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Sabrina Charles-Pierre, Editor

ROCKLAND COUNTY BAR ASSOCIATION

1893 - 2018 125th Anniversary

NEWSBRIEF

www.rocklandbar.org September 2018

ROCKLAND COUNTY BAR ASSOCIATION

1893 - 2018 125th Anniversary

HAPPY ANNIVERSARY RCBA!

The RCBA 125th Anniversary Committee:

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Nancy Low-Hogan, Ph.D.
Timothy McNamara, Esq.
Luis Rivera, Esq., Sterling National Bank
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Proud to bring you these special anniversary events:

RCBA Historical Exhibition Opening Reception – September 13

FREE Family Fun Barbeque – September 23

125th Anniversary Gala – October 25

~

Don't forget to buy one of our Limited Edition 125th Anniversary Mugs. Order online at www.rocklandbar.org, or call us 845-634-2149 for more information.

This year's Souvenir Journal will be a real
SOUVENIR

SOUVENIR JOURNAL
125th Anniversary Gala

Guest of Honor
Hon. Janet DiFiore
Chief Judge of the Court of Appeals and the State of New York
and
The Lifetime Achievement Award:
Richard A. Glickel, Esq.
The Natalie Couch Award:
Lawrence A. Codispoti, Esq.

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Please make your check payable to the *ROCKLAND COUNTY BAR FOUNDATION*
DATE OF ANNUAL/ANNIVERSARY DINNER: THURSDAY, OCTOBER 25, 2018

Please email your ad to: - sabrina@rocklandbar.org -- *ad deadline October 12, 2018.*
Call us with your questions: Sabrina Charles-Pierre – 845-634-2149
Rockland County Bar Association, 337 N. Main St., Suite 1, New City, NY 10956

ROCKLAND COUNTY BAR ASSOCIATION
1893 - 2018
125th Anniversary

125th Anniversary Gala
(ANNUAL DINNER)

THURSDAY, OCTOBER 25, 2018
6:00 P.M. – Patriot Hills Country Club

Featuring

GUEST OF HONOR
HON. JANET DIFIORE
Chief Judge of the Court of Appeals and the State of New York

And

LIFETIME ACHIEVEMENT AWARD RECIPIENT
RICHARD A. GLICKEL, ESQ.

And

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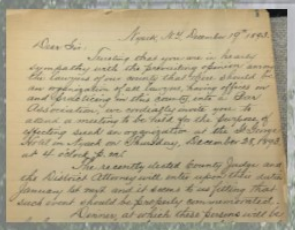
ROCKLAND COUNTY BAR ASSOCIATION
125TH ANNIVERSARY HISTORICAL EXHIBITION
OPENING RECEPTION WINE AND CHEESE

Thursday, September 13, 2018
5:00-7:00pm
at
HISTORICAL SOCIETY OF ROCKLAND COUNTY
20 ZUKOR ROAD, NEW CITY, NY 10956



FREE! RSVP so we know you are coming! Click here or call 845-634-2149.

JOIN US!

~ Enjoy looking at our archived materials. See old photos of Rockland County judges and attorneys and view the original Minutes from the first meeting of the RCBA on December 28, 1893, among other things

~ Enjoy a FREE walking tour of the 1832 Jacob Blauvelt House

~ Receive a FREE Rockland County history book

~ Camaraderie and Service Throughout The Years ~

COMMERCIAL LITIGATION ISSUES OF INTEREST **September 2018**

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 client recently contracted to sell his vacant lot for $3 million to a developer who hopes to construct a multi-story residential building. But there is a snag. A non-profit that incorporated in 2012, has sued for a declaration that it owns the lot by adverse possession commencing in 1985, when a community garden was founded by its members on your client's lot and two other contiguous lots. The non-profit alleges that the community garden members began clearing garbage and old construction debris from the three lots to create a garden in 1985, when they also built a chain-link fence around the three lots, installed a locked gate for access, and planted trees and other plants. They later installed paths and playground equipment, and have used the garden regularly for play, community concerts and other community events. In 1999 and 2013, your client entered the lot, chopped down trees, pulled up plants, and installed an internal fence to block access to and from the other two lots comprising the garden. The community garden members promptly removed the internal fence and repaired the damage. You move to dismiss the complaint, claiming there was no continuous use by the same members of the organization, which was not incorporated until 2012, and there was no reasonable basis for any claim of right, as the members knew they did not hold title by deed.

Will your motion to dismiss be granted?

The answer is no.

In *Children's Magical Garden Inc. v. Norfolk St. Dev. LLC*, NYLJ 1531489448NY15209414; Index No.152094/2014; 2018 WL 3384943 (App. Div. 1st Dep't, July 12, 2018), the plaintiff, which incorporated as a non-profit in 2012, is a community garden that was founded in 1985 by its members on three contiguous lots. Two of the vacant lots comprising the garden were city-owned, and in 2013 were formally licensed to the plaintiff as a community garden under the City's Green Thumb program. The third lot is owned by a developer that purchased the lot for $3.3 million in 2014, and applied to construct a six-story residential building. The plaintiff commenced an action seeking a declaration of adverse possession. The defendants moved to dismiss the complaint.

The complaint alleges that the garden began by members cleaning up garbage and used needles on the three vacant lots in the Lower East Side neighborhood of Manhattan across from an elementary school. The members enclosed the property by a chain-link fence, limited access by locked gates, and improved the property. The garden includes a fish pond, pathways, playground equipment and a stage used for concerts, art displays, and other community activities. The complaint alleges that the gates are locked unless a supervising member is there. Only members have keys. In 1999 and 2013, the defendants intruded into the garden, chopping down trees, pulling up plants, and installing an interior fence to block access to and from the other two lots. The garden members promptly took out the fence and repaired the damage.

COMMERCIAL LITIGATION ISSUES OF INTEREST **September 2018**

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

The motion to dismiss argues that there is no allegation that the plaintiff had the necessary privity with the earlier members, and cannot, therefore, satisfy the "continuous" element of adverse possession. The Court rejected this argument, noting that an unincorporated association may adversely possess property and later incorporate and take title, citing Reformed Church of Gallupville v. Schoolcraft, 65 N.Y. 134 (1875). The Court found that the complaint, supplemented by affidavits of early members, adequately alleged that a few of the same individual members of the garden worked together from 1985 through 1999, and that the current president of the garden corporation worked together with other members from 1997 to 2013, thereby satisfying the requirement of an "unbroken chain of privity between the adverse possessors," citing Belotti v. Bickhardt, 228 N.Y. 296, 306 (1920). The Court distinguished this from cases where individuals occupied different apartments within a building, with no apparent contact between the vacating occupant of an apartment and the new occupant.

The defendants also argued that the plaintiff could not plead a claim of right, since there was no "objective basis in fact" for the plaintiff to have an expectation of any right. The Court noted that the plaintiff's claims are governed by the law as it existed prior to the amendment of RPAPL § 501(3) in 2008, which now requires "a reasonable basis for the belief that the property belongs to the adverse possessor." Prior to the amendment, an adverse possessor could have actual knowledge of the true owner, so long as there was no "overt acknowledgement by the claimant during the prescriptive period," citing Walling v. Przybylo, 7 N.Y.3d 228, 233 (2006). The Court ruled that there was no such acknowledgment here.

The lesson? If your client owns real property that your client does not regularly use, advise the client to check the property annually for signs of use by others, and to take timely action to remedy any illegal use.

Savad | Churgin

IT'S DUES TIME!

This is a friendly reminder that it is time to pay your 2018-19 RCBA Membership Dues.

Annual Dues for 2018-19 for regular Members are $185.00.

Renew and pay online by clicking here, or print out a Renewal Form & send in your check.

After September 30, 2018 Dues amount increases to $200.00!

If you have any questions about your Membership, please contact Sabrina Charles-Pierre, Program Coordinator, at sabrina@rocklandbar.org, or call Sabrina at 845-634-2149. Enjoy the rest of your summer!

BIG BROTHERS BIG SISTERS OF ROCKLAND COUNTY IS SEEKING BRO BONO LEGAL ASSISTANCE TO FORMAT A 501c3 ORGANIZATION.

PLEASE CONTACT GILLIAN BALLARD: GBALLARD@BBBSOFRC.COM OR TELEPHONE: 845 634 2199 X 5.

Big Brothers Big Sisters of Rockland County

Big Brothers Big Sisters is the oldest, largest, and most effective youth mentoring organization in Rockland and throughout the United States.
We have been the leader in one-to-one youth service for more than a century, developing positive relationships that have a direct and lasting impact on the lives of young people ages 7 to 18 throughout all of Rockland's communities.

CALL TODAY AND CHANGE A CHILDS' LIFE!
ROCKLAND'S ESTABLISHED LEADER IN MENTORING.

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September 6, 2018

12:00pm - 2:00pm

Paramount Country Club

60 Zukor Road

New City, New York 10956

1 Ethics

1 Diversity, Inclusion, and Elimination of Bias

VISIT US ONLINE

OPEN FOR BUSINESS

RCBA 125TH ANNIVERSARY

FAMILY FUN

BARBEQUE

SUNDAY, SEPTEMBER 23, 2018*

1:00-5:00pm

Rockland Country Day School
34 Kings Hwy., Congers, NY 10920

FREE!

Free to RCBA Members and Families.

Non-Members $20.00

RSVP REQUIRED.

To RSVP online, click here, or go to www.rocklandbar.org, or call the RCBA at 845-634-2149.

BURGERS, MUSIC, hot dogs, **GAMES, BEER**, soda, chicken, **FUN, KanJam!**

Plenty of parking. Bring blankets and bug spray.

***Rain date: September 30, 2018**

Dear Colleagues,

We hope you will be able to join us for the Presentation of the Portrait of:

Honorable Margaret Garvey
Justice of the Supreme Court, Retired

Thursday, September 20, 2018
3:00 p.m.
Rockland County Courthouse

With best regards,

The Bar Association

THE PRACTICE PAGE

THE DE-ACCELERATION OF MORTGAGED NOTE DEBT

Hon. Mark C. Dillon*

The housing bubble popped in 2008, resulting in a significant wave of mortgage defaults in the years that followed. Payments on notes are normally due on a rolling monthly basis, and each missed payment represents a default that is separately subject to the six year statute of limitations of CPLR 213(4). However, notes and mortgages typically contain a provision that in the event of missed payments, the lender may "accelerate" the debt by demanding the full amount of the balance due. In such instances, the six year statute of limitations is measured from the acceleration (U.S. Bank Nat'l. Association v Joseph, 159 AD3d 968, 970).

The Second Department has held that for accelerations to be effective, they must be clear and unambiguous (Nationstar Mtge., LLC v Weisblum, 143 AD3d 866, 867). Accelerations may occur one of three ways. The first is when a lender sends the debtor a letter demanding payment of the note balance in full (Id., at 867). The second is when the lender commences a foreclosure action and demands payment of the full balance in the complaint (Clayton Natl. v Guldi, 307 AD2d 982). The third is self-executing, when a note requires a balloon payment at the end of the pay-back period (Trustco Bank N.Y. 37 Clark St., 157 Misc.2d 843, 844).

Since many mortgage defaults occurred in the 2008-2012 time frame, and accelerations from that time frame are subject to a six year statute of limitations, the timeliness or untimeliness of foreclosure actions has become a hot topic in litigations now. In some cases, lenders commenced foreclosure actions against their debtors on a timely basis, but for reasons of standing, document production, or other problems of proof, withdrew some of those cases. RPAPL 1501(4) provides that a person with an interest in real property may commence an action to cancel the encumbrance, if the applicable limitations period for foreclosing upon it has expired.

Lenders may circumvent the problem of untimeliness before a litigation, or after a litigation has been discontinued, if they "de-accelerate" the mortgaged debt. Lenders must do so within the six-year limitations period, even if subsequent to the initiation of an initial timely foreclosure action (NMNT Realty Corp. v Knoxville 2012 Trust, 151 AD3d 1068, 1069-70).

In a recent appellate decision, Milone v U.S. Bank Nat'l. Assoc., __ AD3d __ (Docket No. 2016-02068, Aug. 15. 2018), the Second Department held for the first time that just as lenders' accelerations must be clear and equivocal to be enforceable, their de-accelerations must be clear and unequivocal as well. But the court did not stop there. It recognized in Milone that there could be instances when, conceivably, de-acceleration is used by a lender as a mere pretext to circumvent the otherwise onerous effect of an approaching statute of limitations. The Second Department held, therefore, that a lender's de-acceleration is not pretextual if the de-acceleration letter to the homeowner demands that he/she prospectively resume the payment of monthly mortgage obligations, or if the lender provides documentary proof that it resumed the practice of issuing monthly invoices to the homeowner, or if there is other evidence that the lender's de-acceleration was bona fide and not a guise to achieve a litigation strategy (Id.). If the de-acceleration is challenged by the homeowner, but the requisite proof is provided by the lender, the statute of limitations runs anew as of each prospective monthly default by the homeowner, or until there is a second acceleration from which the six year limitations period runs fresh.

Counsel for homeowners should carefully examine de-acceleration documentation received from their clients' lenders, to determine whether the documents meet the evidentiary standards now promulgated by Milone. Conversely, counsel for banks and other lenders, facing statute of limitations problems of a previosuly-accelerated mortgage, should advise their clients of Milone's requirements. If the lender's de-acceleration documentation is in order, its claims may live to see another day. If not, general statute of limitations defenses, and homeowners' rights under RPAPL 1501(4), may trigger, and the lender's remedy of foreclosing upon the collateralized property will be lost to untimeliness.

Mark C. Dillon is a Justice of the Appellate Division, Second Department, and an Adjunct Professor of New York Practice at Fordham Law School.

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 sabrina@rocklandbar.org by the 15th of the month so that the Executive Board may review it.

Thank you!

RCBA MEMORIAL RECOGNITION CEREMONY

for those who left us in 2017-18

Friday, October 5, 2018

3:00 PM

Ceremonial Courtroom

Rockland County Courthouse

The Honorable Robert M. Berliner, JSC, Presiding

COMMITTEE CORNER

New Lawyers & Social Committee

NOW FORMING

Please join us at our first meeting: Wednesday, October 17, 2018

5:30PM at the RCBA Offices

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

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September 6, 2018
12:00pm - 2:00pm

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60 Zukor Road
New City, New York 10956

HIGH TECH TOOLS FOR STONE AGE LAWYERS

September 20, 2018
12:00pm - 2:00pm

Double Tree Hilton
425 E. Rte 59
Nanuet, New York 10954

NEW CLE REQUIREMENT

In addition to ethics and professionalism, skills, law practice management, and areas of professional practice, a new category was added for diversity, inclusion and elimination of bias courses. This category of credit is effective January 1, 2018.
Experienced attorneys due to re-register on or after July 1, 2018 must complete at least one credit hour in the Diversity, Inclusion and Elimination of Bias CLE category of credit as part of their biennial CLE requirement. The transitional CLE requirement for newly admitted attorneys remains unchanged. For more information about the CLE Rules, visitnycourts.gov/Attorneys/CLE.

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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Schedule: Monday through Friday from 9 am to 5 pm.
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Strong communication and organization skills, multitasking, Microsoft Word, attention to detail and basic computer skills are essential.
Please send cover letter and resume via email to Valeria Palacios at koenigmgmt@gmail.com or fax it to 845-639-0433.

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Please fax resume to 845.639.4610 or
E-mail: michael@demoyalaw.com

ASSOCIATE ATTORNEY NEEDED

3-5 years litigation experience for busy Rockland County firm. Please forward resume to phabas@barpc.com or fax to 845-359-5577

ATTORNEY SEEKING PART-TIME

Attorney with 7+ years of commercial litigation and real estate experience interested in part time and/or per diem work, including but not limited to, legal research, commercial/residential leasing, legal briefs/ memoranda, e-filing. If interested, please call 914-260-1266.

STAFF ATTORNEY NEEDED

Legal Services of the Hudson Valley has two openings in its Yonkers, NY office, as part of a Universal Access Pilot Project in Yonkers City Court, who will assist low-income individuals in housing matters. Please apply here: Legal Services of the Hudson Valley- Housing Staff Attorney-Universal Access-Yonkers, NY"

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I can interpret to help prepare for hearings and trials. I am willing to accompany attorneys to interpret in prisons or jails. I am available to meet interpretation needs professionally an affordably.
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