

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1458

CA 08-02265

PRESENT: SMITH, J.P., PERADOTTO, GREEN, PINE, AND GORSKI, JJ.

LT PROPCO, LLC, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CAROUSEL CENTER COMPANY, L.P. AND CITY OF
SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY,
DEFENDANTS-RESPONDENTS.
(ACTION NO. 1.)

LORD & TAYLOR CAROUSEL, INC.,
PLAINTIFF-APPELLANT,

V

CAROUSEL CENTER COMPANY, L.P. AND CITY OF
SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY,
DEFENDANTS-RESPONDENTS.
(ACTION NO. 2.)

IN THE MATTER OF THE APPLICATION OF CITY
OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY,
PETITIONER-RESPONDENT,
TO ACQUIRE CERTAIN INTERESTS IN THE CAROUSEL
CENTER SITE, WHICH SITE IS GENERALLY IDENTIFIED
AS 1 CAROUSEL CENTER DRIVE (LOT 11K), SBL NO.
114-02-05.6; 304 HIAWATHA BOULEVARD W. REAR
(LOT 11B), SBL NO. 114-02-05.2 IN THE CITY OF
SYRACUSE, NEW YORK, WHICH PARCELS COMPRISE A
PORTION OF THE SITE FOR THE PHASED PUBLIC
PROJECT KNOWN AS DESTINY USA.

LORD & TAYLOR CAROUSEL, INC.,
RESPONDENT-APPELLANT.
(PROCEEDING NO. 1.)
(APPEAL NO. 1.)

HARRIS BEACH PLLC, PITTSFORD (DOUGLAS A. FOSS OF COUNSEL), FOR
PLAINTIFFS-APPELLANTS AND RESPONDENT-APPELLANT.

GILBERTI STINZIANO HEINTZ & SMITH, P.C., SYRACUSE (KEVIN G. ROE OF
COUNSEL), FOR DEFENDANT-RESPONDENT CAROUSEL CENTER COMPANY, L.P.

HISCOCK & BARCLAY, LLP, BUFFALO (MARK R. MCNAMARA OF COUNSEL), FOR
DEFENDANT-RESPONDENT AND PETITIONER-RESPONDENT CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY.

Appeal from an order of the Supreme Court, Onondaga County (John C. Cherundolo, A.J.), entered August 7, 2008. The order, among other things, conditionally granted the motion of defendants in action Nos. 1 and 2 seeking to dismiss the EDPL article 5 proceeding unless plaintiff LT Propco, LLC join certain indispensable or necessary parties.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating those parts providing that LT Propco, LLC join certain indispensable or necessary parties and by providing in the third ordering paragraph that the motion is denied and as modified the order is affirmed without costs.

Memorandum: LT Propco, LLC, the plaintiff in action No. 1, and Lord & Taylor Carousel, Inc., the plaintiff in action No. 2 and the respondent in proceeding No. 1 pursuant to EDPL article 5 (collectively, plaintiffs), appeal from an order that, inter alia, conditionally granted the motion of defendants in action Nos. 1 and 2 seeking to dismiss the EDPL article 5 proceeding unless LT Propco, LLC joined its mortgagees as necessary parties therein (*LT Propco, LLC v Carousel Ctr. Co. LP*, 20 Misc 3d 1124[A], 2008 NY Slip Op 51598[U]). We agree with plaintiffs that the mortgagees are not necessary parties to the EDPL article 5 proceeding at issue (*see generally* CPLR 1001, 1003), and we therefore modify the order accordingly. Because New York operates under a lien theory as opposed to a title theory with respect to mortgages, "the language used in the assignment instrument itself is not determinative of what rights are actually transferred" (*Dream Team Assoc., LLC v Broadway City, LLC*, 2003 NY Slip Op 50894[U], *6; *see Mooney v Byrne*, 163 NY 86, 91, *rearg denied* 164 NY 585; *Leonia Bank v Kouri*, 3 AD3d 213, 216-217; *Ganbaum v Rockwood Realty Corp.*, 62 Misc 2d 391, 395). Here, upon reviewing the assignment agreement between LT Propco, LLC and its mortgagees as a whole, we conclude that it is clear therefrom that the assignment of any rights to the mortgagees was for the purpose of securing the repayment of debt owed (*see generally Matter of Westmoreland Coal Co. v Entech, Inc.*, 100 NY2d 352, 358).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court