

## SIDNEY SIBEN'S AMONG US

### Announcements, Achievements, & Accolades...

**Karen Tenenbaum**, Esq., LL.M. (Tax), CPA, of Tenenbaum Law was the moderator at the NYU Tax Controversy Forum on the topic of NYS Residency Audits. She, **Leo Gabovich** and **Hana Boruchov** presented at the NYSSEA, Metro Chapter on IRS Audits and Tax Collection. Additionally, **Karen Tenenbaum** was published in Upserve, "Didn't Pay Your New York State Sales Tax? 8 Consequences Restaurant Owners Need to Know." She was also featured on a podcast for Heller Wealth Management.

### Congratulations...

Justice **Joseph C. Pastorella**, Supreme Court, Suffolk County, and a member of the Board of Governors of Touro Law School, was chosen by the dean and faculty of the law school to

receive the award of Adjunct Professor of the Year.

**Laura Lane**, the Editor-in-Chief of the Suffolk Lawyer, received the Robert W. Greene Award for Public Service in the 2019 Press Club of Long Island contest for her article, "The NRA has a long and surprising history." The article was part of a 13-part series, "Safety and the Second" submitted by the Herald Community Newspapers that examined guns and gun culture from all sides — student activists seeking stricter gun laws, gun owners, police, educators and lawmakers.

Congratulations to **Elena B. Langan** who has been appointed as the seventh dean of the Touro College Jacob D. Fuchsberg Law Center. Dean Langan brings to Touro an impressive record of academic and administrative leadership experience having served as the dean of Concordia Law School in Boise, Idaho, and interim dean of Nova Southeastern University's Shepard Broad College of Law in Fort Lauderdale, Florida. Dean Langan's appointment is effective August 1, 2019.

On behalf of SCBA's President Lynn Poster-Zimmerman, our officers, directors, members and staff we thank Dean **Harry Ballan** for his leadership and service to Touro and we extend our warmest wishes as we pay honor to his service and achievements.

### Condolences...

To SCBA staff member **Mary Shannon**, on the passing of her granddaughter, Shannon E. Brown on June 20, 2019 at the age of 25 years.

To Family Court Judge the Honorable **Frank Tantone** on the passing of his sister, Veronica Tantone.

The Board of Directors and members of the staff join in extending past president **Edward V. Esteve** (1989-90) and his family our heartfelt sympathy of the recent passing of his beloved wife, Mildred, who he was married to for the past 58 years.

To **Warren G. Clark** on the passing of his mother, Veronica E. Clark.

## FAMILY

# Family Court's 'Focus' on Families and Children Brings a Change to Treatment Court Legal Track

By Hon. James F. Quinn

Families Overcoming Crisis utilizing Unified Services (FOCUS) is the result of Family Court Judge Hon. Caren Loguercio's vision, which progressed into the development and award of a five year, 2.1 million-dollar federal SAMHSA (Substance Abuse and Mental Health Administration) grant which will enable Family Court to address the service needs of families in crisis as they navigate the child protective arena. In collaboration with the Department of Social Services' Child Protective Services and Hope for Youth, the Family Court will enhance access to services that address the trauma and developmental needs of young children as well as the complex needs of their parents, including those with co-occurring substance abuse and mental health issues.

Of all the children removed from their parents in Suffolk County in 2016, over 60 percent were under age five and 45 percent were age birth to three years. Substantial research shows that experiences children have early in life influence their developing brain and thus can have lasting impacts on their health and

well-being throughout their lives. FOCUS will place an emphasis on infants and toddlers who have entered the foster care system in Suffolk County.

By employing a family-centered trauma informed approach, this initiative will increase the capacity of Family Treatment Court and expand the availability of services to all families that enter the child welfare system by training and re-defining the role and responsibilities of FTC case managers and institutionalizing the collaborative efforts of our agency partners. In addition, FOCUS incorporates an experienced Family/Child specialist from Hope for Youth who along with an interdisciplinary team will:

Provide a comprehensive early assessment and psychosocial evaluation of the entire family on child protective matters who are participating in the Suffolk County Family Treatment Court.

Provide Child and Parent Psychotherapy to eligible families. CPP is a research based, multi-dimensional approach to assessment



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and treatment for parents or primary caregivers and young children, which aims to reestablish normal developmental functioning in the wake of trauma and domestic violence. The primary goal of CPP is to restore the child's cognitive, behavioral and social functioning by supporting and strengthening the relationship between a child and their parent.

Collaborate with the team at monthly meetings (court, DSS, attorney for respondent, attorney for child, county attorney, etc.) and address the families' complex needs, including early identification and provision of a continuum of mental health services.

Select and train foster parents to ensure availability for frequent family visits and assess their willingness to engage with birth parents.

Additionally, the grant will assist Hope for Youth to establish a satellite office in Riverhead, drastically improving access to services for our East End families by alleviating geographical and commuting difficulties.

Initially, a minimum of 175 families (35 an-

nually for five years) will be offered specialized services and FOCUS will provide each family with a screening for developmental, social, emotional or family concerns, as well as expedited and enhanced delivery of high quality, targeted services. Acceptance into the program requires that the respondent parent agree that the court make a finding of neglect. As part of a collaborative effort with the Department of Social Services' Child Protective Services and the county attorney, the respondent parent would receive Suspended Judgment as a dispositional order. Upon successful completion and graduation from FTC/FOCUS and expiration of Suspended Judgment, the underlying petition would be deemed dismissed. Subsequently, the finding of neglect may be vacated upon motion of respondent's attorney. The anticipated outcome of FOCUS is lasting permanency with improved long-term life outcomes for children and families, expedited re-unification and a reduced number of different foster care placements, significantly increased parenting time and better and more timely outcomes for families.

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## REAL ESTATE

# Freedom of Contract Ends Yellowstone Injunctions, What's Next?

By Andrew Lieb

The Court of Appeals has affirmed the Second Department's holding in *159 MP Corp. v. Redbridge Bedford LLC* and as a result, has ended Yellowstone Injunctions statewide when such injunctions are waived by sophisticated parties during commercial lease negotiations. Previously, in the March 2018 edition of *The Suffolk Lawyer*, we discussed the Second Department's holding in the article "The End of Yellowstone Injunctions." Now, we address the Court of Appeal's holding, which is a far broader precedent, reaching issues of freedom of contract, beyond Yellowstone Injunctions. In fact, as the dissent is quick to point out, the majority has determined that freedom of contract may only be overcome by either a competing public policy if such policy is expressly set forth in a statute as a preclusion to contract or where the contractual provision at issue involves criminality.

Initially, and as background on the core certified issue, the court explained that a Yellowstone Injunction is "a 'creative remedy' crafted

by the lower courts to extend the notice and cure period for commercial tenants faced with lease termination . . . [while] permitting a tenant who loses on the merits of the lease dispute to cure the defect and retain the tenancy."

The specific issue certified before the court was whether a waiver of "the right to commence a declaratory judgment action as to the terms of" a commercial lease is "void as against public policy." The express rider language, at issue, was that "Tenant waives its right to bring a declaratory judgment action with respect to any provision of this Lease or with respect to any notice sent pursuant to the provisions of this Lease. . . [i]t is the intention of the parties hereto that their disputes be adjudicated via summary proceedings." The stated public policy that was set forth as contravening such language was that declaratory relief provides the benefit of "stabilizing uncertainty in contractual relations."

The underlying dispute, between the parties, emerged when the tenant, in response to re-



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ceipt of a notice to cure, moved the Supreme Court, by order to show cause, seeking "a declaratory judgment that they were not in default" together with a Yellowstone Injunction. Initially, the Supreme Court denied the order to show cause and dismissed the case. Then, the Appellate Division affirmed. However, a dissenting Appellate Division Justice argued that "a tenant's ability to litigate in summary proceedings commenced by the owner was not a sufficient substitute for the ability to commence a declaratory judgment action." Therefore, the Appellate Division certified the question, whether its order was properly made, to the Court of Appeals.

In affirming, the Court of Appeals looked to its holding in *Matter of American Broadcasting Cos., Inc. v. Roberts*. Therein, the court stated "that a public interest is present does not erect an inviolable shield to waiver." Next, the court articulated two bases to override freedom of contract while stating that neither existed before the court. The two bases were if either the leg-

islature had identified a Yellowstone Injunction as being non-waivable or if it involved illegality. Therefore, this holding reaches far beyond Yellowstone Injunctions and instead, sets precedent for when freedom of contract should give way to other public policy interests. As such, the main takeaway from the holding was not merely the glacial shift in commercial landlord/tenant practice, but instead the court's reaffirmation of its adherence to the principles of freedom of contract. As the court explained, freedom of contract must prevail for "New York's status as the preeminent commercial center in the United States, if not the world," to remain in place. Moving forward, litigators should only argue that public policy overcomes freedom of contract if one of the two articulated bases exist.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Smithtown and Manhasset. He is a past co-chair of the Real Property Committee of the Suffolk Bar Association and has been the Special Section Editor for Real Property for *The Suffolk Lawyer* for years.