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publication in the New York Reports.

No. 32
In the Matter of 10 East Realty,
LLC, et al.,
 Respondents,
 v.
Incorporated Village of Valley
Stream, et al.,
 Appellants.

John E. Ryan, for appellants.
Jordan M. Hyman, for respondents.
New York State Conference of Mayors and Municipal
Officials; City of New York, amici curiae.

JONES, J.:

The issue before this Court is whether a purchase money mortgage taken by a municipality to secure the payment of the consideration in connection with a sale of municipal property to a private entity violates article VIII section 1 of the New York

Constitution.

In 2002, respondent, the Incorporated Village of Valley Stream (the Village), sold a parcel of land owned by the Village to 1 E. Lincoln Realty Corp, a private entity, for \$275,000. Under the purchase agreement, no money was to be paid at closing, instead the consideration was to be paid over 15 years with an interest rate of 5% per annum. The Village took a mortgage interest in the property to secure the deferred payments under the contract. Petitioners, a civic organization and several residents, then commenced the instant article 78 proceeding (1) to annul the Village's resolution which authorized the sale and (2) to enjoin the Village from closing on the sale, alleging, among other things, that the transaction involved an unconstitutional loan under article VIII section 1 of the New York Constitution (Gift or Loan clause). Modifying Supreme Court's dismissal of the petition, the Appellate Division held that the purchase money mortgage was a loan prohibited by the Gift or Loan clause. We disagree.

The Gift or Loan clause provides that "[n]o county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking ..." (NY Const art VIII, § 1). A purchase money mortgage is generally defined as "a mortgage executed at the time of purchase of the land and contemporaneously with the acquisition of legal title, or

afterwards, but as a part of the same transaction, to secure an unpaid balance of the purchase price" (Szerdahelyi v Harris, 67 NY2d 42, 46 [1986]). In Mandelino v Fribourg, this Court answered the question of "whether a purchase money mortgage is to be regarded in law as a loan" in the negative (23 NY2d 145, 147 [1968]). Although decided in the context of the usury laws, the rationale is equally applicable in this case. "A contract which provides for [payment of interest] ... upon a deferred payment ... constitutes the consideration for the sale ... " (id. at 151) and such a transaction is not the type contemplated by the Gift or Loan clause (see Sun Print & Publ Assn v Mayor of the City of New York, 152 NY 257, 268-269 [1897]).

Here, the Village made no loan of money or property to the purchaser. The fact that the consideration in this sale mentions an interest rate and a term of payment, or that a mortgage was taken as a security interest, does not make this transaction involving a deferred payment plan an unconstitutional loan.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, with costs, and the judgment of Supreme Court reinstated.

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Order, insofar as appealed from, reversed, with costs, and judgment of Supreme Court, Nassau County, reinstated. Opinion by Judge Jones. Judges Ciparick, Graffeo, Read, Smith and Pigott concur. Chief Judge Lippman took no part.

Decided March 31, 2009