BEAN KINNEY & KORMAN PC

BUSINESS LAW NEWSLETTER

ACCORD AND SATISFACTION REVISITED

BY: James V. Irving, Esq

In our November 2001 newsletter, we discussed the effect of Code of Virginia Section 8.3A-311, which provides that an unliquidated debt may be discharged by payment of less than the full amount if conditions of the statute are met. On November 26, 2001, a Spotsylvania Circuit Court judge applied this statute in the context of a mechanic's lien case. The case is *Chittum et al. v. Anthony et al*.

Chittum arose from a dispute involving a landscape excavation contractor and a homeowner. After Chittum, the contractor, filed a $28,925.20 mechanic's lien, the homeowner delivered to Chittum a check in the amount of $17,282.00 marked "Final Payment" on its face, accompanied by a letter to the same effect. Thereafter, homeowner Anthony claimed that the balance of the invoice had been discharged.

Judge William H. Ledbetter reviewed these facts and found, as a matter of law, that the Final Payment notation and the letter satisfied the requirement for a "conspicuous" notation because a reasonable person against whom it was to operate ought to have noticed and understood it.

On the other hand the Court noted that in order for an accord and satisfaction to be effective, the proponent must also prove that the check was tendered in good faith satisfaction of a claim, that the amount was unliquidated or subject to a bona fide dispute, and that the claimant obtained payment on the instrument. Judge Ledbetter ruled that he could not, as a matter of law in a preliminary hearing, determine these issues. The Court ordered an evidentiary hearing with the clear understanding that upon production of the required proof, the accord and satisfaction would be recognized and the balance of the contractor's claim dismissed.

The tone of Judge Ledbetter's ruling suggests he was not anxious to grant the homeowner's motion. On the other hand, his analysis also makes clear that the Court must and will enforce an accord and satisfaction and discharge the balance of a legitimate claim if the statute requires it. *Chittum* serves as another reminder to business people to assure that all personnel authorized to handle and receive payments are familiar with the requirements of this stature.◈

NEWS FROM THE DISTRICT OF COLUMBIA

BY: James Bruce Davis, Esq.

This year has seen major changes in District of Columbia laws concerning real estate. Here are the highlights:

1. **Dower abolished.** The Omnibus Trust and Estates Amendment Act of 2000, effective April 27, 2001, D.C. Code §19-102, abolished a spouse's common law interest in the real estate of the other spouse.

2. **Foreclosure procedures revised, then suspended.** The District of Columbia Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, effective on April 3, 2001 (hereinafter, "Predatory Lending Act"), made major changes in the law of foreclosures. However, the District of Columbia Council suspended the Predatory Lending Act from November 6, 2001 through March 6, 2002 because some lenders responded to the legislation by ceasing to lend in the District.

3. **Mortgage law revised, codified and then suspended.** The Predatory Lending Act completely revised the law of mortgages, not just predatory mortgages or home mortgages. One of the more onerous provisions of the Predatory Lending Act specified that deeds of trust on "residential" property could not be recorded unless the lender recorded a six part disclosure statement signed by the lender,

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borrower, loan broker and certain others. As reported above, the law has been suspended through March 6, 2002.

4. **Predatory lending prohibited, temporarily.** The Predatory Lending Act declared certain lending practices to be "predatory" and prohibited them. The prohibitions against predatory lending applied only to "home loans," the definition of which consumed five single-spaced pages of text. (No wonder lenders were confused!) As reported above, the law has been suspended through March 6, 2002.

5. **Tax sale procedure completely revised.** The Real Property Tax Clarity and Litter Control Administration Temporary Amendment Act of 2001 ("Tax Clarity Act") revised the District's tax sale procedures in a way that is sure to please title companies. In order to obtain a tax deed, a tax sale purchaser must bring an action in the District of Columbia Superior Court to foreclose the former owner's right of redemption. D.C. Code § 47-1370. Owners, mortgage lenders and certain others must be made parties to the foreclosure suit. Under the new procedure, most tax deeds should be insurable following entry of the order of foreclosure.

6. **Mortgage recordation tax revised.** The Tax Clarity Act repealed the recordation tax exemption for deeds of trust that refinance purchase money loans. The Act assesses a 1.1% recordation tax each deed of trust, but provides a tax credit for recordation tax paid on a deed of trust that is being refinanced. Thus, the full recordation tax applies to the first refinancing of a property (because no tax was paid on the purchase money deed of trust). The second refinancing will be subject to tax, but a credit will be available for the tax paid on the first refinancing. And so it goes.

7. **Recordation and transfer taxes on leases.** The Tax Clarity Act assesses recordation and transfer taxes on leases of 30 years or more.

8. **Recordation and transfer tax forms redone.** The Recorder of Deeds adopted a new form for Real Property Recordation and Transfer Tax Returns, known as Form FP 7/C, effective June 1, 2001. The new form includes a space for exemption claims. Former Forms FP 5 (exemption claim) and FP 7 (recordation tax return) were discontinued. ◈

REAL ESTATE ISSUES: HOUSING DISCRIMINATION

BY: James V. Irving, Esq

Bean, Kinney & Korman regularly represent landlords, homeowners and management companies in a broad variety of residential and commercial claims. These include defending claims based upon breach of duty under contract and also for alleged violations of federal law. For example, BKK shareholder Leo Fisher recently achieved a notable success in defending a cooperative housing association (the "Co-op") against a discrimination complaint filed with the U. S. Department of Housing and Urban Development.

The complaint was brought by a tenant who alleged that the Co-op had discriminated against him and had intimidated, interfered, or coerced him to keep him from taking full advantage of the federal Fair Housing Law. Mr. Fisher's efforts resulted in a prompt Letter Opinion finding "no reasonable cause" to support the claim.

BKK's client is a self-governing cooperative owned largely by its members and it provides affordable housing for the broader Arlington, Virginia community. Before renting any of its units, the Co-op requires that renters agree to obtain board approval of any roommate who is not himself or herself a member of the Co-op. Such an individual is known as a "sharee". The Co-op took this step so that they would have a contractual relationship with each sharee residing at the Co-op property.

In the fall of 1999, a prospective tenant submitted an application to rent a unit at the Co-op with an option to purchase. He was approved, and a lease was entered which specifically noted that the new tenant was not permitted to sublease or permit a non-family member to occupy the premises without the Co-op's approval. Approximately six months later, the tenant submitted a request to the Co-op for a sharee. The application gave no indication that the request was related to any disability of the tenant. The Co-op denied the request.

The tenant's response was to complain to the Department of Housing and Urban Development that the Co-op had failed to accommodate his mental disability as required by the Fair Housing Law. Thereafter he submitted a new written request for a sharee, this time indicating that the roommate was necessary to accommodate this disability – a position he had never previously taken.

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The Co-op took a closer look at whether it was reasonably necessary to grant the accommodation, and during that process, wrote to the tenant setting out their position and the steps necessary for sharee approval. Among these was a reminder that, if approved, the sharee would have to sign a contract with the Co-op. The tenant did not respond to the letter and apparently allowed the sharee to move in despite the status of his application.

The Virginia Real Estate Board heard the complaint and found that, although the tenant was protected under the Virginia Fair Housing Law and disabled as that term is defined, there was no reasonable cause to believe that an unlawful discrimination had taken place. In reaching this conclusion, the real estate board adopted much of the legal reasoning and factual conclusion provided to them by Mr. Fisher.

Anti-discrimination statutes in Virginia, as in DC and Maryland, are liberally drafted and interpreted, and are often aggressively pursued. An innocent landlord or property owner is always at risk that they may be painted or perceived as an insensitive conglomerate taking advantage of those in weakened bargaining positions.

A successful defense to a discrimination claim requires not only a knowledge of the facts, but an ability to package and present these facts in light of the law and in a manner designed to allow the governing body to understand and digest an innocent owner's real and reasonable motivation for protecting its intent. Mastery of the law, combined with a grasp of its intent, has allowed BKK to achieve its record of success on real property litigation. ◈

INTERNET LAW

BY: James V. Irving, Esq

This newsletter has periodically reviewed developments in Internet law, both because it is an emerging topic and because Virginia state and federal courts are on the leading edge of this fast developing area. As we pointed out in the August 1999 edition of this newsletter, the intricacies of jurisdiction make this major issue one of the first lines of defense raised by any out of state service provider.

A preliminary motion in *Bova v. Cox Communications*, Inc. et al., was argued in the United States District Court for the Western District of Virginia on November 13, 2001. In this class action, Bova, on behalf of the class, alleged that CoxCom, Inc. and its parent entity, Cox Communications, Inc. ("CCI") had violated the Telecommunications Act (47 U.S.C. Section 151 *et seq*) by charging unreasonable and discriminatory fees for cable Internet services. Under the Act, telecommunications services are classified as an information service, telecommunications service, or cable service. The Cox companies contended that their services were either "cable service" or "information service" - either of which could have made the franchise fees legal - as opposed to "telecommunications services" in which case they might not be. In addition to this substantive position, CCI also objected to jurisdiction, claiming that they did not have the necessary "minimum contacts" with Virginia.

CCI is a Delaware corporation with its principal place of business in Georgia. It has no corporate presence in Virginia. CoxCom, on the other hand, operates various cable systems in Virginia. The district court had no difficulty piercing to the heart of the relationship. Judge Samuel G. Wilson found that although CCI was not subject to the general jurisdiction of the Court, it was properly before the Court in this action, since it was the decision maker and beneficiary of the complained of acts.

The Court found that CCI had transacted business in Virginia because it was behind the decision to impose and collect franchise fees from the Plaintiffs, and because it actively participated in and controlled these fees. Since CCI purposely directed its activities to Virginia residents and because the cause of action arose out of those activities, minimum contacts were present which would allow Virginia courts to assume jurisdiction of the lawsuit.

The question of jurisdiction is often hotly contested in Internet matters, and particularly in class actions, because a determination that subjects the defendant to the cost and risk of litigation quite often has the result of forcing a final resolution. A conglomerate's effort to restrict its liability to a limited, local subsidiary is nothing new. Virginia Courts have regularly and consistently shown a willingness to pierce this façade and exercise jurisdiction over Internet providers to the full extent provided by the Virginia long-arm statute. ◈

BEAN KINNEY & KORMAN PC
ATTORNEYS

2000 North 14th Street, Suite 100
Arlington, Virginia 22201

PHONE: (703) 525-4000

FAX: (703) 525-2207

E-Mail: jirving@beankinney.com

We're on the Web!

See us at: **www.beankinney.com**

About Our Organization...

For over four decades, Bean, Kinney & Korman has been a leading Northern Virginia law firm that has continuously grown and diversified to meet the needs of its expanding community of clients and their increasingly complex legal needs. While we have grown in size and greatly expanded the depth and breadth of our capabilities, we have remained committed to those fundamental elements of value that are integral to our practice philosophy: experience, versatility, dedication to service, flexibility and efficiency.

Our responsive and exceptional quality service, coupled with our sensitivity to client needs, has established a professional reputation in which we take great pride. We are dedicated to achieving exceptional results for our clients in every matter we are entrusted to handle, mindful of each client's resources and unique circumstances. Delivering greater value to our clients day in and day out is how we will continue our reputation as one of the most highly regarded law firms in the Washington metropolitan region.

BEAN KINNEY & KORMAN PC
ATTORNEYS
2000 NORTH 14TH STREET, SUITE 100
ARLINGTON, VIRGINIA 22201