 2016 NEWSBRIEF

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COMMERCIAL LITIGATION ISSUES OF INTEREST

November 2016

Submitted by Paul Savad, Esq.
Chair, Commercial and Corporate Law Committee,
Joseph Churgin, Esq., and Susan Cooper, Esq., of
SAVAD CHURGIN, LLP, Attorneys at Law

Your clients, a husband and wife, were sued to foreclose the mortgage on their home, which was owned solely by the wife. The bank brought its first action in 2007, and discontinued it by stipulation in 2009. The bank's second action was voluntarily discontinued in 2010. A third action was commenced in 2015. You moved for summary judgment dismissing the third action based on the statute of limitations, which you argue began to toll when the debt was accelerated by commencement of the 2007 action. After the motion was submitted, the wife died without a will. You obtained a stay to allow time for substitution by a representative of the estate, but never moved for substitution. The case has been stayed for four months without any activity. The Court now wants to clear its docket.

Will the Court lift the stay and grant your motion for summary judgment on the merits?

The answer is *yes*.

In *Deutsche Bank Trust Co. Americas v. Smith*, 2015-2381, NYLJ

1202766695379 (Sup. Ct. Orange Co. August 5, 2016), Deutsche Bank sued Margaret and Lawrence Smith to foreclose a mortgage on their home, which was solely owned by Margaret. The mortgage was in default since its inception in 2007. The bank commenced an action on November 7, 2007, but discontinued the action by stipulation. The bank then commenced a second action in 2009, and voluntarily discontinued it on March 30, 2010, allegedly due to difficulty in serving the defendants. On March 31, 2015, the bank commenced the third action.

The Smiths promptly moved for summary judgment, arguing that the statute of limitations began to toll when the mortgage debt was accelerated by commencement of the first action. The bank countered, without explanation, that the acceleration occurred when the 2009 action was commenced.

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Susan Cooper, Esq.
Joseph Churgin, Esq.

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After the summary judgment motion was submitted, Margaret died without a will. The Smiths' attorney obtained a stay pursuant to CPLR § 1015 to allow time to obtain a substitution for Margaret. Four months later, no motion for substitution had been made. Nor had the bank moved to continue the action against the living defendants.

The Court began its analysis by noting that CPLR § 1021 requires that a motion for substitution be made, or the matter can be dismissed without prejudice. Any party may move for substitution, not just the defendant. Because no one moved for substitution for four months, the stay was vacated, and the merits of the motion for summary judgment were addressed.

The Court rejected the bank's argument that the debt was first accelerated by the 2009 action, in view of the earlier 2007 action, which was discontinued. Thereafter, the discontinuance of the second action operated as an adjudication on the merits pursuant to CPLR § 3217(c). Thus, by operation of law, the third action had no merit.

The lesson? Be cautious about how you discontinue an action for the second time, if you intend to assert the same cause of action later. A voluntary discontinuance by notice will be an adjudication on the merits if the same cause of action was discontinued in any manner once before. CPLR § 3217(c). Be equally cautious about waiting for your adversary to move for substitution of a party in your action, if a stay to allow substitution is in effect. Your action may be dismissed without prejudice. CPLR § 1021.



It's A Wonderful Time of Year

THE ROCKLAND COUNTY BAR ASSOCIATION

INVITES YOU TO

Celebrate the Season!

HOLIDAY PARTY

THURSDAY, DECEMBER 15, 2016

6:00 - 9:00 PM

Nyack Seaport

21 Burd Street, Nyack, NY

Cost: \$60/pp

**Includes hors d'oeuvres, pasta, carving station,
beer, wine, soda**

**RSVP via check by
December 1, 2016**

**MAKE ALL CHECKS PAYABLE TO:
ROCKLAND COUNTY BAR ASSOCIATION
337 NORTH MAIN STREET - SUITE 1
NEW CITY, NY 10956**

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Interested in Being an RCBA SPONSOR?

Expand your network and create new and stronger business and professional connections with the Rockland County Bar Association.

EVENT SPONSORSHIPS	<u>Components/Benefits</u>	<u>Cost</u>	<u>Notes</u>
ANNUAL DINNER CO-SPONSOR – multiple sponsorships available including “Co-Sponsor;” “Cocktail Hour Sponsor;” and “Dessert Sponsor” **	-Free attendance for one (1) to Annual Dinner (value = \$150+) -Signage at event -Name listing in event program journal	\$500 - \$1500 – various options available depending upon Sponsorship type	October 27, 2016 **Limitations exist – inquire to RCBA
INSTALLATION DINNER CO-SPONSOR – multiple sponsorships available including “Co-sponsor;” “Cocktail Hour Sponsor;” and “Dessert Sponsor”**	-Free attendance for one (1) to Installation Dinner (value = \$75+) -Signage at event -Name listing in event program	\$350 - \$1200 – various options depending upon Sponsorship type	June, 2017 **Limitations exist – inquire to RCBA
CLE SPONSOR -Multiple Sponsorships available	-Free attendance for two (2) at the CLE you sponsor -Opportunity to speak briefly at the CLE -Name listing on all event advertising	\$1000-\$5000 depending upon CLE topic	Typically 12-16 CLE’s offered each year; multiple sponsorship discounts available
HOLIDAY PARTY – SPONSOR – one Sponsorship only available for this event	Free attendance for two (2) to Holiday Party (value = \$110+) -Signage at event -Name on all event advertising, including website	\$750	December 15, 2016
INFORMAL SOCIAL EVENTS – one Primary Sponsor only per Social Event	Free attendance for up to six (6) people at the social event -Signage at event -Name on all event advertising, including website	\$350-\$1000 – depending upon costs of social event and venue	Typically 4-6 informal social events per year
NEW MEMBERS WELCOME SOCIAL Primary Sponsor – One Sponsorship only available for this event	-Free attendance for up to six (6) people at the New Members Social Event -Signage at event -Name listing on all event advertising, including website	\$750-\$1000	This Sponsorship could be expanded beyond one event to the “RCBA New Members Official Sponsor” of New Members Orientation

**RCBA SPONSORSHIP, MEMBERSHIP AND ADVERTISING
OPPORTUNITIES – July 1, 2016-June 30, 2017
QUESTIONS? CONTACT MANUELA GOMEZ, manuela@rocklandbar.org**

ADVERTISING OPPORTUNITIES	<u>Components/ Benefits</u>	<u>Cost</u>	<u>Notes</u>
WEBSITE SPONSOR —three (3) Primary Sponsors on Main Page of RCBA website**	-Your ad on RCBA website main page	\$500-\$4500 – depending on length of time ad is on website	Ads available for 1, 3 and 6 mos. and 1 year **Please note: this option will be available on or about February 15, 2017
NEWSLETTER SPONSOR —various ads of different sizes in monthly <i>Newsbrief</i>	-Your ad in RCBA monthly <i>Newsbrief</i> newsletter	\$75-\$400 /mo -- depending upon size of ad	Ads available every month for 11 mos. (we do not publish in July) 10% discount available for 6 mos. and 20% discount for one year.
E-NEWS SPONSOR – One sponsor per monthly RCBA E-News	-Your name listed as Sponsor of the RCBA E-News	\$150/mo	Check with RCBA Offices for E-News publication dates
ANNUAL DINNER JOURNAL	-Your ad in Annual Dinner Journal – our largest event	Various ad sizes and costs	October 27, 2016 – Preet Bharara Guest of Honor
CLE BOOKLET SPONSOR – one (1) Primary Sponsor	-Free attendance for one (1) person for six (6) CLE's -Your ad prominently displayed in the annual CLE Schedule Booklet	\$1000	CLE Schedule Booklet is published on the RCBA website annually

INTRODUCING...
OUR RCBA 2016-17
MAJOR SPONSORS:

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NEWS from the Executive Director

Dear Colleagues,

Hard to believe it is November already!

We had a busy and exciting Fall at the RCBA. Our Annual Dinner, held on October 27, was a huge success. All feedback received has been positive. Attendees were thrilled to hear Hon. Preet Bharara address our Association and guests. His comments were candid and insightful. Our other two honorees, Diana Rivet, Esq. and Phyllis B. Frank were a delight. We all enjoyed hearing from those whose lives have been touched by Diana and Phyllis. Those stories were informative and touching.

The RCBA will be introducing a *new website* in the New Year. We are just at the beginning of this process, and as you can imagine it is a big undertaking. However, we are very excited at the prospect of making our services more accessible to our members and the public.

I'd like to bring to your attention Pages 4 and 5 in this month's *Newsbrief*. You will see there are multiple and some NEW opportunities for members and non-members alike to sponsor various aspects of our program. Please take a look and share with your non-member colleagues who might be interested in gaining access to local attorneys through advertising and outreach.

You will see we are already making plans for our 2016 HOLIDAY PARTY which will be on December 15 at the Nyack Seaport. **PLEASE MARK YOUR CALENDAR NOW!**

On behalf of the Officers, Board and Staff of the RCBA, let me take this opportunity to wish you and your family a wonderful Thanksgiving.

With all good wishes,

Nancy

Nancy Low-Hogan, Ph.D.
Executive Director

Supporting our communities is important.

At M&T Bank, we know how important it is to support those organizations that make our communities better places to live and work. That's why we offer both our time and resources and encourage others to do the same.

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abrockway@mtb.com

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**THE BOARD OF DIRECTORS & STAFF
OF THE
ROCKLAND COUNTY BAR ASSOCIATION WOULD LIKE
TO WISH ALL OF OUR
MEMBERS AND THEIR FAMILIES A VERY
HAPPY THANKSGIVING.**

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CAN BE A REAL TRIAL.



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 Personal Injury
 Medical Malpractice
 &
 Estate Planning/Estate
 Administration
 Surrogate Practice
 Phone # 845-639-7800
 Fax # 845-639-7850
aweiner@mkbllp.com

Of Counsel
 Mandel, Katz & Brosnan LLP
 210 Route 303
 Valley Cottage, New York 10989

**ASSIGNED COUNSEL
 PANEL MEMBERS
 PLEASE NOTE:**

**THE 2016 FISCAL YEAR IS COMING
 TO A CLOSE.
 PLEASE SEND IN YOUR VOUCHERS
 FOR CASE COMPLETED.
 DO NOT HOLD YOUR VOUCHERS FOR
 THE 2017 BILLING CYCLE.**

**ALL ADVERTISEMENTS AND ARTICLES MUST BE
 REVIEWED BY THE EXECUTIVE
 COMMITTEE
 FOR CONTENT.**

LEGAL RESEARCH AND WRITING

Trial and Appellate Courts

Motions • Memoranda • Briefs •
 Oral Argument



SUSAN COOPER, ESQ.

845-304-2969

SusanCooperEsq@gmail.com



YOUR AD HERE

MEMO**TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS**

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long - a succinct piece of general interest and importance would be best. If you are able to submit an article for the Newsletter it should be sent via email to Manuela@rocklandbar.org by the 15th of the month so that the Executive Board may review it. Thank you!

READ A GOOD BOOK?

If anyone has read a book that they would like to recommend, please write a short review for publication in our Newsletter.

Need a Place to Meet in New City?

RCBA Conference Rooms available for rent.

MEMBER PRICES:

**1st two hours FREE, then \$25/hour
Full Day (8 hours) = \$140.00**

NON-MEMBER PRICES:

\$50/hour

**Half Day (4 hours) = \$150.00
Full Day (8 hours) = \$300.00**

LAWYER REFERRAL SERVICE**SIGN UP NOW FOR 2017!**

IF ANY MEMBER IS INTERESTED IN JOINING THE REFERRAL SERVICE PLEASE CALL RCBA @ 845-634-2149 ask for Manuela FOR AN APPLICATION. THE APPLICATION CAN ALSO BE FOUND ON OUR WEBSITE WWW.ROCKLANDBAR.ORG IN THE ATTORNEY RESOURCES SECTION.

Michael E. Zall

Intellectual Property Law
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Two Yorkshire Drive
Suffern, NY 10901
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Michael E. Zall
Attorney At Law
Mike@Zall-Law.com

NEWSBRIEF ADVERTISING RATES

FULL PAGE (7.5x10.25)	\$400.00
1/2 PAGE (7.5x5):	\$250.00
1/4 PAGE (3.75x5):	\$200.00
1/8 PAGE (3.75x2.5):	\$125.00
BUSINESS CARD:	\$75.00

Announcing New Discounts:
10% for 6 mo. bookings
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PLEASE NOTE:
NEWSBRIEF IS NOT PUBLISHED IN JULY
CALL MANUELA @ 845-634-2149
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Advertising & articles appearing in the RCBA Newsletter does not presume endorsement of products, services & views of the Rockland County Bar

CLE Corner

Rockland County Bar Association, Rockland County Women's Bar Association
and NYS Society of CPA's - Rockland Chapter
Present

ANATOMY OF A BUSINESS ACQUISITION

Synopsis: Explore the key legal and business elements of an acquisition as our discussion follows a deal from inception through closing. Our panel of attorneys and financial professionals will review the essential components of the transaction including: Non-Disclosure Agreements, valuation, terms of the deal, due diligence, financing, closing, and regulatory hurdles in the healthcare context. Join an audience of attorneys and accountants to obtain this practical guidance on business acquisitions.

Date: Monday, November 14, 2016
Time: 6:00 p.m.– 9:00 p.m. (*Registration 5:30 p.m.*) (*dinner*)
Level: Transitional/Non-Transitional
Moderator: Sharon Siegel, CPA, New City, NY
Speakers: Judith Bachman, Esq., New City, NY
 Rondi K. Loganzo, Esq., New City, NY
 Steve Breen, Business Banking Relationship Manager,
 M & T Bank, Nyack, NY
 Dennis Kremer, CPA, Goldstein, Karlewicz & Goldstein, LLP,
 Chestnut Ridge, NY
Place: Italiana's, 253 South Little Tor Road, New City, NY
Cost: \$ 45.00 in advance; \$ 55.00 at the door; \$ 65.00 Non-Members
 (who are not CPA's); \$ 10. 00 paralegals and students
Credits: 3 CLE Credits: 2.5 Professional Practice/Skills; .5 Ethics

Sponsored by M & T Bank and Goldstein, Karlewicz & Goldstein, LLP

THE AUTOMOBILE CASE: A CRASH COURSE AND STEP - BY - STEP GUIDE TO HANDLING A MOTOR VEHICLE COLLISION CASE FROM SIGN-UP TO VERDICT

Synopsis: This is a primer on how to handle these cases from beginning to attend, including the initial intake interview, pre-suit investigation and analysis, getting from filing the action to trial, No-Fault "Threshold" issues, and the full trial or cheaper alternatives.

Date: Wednesday, November 30, 2016
Time: 6:00 p.m.– 9:00 p.m. (*Registration 5:30 p.m.*) (*dinner*)
Level: Transitional/Non-Transitional
Speakers: Robert B. Marcus, Esq., Orangeburg, NY
 Valerie J. Crown, Esq., New City, NY
 Anthony J. Benedict, Esq., Chestnut Ridge, NY
Place: Italiana's, 253 South Little Tor Road, New City, NY
Cost: \$75.00 in advance; \$85.00 at the door; \$95.00 Non-Members; \$40.00 paralegals and students
Credits: 3 CLE Credits: 2.5 Professional Practice/Skills; .5 Ethics

CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited "transitional" education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice.

Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

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One (1) small office at \$450 per month.

Office in well-appointed law suite. Conference room and reception provided. Fax, internet, and photo copy also available. Call Lisa Chakan @ 201-391-7000

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1014 square foot ground floor suite in one story office building, divided into 3 separate offices, reception area, bathroom and hallway. Reduced Price: \$239,000. Lee at 845 300-5877

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Offices in beautiful spacious suite, directly across from the New City Courthouse. Includes reception and conference room. Please call 845-623-7070

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Storage space for legal files available. 180 square foot storage space. 24/7 access. Currently used by local lawyers for storage. Premises are located in Route 303 in Orangeburg and are sprinklered. \$225.00/month, no lease required. Contact Bruce or Toni: 845-359-5400

OFFICE SPACE - SUFFERN

One or two rooms in professional office complex with waiting room and secretarial area. Furnished. 1 Executive Boulevard next to NYS Thruway and Crowne Plaza. Call Arnold Etelson at 845 368-3310

OFFICE SPACE—PIERMONT

Great Opportunity in Piermont for office space in prime location, **450 Piermont Avenue** \$2,000 per month. Large reception area, shared conference room and three additional offices and restroom. Next to NYC Bus route, surrounded by shops and businesses. Perfect for an attorney or attorneys MLS# 4631865 Call Adam Blankfort (845) 641-3255 or email: adam@baerhomes.com.

OFFICE SPACE—NYACK

Bright, Exquisite, Furnished, Soho Style office in Nyack's best location **97 S. Broadway** \$650 per month. 1 block from the Hudson River. Operate your business from this furnished or unfurnished 2nd Floor studio space complete with your own parking space, including glass conference table, three desks, year-round river views, skylight, exposed brick. Convenient Bus route to NYC right in front of office. Utilities and Internet additional \$50 per month. Ideal for solo practice. Call Adam Blankfort (845) 641-3255 adam@baerhomes.com.

SITUATION WANTED

Experienced litigation, education law, employment, bankruptcy, and transactional attorney would like permanent or temporary work. Available immediately. Please email smillsrich@aol.com or call Susan Richmond at 845-641-1441.

IMMIGRATION ATTORNEY WANTED

Immigration Attorney Wanted: New City Law Office seeking an attorney with immigration experience, full time, trial experience a plus, Spanish speaking a plus, admitted to Southern District of NY a plus. Also willing to assist with family law/bankruptcy/collections and loan modifications a plus. Call 845.639.4600 or fax 845.639.4610 or E-mail:

michael@demoyalaw.com

MATRIMONIAL ATTORNEY WANTED

Attorney Wanted: New City Law Office seeking an attorney with matrimonial and family law experience, full time, trial experience a plus, Spanish speaking a plus, admitted to Southern District of NY a plus. Call 845.639.4600 or fax 845.639.4610 or E-mail: michael@demoyalaw.com

REAL ESTATE ATTORNEY WANTED

Experience necessary, salary negotiable. Please provide cover letter and resume to the Rockland County Bar Association.

RETIRING ATTORNEY

With office in New City seeks a Successor Attorney for his General Practice consisting primarily of Real Estate, Wills, Trust and Estates.

Please call (845) 623-8055 Fax (845) 623-2219

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Priced to sell. Vertical and lateral file cabinets, storage units, desks, chairs, conference table, book cases, credenza, tables, dividers, bulletin boards, white board. Please call Madelon at 914-527-2400 for information. Items are located in New City.

Domestic Violence Staff Attorney-Temporary 6 months-White Plains, NY office; Legal Services of the Hudson Valley

This position includes intakes and individual case work, litigation in state courts including appellate practice and education and outreach efforts at community members, advocates and service providers. Qualifications include three or more years of legal experience including litigation or its equivalent, and understanding of the dynamics of domestic violence. Please apply through our website: www.lshv.org, under the **Get Involved** link.

Staff Attorney General Practice-Public Benefits, Social Security & Housing- Poughkeepsie, NY office; Legal Services of the Hudson Valley

This is a general practice position focusing on working on the Disability Advocacy Program (DAP) and assisting disabled clients with housing matters, at Administrative Hearings before the Social Security Administration and in Federal Court. A willingness to be admitted to the Federal Bar, one or more years of legal experience including litigation and administrative hearings. Please apply through our website: www.lshv.org, under the **Get Involved** link.

Part-Time (.6 FTE) General Practice Staff Attorney – Newburgh, NY office; Legal Services of the Hudson Valley

This position focuses on work on social security, public benefits and other matters, serving clients living in Orange County with matters such as SSI/SSDI, Medicaid, Food Stamps, Public Assistance, consumer, disability discrimination, landlord/tenant, advanced planning and other housing issues. Three or more years of legal experience including litigation or its equivalent. Please apply through our website: www.lshv.org, under the **Get Involved** link.

OFFICE SPACE AVAILABLE

Beautiful windowed offices in law suite. New paint and carpeting in October 2016. All amenities, including fax, color copier/scanner, high speed internet, wi-fi, conference room, phone/voice mail system, kitchenette. Convenient to courts, train, bus and restaurants. (914) 684-1200 x 101. FREE GARAGE PARKING - DOWNTOWN WHITE PLAINS

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G. Mercedes Felix,
Confidential Secretary to County Attorney
Rockland County Department of Law
11 New Hempstead Road
New City, New York 10956
felixm@co.rockland.ny.us