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FMC LAW

Focus on
Real Estate

OCTOBER 2012

City of Toronto Zoning By-Law Update

By Mark Piel

"If at first you don't succeed, try again" seems to be the motto of the City of Toronto with respect to the adoption of a new comprehensive zoning by-law for the entire City.

Where Are We Now?

On August 27th, 2010, City Council adopted a comprehensive zoning by-law for the City of Toronto. On May 18th, 2011, City Council repealed that by-law rather than face almost 700 legal challenges by way of appeals to the Ontario Municipal Board.

The City's Planning & Growth Management Committee directed City Planning staff to consult with parties who filed appeals of the first zoning by-law adoption and to report back to the Committee with respect to progress on same, with the intention of bringing forward a new zoning by-law to Committee. City Planning staff have now prepared a draft zoning by-law which attempts to largely achieve the same goals as the original. A statutory public meeting with respect to the draft zoning by-law is expected to occur in November of 2012, setting the stage for its possible adoption in early 2013.

City consultations with stakeholders, which occurred between the repeal of the first zoning by-law and the introduction of the draft zoning by-law to the Planning & Growth Management Committee this past Summer, addressed a number of shortcomings with the original document including, among other things, the transitioning of development applications filed under existing in-effect zoning by-laws, the recognition of minor-variance and site-specific-by-law permissions, matters relating to legal non-conforming uses, the treatment of existing

buildings in the new zoning regime, and definition and mapping issues.

Transition of Complete Development Applications

The draft zoning by-law now contains a transition clause which grandfathers complete minor variance, site plan approval, consent, draft plan of subdivision, plan of condominium, payment in lieu of parking agreement and part lot control exemption applications filed to the City prior its adoption. These transition clauses will be repealed on the third anniversary of the adoption date which means land owners must be diligent and act to implement the approvals acquired through these applications before the transition provisions are removed.

Complete applications for zoning by-law amendments filed before the adoption of the draft zoning by-law will be subject to the zoning by-law they propose to amend. In order for this "transitioning" to occur, existing zoning by-laws will not be repealed by City Council when the draft zoning by-law is adopted. The City has indicated that, at some point in the future but after adoption, it intends to incorporate into the new zoning by-law lands rezoned pursuant to an amendment to an existing zoning by-law in consultation with property owners.

Regardless of these attempts to transition complete applications from the scope of the draft zoning by-law, matters relating to transition have not been tested in practice. Parties with interests in real estate in Toronto are subject to risk in this regard.

What Do You Need To Do?

If you have real estate interests in Toronto the onus is on you to review the draft zoning by-law and determine if and how it impacts your interests. If you fail to register an objection or concern with the draft zoning by-law before it is adopted by City Council you will lose your right to appeal it to the Ontario Municipal Board.

FMC's team of municipal and property development specialists have a wealth of experience with both planning and advocacy matters and are able to assist you with conducting your due diligence in respect of the draft zoning by-law. In doing so, we will ensure your rights are protected including making any necessary submissions to City Council and, if necessary, appealing City Council's adoption of the draft zoning by-law to the Ontario Municipal Board.

New Heritage Official Plan Policies For The City of Toronto

By Mark Piel

The City of Toronto is on course to fulfill its statutory requirement to update its Official Plan by the end of the first quarter of 2013. City Planning staff will make their final recommendations with respect to an Official Plan Amendment for heritage policies to the October 12th, 2012 meeting of the City's Planning & Growth Management Committee.

The proposed Official Plan Amendment with respect to heritage policies is the first amendment to go to Committee and it is possible that City Council will adopt the Amendment as early as October 30th of this year.

What's New About The Proposed Heritage Official Plan Policies?

As anyone with development interests in Toronto knows, the City's Official Plan contains policies with respect to the protection and conservation of properties with cultural heritage value or interest. In late September 2012, City Planning staff circulated to the public a draft Official Plan Amendment which proposes significant revisions to the existing policies. Changes of note include:

- New policies which require private development to maintain, frame, and, where possible, create public views to important natural and human-made features. Views

identified in attachments to the Official Plan Amendment are designated as significant and are to be preserved without obstruction. Where a development proposal may obstruct or detract from a view designated in the Official Plan Amendment, a heritage impact assessment may be requested by City staff;

- The impact of proposed development adjacent to a property listed on the City's heritage register will be assessed by City staff prior to work commencing on the property. City staff's assessment will be achieved through the proponent filing a heritage impact assessment;
- Policies provide for additional gross floor area to be permitted in excess of what would be permitted in designated zones for a heritage building, provided the additional floor area will not detract from the heritage property and will not conflict with any other Official Plan policy, and the concerned heritage building or structure is protected in a heritage easement agreement, and the necessary by-laws are enacted prior to approval of the site plan for the entire development;
- Heritage impact assessments will be required for the proposed demolition of a property adjacent to a property listed on the City's heritage register;
- New construction adjacent to a property listed on the City's heritage register must be designed to protect the cultural heritage values, attributes and character of the heritage property, and to minimize visual and physical impact on it, including considerations such as scale, massing, materials, height, building orientation and location relative to the heritage property; and
- Significant cultural heritage landscapes, defined as "a geographical area of heritage significance which has been modified by human activities and is valued by a community and includes a grouping of individual heritage features such as structures, spaces, archaeological sites and natural elements which form a significant type of heritage form distinctive from that of its constituent elements or parts", will be included in the City's heritage register and/or designated under the *Ontario Heritage Act*. Examples of cultural heritage landscapes include, but are not limited to, heritage conservation districts, villages, parks, gardens, battlefields, main streets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage value.

What Do You Need To Do?

If you have real estate interests in Toronto the onus is on you to review the proposed Official Plan Amendment and determine if and how it impacts your interests. If you fail to register an objection or concern with the proposed Official Plan Amendment before it is adopted by City Council you will lose your right to appeal the matter to the Ontario Municipal Board.

FMC's team of municipal and property development specialists have a wealth of experience with both planning and advocacy matters and are able to assist you with conducting your due diligence in respect of the proposed Official Plan Amendment. In doing so, we will ensure your rights are protected including making any necessary submissions to City Council and, if necessary, appealing the proposed Official Plan Amendment to the Ontario Municipal Board.

Creditor Priority as between Factoring Companies and Lienholders in the Wake of the Alberta Decision in *Van T Holdings Inc. v. KCS Equipment Ltd.*

By Karen Groulx and Thomas R. Wilson

The recent decision from Alberta in *Van T Holdings Inc. v. KCS Equipment Ltd.*[1] should be of interest to a certain class of lenders known as Factors or a certain kind of loan called Factoring[2] and to lawyers who act on behalf of Factors and lien claimants as it considers the competing claims that can arise between creditors where contractors or subcontractors involved in the construction project become insolvent. The decision in *Van T Holdings* centers on a dispute over court-held funds between a Factor, Liquid Capital Exchange Corp. and lienholders. The dispute related to excavation and grading work performed in West Edmonton, Alberta, and arose after Van T Holdings Inc., the general contractor, was ordered to pay $673,335.88 into court to have all liens discharged from title after its subcontractor, KCS Equipment Ltd., became insolvent.[3]

The Court concluded that the Crown's Enhanced Requirement to Pay pursuant to section 224(1.2) of the *Income Tax Act*[4] and section 317(3) of the *Excise Tax Act*[5] afforded it superior priority over the lienholders. [6] However, the Alberta court held, on the facts of the case, that the Factor enjoyed priority superior to that enjoyed by the Crown. Relying on the Supreme Court's decisions in *First Vancouver*[7] and *Port O'Call*[8], Master Schlosser found that the subcontractor's obligation to deduct and remit employee's source deductions and GST gave rise to a deemed trust in favour of the Crown over assets of the tax debtor/subcontractor, KCS, held at the time or acquired after the time the trust arose (the moment it failed to remit its source deductions by the specified due date).[9] However, because the factoring agreement was perfected before the Crown's Enhanced Requirement to Pay, the Factor had a superior claim to proceeds of the factored invoice, regardless of whether or not the funds were in possession of the Crown.[10] In short, the court held that "a factored invoice would not be caught by an Enhanced RTP."[11]

Section 11(1) of the Alberta's *Builders' Lien Act*[12] (the "*Alberta Act*"), reads as follows: "A lien has priority over all judgments, executions, assignments, attachment, garnishment or receiving orders recovered, issued or made after the lien arises."[13] Because Master Schlosser viewed a factored account as an *absolute* assignment more akin to a sale transaction than an 'assignment' for the purposes of the *Alberta Act*, he determined that the rights of the Factor were absolute as against the lienholder.[14]

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[1] 2012 ABOB 335 [*Van T Holdings*]

[2] Factoring is a financial transaction whereby a business sells its accounts receivable (i.e. invoices) to a third party (called a Factor) at a discount.

[3] *Van T Holdings, supra* note 1 at paras 2 and 7.

[4] RSC 1985, c 1.

[5] RSC 1985, c E-15.

[6] *Van T Holdings*, *supra* note 1 at para 15.

[7] *First Vancouver Finance v Canada (MNR*), 2002 SCC 49.

[8] *Canada Trustco Mortgage Corp v Port O'Call Hotel Inc*, [1996] 1 SCR 63.

[9] Van T Holdings, supra note 1 at paras 16 and 19.

[10] Van T Holdings, supra note 1, at para 34.

[11] *Ibid*.

[12] RSA 2000, c B-7

[13] *Ibid*.

[14] *Ibid* at para 41.

Analysis with respect to *Van T Holding*'s applicability in Ontario

In *Van T Holdings*, Master Schlosser read "assignment" in section 11(1) of the *Alberta Act* as not including an "absolute assignment". Master Schlosser further determined that because the Factored invoices were "absolute assignments", as per a 1996 decision[15] of the Supreme Court, section 11(1) did not apply to grant lienholders superior priority over the Factor.

The Alberta court's ruling is problematic, in that there is nothing in the *Alberta Act* or cited jurisprudence suggesting that an "absolute assignment" is, necessarily, not included in the class of "assignments" referred to in section 11(1). Furthermore, the definition set out in Black's Law Dictionary of assignment ("the transfer of rights or property") and absolute assignment ("an assignment that leaves the assignor no interest in the property or right") leave open the possibility that "absolute assignment" is a species of "assignment". As a result, Master Schlosser determines, somewhat arbitrarily, that a Factor takes priority over a lienholder for the purpose of the *Alberta Act*.

Like the *Alberta Act*, Ontario's lienholder priority provision is largely ambiguous with respect to the meaning of "assignment". Section 77 of the *Construction Lien Act*[16] (the "*Ontario Act*") reads as follows:

> The liens arising from an improvement have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders except those executed or recovered upon before the time when the first lien arose in respect of the improvement.

If *Van T Holdings* were tried in Ontario, a court would likely decide in favour of lienholders over Factors.

Although the decision in *Van T Holdings* may be viewed as a victory for factoring companies in Alberta, the decision does not affect the position of factoring companies in Ontario since contractors and subcontractors enjoy additional protection by way of statutory trusts created pursuant to Part II of the *Ontario Act*.

Specifically, under section 8 of the *Ontario Act*, a trust fund for the benefit of contractors and subcontractors who supply materials or services to a project arises as soon as amounts become payable to them under a contract with respect to an improvement, that is, when work commences. Under the *Ontario Act*, money held in trust includes not only those amounts *received*, but also those amounts *owed* to the contractor, whether or not due or payable. Therefore, accounts receivable, in that they represent money owed by the owner to the contractor with respect to an improvement, are captured by a construction trust in Ontario. Under section 8(2) of the *Ontario Act,* the contractor or subcontractor, as trustee, is unable to appropriate or convert these owed amounts for its own use or for any use inconsistent with the trust. Therefore, a factoring agreement entered into *after* the trust arises and without the consent of those contractors and subcontractors with a beneficial interest in the monies is inconsistent with the *Ontario Act*. In Ontario if, as Master Schlosser held in Alberta, "a factored account is a sale, not a loan"[17] it is a sale of property subject to a statutory trust for the benefit of the contractors.

Any subsequent assignment of an account receivable in Ontario is therefore subject to the pre-existing trust in favour of the contractor or subcontractor who supplied services or materials for the improvement of the property.

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[15] *Canada Trustco Mortgage Corp v Port O'Call Hotel Inc,* [1996] 1 SCR 63 per Cory J at para 31.

[16] *Construction Lien Act*, R.S.O. 1990, c. C.30

[17] *Van T Holdings*, *supra* note 1 at para 32.

The decision in *Van T Holdings* shows just how difficult it can be to rely on construction lien jurisprudence from "foreign" jurisdictions. Commentators warn that case law in this area of law can be misleading given discrepancies in the language of provincial construction lien statutes.[18] Bristow, Glaholt, Reynolds & Wise lament the varied legal landscape in Canada with respect to construction liens:

> A lack of national uniformity in statutory construction trusts in the provinces means that suppliers of labour and materials across provincial borders find themselves with differing degrees of protection and different methods of enforcement of their claims in different jurisdictions.[19]

Although steps have recently been made toward harmonization, most notably a set of amendments that came into effect in Nova Scotia in 2005[20] that brought that province's construction lien legislation closer to Ontario's, discrepancies between the *Act*s will continue to render jurisprudence from other provinces outside Ontario of reduced value and application for cases involving construction projects in Ontario.

Calculating a Tenant's Share of Realty Taxes: A Review of the Case Law Considering the Use of Working Papers

By Julie Robbins

Since 1998 separate assessments have not been levied in respect of individual leased premises in multi-tenanted properties in Ontario but rather properties have been assessed at their "current value" and an owner receives a bill for the entire property. In order to calculate a tenant's share of such tax bill, landlords must review the realty tax provisions in their leases. Commercial leases that were entered into prior to 1998 were drafted under a regime where separate assessments were generally provided in respect of individual leased premises. Interpreting these leases has resulted in some disputes between landlords and tenants in determining the method of calculation of realty taxes.

One of the main issues relates to whether "working papers" or "valuation records" produced by the taxing authority should be considered in calculating realty tax obligations. Working papers were described in *Indigo Books & Music Inc. v. The Manufacturer's-Life Insurance Company*[21] by Justice Lederer at paragraph 7 as follows:

> Working papers are developed in the course of preparing the assessments. Although no reference is made to it in the applicable legislation, what was referred to as a "working paper system" has developed. The working papers are prepared in furtherance of the overall assessment of the building, but may take into account an understanding of the contribution of the space leased by a tenant. The working papers can be made available to those interested. They are not subject to any appeal.

The method for calculating realty taxes under a commercial lease can have significant financial consequences for both parties. A landlord wants to ensure that there are no shortfalls and that it can recover all of the realty taxes assessed against its property. A tenant will want to keep these costs as low as possible. Many sophisticated tenants have tax consultants that advise them on

[18] *Bristow, Glaholt, Reynolds & Wise*, *Construction Builders' and Mechanics' Liens in Canada,* looseleaf (Carswell, Toronto), *supra* note 23 at 9-4–9-5.

[19] *Bristow, Glaholt, Reynolds & Wise*, *supra* note 23 at 9-4.

[20] Bill 58, *An Act to amend Chapter 277 of the Revised Statutes, 1989, the Mechanics' Lien Act*, 1st Sess, 59 Leg, Nova Scotia, 2004 (assented to 20 May 2004).

[21] 2009 ONCA 885 aff'g 2009 CanLII 11432, 82 R.P.R. (4th) 226 (Ont. Sup. Ct) ("Indigo").

a site by site basis of the most financially advantageous method of calculating taxes.

The realty tax provisions in a commercial lease were recently considered by the Court in *Terrace Manor v. Sobeys Capital Incorporated*[22]. The Court agreed with the tenant, Sobey's, that the working papers and valuation records prepared by the Municipal Property Assessment Corporation ("MPAC") contained the information necessary to determine what a separate assessment would have been and accordingly, the landlord was not entitled to charge realty taxes on a proportionate share basis. The decision may be a little surprising to those familiar with the relevant case law which has generally found working papers to be unreliable.

Review of the Case Law

The decision of the Court in *Orlando Corp. v. Zellers Inc*.[23] held that working papers were not separate assessments as contemplated by the lease.[24] The lease provided that if realty taxes were assessed "en bloc" for the shopping centre or the tenant's building was "not ***assessed and taxed as a separate and independent tax lot***" (emphasis added), that the tenant would pay a proportionate share of realty taxes.[25] The Court rejected the tenant's argument that the working papers constituted a separate assessment.

Similarly, in *Sophisticated Investments Limited v. Trouncy Incorporated*[26], the Court determined that working papers could not be used to determine the "assessed value" of the premises. The lease provided that if there were no separate assessments, then the tenant's share of taxes "shall, at the option of the Landlord, be calculated by the Landlord on the basis of the ***assessed value*** of the Leased Premises" and if there were no separate assessments and the landlord could not "charge on the basis of ***assessed value***", then the tenant would pay a proportionate share of realty taxes (emphasis added).[27] The Court rejected the landlord's argument that the assessor's working papers provided an "assessed value" of the premises.

In *658425 Ontario Inc. v. Loeb*[28], the Court held that working papers did not separately "value" leased premises for tax purposes. The lease required the tenant to pay realty taxes on a proportionate share basis "provided that if the Leased Premises are ***assessed or valued separately*** by the municipality for tax purposes, then the tenant's share…shall be the sum equal to the ***assessed value***" (emphasis added).[29] Until 2003 the tenant paid on a 'separate value' basis. In 2003 the tenant demanded that realty taxes be calculated on a proportionate share basis. The Court agreed with the Tenant that the working papers did not create a "separate value".[30]

Concerns with Working Papers

Some of the concerns with relying on working papers noted in these decisions include:

(a) the calculations are informal and discretionary, and not dictated by statute or regulation;[31]

(b) disputes regarding the assessed value of a property are often resolved by negotiation

[22] 2012 ONSC 2657 (Ont. Sup. Ct.) ("Terrace Manor").

[23] 2002 CanLII 38184 (Ont. Sup. Ct.) aff'd by the Ontario Court of Appeal in 2003 CanLII 57435 ("Zellers").

[24] *Ibid*. at para 9 of the Ontario Court of Appeal decision.

[25] *Ibid*. at para 1 of the Ontario Superior Court decision.

[26] (2003) 13 R.P.R. (4th) 291 (Ont. Sup. Ct.) ("Sophisticated Investments").

[27] *Ibid*. at para 1.

[28] 2007 CarswellOnt 9619, O.J. No. 4723 (Ont.Sup.Ct.) ("Loeb").

[29] *Ibid*. at para 4.

[30] *Ibid.* at para 16.

[31] *Ibid*. at para 16.

and working papers are not always adjusted to reflect settlements;[32] and

(c) the individual figures are used to determine a gross figure for the property and cannot be considered accurate or reliable on an individual basis.[33]

These cases reflect a general view that working papers are not reliable and were not intended to be separate assessments.

In the Indigo case referred to above, the Court found that a landlord was entitled to refuse to consider working papers in determining the method for calculating realty taxes owing under the lease. Section 3 of the lease stated:

> … in the event that the Landlord is unable to obtain from the assessing authorities any separate allocation of the Landlord's Taxes or is unable to obtain from the taxing authorities any separate assessment **or other information deemed sufficient by the Landlord to make the calculations of Additional Rent** under this Lease, the Tenant's allocation of the Landlord's Taxes shall be the Tenant's Proportionate Share of the Landlord's Taxes.[34]

The landlord elected to charge realty taxes on a proportionate share basis. The tenant argued that the working papers constituted "other information" which should have been "deemed sufficient" as required by section 3 of the lease and accordingly taxes could not be charged on a proportionate share basis. The Court held that the word "deemed" gave the landlord discretion to determine whether or not the working papers were sufficient to calculate the tenant's taxes and that it was reasonable for the landlord to determine that they were not.

The Court in Indigo did not need to decide whether the Landlord could have relied on working papers; it only needed to determine whether it was reasonable for the landlord to not consider them. The Court found that it was reasonable for the landlord to deem the working papers to not be sufficient information for the purposes of calculating the tenant's taxes.

Working Papers Can be Used

Given this background, the holding in Terrace Manor may seem a little surprising. However, the result of the decision does appear to reflect the intentions of the parties as reflected in the language used in the lease and in their conduct. Section 5.2(a) of the lease states that if there were no separate assessments, then the parties would use "their reasonable and diligent efforts…**to obtain sufficient official information to determine what such separate assessments would have been if they had been made**…".[35] Section 5.2(c) of the lease provided that if there was no separate assessment then the Tenant's share of realty taxes would be:

> …determined by the Landlord reasonably and equitably allocating a portion of the Taxes levied, rated, charged or assessed against the Shopping Centre to the Premises **having regard to the generally accepted method of assessment** and applicable elements utilized by the lawful assessment authority in arriving at the assessment of similar developments if that method is known, provided however, in **no event shall the Tenant be required to pay more than its Proportionate Share** of all Taxes…assessed against the Shopping Centre (emphasis added).[36]

The landlord argued that the only method to be used for calculating realty taxes in accordance

[32] Indigo at para 39 of the Superior Court decision.

[33] *Ibid* at para 39 and Sophisticated Investments at para 22.

[34] Indigo, at para 9 of the Superior Court decision.

[35] Terrace Manor, at para 6.

[36] *Ibid*., at para 6.

with the lease was the proportionate share method. This method had been used for the period 1998 to 2002. In 2003 the tenant advised the landlord it disagreed with the proportionate share method and argued an assessed value approach should be used. Although the landlord disagreed, it began charging taxes based on the assessed value found in the working papers. However, in 2010 the landlord sent supplemental invoices charging the tenant for amounts owing based on a proportionate share calculation for the period 2005 to 2009. The tenant refused to pay.

The Court stated that the particular language in the lease distinguished it from the other cases to which it was referred. The Court appeared to find the working papers to be a reliable source because the records contain all of the necessary information to determine how the current value was calculated for each unit and the individual assessments are used for other official purposes, such as vacancy and charity rebates.[37]

The Court held that the valuation records were "official" and provided "sufficient information to determine what a separate assessment would have been, had one been made".[38] As the landlord had the information necessary to determine what a separate assessment would have been, the provisions of Section 5.2(a) of the lease applied.

It is interesting that the Court relied on Section 5.2(a) of the lease to find in favour of the tenant. By doing this, the Court had to determine that the working papers were "official" information that could determine what a separate assessment would have been. This appears contrary to the decisions in Zellers, Sophisticated Investments and Loeb. However, the result seems to be consistent with the provisions of Section 5.2(c) of the lease which specifically required the landlord, if there were no separate assessments, to act reasonably and equitably in determining the tenant's share "having regard to the generally accepted method of assessment and applicable elements utilized by the lawful assessment authority".[39] This language appears broad enough to support the tenant's position that an assessed value method should be used to calculate its share of taxes. In addition, this language would likely allow the landlord to make any necessary adjustments to the individual assessment if it was determined that they were not reliable or correct.

The Court was likely also influenced by the fact that the landlord had charged the tenant on an assessed value basis for a number of years before changing to a proportionate share calculation. Refusing to allow the landlord to change its method of calculation is consistent with the decision in *OGT Holdings Ltd. v. Startek Canada Services Ltd.*[40] The lease in Startek required the tenant to pay a proportionate share of taxes but if there was "**a separate assessment or apportionment** and/or bill in respect of the Leased Premises" the Landlord could, at its option, use such separate assessment or apportionment.[41]

In that case, the landlord had been charging the tenant based on the assessed value provided by MPAC. Four years later, the landlord changed to a proportionate share calculation. The landlord argued it was mistaken in relying on the working papers and had "inadvertently acted (with the concordance of the Tenant) in a manner contrary to the Lease".[42] The Court rejected this argument and agreed with the tenant that the landlord had elected to use an assessed value method rather than proportionate share. The Court distinguished the lease from the prior cases because of the

[37] *Ibid.*, at paras 41-44.

[38] *Ibid.*, at para 49.

[39] *Ibid.*, at para 6.

[40] 2010 ONCA 438 aff'g 89 R.P.R (4th) 89 (Ont. Sup. Ct.) amended by 2010 ONSC 1090 ("Startek").

[41] *Ibid.*, at para 3.

[42] *Ibid.*, at para 18.

word "apportionment" and that the apportionment did not have to come from the taxing authority. The Court accepted that there was a separate apportionment available.[43] Once the landlord elected to proceed with the assessed value approach, the Court held “that election was final” and the landlord could not “resile from that election”.[44] This is similar to Terrace Manor where the landlord had charged based on the assessed value approach but later tried to change the calculation method to a proportionate share basis.

The Terrace Manor decision is a reminder that there are circumstances where a Court will allow a party to consider working papers in determining a tenant’s share of realty taxes even if the lease does not specifically refer to working papers. In addition, it is an example of the notion that once a landlord has chosen a method of calculation that it cannot change that method to obtain a unilateral benefit to the tenant’s detriment.

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For further information, please contact a member of our National Real Estate Group.

[43] *Ibid.*, at para 16.

[44] *Ibid.*, at para 25.