

COURT OF APPEALS OF THE STATE OF NEW YORK

328 Owners Corp. v. 330 West 86 Oaks Corp.

8 N.Y.3d 372, 865 N.E.2d 1228, 834 N.Y.S.2d 62 (2007) · Decided April 3, 2007

SUMMARY

The New York Court of Appeals held that land-use restrictions imposed under the Urban Development Action Area Act and reflected in a deed could run with the land and bind a successor purchaser. The court concluded that the deed, read as a whole with the related statutory and municipal approvals, demonstrated intent to impose continuing restrictions and satisfied the requirements for a covenant running with the land. The court reversed the Appellate Division and reinstated the amended order and judgment of Supreme Court.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of the State of New York                                                                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Ciparick, J.; Chief Judge Kaye; Judge Graffeo; Judge Read; Judge Smith; Judge Jones; Judge Ciparick; Judge Pigott                                                                                                                                                                                                                         |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | April 3, 2007                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Plaintiff and the City appealed as of right from a divided Appellate Division decision that reversed Supreme Court's judgment enforcing deed-based land-use restrictions against the successor grantee and granted summary judgment to 330 West. The Court of Appeals reversed and reinstated Supreme Court's amended order and judgment. |
| STANDARD OF REVIEW    | De novo review of summary judgment and interpretation of the deed and governing statutes.                                                                                                                                                                                                                                                 |
| PRECEDENTIAL VALUE    | Published Court of Appeals opinion; binding New York precedent.                                                                                                                                                                                                                                                                           |
| PARTIES               | 328 Owners Corp., City of New York v. 330 West 86 Oaks Corp., 330 West 86th Street, LLC                                                                                                                                                                                                                                                   |

TOPICS

- covenants and restrictions
- deeds
- real estate
- municipal law
- statutory interpretation

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether land-use restrictions referenced in the recitals of a deed and mandated by article 16 of the General Municipal Law can be enforced against a successor grantee.
2. Whether the deed and surrounding transaction demonstrated the intent, touch-and-concern, and privity requirements for a covenant to run with the land.
3. Whether the property should be restricted to conservation purposes only, rather than to the broader uses identified in the deed and UDAAP documents.

## HOLDINGS

1. Land-use restrictions contained in the deed and mandated by article 16 of the General Municipal Law run with the land and are enforceable against the successor grantee under the circumstances presented.
2. The requirements of intent, touch and concern, and privity of estate were satisfied, making the restrictions enforceable against 330 West.
3. The property was not limited to conservation purposes alone; the applicable restrictions included rehabilitation or conservation of the existing building and construction of one- to four-unit multiple dwellings without a change in land use permitted by existing zoning.

## KEY QUOTATIONS

*“We now reverse and reinstate the amended order and judgment of Supreme Court.” (380)*

*“Under the circumstances presented here and the integrated statutory authority for the sale of this property, we hold that the land use restrictions included in the language of the deed and mandated by statute run with the land.” (384)*

## FACTUAL BACKGROUND

The City acquired a deteriorated eight-unit townhouse through an in rem tax foreclosure and conveyed it to 330 West 86 Oaks Corp. through an accelerated Urban Development Action Area Project. The conveyance price and transaction benefits were conditioned on rehabilitation or conservation of the property, correction of code violations, maintenance of existing rents for two years, and compliance with statutory UDAAP limitations. Oaks Corp. failed to correct the violations and sold the property to 330 West 86th Street, LLC, which planned to demolish the building and construct a high-rise apartment building.

## PROCEDURAL HISTORY

The adjacent-property owner commenced an action seeking a declaration that land-use restrictions in a City deed ran with the land, injunctive relief, and a declaration that the City's original conveyance was void. Supreme Court dismissed the challenge to the original conveyance as time-barred, granted partial summary judgment enforcing restrictions against 330 West, and later resettled the judgment to state that the restrictions ran with the

land. The Appellate Division reversed and granted summary judgment to 330 West. The Court of Appeals reversed the Appellate Division and reinstated Supreme Court's amended order and judgment.

#### DISPOSITION

reversed

#### REMAND INSTRUCTIONS

The amended order and judgment of Supreme Court were reinstated; no further specific remand instructions were stated.

#### CASES CITED

- Phoenix Ins. Co. v. Continental Ins. Co., 87 N.Y. 400, 407 (1882)
- Suffolk Bus. Ctr. v. Applied Digital Data Sys., 78 N.Y.2d 383, 388 (1991)
- Wasil v. Realty Dealership Co., 87 A.D.2d 931, 932 (3d Dep't 1982)
- Post v. Weil, 115 N.Y. 361, 369-372 (1889)
- Matter of Lade v. Abbott, 185 Misc. 501, 507 (Sup. Ct., Onondaga County 1945)
- United States v. City of New York, 233 F.2d 307, 310 (2d Cir. 1956)
- Witter v. Taggart, 78 N.Y.2d 234, 237-238 (1991)
- Neponsit Prop. Owners' Assn. v. Emigrant Indus. Sav. Bank, 278 N.Y. 248 (1938)
- Medical Coll. Lab. v. New York Univ., 178 N.Y. 153, 163 (1904)
- Granada Bldgs. v. City of Kingston, 58 N.Y.2d 705, 708 (1982)
- Booth v. Knipe, 225 N.Y. 390, 396 (1919)

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