           JUDGE BACKS EVICTION OF ESSEX STREET VENDORS [FNa]

                             Edward A. Adams

 THREE VENDORS in the city-owned Essex Street Market on Manhattan's Lower East
Side--including a pickle vendor who has sold his wares in the complex for over 50
years--can be evicted, despite their claims to a constitutional right to remain, a
Manhattan Civil Court judge has ruled.

 The vendors include a company that sells men's clothing, located in the Market
for 13 years, and a purveyor of smoked fish, which has been there for 12 years.

 The vendors claimed their businesses are part of a "tradition that dates back to
the days of the push cart," said Judge Paula J. Omansky in I.S.J. Management Corp.
v. Delancy Clothing Inc., L & T 80396/90. The landlord, who manages the facility
for the city, wanted to charge higher rents that would deprive them "of their
right to earn a living," the vendors said.

 But Judge Omansky found that the duration of their tenancies could not be
considered in their claim to a property interest.

 She also found that the now-defunct Board of Estimate rejected proposed efforts
to protect the merchants when it approved a plan to lease and renovate the Market,
which gave rise to the higher rents.

 This is the second recent case to address the relationship of Market tenants with
their landlord. In a separate case decided two weeks before Delancy, Manhattan
Civil Court Judge Joan B. Lobis was unwilling to grant the management company
summary judgment.

 In I.S.J. Management Corp. v. Essex Street Market Retail Merchants Realty Corp.,
L & T 93230/90, Judge Lobis ordered a trial on the issue whether the leases for
three other tenants could be terminated.

 She found, as did Judge Omansky, that there is no precedent for granting
commercial tenants a right to renew leases. But she also said that "these
tenancies are somewhat unique."

 The management company was required by its contract with the city to renew the
leases of all "qualified merchants," Judge Lobis said. The contract defined such

merchants as those that were:

 "Currently occupying a stall pursuant to a written sublease or license for such stall from the Merchant Association as of a date prior to the commencement date, which merchant is currently paying rent and all other charges, if any, on a timely basis."

 Judge Lobis said she did not have sufficient information to decide whether the three tenants fell under that classification.

Pushcarts

 The Market opened in 1939, as part of then-Mayor Fiorello LaGuardia's efforts to rid the city's streets of push-cart vendors. It is housed in four, one-story buildings on the east side of Essex Street between Stanton and Broome.

 As recently as 1988, some vendors paid as little as $20 a week for their stalls, according to a New York Times article in that year. The three vendors in the Delancy case paid between $300 and $2,000 a month in rent, according to their attorney, William Gribben of **Himmelstein &** McConnell. Their city permits expired in 1986, and they remained as month-to-month tenants.

 In December 1989, the Board of Estimate leased the facility to I.S.J. Management Corp., which planned a multi-million dollar renovation to be reimbursed by the city. In April 1990, the management company told each of the three tenants in Delancy it was about to begin eviction proceedings.

 The vendors claimed they had the same right to renew their leases as residents of public housing projects. But Judge Omansky noted they "point to no policy, law, or regulation protecting commercial tenancies in the private or public sector," and she declined to create such authority here.

 The judge also found the tenants' leases with the city included a waiver of a right to a jury trial, which she said applied to this case.

 Mr. Gribben represented the tenants in both cases. Bruce Feldman of Karsch & Meyer represented the management company.

FNa The decision is on page 22, column 4.

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