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Date: November 17, 2009
To: All Clients and Friends
From: Cliff Bernstein
Re: Recent Cases of Interest

**NEW YORK
RECENT CASES OF INTEREST FOR REAL ESTATE LAWYERS**

Kopp v. Boyango

11/4/2009

Second Department

Real Property Law; Contracts; Seller's Warranty of Compliance with Zoning Laws.

Plaintiffs (buyers), who brought an action to recover their down payment for the purchase of defendant's home, alleged that the defendant breached the contract of sale, in which the seller represented that the house was a legal one-family dwelling. After the parties executed the contract of sale and the plaintiffs learned that the defendant had converted the garage into additional living space without obtaining required permits from the City of New York, plaintiffs' counsel sent a letter to defendant's counsel indicating that the defendant could either make the premises legal or return the down payment. In response, the defendant sent a "time of the essence" demand for closing. In the actual event, plaintiffs chose not to appear at the "closing." Both parties moved for summary judgment. Order denying plaintiffs' motion and granting defendant's motion is reversed in its entirety. Although the general rule is that a purchaser takes property subject to applicable zoning laws, an exception exists where, as here, the seller represents in the contract of sale that the structures on the property will not be in violation of any zoning ordinance or regulation. Thus, the plaintiffs had the right to demand that the defendant either correct the violation or return the down payment. Further, plaintiffs did not waive these rights by not appearing at the "closing," as the defendant was in breach of contract. [Kopp v. Boyango](#). Decided 11/4/09.

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