

WHAT'S INSIDE

**Supreme Court Expands
Potential Liability For
Hostile Work Environment
Discrimination**

2

**Legislative Changes Affect
Documentary Stamp Tax
On Loan Transactions and
Mortgage Foreclosures**

4

**PALM
BEACH
COUNTY**

Autumn 2002

BOCA RATON / FT. LAUDERDALE / MIAMI / ORLANDO / TALLAHASSEE / TAMPA / WEST PALM BEACH

**Homestead:
Florida's Chameleon**

PATRICIA LEBOW

Homestead is known as Florida's legal chameleon because it has different meanings depending upon its context. The purpose of this article is to provide a broad overview of the multiple types of Homestead available under Florida law.

Under Article X Section 4 of Florida's Constitution, Homestead property of Florida residents is protected within certain limitations from unsecured creditors. To qualify for this creditor protection the Homestead can occupy not more than one-half acre in a municipality and up to 160 acres outside a municipality. Titling the home in your own name (or as tenants by the entireties) is the only way to truly ensure this protection. In a recent case styled: *In Re: Bernadine L. Bosonetto, Debtor, Gregory K. Crews, Trustee, Plaintiff,*

HOMESTEAD continued on page 3

REAL ESTATE LAW:

**My Tenant Moved Out,
Now What?**

RONALD M. GACHÉ AND JEREMY SLUSHER

Learn what to do when a commercial tenant violates a lease agreement

What can (and should) a landlord do when a commercial tenant abandons its leased premises in violation of the terms of its lease? According to the Florida courts, when a tenant abandons its leased premises prior to the expiration of the lease term, the landlord has three options. The landlord may: (1) terminate the lease and take possession of the premises for its own benefit; (2) take possession of the premises for the account of the tenant and hold the tenant liable

for any rental amounts which are not paid by a replacement tenant; or (3) do nothing and sue the former tenant for each rental payment as it becomes due. *CB Institutional Fund VIII v. Gemballa U.S.A., Inc.*, 566 So.2d 896 (Fla. 4th DCA 1990).

Most commercial landlords will not elect the first remedy unless there is an economic reason to do so. By terminating the lease and

TENANT continued on page 3

ADVERTISEMENT

SPOTLIGHT:

Supreme Court Expands Potential Liability For Hostile Work Environment Discrimination

STEVEN M. PARRISH

The U.S. Supreme Court recently issued an important decision in a case addressing the time limits for filing charges of discrimination in the workplace. Under Title VII of the Civil Rights Act of 1964 ("Title VII"), a Florida employee is normally required to file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within 300 days of workplace conduct that discriminates against the employee on the basis of his or her protected class (i.e., race, color, gender, national origin, and religion), including a termination, demotion, failure to promote or conduct involving harassment or hostile work environment.

In *National Railroad Passenger Corporation v. Morgan*, the Court was asked to decide the application of the "continuing violation" doctrine to Title VII's 300-day limitation period. The "continuing violation" doctrine had been used by the courts to some-

damages for conduct occurring inside of the limitations period.

In its opinion, the Supreme Court first unanimously held that an employee could not use the "continuing violation" doctrine to avoid the 300 day statute of limitations for discrete discriminatory adverse employment action such as terminations, promotion denials, demotions and other distinct acts that are separately actionable. However, the Court, in a 5-4 split decision, then held that the "continuing violation" doctrine could in fact be used to establish liability in harassment or hostile work environment claims (claims involving pattern of derogatory or denigrating verbal, physical or visual conduct related to a protected class) so long as at least one of the acts making up the hostile work environment occurred within the 300-day limitation.

Importantly, the Court also ruled that the entire period of the hostile work environment, regardless of



Significance for Employers

While the decision is helpful to employers in one respect, as it will prevent the application of the "continuing violation" doctrine to claims for discrete adverse employment action like terminations and demotions, it does expand potential liability in hostile work environment and harassment claims. Accordingly, employers will have to strive harder through policies and training to prevent hostile work environment claims before they occur, and also take more drastic remedial action in responding to employee internal complaints of harassment or hostile work environment in order to ensure that hostile conduct ceases immediately.

Broad and Cassel attorneys are experienced in helping employers prevent discrimination charges and lawsuits before they occur and in defending employers against such claims when they arise. If you would like more information about this decision and how it affects your business or would like to discuss any other employer related issue or problem, please contact Steven M. Parrish, Esq., at the West Palm Beach office at 561/832-3300. BC

EMPLOYERS WILL HAVE TO STRIVE HARDER THROUGH POLICIES AND TRAINING TO PREVENT HOSTILE WORK ENVIRONMENT CLAIMS BEFORE THEY OCCUR

times override the 300 day limitations period and permit an employee to sue for conduct occurring more than 300 days prior to the charge of discrimination.

Although the "continuing violation" doctrine was used to help some employee claims survive the limitations period, it was still generally accepted that the employee could only recover

whether some or most of the wrongful conduct occurred outside of the 300-day limitations period, could be considered for purposes of assessing the employer's liability. Thus, the Court expanded liability for hostile work environment claims by permitting employees to now recover damages for wrongful conduct occurring outside of the 300-day limitations.

HOMESTEAD *continued from cover*

v. Bosonetto, et al., 271 B.R. 403, (M.S. Fla. 2001), the U.S. District Court for the Middle District of Florida rejected the Homestead status of property titled in the name of a Revocable Trust. This case has not been appealed on the Homestead issue and presents troublesome issues for clients and lawyers who seek to utilize a revocable trust to avoid probate in the event of death, but do not wish to risk losing their Homestead for asset protection purposes. Moreover, it should be noted that since ownership of a residence by a Qualified Personal Residence Trust (QPRT) is even one step further away from personal control than a Revocable Trust, a court could also deny Homestead status to real property titled in a QPRT under the reasoning the court applied in *Bosonetto*.

In a second context, Florida's Homestead chameleon changes meaning to allow Floridians a tax benefit with an annual real property tax exemption and a percentage limitation on real property taxes in connection with their primary residence. Florida residents can avail themselves of this constitutional and legislative protection so long as their residence is titled in their own name, the name of their revocable trust or QPRT. The owner must register for homestead status with the property appraiser's office before December 31st of the year in which the residence is purchased or otherwise qualifies as Homestead property in order to obtain the tax benefit for that year. Married couples who choose to own two Florida residences, but live separately, can each have their own Homestead for property tax exemption purposes.

Thirdly, in the world of devise and descent, the Homestead chameleon takes on another color and establishes a life estate right for a spouse and other rights for minor children who reside in their home at the time of decedent's death despite the provisions of the decedent's will which may be to the contrary.

Finally, in its fourth change of persona, the Homestead chameleon surfaces in the area of family law. Homestead in this context provides leverage for one spouse over the other in connection with selling or refinancing the family home regardless of how it is titled. When the home is the primary residence for a Florida resident, both spouses must sign to convey legal title or mortgage its equity. By titling the primary residence in his or her sole name, one spouse cannot convey title without the joinder of the other because of the Homestead right. Clients are often surprised to learn of this limitation.

One technique used to avoid the complications inherent in Homestead issues whether due to death, estate planning or marital issues is a postnuptial agreement. Oftentimes a husband and wife cannot face the multiplicity of issues involved with an all-encompassing postnuptial agreement. In that case, a postnuptial agreement dealing only with Homestead may be desirable as it can fix rights both in the present and future as to a known asset.

For more information on Homestead or Postnuptial Agreements contact Patricia Lebow, Esq., Managing Partner, at the West Palm Beach office at 561/832-3300.

BC

TENANT *continued from cover*

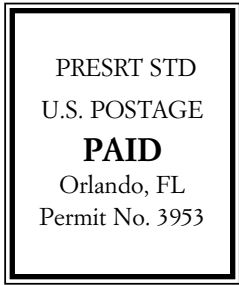
retaking possession of the premises for its own benefit, the landlord relieves the tenant of all liability for rent coming due after the date of such termination. Therefore, a landlord should only terminate the tenant's lease and take back possession of the premises for itself if the landlord has another tenant ready to release the premises or if the landlord intends to utilize the property itself.

More often than not, landlords will elect either options (2) or (3) above. Under scenario (2), a landlord retakes possession of the premises for the tenant's benefit. Once the landlord has retaken the premises for the tenant's account, he must make an effort to re-let the demised premises. This concept is known as the duty of mitigation. If the landlord elects not to retake possession of the abandoned premises (because it does not want the obligation to mitigate damages), Florida law allows that landlord to sit back and do nothing, collecting each installment of rent as it comes due. If the lease contains an acceleration clause, landlords proceeding under either scenario need not wait for each monthly rental installment to come due. Instead, they may declare the entire remaining balance under the term of the lease immediately due and payable and sue the former tenant for that entire amount, so long as that accelerated rental amount is reduced to its present value. Remember, though, whether the landlord accelerates the rent or not, a retaking for the benefit of the tenant always requires the landlord to mitigate its damages.

*The lawyers at Broad and Cassel have a great deal of experience in both drafting lease agreements and litigating landlord tenant issues when a party has breached its obligations under a lease agreement. If you would like to talk to someone about your rights, either as a landlord or a tenant in either a commercial or residential setting, please contact attorneys Ronald M. Gaché or Jeremy E. Slusber at the West Palm Beach office at 561/832-3300. **BC***



One North Clematis
Suite 500
West Palm Beach, FL 33401



ADVERTISEMENT

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

Legislative Changes Affect Documentary Stamp Tax On Loan Transactions and Mortgage Foreclosures

JOYCE L. ELDEN

Two laws recently passed by the 2002 Florida Legislature will affect the documentary stamp tax payable in certain loan transactions and mortgage foreclosures.

First, as of July 1, 2002, the documentary stamp tax due on unsecured promissory notes executed within the State of Florida is now limited to a maximum tax of \$2,450.00 (\$2,450.00 is the amount due on a \$700,000.00 note). Unsecured notes are notes, which are not collateralized by mortgages on Florida real estate.

This means that after July 1, 2002, many of the transactions that lenders and

borrowers traveled out-of-state or into international waters to close can be closed within the State of Florida and the documentary stamp tax due will be limited to \$2,450.00. The documentary stamp taxation on unsecured notes up to \$700,000.00 will continue to be computed based upon 35¢ per \$100 of indebtedness. The full documentary stamp tax will continue to be due in transactions involving mortgages on Florida real estate.

Second, effective as of March 14, 2002, the documentary stamps due on a certificate of title issued in a judicial sale of real property under an order of final judgment

in a foreclosure proceeding is now computed based solely on the amount of the highest and best foreclosure bid received for the property. Previously, the documentary stamp tax due would be the amount of the foreclosure bid received for the property, plus the outstanding amount of encumbrances senior to the foreclosed lien and mortgage, which increased the costs in a junior lien foreclosure.

*For more information, contact Joyce L. Elden at the West Palm Beach office at 561/832-3300. **BC***