

For Immediate Release

**STATE'S HIGHEST COURT UNANIMOUSLY REVERSES
TWO LOWER COURTS AND RULES IN THE CITY'S FAVOR
IN AN EMINENT DOMAIN CASE,
THE FIRST DECISION OF ITS KIND IN 40 YEARS**

***THE NEW YORK STATE COURT OF APPEALS UNANIMOUSLY OVERTURNS LOWER COURT
RULINGS IN A CASE IN WHICH A CLAIMANT SOUGHT TO BE PAID BY THE CITY FOR THE
INDUSTRIAL WOODWORKING TOOLS USED IN HIS BUSINESS
ON PROPERTY BEING TAKEN BY EMINENT DOMAIN;
RULING COULD MEAN MILLIONS IN SAVINGS FOR NEW YORK CITY AND STATE***

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New York, October 28, 2008 – The New York State Court of Appeals, the state's highest court, today unanimously (7-0) overturned lower court and appellate division rulings in a case where a claimant, whose property had been taken by "eminent domain," sought to be paid by the City for all the standard industrial tools that he used in the woodworking shop that he operated on the premises. This was the first Court of Appeals decision on this subject matter in almost 40 years.

(Editor's Note: Eminent domain is the process by which municipalities acquire private land to accommodate a public use.)

Under condemnation law, the government not only pays for the real property which it acquires, it also pays for those items used in business that the court defines, as noted, as fixtures. Relying on a Court of Appeals decision from 1969 which stated that an item is a fixture if will "lose substantial value if removed," the former owner here argued that the City should pay for the tools and equipment he used in his woodworking business, such as saws, grinders and sanders, because their removal would cause substantial loss in value in the secondhand market.

The City argued that loss of value means only that the items could not be used again if removed. The City argued that the claimed items were not fixtures and should not be paid for, because they were of standard design and could be used in another business.

The trial court found that the tools and equipment were fixtures, and the Appellate Division, First Department (a midlevel appeals court) agreed. The Appellate Division held that the equipment were fixtures, because they would lose substantial value if removed; were an integral part of the business; and that because the premises were small, the machines were arranged efficiently.

Today, New York State's highest court, in a 16-page decision, reversed the decision, agreeing with the City that loss of value, as defined in the prior 1969 Court of Appeals decision, means the loss of functional utility upon removal. The Court wrote in its ruling that "...use in connection with a business is not the test of compensability in New York; nor is efficiency of operation. The common thread of items qualifying under the 'substantial loss' category of compensable fixtures is devaluation of functional utility if the item is removed." The Court wrote further that the "claimant mistakes diminution in use with loss in

value merely because each piece of equipment may be worth less used. Under such analysis, virtually every machine used in a business would be a compensable fixture, obliterating the distinction between fixtures and personality.” The case was remanded to the trial court for further proceedings in accordance with the opinion.

Paul T. Rephen, Executive Assistant Corporation Counsel, who argued the case in the Court of Appeals, said, “We are pleased that the Court recognized that the courts below had misinterpreted case law and reaffirmed that not everything used in a business must be paid for by the condemnor. This decision has far-reaching implications – and it will potentially save the City and State millions of dollars.”

Tax & Bankruptcy Litigation attorneys Rochelle Cohen and Fred Kolikoff worked on the briefs. Paralegal Kim Paulk prepared the record on appeal. Appeals Division lawyers Len Koerner and Larry Sonnenshein also offered critical input.

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