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COUNSELORS AT LAW

Current Legal and Business Developments
Affecting the Design, Construction
and Real Estate Industries

Quarterly Review

Spring 2002 Volume 8 Number 3

An Interview with Richard Meier, Architect

With Michael S. Zetlin

As a regular feature of this newsletter, we bring you an interview with a client whose career and work are both exemplary and instructive. I was pleased to interview Richard Meier approximately one month after the events of September 11, 2001.

- Michael Zetlin

MSZ: Richard, your career is certainly one that would be instructive to other architects. Would you mind talking about your background?

RM: After graduation from architecture school at Cornell University, I went to work for Davis Brody &Wisnewski, a small firm at the time, although not so small today. I worked there for only six months because I wanted to travel around the world and did so for six months. When I did come back, I worked for Skidmore Owings & Merrill for six months and then ultimately went to work for Marcel Breuer, where I stayed for three years with the idea that I would take my licensing exam and then open my own office. I always had a dream of opening my own office, even if I didn't know what that meant or how I would do it.

MSZ: How did you launch your practice?

RM: When I passed the architectural exam I immediately left Breuer's office and began working out of my apartment. I lived in one room and worked in the other and did some exhibition design for a Cornell professor of mine who had become the Director of the Jewish Museum in New York. I did an apartment renovation and some other small projects and then one day my parents, who wanted to move from a three story house to a one level house, asked me to design a new home for them, which I did. Their house was published and that led to another house in Darien, Connecticut, and then to another which was built on Long Island.

Continued on page 2

Assignment of Contracts: Let the Buyer Beware

By Matthew S. Quinn

The issue of assigning a contract from one party to another is one that arises with some frequency in the design and construction areas. The following is a typical fact pattern:

Acme Owner contracts with Zip Engineering to design the HVAC system in its current high-rise project in Manhattan. Their contract states that neither party will assign or transfer any rights or obligations without the consent of the other party. Shortly after the ink dries, Zip's owners decide to retire to sunny Florida and they wind up business operations. Before they do, however, they assign their contractual obligations to another firm, Tornado, but never obtain Acme's explicit consent to the assignment to complete the HVAC design. Later, Acme fails to make certain payments to Tornado and Tornado then sues Acme to

Will Tornado be successful in enforcing Acme's payment obligations under the assigned contract?

There are several different scenarios under which the need to assign a contract may arise. As in the previous example, when a firm winds up its business, it typically has several outstanding contractual obligations. Unless the contract with the client allows the design or construction firm to terminate the contract for its convenience,[1] the remaining contractual obligations must be fulfilled. One method for fulfilling these

Continued on page 7

Legal Updates

An architect may be held liable under the Fair Housing Act if he produces a design which is not handicapped accessible. ***Doering v. Pontarelli Builders, Inc., 2001 WL 1464897 (N.D. Ill. 2001)***

An exculpatory clause which provided that the contractor's damages for delay were limited to an extension of the project completion date was valid and enforceable. ***Indiana Department of Transportation v. Shelly & Sands Inc., 756 N.E.2d 1063 (Ind. App. 2001)***

An arbitration clause was held enforceable, despite the fact that the owner alleged that the clause was part of the architect's fraudulent scheme to swindle the owner. ***Garten v. Kurth, 265 F.3d 136 (2d Cir. 2001)***

A condominium board president had the authority, whether actual, implied or apparent, to bind the entire condominium board. ***Odell v. 704 Broadway Condominium, 284 A.D.2d 52 (1st Dep't 2001)***

A construction contract's express negation of enforcement by third parties was controlling. ***Board of Managers of the Alexandria Condominium v. Broadway/72nd Associates, 285 A.D.2d 422 (1st Dep't 2001)***

Interview with Richard Meier *Continued from cover*

MSZ: Were your designs for those houses inspired by any particular designs?

RM: The first house, for my parents, was inspired by Frank Lloyd Wright and it was influenced by my visit to Falling Water. The second house, the Smith House in Darien, was perhaps inspired by Le Corbusier. I received a fair amount of publicity for this house in 1967 and that led to other projects. I realized then that I couldn't operate out of my small apartment anymore. I rented a small office space on 53rd Street. Out of the blue one morning I got a call from Ed Logue, who was the head of the Urban Development Corporation. He asked me to design some housing in the Bronx and we built 384 units in the Twin Parks section of the Bronx. That was the way things happened in the 60's and 70's, an architect's work generally came by word of mouth. It is a different climate today with endless committee interviews and long lists becoming short lists becoming competitions.

MSZ: As your reputation developed, did you have a distinct or recognizable style?

RM: To some degree, I believe I did. However, I designed two hospitals for disabled children—one in Rochester and one in the Bronx. These were both very different.

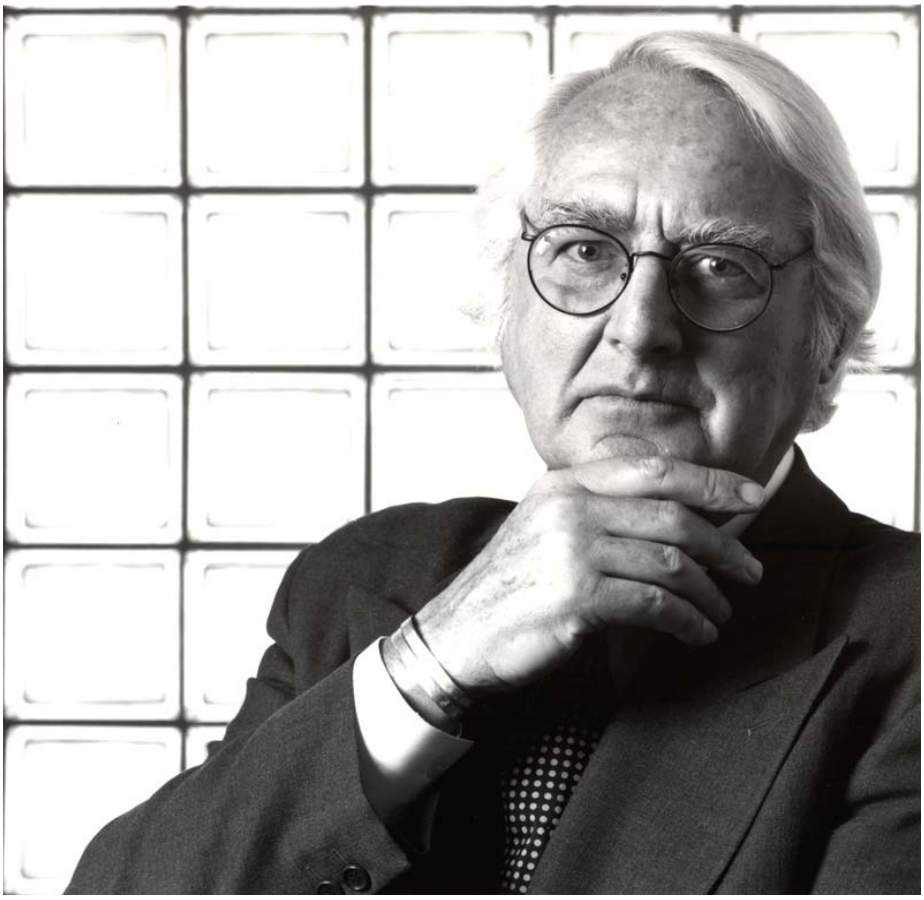
MSZ: How does great architecture influence people?

RM: A building does have a life outside itself and of course, that life changes depending on the occupants and how it is used. With the recently completed court houses, for example, it is not just important to accommodate the judges' chambers, the court rooms and lawyers' needs, but also other aspects of the judicial system that may have a direct relationship to the people who for one reason or another take part in the judicial process. I don't think people in the U.S. recognize the pervasive effect of architecture on the quality of their lives.

MSZ: The Getty may be your most visible accomplishment. Tell me about being selected for the Getty project.

RM: The selection process was an arduous one and took over a year. It started with asking 110 architects to send material after which a committee reviewed all of the brochures and selected 33 architects to send more material. They culled the 33 architects down to nine. The Getty Trust then abandoned the original committee and started with another committee. People would call in the morning saying they were in NYC and wanting to come visit, so you drop everything in order to accommodate them. It was exhausting, long and arduous. One night when I was having dinner with my children I received a call from the President of the Getty Trust who said I had been selected as the architect and that now "we want the building finished in 3 years!" Little did I know it would take 15 years. During those years I was spending two weeks every month in California and two weeks in NYC. It takes a toll on your family and yourself.

MSZ: Certainly no regrets…



RM: No. None. The architecture that emerged, the 'institution', had to go hand in hand with everyone's hopes, aspirations, and needs. It was not just the program of space. All of the staff, departments, visitors and users, many of whom changed over time, had an input and their requirements had to be accommodated. There was a Getty Museum when we started, but there was no Educational Institution, no Conservation Institute. It was like building a university from scratch.

MSZ: Was the Getty your most challenging significant project?

Continued on page 4

Amendment to NYS Law Provides Limited Protection in Emergencies

Michael De Chiara is Chairman of the Liability / Legal Jurisdiction Committee of the New York City Partnership's Infrastructure Task Force

The New York City Infrastructure Task Force (www.nycrebuild.org) of the New York City Partnership has proposed these amendments to the existing Good Samaritan law:

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. **The presently existing law of this State is amended by adding the following new section to the (executive law):**

§ 881: "Engineers","Architects", "Construction Managers", "Contractors", "Subcontractors" and all persons who work for or under their direction or control and the people of the State of New York are the intended beneficiaries of this legislation.

(A) "**Architect**" shall mean a person or firm duly licensed under the laws of this State or any other State in the United States to practice architecture or an unlicensed person performing architectural services acting under the direction or supervision of a duly licensed architect.

(B) "**Engineer**" shall mean a person or firm duly licensed under the laws of this State or any other State in the United States to practice engineering or an unlicensed person performing engineering services acting under the direction or supervision of a duly licensed engineer.

(C) "**Construction Manager**" shall mean a person, firm or other entity which provides construction management services in and under the laws of this State or any other State in the United States and any employee of such person, firm or entity.

(D) "**Contractor**" shall mean a person, firm or other entity which provides construction contracting services in and under the laws of this State or any other State in the United States and any employee of such person, firm or entity.

(E) "**Subcontractor**" shall mean a person, firm or other entity which provides construction subcontracting services in and under the laws of this State or any other State in the United States and any employee of such person, firm or entity.

(F) "**Public Official**" shall mean any federal, state, or locally appointed or elected official with executive responsibility in the jurisdiction in which the emergency or event has occurred.

(G) "**Public Safety Official**" shall mean any appointed or elected federal, state, or local official with executive responsibility to coordinate public safety in the jurisdiction in which the emergency or event has occurred.

(H) "**Law Enforcement Official**" shall mean any appointed or elected federal, state, or local official with executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or event has occurred.

(I) "**Building Inspection Official**" shall mean any appointed or elected federal, state, or local official with executive responsibility to coordinate building inspection in the jurisdiction in which the emergency or event has occurred.

(J) "**Political Entity**" shall mean any duly empowered federal, state or local governmental entity or one or more Public Official, Public Safety Official, Law Enforcement Official, Building Inspection Official.

(K) "**Emergency**" shall mean: (1) any situation, including man-made disasters (such as acts of war, terrorism or individual acts of destruction or aggression), naturally occurring disasters (such as fire, earthquake, hurricane, flood, tornado or other naturally occurring disasters) that gives rise to a present or imminent threat to life or public safety; or (2) any situation requiring immediate response which, in the reasonable judgment of an Architect, Engineer, Construction Manager, Contractor or Subcontractor, gives rise to a present or imminent threat to life or public safety; and (3) the exigency of responding to conditions set forth in (1) or (2) above does not allow the Architect, Engineer, Construction Manager, Contractor or Subcontractor time to proceed at a pace which would allow it to timely and thoroughly plan and evaluate its actions as if it were working on a typical non-emergency construction project; or (4) a circumstance in which a Political Entity declares the existence of an emergency or a disaster area.

(L) "**Emergency Term**" shall mean the period from the commencement of an Emergency or, in the event of a declaration of an emergency or a disaster area from the occurrence of the event which results in such declaration, to such time as all the Political Entities which have jurisdiction and control over an Emergency site have rescinded all applicable declarations of emergency and declared and directed in writing that the Architects, Engineers, Construction Managers, Contractors and/or Subcontractors are to reduce and moderate the pace and execution of their services and actions to a pace such that they can proceed from that point forward in a manner which will allow them the time necessary to consider and apply the types and varieties of analysis and safety procedures they would employ if the site of the Emergency was a typical construction site and they were free to move at the pace customary and acceptable for a non-emergency construction project. In the event of an Emergency which has not been a declared emergency or a disaster area by a Political Entity, the Term of the Emergency shall expire forty-five (45) days after the commencement of the Emergency.

Continued on back cover

Continued from page 2

Interview with Richard Meier

RM: The most challenging and difficult was the renovation of the Bell Telephone Laboratories, 12 interconnected buildings in Greenwich Village. This was the first large-scale renovation of what we now call 'adaptive reuse' in America and we changed the rules. One of the conditions of the FHA and the sale of the buildings was that they had to begin construction nine months from the time that I was hired, so we had to produce all the drawings, get all the New York City approvals, changes of zoning districts and all regulations modified to make it happen. We worked night and day.

MSZ: What advice do you have for younger architects aspiring to the kind of reputation you have achieved?

RM: It's very hard to tell younger people what they should or shouldn't do, but here are some thoughts. I think some young architects, after they work for someone else and go out on their own, want to combine private practice with teaching. I did that but there comes a point when you have to decide whether you are going to stay and teach or go into practicing your profession. It's a very difficult decision. I think it's going to be difficult for a while for that young person who wants to start a practice on his or her own. I really think that there is always a need for excellent architecture on every scale. I would tell a young architect to only do those things you think you can do well. Never take on a project simply because you think it's going to lead to another project. That alone is not enough.

MSZ: You hear criticisms that architects are really not valued by developers, by owners and institutions, and efforts are made to cut the architect's fee to the bone. Is that your experience?

RM: All too often. The problem I see is that the owner or developer is saying that they are used to paying some small percentage for the architect's fee when in reality the architect's costs exceed the developer's figure. Unfortunately, there are architects willing to work at that rate and that is why we often see poor architecture. Owners need to appreciate that projects will suffer when architects' fees are minimized. I believe we have a professional responsibility, a legal responsibility and we also have a moral responsibility, and when only two of those three are fulfilled, the project and the architect stand to be compromised.

> *" I think architecture is in a much healthier position than it was twenty years ago."*

MSZ: Have you noticed a change in the climate for architects over the past 20 years?

RM: Definitely, yes. There is a greater public awareness of architecture that I think began with the architectural critic of ***The New York Times***, Ada Louise Huxtable. She wrote so beautifully and so passionately about architecture that she admired that the public loved to read her column and started looking around. Then other newspapers around the country enlisted people to write about architecture, even if just occasionally. This interest spread from newspapers into other public journals and architecture became better noted and recognized by the public. So in that respect, I think architecture is in a much healthier position than it was twenty years ago.

MSZ: Richard, let me switch for a moment to a painful subject. The September 11th tragedy is one of the worst disasters in the United States in many years. It is going to have a tremendous impact on the construction industry. Can you tell us how you think this event might impact the industry and us?

RM: I don't think we can predict what the impact will be, not for a long time.

MSZ: From an architecture or engineering standpoint, do you see immediate changes that would affect design?

RM: The effect is going to be an immediate downturn in construction planned now. The ability to plan for the future has been hampered to the degree that one may not be able to predict whether there will now be a need for more office space or hotels in NYC. In the field of education, hopefully things will be relatively normal because schools and universities have deferred building, and now have students and programs that need new facilities, so that may be one area that should remain strong. Speculative office building and government sponsored construction may be difficult to forecast because there will be so much need for government money in other areas.

MSZ: Is it economically feasible to rebuild the Towers?

RM: I think the Towers, per se, should not be rebuilt…they aren't buildings we would build today. But we should definitely rebuild on the site with tall buildings, although not 110 stories. The World Financial Center is 50 stories so perhaps the new towers should be 75-85 stories. There will undoubtedly be resistance by some people to tall buildings and there may be some people who do not want to be on the top floors. It is going to take ten years to rebuild with all the people and agencies involved, but I would foresee tall buildings that are perfectly in scale with the rest of Manhattan.

MSZ: On an international level, will other large-scale projects be affected?

Continued on page 6

Judicial Relief for Developers Being Held Hostage by Neighboring Property Owners

By Raymond T. Mellon

Although Robert Frost believed that good fences made good neighbors, in New York City that adage is not always apropos. With the density and proximity of all types of buildings in the City, territorial disputes are frequently raised to a ridiculous degree. Too often, owners of real property impede or interfere with adjoining property owners' development plans. Such conduct can be manifested through the initiation of lawsuits questioning the right and entitlement to the particular development scheme or can be as covert as anonymously reporting alleged violations to interested city agencies, such as the Department of Buildings or the Fire Department.

" With the density and proximity…of buildings in the City, territorial disputes are frequently raised to a ridiculous degree."

Resistance to development can also occur in very passive ways. Given the logistical problems arising from space limitations, often times certain construction activities cannot be completed without performing such work from a neighbor's property. Since an unauthorized entry upon a neighbor's property constitutes a trespass, authorization for such entry must first be obtained. The first option is, of course, to seek permission for such entry from the neighboring property owner. Fortunately, a neighbor's refusal to grant access to the property does not spell doom to the development process.

Although infrequently used, New York law provides a remedy to a property owner who is unable to make necessary repairs to the property without entering onto the property of an adjoining landowner. Section 881 of the New York Real Property Actions and Proceedings Law ("RPAPL") allows a property owner to petition a court to obtain a license to enter upon a neighbor's real property where (a) permission has been sought and refused, and (b) the property upon which work is being performed is "so situated that such improvements or repairs cannot be made by the owner…without entering the premises of an adjoining owner…." Where a party can fulfill these preconditions, a special proceeding can be instituted in the Supreme Court in the county where the property is situated to obtain a license to enter upon the adjoining land owner's property. Due to the infrequent usage of this statute, both judges and attorneys are often unaware of this valuable tool thatallows development to proceed apace.

Recently, this firm had the unique occasion to bring two special proceedings to obtain licenses under RPAPL § 881 in order to perform work that could not be performed without entering upon the adjoining property. One instance related to a commercial development, the second occurred in a residential context. Both cases illustrate the relief

"New York Law provides a remedy to a property owner who is unable to make necessary repairs to the property without entering…the property of an adjoining landowner."

available to a landowner when requests for permission to enter upon neighboring property to perform the necessary construction work were refused.

In regard to the commercial development, this firm's client was developing a residential multiple dwelling consisting of three attached buildings. The exterior of the buildings was to be finished with an EIFS weatherproofing system. Due to the virtual lot line construction of the project, the installation of the EIFS system on the south wall of the project proved impossible in the absence of entering the adjoining neighbor's property.

Due to outstanding claims that the adjoining neighbor had for alleged damages caused by excavation of the project site, the request for permission to enter upon the adjoining site was denied. Instead, the adjoining property owner demanded, as a condition to permission to enter, that the developer agree to either settle the controversy by paying the alleged damages, or put money in escrow to be applied to the claims. Since such conduct by the developer would constitute an admission of liability, thereby voiding any insurance coverage, this condition was patently unacceptable. The developer's recourse was to seek relief under RPAPL § 881.

The residential development concerned a prospective homeowner's desire to build a house on a vacant lot. Since the plans for the house called for a foundation to be placed 10 feet below grade, the new foundation would exceed by two and half feet the foundation of the adjoining property, which was directly adjacent to the lot line. Pursuant to applicable provisions of the New York City Building Code ("Code"), the foundation of the adjoining building must be extended to the depth of the new construction, to avoid the undermining of the adjoining building's foundation. Although the Code provision in question requires the adjoining property owner to extend its foundation to the required depth of the new construction, the homeowner/developer voluntarily agreed to assume the cost of the underpinning work.

Although relieved of the financial burden to extend the depth of its foundation, the adjoining property owner still refused permission for the homeowner/developer to perform the underpinning work that was required as a precondition to the construction of the new house. In an effort to assuage any concerns about property damage, the homeowner/developer proffered evidence of ample insurance coverage. When the evidence of insurance coverage proved unpersuasive, the homeowner/developer was forced to seek judicial relief.

Continued on back cover

Continued from page 4

Interview with Richard Meier

RM: I think that for some time it is going to be difficult to find people who want to invest in such large-scale projects. Everyone wants to have the tallest building in the world, but they are tallest for a week and then something new is projected. Buildings in cities will continue to be planned as tall buildings are symbols, but they are also obviously targets for terrorism.

MSZ: How do we balance security concerns with quality of life issues?

RM: After 9-11, security concerns will for many people override quality of life issues and this is a serious issue, unfortunately underwritten by economics. It is a worrisome moment and we need to consider what we enjoy and value that has to do with the quality of life in our physical environment. It's going to take some strong people in government to convince those who are just interested in getting projects done, to do them right. Private as well as public, cultural and educational institutions will lead the way in striking a balance between the quality of place, and experience, and balance those with security concerns before we go back to some semblance of normality. But I don't think that we'll ever see life that's as free as we have enjoyed in our lifetime. Nothing will be as it used to be.

MSZ: Have other countries dealt with this balance of quality of life and security better than we have in the United States?

RM: Oh yes, and for years. This balance has been considered strongly in France and Germany as early as the mid-eighties. Then I was designing the headquarters for Siemens, and no one could get into that building without going through intense security. Board members working in the building had bulletproof cars, secure garages, and private elevators. Every major company had extraordinary and elaborate, but not obvious, security for all their employees, not just to protect against a bombing. They were willing to spend two to three times more the amount of money for their building per square foot than American companies would both for security and energy conservation, and for materials that had a greater lifespan. Above all, they wanted beautiful buildings.

Photo of The Getty Museum by Scott Frances, Esto Photographics

MSZ: Thank you, Richard, for sharing your thoughts with us today.

Assignment of Contracts: Let the Buyer Beware

Continued from front cover

obligations is to assign them to another firm.

In determining whether the assignment of a contract is an appropriate option, the first issue that must be explored is whether the parties to the contract are allowed to assign their respective rights and obligations under the contract to a third party. The answer to this question generally lies in the contract itself, if a written contract exists. If there is no written contract and the parties have not verbally agreed to disallow assignment, or if there is a written contract but the contract is silent on the issue of assignment, generally either party may freely assign their respective rights and obligations under the contract.[2] However, often written contracts specifically address the issue of assignment. For example, the parties may agree to a mutual prohibition on assignment altogether or they may agree that a contract may be assigned only with the prior written consent of the other party.

An assignment made in contravention of a clause in a contract prohibiting its assignment is not necessarily invalid.While the party assigning its rights and obligations under such a contract may face a claim for breach of contract and be liable for any damages resulting from the assignment, under New York law the assignment itself will likely be invalid only if the contract specifically provides that an assignment made in violation of the prohibition on assignment shall be null and void. Therefore, in the example above, if the agreement between Acme and Zip does not provide that assignments made without the consent of the other party shall be null and void, Tornado will likely be successful in its fee claim against Acme.

The ability or inability to assign need not be mutual. Often contracts prohibit assignment by one party while allowing it, perhaps only under certain circumstances or to certain third parties, by the other. For example, the AIA Abbreviated Standard Form of Agreement between Owner and Architect, AIA Document B151-1997, provides at paragraph 9.5 that "[n]either the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project." Often a lender providing financing for a project will insist that it have the right to "step into the shoes" of the Owner in the event of a default so that it can take whatever actions are necessary to protect its investment.

If a contract allows its assignment, but requires the other party's consent, the consent should be obtained in writing prior to effecting the assignment. However, even if a contract does not require consent to an assignment, it may nonetheless be advisable to obtain the other party's consent so as to avoid any objections to the assignment in the future. In addition, requesting consent from the other party to the contract provides a good opportunity for the party to whom the contract is being assigned (the "assignee") to request a representation from the other party that the assigning party (the "assignor") has fully and satisfactorily performed its duties and obligations under the contract through the effective date of the assignment. Such a representation should be secured directly from the assignor as well. These representations give the assignee at least some assurance that the assignor has performed under the agreement and that the assignee is not becoming involved in a bad situation, including possible claims for non-performance.

> ***" If the contract is not in writing, the assignee should thoroughly inquire regarding the terms of the verbal agreement and confirm those terms with the other party to the contract."***

In addition to representations regarding satisfactory performance, in most instances the assignor should agree, as part of the assignment document, to defend and indemnify the assignee for all claims that may arise from services performed or work provided prior to the effective date of assignment. This defense and indemnity provision offers further protection to the party taking over a project, provided that it can be shown that the basis for a claim is the negligence, breach of contract or other wrongful conduct of the assignor prior to the date of the assignment.[3] Of course, if the assigning entity is winding up its affairs, the agreement to defend and indemnify may be of little value if the assignor no longer exists at the time a claim is made. Therefore, in these situations the assignee should require that the assignor continue to maintain professional liability insurance and other applicable coverages after the assignment to cover any claims that may arise pertaining to alleged acts or omissions which occurred prior to the assignment.

While a well-drafted assignment agreement is the best protection for both the assignor and assignee from liability for claims arising from the services of the other party, it is not the only document that affects the rights and obligations of the parties involved. Because the assignee "steps into the shoes" of the assignor, the contract that is the subject of the assignment will govern the relationship between the assignee and the other party to the contract. As the assignee is not involved in the original negotiations of the contract, it should conduct a thorough review of the terms and conditions of the contract prior to the assignment. The assignee should also review any documents which may modify the contract, such as approvals of claimed additional services, and obtain a representation from the assignor that it has provided all documents which may bear on the parties' contractual rights. If the contract is not in writing, the assignee should thoroughly inquire regarding the terms of the verbal agreement and confirm those terms with the other party to the contract. It should also request copies of correspondence or other writings which set forth any portions of the understanding between the assignor and the other party to the contract.

If there are terms or conditions of the contract to be assigned which are unacceptable to the assignee, the assignee should try to renegotiate those terms or conditions with the other party to the contract *prior* to agreeing to assume the assignor's obligations. Any renegotiated terms should be set forth in writing and signed by all relevant parties. If the other party to the agreement refuses to renegotiate, the proposed assignee must decide whether it can live with the original terms or whether it should walk away from the deal. Once it

Continued on back cover

Judicial Relief for Developers…

Continued from page 5

The special proceedings were instituted in the county where both properties were situated and were assigned to the same judge. The judge candidly admitted that this was the first instance in which such judicial relief was requested of him. In granting a license in both special proceedings, the Court took pains to recognize that the developing parties were completely unable to perform the required work from their own property. In both circumstances the developing parties provided proof of extensive insurance coverage. Since RPAPL §881 makes the licensee liable for any "actual damages occurring as a result of the entry", such proof was provided to the Court as evidence of sufficient security for any damages. Both developing parties also agreed to post reasonable security for any ancillary damages that may develop. In both special proceedings, the Court required the licensees to post additional security to further protect the adjoining property owners.

As a direct result of the issuance of licenses under RPAPL §881, both development projects were able to continue despite the attempts of neighboring property owners to derail "as of right" development. To the uninitiated, the complexities of the construction process and the lack of familiarity with RPAPL § 881 could have been insurmountable obstacles to obtaining this essential judicial relief. Since counsel knowledgeable in both areas represented the owners of these two development projects, unnecessary delay and expense to the construction process was avoided.

Given the enormous financial pressures to complete real estate development projects as quickly as possible, it is unfortunate that most developers fail to appreciate that they have recourse if a neighboring property owner is unreasonably refusing access to its property in order to complete construction. Instead of agreeing to unreasonable demands for compensation as a condition to such cooperation, developers should utilize RPAPL § 881. Experienced counsel in this area can obtain the necessary relief in a quick and economical fashion.

Assignment of Contracts…

Continued from page 7

agrees to the assignment, it will be bound to whatever terms and conditions are in place at the time.

Other items which must be clarified are responsibility for expenses incurred by the assignor but billed to the assignee and entitlement to receivables generated by the assignor but collected by the assignee. While there is no magic formula for these accounting issues during this transition period, the assignor and assignee should agree how they will be handled ahead of time and set forth that agreement in writing in the instrument of assignment.

Assignment is a useful mechanism when circumstances require that rights and obligations under a contract be transferred from one party to another. However, a party considering assuming such rights and obligations should proceed with caution. A properly drafted assignment agreement between two well-informed parties should greatly reduce the chance of problems down the road.

1. While many contracts bestow this right on an owner, rarely is the right to terminate for convenience given to a party providing services for the owner.

2. Assignment of certain contracts, however, may be prohibited by statute or because they involve duties of such a personal or unique character as cannot be delegated.

3. In exchange, the assignor may request that the assignee agree to a similar defense and indemnity provision protecting the assignor from claims that may arise from the acts or omissions of the assignee after the date of the assignment.

Amendment to NYS Law…

Continued from page 3

Section 2. An Architect, Engineer, Construction Manager, Contractor or Subcontractor shall be immune from and have no liability for any damages, loss or claims whatsoever arising out of or resulting from the provision of any services (including professional services), work, labor, materials and/or equipment in response to an Emergency during an Emergency Term, as well as for its judgments, directions and related actions in connection therewith, except to the extent damages are caused by its willful misconduct or lack of good faith.

Section 3. The provisions of this Statute shall apply whether the services provided by the Architect, Engineer, Construction Manager, Contractor or Subcontractor are provided with the contemplation of compensation for services or actual compensation for services or provided on a voluntary basis.

Section 4. The provisions of this Statute shall take effect retroactively from September 10, 2001 forward.

Spring 2002 Volume 8 Number 3

Quarterly newsletter publication from

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