



1993-2019

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# SAFE HARBOR TITLE

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## Our Commitment to the Community

As Safe Harbor Title proudly celebrates our twenty-sixth year of steadfast service to the legal and lending communities we continue our loyalty to the core principals and beliefs of **integrity, commitment, and reliability** that Safe Harbor Title was founded upon. Unparalleled service with a smile! Another core value we hold close to our hearts is sharing and supporting those in need. Over the course of the past twenty six years we have made giving a priority. Helping others is built into our fiber and fortifies who we are. One can never underestimate good will. Safe Harbor Title has been paying it forward long before the term was first coined. Are we trend setters? No, just people that care and aren't afraid to reach out and help those in need.

With this in mind, we have undertaken to highlight and recognize worthy organizations that actively help to make the world a better place in our monthly newsletter the "e-Beacon". Their missions are deeply respected and eagerly supported. We are proud to support and recognize these fine organizations!

We thank our valued friends and supporters for allowing Safe Harbor Title to prosper these twenty six years past—allowing us the wherewithal to help our neighbors in need! We are humble in our gratitude, thankful in our hearts!

## Religious Corporations / Mortgage

A Church in East Harlem filed a petition seeking court approval for a mortgage on its house of worship, which was its sole asset, under Not-for-Profit Corporation Law Sections 510 ("Disposition of all or substantially all assets") and 511 ("Petition for court approval") and Religious Corporations Law ("RCL") Section 12 ("Sale, mortgage and lease of real property of religious corporation"). The purpose of the loan, in the amount of \$7,200,000, was to fund expenses to be incurred to achieve the up-zoning of the property, the construction and sale of a new building on the site, the repayment of an unsecured bridge loan, debt service, and other costs to be incurred in the redevelopment of the property. The interest reserve was sufficient to cover four years of interest payments. Repayment was to be made from sales proceeds realized from the sale of the property once improved. The estimated cost to construct a new building, including transaction expenses, was estimated to be as much as \$25,000,000. The Church had limited reserves.

The New York State Attorney General's Office did not approve the transaction, finding that "[t]his is a highly speculative and risky undertaking, involving substantial entitlement risk; should the rezoning and plan approval not occur, or be held up by litigation, or should the New York real estate market be unfavorable to the development at the end of the loan term, the organization would lose its property to the lender". The Supreme Court, New York County, then denied the Petition, holding that "petitioner does not demonstrate that the [mortgage loan] is fair and reasonable and that petitioner's interests will be thereby promoted". According to the Court,

"...when a religious corporation seeks to sell or mortgage its real property, approval by the court, upon notice to the Attorney General, or approval by the Attorney General, is required to confirm that 'the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of its members will be promoted [citations omitted]'...As a future development deal, with petitioner acting as its own developer/contractor, and given its financial status at the time of the application, the value of the property, and petitioner's questionable ability to carry the financial burden of the increase in its liabilities, the petition falls short of demonstrating an ability to support the financial burden and increased risk associated with the transaction. Thus, the [mortgage] is not 'fair and reasonable' or a sound financial decision when petitioner's sole valuable asset is placed at risk".

*Matter of the Application of La Hermosa Church, 2019 NY Slip Op 30691, decided March 22, 2019.*

*Continued on Page 2*

Integrity

Commitment

Reliability



# Recording Act

In 1977, James Foote conveyed certain property to Milton Wilson. The deed was recorded but indexed against the wrong tax block and lot. A mortgage made by Wilson to Foote was also recorded but properly indexed. In 2016, the Plaintiff purchased the property from the purported heirs of James Foote, then deceased. After the deeds to the Plaintiff were recorded, the New York City Register re-indexed the deed to Wilson. The Plaintiff brought an Action to quiet title in his name and to have the deed to Wilson canceled and expunged from the record.

The Supreme Court, New York County, on re-argument, upheld Wilson's title to the property and declared that the Plaintiff's claim to the property was invalid. The Court granted Wilson's motion to dismiss and dismissed the Action, sua sponte, as against the New York City Department of Finance. Although the deed to the Plaintiff was the first deed properly recorded, the Plaintiff was not a "good faith" purchaser within the meaning of Real Property Law Section 291 ("Recording of conveyances"), New York's "Recording Act". A title search conducted in 2016 would have disclosed the existence of the mortgage that Wilson executed to Foote. According to the Court,

"[c]harged with constructive knowledge of [the mortgage made by Wilson to Foote, the fee owner of record], [the Plaintiff] had a duty to inquire as to the nature and scope of Wilson's interest in the Property. The complaint and affidavits lack any indication that [the Plaintiff] fulfilled its duty of reasonable inquiry as to Wilson's claim to the Property".

*Zucker Real Estate Corp. v. Wilson, 2019 NY Slip Op 30932, decided April 8, 2019.*

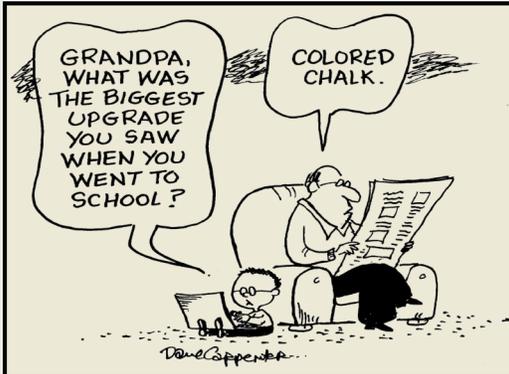
## "Religious Corporations / Mortgage" Continued from Page 1

In another case involving the execution of a mortgage by a religious corporation, the foreclosing mortgagee moved for an Order granting it summary judgment, appointing a referee to compute, reforming the mortgage to include a full legal description, and confirming the validity of the mortgage being foreclosed. It also requested that the Court direct the execution of a confirmatory mortgage or the recording of an Order confirming the mortgage. The Defendant cross-moved for an Order dismissing the complaint, declaring that the note and mortgage were unenforceable. The Supreme Court, Kings County, declined to approve the mortgage nunc pro tunc, held that the mortgage was invalid under RCL Section 12, and dismissed the complaint without prejudice for the Plaintiff to sue on the indebtedness. According to the Court,

"it is clear that nunc pro tunc approval of a \$350,000 mortgage with a 16% rate of interest and default interest rate of 24%, upon which it was previously determined that the amount of indebtedness due and owing as of November 30, 2017 exceeded one million dollars, would not be in defendant's best interest as it will likely result in the loss of its house of worship in foreclosure".

*John F. Walsh Enterprises, LLC v. Grace Christian Church, 2019 NY Slip Op 50247, decided February 28, 2019.*

**fyi** Courtesy of First American Title



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