

The Survey of New York Practice Table of Contents

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

DEVELOPMENTS IN THE LAW

Tenant's conditional contract to sell his apartment upon conversion to condominium ownership does not violate "no assignment" clause in standard lease 387

CRIMINAL PROCEDURE LAW

CPL § 190.25(4); The disclosure of grand jury testimony in a subsequent civil action 393

UNIFORM COMMERCIAL CODE

UCC 2-318: Implied warranty cause of action accrues when manufacturer or distributor tenders delivery of product rather than when product is sold to plaintiff 400

UCC 1-207: Section 1-207 supersedes the common law doctrine of accord and satisfaction in situations involving the tender of negotiable instruments in full satisfaction of disputed claims 406

INTRODUCTION*

In this second issue of Volume 60, *The Survey* examines a va-

* The following abbreviations will be used uniformly through *The Survey*:

New York Civil Practice Law and Rules (McKinney)	CPLR
New York Civil Practice Act	CPA
New York Criminal Procedure Law (McKinney)	CPL
New York Code of Criminal Procedure	CCP
Real Property Actions and Proceedings Law (McKinney)	RPAPL
Domestic Relations Law (McKinney)	DRL
Estates, Powers and Trusts Law (McKinney)	EPTL
General Municipal Law (McKinney)	GML
General Obligations Law (McKinney)	GOL
D. Siegal, <i>New York Practice</i> (1978)	SEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1982)	WK&M
<i>The Biannual Survey of New York Practice</i>	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i>	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i>	<i>The Survey</i>

Extremely valuable in understanding the CPLR are the five reports of the Advisory

riety of issues of recent importance in New York law. Among the cases discussed is *Continental Towers Limited Partnership v. Kratalic*. In *Continental*, the Appellate Term, First Department, rejected a landlord's contention that a lease was violated when his tenants contracted with a third party purchaser to convey their apartments to the purchaser in exchange for the tenants' acquisition of the unit. The Appellate Term held that tenants do not violate standard lease provisions prohibiting the unauthorized assignment of leases by conditionally contracting to sell their apartments upon condominium conversion.

In *Melendez v. City of New York*, the Appellate Division, First Department, held that the disclosure of grand jury testimony in a subsequent civil action pursuant to CPL 190.25(4), was proper since the testimony had a bearing upon issues in the later civil litigation. The *Melendez* court also ruled, however, that a plaintiff's conclusory assertions that a police officer's testimony was useful for trial preparation failed to satisfy the "compelling and particularized need" standard necessary to warrant pretrial disclosure of a third party's grand jury testimony.

The Survey also examines the Court of Appeals' decision in *Heller v. U.S. Suzuki Motor Corp.*, in which U.C.C. 2-318 was interpreted. The Court of Appeals held that in implied warranty actions against a manufacturer or distributor, the limitations period accrues when that party tenders delivery of a product, not on the later date when the plaintiff purchases the item. The Court noted that if the date of accrual was the date of final sale to the consumer, the exposure period of liability could become unpredictable, thus frustrating the purpose of a statute of limitations.

Finally, *The Survey* addresses the Court of Appeals' recent interpretation of section 1-207 of the Uniform Commercial Code in

Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. Leg. Doc. No. 6(b)	FIRST REP.
1958 N.Y. Leg. Doc. No. 13	SECOND REP.
1959 N.Y. Leg. Doc. No. 17	THIRD REP.
1960 N.Y. Leg. Doc. No. 120	FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure	FINAL REP.

Also valuable are the two joint reports of the Senate Finance Assembly Ways and Means Committee:

1961 N.Y. Leg. Doc. No. 15	FIFTH REP.
1962 N.Y. Leg. Doc. No. 8	SIXTH REP.

Horn Waterproofing Corp. v. Bushwick Iron & Steel Co. Reversing the lower court determination, the *Horn Waterproofing* Court held that UCC 1-207 supersedes the common law doctrine of accord and satisfaction in situations involving the tender of negotiable instruments in full satisfaction of disputed debts.

The members of Volume 60 hope that the analysis of the cases contained in *The Survey* will be of interest and value to the New York bench and bar.

DEVELOPMENTS IN THE LAW

Tenant's conditional contract to sell his apartment upon conversion to condominium ownership does not violate "no assignment" clause in standard lease

In New York, the ability of a landlord to convert a rental apartment building into a cooperative¹ or condominium² is condi-

¹ See P. ROHAN, REAL PROPERTY § 9.01 at 9-1 (1981). Cooperatives first gained significance in the United States during the housing shortage after World War I. *Id.* Since then, their popularity has increased dramatically, especially in the bigger cities where it is impractical to build single-family structures due to the scarcity of land. *Id.*; see also P. KEHOE, COOPERATIVES AND CONDOMINIUMS 7 (1974)(more efficient land use necessary in metropolitan areas in mid-1950s). In organizing a cooperative, a corporation is formed and a parcel of real estate is conveyed to it. P. ROHAN, *supra*, § 9.04(4)(a) at 9-13. Prospective tenants then purchase shares of stock in the corporation that are allocated to certain apartments. *Id.* A proprietary lease, and not mere ownership of corporate shares, entitles a stockholder to occupy an apartment. *Id.* A lessee, however, must possess a specific amount of shares in order to obtain a proprietary lease from the cooperative corporation. P. ROHAN, *supra*, § 9.04(4)(a) at 9-13. A cooperative tenant's proprietary lease is actually "a contract for the 'use' of real property, but not a real property interest itself." *Id.*, § 9.03 at 9-6. A tenant's interest in the cooperative is more appropriately referred to as "personalty". See *id.* See generally H. ROTHENBERG, WHAT YOU SHOULD KNOW ABOUT CONDOMINIUMS 21 (1974)(corporation holds title to realty; shareholders receive right to exclusive occupancy and must transfer shares to transfer right of occupancy). For a more extensive look at proprietary leases, see P. KEHOE, *supra*, at 24, and Kamer, *Conversion of Rental Housing to Unit Ownership - A Noncrisis*, 10 REAL ESTATE L.J. 189 (1982).

² See 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW AND PRACTICE § 1.01(1) at 1-1 (1985). A condominium is "a system of separate ownership of individual units in multi-unit projects." *Id.* Condominiums are a relatively recent phenomenon; through the Horizontal Property Act of 1958, Puerto Rico became the first American legal jurisdiction to authorize them. See P. KEHOE, *supra* note 1, at 8. By 1969, however, all 50 states had enacted laws specifically authorizing condominiums. See *id.* In a condominium, the participants have fee simple ownership of their units individually, and of the common elements as tenants in common in undivided percentages. See D. CLURMAN, F. JACKSON & E. HEBARD, CONDOMINIUMS AND COOPERATIVES 1 (2d ed. 1984); P. ROHAN, *supra* note 1, § 9.02(3) at 9-5; H. ROTHENBERG, *supra* note 1, at 19-20. The ownership of a condominium unit is very similar to owning an individual home because the unit owner must arrange and pay for the financing of the condominium unit. P. ROHAN, *supra* note 1, § 9.02(3) at 9-5. Along with the real estate