



Davidoff Malito & Hutcher LLP

***Helping Businesses Overcome Their Challenges
From Wall Street to State Street***

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In This Issue

County of Nassau v.
New York State

Legal Analysis

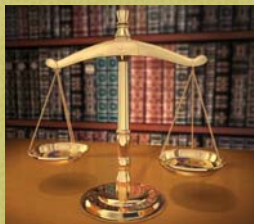
New Attorneys Join
DMH

Welcome to Davidoff Malito & Hutcher
LLP's November 2010 e-newsletter.

County of Nassau v. New York State

On July 21, 2010, New York State Supreme Court Justice Michele Woodard issued a decision and order requiring that the New York State Board of Elections ("NY State BOE") comply with Nassau County's discovery demands for certain materials and information regarding our client, Election Systems & Software, Inc.'s (ES&S), electronic voting machines. The order of the Court did not address the confidential and proprietary information of ES&S, which had been provided to the NY State BOE pursuant to an agreement entered into between the NY State BOE and ES&S (the "Agreement") and the requirements of the New York State Election Law.

Our Offices



New York
605 Third Avenue
New York, NY 10158
p: 212.557.7200
f: 212.286.1884

Our firm, in concert with ES&S' local Nebraska counsel, successfully intervened in the action on behalf of ES&S for the limited purpose of prohibiting the NY State BOE from providing any of ES&S' confidential and proprietary information to any third parties, including Nassau County, without an appropriate confidentiality order. In addition to intervening, the firm argued that the Court's prior decision with respect to Nassau County's discovery demands required a confidentiality order as a result of the terms of the Agreement and the Election Law in order to properly protect ES&S' confidential and proprietary information. The Court requested that ES&S and Nassau County attempt to negotiate a confidentiality order on mutually agreeable terms. Upon the parties' inability to reach such agreement, the Court requested that each party submit a proposed confidentiality order to the Court.

Long Island
200 Garden City Plaza
Suite 315
Garden City, NY 11530
p: 516.248.6400
f: 516.248.6422

Washington D.C.
444 N. Capitol Street
N.W.
Washington, D.C.
20001
p: 202.347.1117
f: 202.638.4584

Albany
150 State Street
Albany, NY 12207
p: 518.465.8230
f: 518.465.8650



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About Us

Davidoff Malito & Hutcher LLP is a full service law firm offering the scope of services of a large firm, as well as the personal service of a small firm. We pride ourselves in attention to detail, and assisting our clients in solving their problems.

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On October 8, 2010, the Court issued a confidentiality order pursuant to which the Court adopted the terms of the confidentiality order submitted on behalf of ES&S. As a result, our firm was able to successfully protect the confidential and proprietary information of ES&S. (Stuart Perlmutter, Steve Spanolios and Dimitra Tzortzatos acted on behalf of our firm in this matter).

Legal Analysis

"The Overlooked Option"

By Bill Walzer, Attorney, Davidoff Malito & Hutcher

Commercial leases are often drawn with a fixed lease term and an option on the part of the tenant to extend that term. Assuming the tenant has invested in the leased property and has developed a successful business there, it seems natural that the tenant would remember to exercise its option and continue the lease. However, in a scenario that's more common than one might think, tenants exercise their options late, or in a manner not authorized by the lease, or not at all. Landlords are often thrilled to realize that an option has not been exercised. They can recover the property earlier than they anticipated, or use the threat of eviction to demand a renegotiation of rent.

Can the tenant be saved from its own stupidity? Surprisingly, yes. Although the Judges presiding in landlord-tenant court have no power to reinstate a lease that has expired due to the non-exercise of an option, a Justice sitting in Supreme Court (the superior trial level courts in NY) has the power to choose equity as a remedy. An emergency application to a Supreme Court Justice describing the nature of the tenant's inadvertence, the loss the tenant will suffer without protection, and the lack of prejudice to the landlord will often result in a temporary restraining order stopping the eviction and culminate in a declaratory judgment deeming the option to have been exercised.

The principal was perhaps best expressed by the Appellate Division, Second Department, in Tritt v. Huffman & Boyle Co., 121 A.D.2d 531, 503 N.Y.S.2d 842 (2nd Dept., 1986) which said as follows:

Equity will intervene to relieve a tenant from the consequences of its negligent or inadvertent failure to give timely notice of its exercise of an option to renew a lease, where the failure to give timely notice does not prejudice the landlord, and the nonrenewal of the lease would result in a forfeiture for the tenant, the gravity of which would be out of proportion to the tenant's fault.

New Attorneys Join DMH

Davidoff, Malito & Hutcher announces the addition of four attorneys, *Jeffrey K. Levin, Malcolm S. Taub, Robert J. Lewis, and*

John Loyal. Each new attorney brings a wealth of experience and resources to the firm.

Jeffrey K. Levin has practiced for 30 years in the areas of commercial real estate, mezzanine and structured financing, with respect to both loan originations and the workout or foreclosure of troubled loans. He actively practices on both the lender and the borrower side.

Malcolm S. Taub has over 37 years experience practicing law-handling high profile Matrimonial and Family Law matters, and specializing in divorce, equitable distribution and child custody issues. Mr. Taub also maintains an active practice in Art Law, and has been active in complex litigations in the State and Federal Courts.

Robert J. Lewis practices primarily in the areas of Matrimonial and Family Law, as well as Art Law. Mr. Lewis has helped successfully litigate numerous matrimonial actions involving high net worth individuals, celebrities and professional athletes.

John Loyal graduated *cum laude* from the State University of New York at Binghamton in 2007, and received his JD *magna cum laude* from New York Law School in 2010. During law school, Mr. Loyal was a Notes & Comments Editor on the *New York Law School Law Review* and a John Marshall Harlan Scholar.

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Davidoff Malito & Hutcher LLP

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