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## ‘Huguenot LLC v. Megalith Capital Group Fund I, L.P.’: A Tutorial On Contract Liability for Real Estate Purchasers

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In June 2024, the First Department decided *Huguenot LLC v. Megalith Capital Group Fund I, L.P.*, 228 A.D.3d 404 (1st Dept. 2024), which resolved a question of liability for a group of condominium apartment buyers and in so doing, touched on a wide range of issues about how contracts can obligate purchasers of real property. In ultimately rejecting the plaintiff’s claim that the apartment buyers could be responsible for the condominium developer’s breach of a contract recorded as part of the condominium’s declaration, the court illustrated some important points about how contracts can run with the land, or otherwise impose liability on real estate buyers.

### Factual Background

The plaintiff was the original owner of a building in lower Manhattan, and entered into a contract under which the developer would renovate the building and then divide and sell the upper floors as condominium apartments, while the plaintiff would retain ownership of the storefront on the ground floor as a commercial unit. After the plaintiff and the developer recorded a condominium declaration dividing the building up into two condominium units, the ground floor commercial unit and “Unit 2” which would later be subdivided into residential apartments, they entered into a contract amendment (the Recorded Contract) which set forth the requirements for the construction work the developer would do in the commercial unit and provided that it could be recorded as part of the condominium’s declaration. In recording the Recorded Contract as part of the declaration, the plaintiff specified that the defined term for the developer in the Recorded Contract “shall mean and refer to” a term that included owners of the apartments that Unit 2 would be subdivided into.

Later, the developer recorded a declaration amendment splitting Unit 2 into individual apartments and stating that the construction work had been completed.

The plaintiff sued the developer alleging that its construction work didn’t meet the specifications in the Recorded Contract, and after the apartments had been sold, named the buyers of the apartments, claiming that, because the Recorded Contract had been recorded as part of the condominium’s declarations, they became responsible for the developer’s contractual breaches. The trial court denied the apartment buyers’ summary judgment motion, holding that they were on notice of the Recorded Contract when they bought their apartments, and as such, questions of fact existed as to whether they could be liable for the developer’s alleged breach of the Recorded Contract.

### The Appellate Division Decision

The Appellate Division, First Department reversed that decision and dismissed all of the claims against the apartment buyers. The appellate court concisely ran through multiple circumstances under which a real estate purchaser could become liable for a contract relating to the land they were buying.

The court’s first point was that the Recorded Contract could not by itself impose liability on the non-party apartment buyers. Although the court recognized that the Recorded Contract had been incorporated into the condominium’s declaration using terms that purported to implicate the apartment buyers, it found that “this incorporation could not alter the contractual definitions of” the plaintiff and developer in the Recorded Contract itself. The court rejected the plaintiffs’ argument that, despite the apartment buyers not being parties to the Recorded Contract itself, the plaintiff could force buyers to become liable under the Recorded Contract by recording it with a statement that they would be liable.

The Court then considered the impact of the apartment buyers having been on notice of the Recorded Contract as incorporated into the condominium's declaration, and the fact that each of the buyers' deeds took title "subject to" the provisions of declaration. The Court found this to be "not sufficient to impose liability on them for every covenant in the Recorded Contract." In other words, because the apartment buyers were not liable under the provisions of the Recorded Contract itself, taking title with knowledge of and "subject to" the Recorded Contract did not make them liable.

The Court then noted that it is not "sufficient that privity of estate exists and that the covenants of the declaration explicitly bind the successors and assigns of any Unit Owner," citing *Eagle Enterprises, Inc. v Gross*, 39 NY2d 505, 507-508 (1976), which set forth New York's long-standing requirements for a covenant to run with the land:

- (1) The original grantee and grantor must have intended that the covenant run with the land.
- (2) There must exist "privity of estate" between the party claiming the benefit of the covenant and the right to enforce it and the party upon whom the burden of the covenant is to be imposed.
- (3) The covenant must be deemed to "touch and concern" the land with which it runs.

The court next addressed the principle that where a contract is not affirmatively assigned, a grantee of real property is only liable for covenants that are found to run with the land.

Having already found that the apartment buyers taking "subject to" the declaration did not constitute assumption of the Recorded Contract, the court applied the *Eagle Enterprises* test. There was no question that the apartment buyers had privity of estate with the developer who sold them their units, so the second factor was satisfied. As to the first factor, the parties had different interpretations of whether the factual circumstances demonstrated that it was the intention of plaintiff and the developer for the Recorded Contract to run with the land, and the Court sidestepped this issue.

The Court, however, held the third *Eagle Enterprises* factor to be determinative in finding that the construction requirements of the Recorded Contract allegedly breached by the developer did not "touch and concern" the land, and thus could not obligate the apartment buyers. The Court found that "An obligation to pay for a one-off task, which is not intended to benefit the land and does not affect subsequent use of the land, does not touch and concern that land," citing cases where contracts to perform discrete tasks were held not to run with the land.

With this, the court concluded that the apartment buyers "had no contractual obligation to pay for the construction," and dismissed all claims against them.

## Summary

In serially rejecting each of the arguments that the plaintiff argued would obligate the apartment buyers under the Recorded Contract, the First Department provided a tutorial on the ways that a property owner can succeed or fail at binding subsequent owners to contract obligations. Although the narrow holding was that condominium apartment buyers were excused from liability under the contract under which the developer constructed the condominium, the case provides an instructive roadmap for determining continuing contractual liability among successive owners of property in a wide variety of circumstances.

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