CO-OP&CONDO
CASE LAW TRACKER
digest
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ALTERATIONS

RUDZIKEWYCZ V. 164 W. 79TH ST. CORP.

2025 NY SLIP OP 31771(U) (SUP. CT. N.Y. CNTY. MAY 16, 2025)

Labor Law Claims Against Co-op and Managing Agent Are Dismissed

SQUIB BY LLOYD F. REISMAN, PARTNER, BELKIN BURDEN GOLDMAN

OUTCOME: Decided, in part, for Co-op and Managing Agent Defendants

WHAT HAPPENED: The plaintiff, a contractor employed by Roth Built Works, Inc., was injured after falling from a 6-foot A-frame ladder while working in an apartment owned by Mr. Dey. The plaintiff claimed the ladder shifted unexpectedly while he was installing ductwork, causing him to fall. The cooperative corporation's resident manager testified that the ladder was improperly placed on garbage bags, contributing to the fall.

As has become commonplace throughout New York City, and despite the fact that neither the cooperative corporation nor the managing agent had any contractual relationship with the plaintiff, claims were nevertheless asserted against the cooperative corporation and the managing agent based on, among other things, the strict liability of an owner under New York State Labor Law §§200, 240, and 241.

IN COURT: After denying all claims against the cooperative corporation and the managing agent, a third-party complaint was filed against the shareholder and the plaintiff's employer, seeking their participation in the action. This step was necessary because the shareholder and the employer had not previously accepted the tender of defense and indemnification made on behalf of the cooperative corporation and the managing agent.

The third-party complaint sought, among other things, the shareholder's indemnification of the cooperative corporation and the managing agent based on certain obligations set forth in the alteration agreement between the shareholder and the cooperative corporation which was executed prior to the commencement of the alteration work, and the employer's indemnification of the cooperative corporation and the managing agent based on certain obligations

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JULY 2025 HIGHLIGHTS

CO-OP&CONDO CASE LAW TRACKER **digest**

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CO-OP & CONDO CASE LAW TRACKER DIGEST includes cases and squib commentary written by the Tracker's Advisory Panel and contributors, who are New York's leading co-op/condo practitioners. This issue covers court decisions from May 2025. For additional cases, visit https://coopcondocaselawtracker.com.

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set forth in the agreement between the shareholder and the employer pursuant to which the alteration was being performed.

After the third-party complaint, the cooperative corporation sought the summary dismissal of the plaintiff's claims and summary judgment on its third-party claims for indemnification. The plaintiff sought summary judgment on his Labor Law §240(1) claim against the cooperative corporation and the managing agent.

In its decision, the court held that: (1) the cooperative corporation and the managing agent were entitled to summary judgment on their third-party claims for indemnification against the shareholder and the employer, noting that neither the cooperative corporation nor the managing agent were "[i]n any way negligent relative to the Work or plaintiff's accident and injuries"; (2) the plaintiff's Labor Law §200 (and common law negligence) claim against cooperative corporation and the managing agent were dismissed because they did not exercise control over the means and methods of the plaintiff's work, nor were they aware of any defect or dangerous condition in the apartment giving rise to the injury (the court noted that the garbage bags present in the apartment were not an "inherent defect" and were the responsibility of the employer); and (3) the plaintiff's Labor Law §240(1) claim against the cooperative corporation and the managing agent remain viable, as there remain triable questions of fact about the condition of the ladder and whether the plaintiff was the sole proximate cause of his accident and injuries.

The employer has since filed an appeal to determine whether the motion court erred in failing to dismiss the plaintiff's Labor Law §240(1) claim and in granting summary judgment in favor of the cooperative corporation and managing agent for indemnification from the employer.

TAKEAWAY:

Cooperatives (and condominiums) need to be vigilant to ensure that their forms of alteration agreements (and related agreements) include appropriate risk transfer language. Here, the cooperative corporation and the managing agent were able to fall back on the terms of the alteration agreement to make certain that the shareholder and its contractor would ultimately be responsible for all damages sustained in connection with these claims (pending any determination that the cooperative corporation and/or the managing agent caused or contributed to the underlying accident or injury).

Notwithstanding this seemingly positive outcome, the cooperative corporation still had to submit this claim to its insurance carrier and deal with its impact in terms of insurance renewal and premium increases. The current legislative climate in New York makes claims such as this all but inevitable, and even the helpful language of an alteration agreement cannot mitigate against the underlying litigation exposure. The bottom line is that cooperatives (and condominiums) should review their existing agreements with counsel and their insurance carriers to confirm appropriate language is present.

BYLAWS

THE BD. OF MGRS. OF THE 80TH AT MADISON CONDO. V. 1055 MADISON AVE. OWNERS LLC

2025 NY SLIP OP 31854(U) (SUP. CT. N.Y. CNTY. MAR. 22 2025)

Condo Motion for Permanent Injunction Against Commercial Unit Owner Denied, Case Dismissed

SQUIB BY THOMAS P. HIGGINS, PARTNER, HIGGINS & TRIPPETT

OUTCOME: Decided for Defendant Commercial Unit Owner

WHAT HAPPENED: A condominium and a commercial unit owner got into a dispute over whether the unit owner violated the declaration and bylaws by removing a catwalk located inside the unit. The catwalk, a narrow walkway high on the wall, allowed workers to access pipe valves located 20 feet above floor level. Without the catwalk, workers lacked access to the valves. The commercial unit owner moved for summary judgment and dismissal of the complaint, while the condominium cross-moved for summary judgment and a permanent injunction compelling the unit owner to reinstall the catwalk.

IN COURT: The court reviewed the evidence about the catwalk, and concluded that the commercial unit owner had the right under the declaration and bylaws to make alterations to its unit without the consent of the condominium. Yet the condominium's lack of access to the pipe valves, expressly reserved by easement in the declaration and bylaws, was impaired and violated by the unit owner's removal of the catwalk.

While the condominium sought to remedy the situation by a permanent injunction against the unit owner, compelling the unit owner to reinstall the catwalk, the court held that this remedy was extraordinary and unwarranted. The record contained expert testimony that there were three ways to provide access to the pipe valves: First, a new catwalk could be installed for $165,000; second, the pipe valves could be lowered for $240,00; or third, the pipe valves could be lowered even further, into the basement and out of the commercial unit entirely, for $290,000.

These three remedies, all of which were available to the condominium, showed that the extraordinary judicial remedy of compelling action by the unit owner was unnecessary. The condominium had the power under the rules to take any of the three actions to remedy access to the pipes, and could then seek reimbursement from the unit owner of the costs for doing so under the bylaws. Because a remedy at law existed, there was no ground for a permanent injunction. As such, the condominium's cross-motion for an injunction was denied, and the condominium's claims seeking an injunction were dismissed.

TAKEAWAY:

A judge has the power to make a commercial unit owner live up to its obligations under the declaration and bylaws. Compelling specific action, or forbidding certain behavior, comes in the form of a permanent injunction, a court order that mandates compliance. But this judicial power is extraordinary, and courts are hesitant to employ it. A party violating the injunction is in contempt of court, and the litigants must return to the courthouse for a judicial determination of that issue. The court is tasked with reviewing a party's behavior, for the indefinite future, and the litigation therefore lacks finality and a clean ending. A party should be wary of seeking a permanent injunction, and should contemplate whether there are other ways to solve the problem that can be reduced to dollars. Money judgments are easy to enforce; they are clear and final; and there is no ambiguity over compliance with a court's ruling.

Here, the judge did not say the commercial unit owner could violate its obligations under the declaration and bylaws with impunity. But the proper remedy was for the condominium to spend money to fix the problem, and then bill the unit owner for the cost. Those costs could be readily determined and reduced to a money judgment against the unit owner.

COMMON ELEMENTS

BARKAGAN V. THE BD. OF MGRS. OF 521 PARK AVE. CONDO.

NO. 156461/2025 (SUP. CT. N.Y. CNTY. MAY 29, 2025) NYSCEF NO. 21

Storage Bins Are Common Elements Rented by Unit Owner, Not His Deeded Property

SQUIB BY ANDREW P. BRUCKER, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Condo Defendants

WHAT HAPPENED: Barkagan was an owner of a unit of a New York City condominium. Since 1992, pursuant to an oral agreement with the condominium, he rented two storage bins, originally for no cost, and then starting in the late 1990s, for a monthly charge of $100 per bin.

In 2024, the condo asked Barkagan (who was in arrears in monthly rent payments for the bins) to remove his personal property from the bins so it could expand the condominium's gym. The condominium gave him a reasonable amount of time to do so, and offered to help move his personal property. Barkagan refused.

IN COURT: Barkagan brought a proceeding seeking declarative and injunctive relief (in order to prevent the condominium from using "self-help"), but the court denied all relief sought by him. Barkagan first argued that the condominium did not serve a warrant of eviction in compliance with Real Property Actions & Proceedings Law (RPAPL) §711, but the court held that this would apply only to residences, which a storage bin clearly is not. The court also held that since the bins were not his property under a deed or any agreement, he had no right to exclusive possession. Therefore, he did not establish a likelihood of success (required of any preliminary injunction).

The court also held that there would be no irreparable harm, since Barkagan could always store his personal property in his condominium unit (or find another place to store it). Further, the court held that the condominium's decision to terminate Barkagan's use of a common element was protected (and permitted) under the business judgment rule.

TAKEAWAY:

A storage bin (unless included in the definition of the unit) in a condominium is typically a common element. As such the unit owner using it has no proprietary right to it, and is granted the use of it only until the board takes it back. Rather than take a chance as to what a court might do, it is wise for any condominium board that allows a unit owner to use any common element to demand that a license agreement be signed by the unit owner. That document would set forth the rights and obligations of both parties. By doing so, the condominium can make it clear that it would have the right to terminate the use of the common element at any time.

It should be noted that if a bin (or other property outside of the unit) is designated as a limited common element, the declaration and bylaws should be carefully reviewed as to the rights of the unit owner to use the property.

ELECTIONS

MCARDLE V. EDGEWATER PARK OWNERS COOP.

NO. 810194/2024E (SUP. CT. N.Y. CNTY. MAY 13, 2025) NYSCEF NO. 53

Co-op Can't Exclude Shareholders from the Ballot for New Directors

SQUIB BY STEWART E. WURTZEL, PRINCIPAL, TANE WATERMAN WURTZEL

OUTCOME: Decided for Plaintiff Shareholders

WHAT HAPPENED: Four shareholders in the Edgewater Park Owners Cooperative—a homeowner's association—brought an Article 78 proceeding to challenge the cooperative's decision to bar them from running for the board of directors and excluding them from the ballot at the 2024 annual meeting.

Edgewater Park is a 675-home cooperative located in the Bronx, where shareholders own and maintain their own home but pay a monthly charge for common area maintenance and property taxes. On the property is a separate building known as the Mansion, which was leased to the Edgewater Athletic Association (EAA), an independent organization, for social purposes. Disputes arose between EAA and the cooperative regarding the operation of the Mansion and an adversarial relationship developed between the cooperative and the EAA.

The board disqualified the four candidates because they were all affiliated in some way with the EAA and felt that a conflict of interest existed that should preclude them from serving on the board. The board asserted that the bylaws require all board candidates to be "in good standing," a term they interpreted broadly to encompass moral, ethical, and fiduciary obligations that they claimed were violated by the "destabilizing" conduct of the EAA.

The cooperative's bylaws had only three requirements for eligibility to serve on the board and run for office: (1) you had to be a stockholder in the cooperative; (2) you had to be an occupant of a dwelling on the property; and (3) you must have a petition signed by 15 percent of the shareholders at least 20 days before the annual meeting supporting your nomination. The four petitioners satisfied all of these criteria.

IN COURT: The court ruled that the petitioners were all entitled to be candidates and ordered the cooperative to add them to the ballot. It found the board's decision to exclude the candidates to be arbitrary and capricious and that the business judgment rule could not be used to justify actions taken in contravention of the bylaws. If there are issues with the EAA, the court held that the proper course of conduct for the board would be to bring action directly against the EAA and not to preclude otherwise qualified individuals from running for the board. The candidates' alleged conflict of interest could be aired at the shareholder's meeting and considered by the shareholders in determining whether to vote for them or not.

TAKEAWAY:
Once again, the corporate documents rule and dictate the outcome. Don't add conditions that are not set forth in the bylaws. Don't disenfranchise your shareholder's ability to vote for properly qualified candidates of their choosing. Don't try to rely on the business judgment rule to justify non-compliance with the bylaws or the proprietary lease.

EVICTION/TERMINATION

330 S. THIRD ST. HOUS. DEV. FUND CORP. V. ALBEDIA

2025 NY SLIP OP 25126 (APP. TERM 2D DEP'T. MAR. 20 2025)

HDFC Board Can Terminate Shareholder's Lease for Objectionable Conduct

SQUIB BY STEVEN S. ANDERSON, SHAREHOLDER, BECKER

OUTCOME: Decided for Petitioner-Appellant

WHAT HAPPENED: The petitioner is a housing development fund corporation (HDFC) cooperative, a corporation formed pursuant to the NY Private Housing Finance Law for persons of low income; its building is located in Brooklyn. The respondent is a shareholder of the apartment, and like other shareholders, possessed a 99-year proprietary lease. The respondent lived in the apartment with her son, and subsequently her brother.

Over a period of time, the cooperative board of directors observed significant and substantial "objectionable" conduct by the occupants of the respondent's apartment and their visitors. Videotapes showed they caused regular disturbances to their neighbors, including but not limited to, screaming, loud noises, fights, smoking in common areas, assaulting other residents, and so on. The board served a notice—pursuant to the proprietary lease—of "objectionable conduct." An opportunity to cure, pursuant to the lease, was given. The respondent did not take heed, and the behaviors continued.

As such, to protect its shareholders, the board voted, as provided by the lease, to have a special meeting to determine whether to terminate the shareholder's lease. Ultimately, a two-thirds majority of the board (as required by the lease) voted for termination after a special meeting and after the shareholder was given the opportunity—at length—to be heard on all relevant issues and matters at the meeting. Thereafter, an eviction proceeding was commenced based upon lease termination procedures having been faithfully and lawfully followed, effectively terminating the lease before the end of its (99-year) term.

The respondent moved in Housing Court to dismiss the petition for failure to comply with notice provisions of the Real Property Law—to wit, a notice requirement added by the Housing Stability and Tenant Protection Act of 2019 that provided for notice—upon and after expiration of a lease. Absent such notice, the respondent alleged, a lease cannot be terminated.

IN COURT: The trial court agreed and held that this notice was not lawfully given, as entitled by a shareholder of a cooperative housing corporation subject to provisions of the Private Housing Finance Law. The court dismissed the cooperative-landlord's petition.

The Appellate Court, however, reversed the lower court, essentially finding the housing court was mixing apples and oranges as regards the notice provisions required to terminate a lease for "objectionable conduct" under the Private Housing Finance Law. The Appellate Court found that the cooperative had met with all lease requirements: (1) lawfully giving notice of "objectionable conduct;" (2) providing an opportunity to cure; (3) holding a lawful "special" board meeting at which the tenant was given full opportunity to be heard; and (4) lawfully voting for lease termination. Having followed these lease procedures, the cooperative was NOT required to give a particular lease termination notice, otherwise required by statute only on a nonrenewal notice at the end of a lease term.

The Appellate Court relied upon two decades of case law dating from the Court of the Appeals' decision in the iconic *Pullman* case (*40 W. 67th St. Corp. v. Pullman*, 100 N.Y.2d 147, 149-150 (2003)): Where lease procedures in a cooperative corporation constituent documents are followed, a shareholder's interest in the cooperative may, and can, lawfully, be terminated based upon "objectionable conduct"—BEFORE the end of a lease term. This holding may be challenged only by seeking to overcome the business judgment rule applicable to cooperative board decision-making generally, including board determinations of "objectionable conduct."

The Appellate Court made clear that while the analysis and business judgment rule standard of

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review—and broad protection for boards—had only been previously applied for non-HDFC cooperatives, the standard was the same for HDFC cooperatives (with low-income tenants subject to the Private Housing Finance Law). The Appellate Court explicitly rejected the tenant's argument that a landlord must be held to a higher standard of proof and showing of "good cause" to terminate the shareholder's lease where an HDFC cooperative is involved in an objectionable conduct proceeding and matter.

TAKEAWAY:
Pullman **law and deference–one might say overwhelming deference—to cooperative boards' decision-making applies to HDFC cooperatives as well as "regular" non-HDFC cooperatives. All boards need to do is comply with lease procedures that give shareholders notice and an opportunity to be heard; then, the legal burden for a tenant-shareholder—even a low-income shareholder under the Private Housing Finance Law—is all but, in this writer's experience, insurmountable. That is particularly the case for a tenant-shareholder up against a record of "objectionable conduct" as this lower court (public) record makes clear. A board—HDFC or "regular" cooperative—just needs to follow lease procedures if it wants to terminate a shareholder's lease for objectionable conduct. The courts historically respect board decisions in such instances without any requisite, such as the "good cause" requisite that the respondent-tenant sought to have apply in this case. The determination of "cause" rests with the board of directors, and not the courts.**

FIDUCIARY DUTY

KARKUS V. 331 W. 71ST ST. APT. CORP.

2025 NY SLIP OP 31693(U) (SUP. CT. N.Y. CNTY. MAY 9, 2025)

Co-op's Delay in Performing Repairs Doesn't Constitute Malfeasance

SQUIB BY HELENE W. HARTIG, FOUNDER AND PRINCIPAL, HARTIG LAW

OUTCOME: Decided for Plaintiff Shareholder, Defendant Co-op

WHAT HAPPENED: The plaintiff shareholder owns 21.25 percent of the shares in a small cooperative building on the Upper West Side of Manhattan. The plaintiff's multi-level unit was allegedly flooded repeatedly in 2021. Waterproofing work was performed several years after the flooding, by a contractor of the plaintiff's choosing and at the expense of the defendant apartment corporation.

Following discovery, the plaintiff moved for summary judgment, alleging that the defendant was liable because of the inordinate delay in the repairs process and because the terms of the parties' proprietary lease mandated that the defendant maintain the exterior of the subject premises in good repair. The plaintiff also alleged that the conduct of the defendant towards the plaintiff constituted malfeasance and bad faith.

The defendant opposed a finding of summary judgment, alleging that: (1) the two-year delay in making repairs was attributable to factors beyond the defendant's control; (2) the plaintiff's situation was of her own making; and (3) the plaintiff was not entitled to any relief based on the breach of the warranty of habitability because the plaintiff did not occupy her unit and because she had failed to mitigate damages. The defendant sought a finding of summary judgment on its counterclaim that the plaintiff improperly converted her cellar area into a living room in contravention of the building's certificate of occupancy.

IN COURT: The court held that because there were conflicting affidavits from experts and numerous disputed issues of fact, summary judgment was premature and inappropriate. Whether the alleged water damage was a "result of the weather, a broken pipe or Plaintiff's own conduct" could be determined only by the trier of fact following a trial.

The passage of time between the corporation's learning of water infiltration and its making of repairs also did not necessarily amount to a breach of the proprietary lease or breach of fiduciary duty. Before such a finding of

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liability could be made, the court would consider many factors, including but not limited to, the age of the building, why the waterproofing and foundational structure had failed, the time the corporation needed to evaluate its repair options, the delays attributable to outside factors, such as governmental filings, and the availability and scheduling by the corporation's preferred contractor.

If there was, as here, any doubt as to the state of an apartment, summary judgment could not be awarded. Whether or not a plaintiff occupied her damaged unit herself or sublet also had no bearing on whether she could assert a claim based on the breach of the warranty of habitability.

Further, the counterclaim of the corporate defendant would be dismissed because no proof whatsoever was presented to the court regarding the plaintiff's use of the cellar area and why it was impermissible and illegal.

TAKEAWAY:
Liability against a corporate defendant will not be presumed simply because a proprietary lease obligates it to maintain the structural elements of a building and keep it in "good repair." However, even after repairs are made, an aggrieved shareholder may be entitled to an abatement, whether or not he or she occupied his or her water damaged unit. When there are a limited number of shareholders and an aggrieved shareholder is "outnumbered" in share allocation, the courts will go to extraordinary lengths to examine the totality of the circumstances to determine whether a corporation's directors acted in good faith or committed malfeasance. If there are conflicting affidavits from experts, or any material issues of fact as to the cause of damages or the actual amount of loss, a trial will be required to determine liability. Similarly, if there is any doubt or dispute about the state of an apartment, despite photographs and affidavits, or a disagreement about what prolonged the repairs process, summary judgment is precluded.

LABOR LAW

DELCID–FUNEZ V. SEASONS AT E. MEADOW HOME OWNERS ASSOC., INC.

2025 NY SLIP OP 02569 (2ND DEP'T. APR. 30, 2025)

Homeowners Association Unable to Escape Labor Law §240(1) Liability at Summary Judgment Stage

SQUIB BY DREW PAKETT, PARTNER, BRAVERMAN GREENSPUN

OUTCOME: Decided for Plaintiff, Defendant Condo

WHAT HAPPENED: The plaintiff, a worker employed by a roofing contractor, claimed that while he was shoveling snow off the roof of a unit in the homeowners association, he fell approximately 30 feet to the ground and sustained injuries.

According to the deposition testimony, a unit owner in the association notified a member of the board that there was a ceiling leak in her unit. The association (or its managing agent) then called the roofing contractor that same day to conduct an emergency inspection of the leak. Prior to the inspection, the roofing professional was not required to enter into any written contract. It was during this visit to the unit that the plaintiff fell off the roof while he was shoveling snow.

The plaintiff commenced a lawsuit against the association and its managing agent asserting causes of action sounding in common law negligence and violations of New York Labor Law §§200, 240(1), and 241(6).

IN COURT: Following discovery, both the plaintiff and the association (and its managing agent) moved for summary judgment on the issue of liability as to the Labor Law §240(1) claim. The lower court denied both motions, finding that there was an issue of fact as to whether the plaintiff was engaged in a covered activity under the statute when he was shoveling snow off the roof. Specifically, the lower court determined that it was unclear whether the snow shoveling constituted "routine maintenance,"

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which would not be covered by the statute, or whether it would be deemed "cleaning," which is covered by the statute, given the plaintiff was called to the premises due to an emergency involving an active leak. The lower court also rejected the association's alternative argument that the plaintiff was the sole proximate cause of his accident. The Appellate Division affirmed the lower court's decision.

TAKEAWAY:
Although boards must often act quickly to address emergency situations that may arise in a building, it is important to ensure that the building/association still takes the time to minimize its liability exposure. Here, Labor Law §240(1) imposes absolute liability against any contractor or owner who fails to furnish an employee with appropriate safety devices necessary to protect workers from risks inherent in elevated work sites. Although this duty is nondelegable, the association should have required the roofing professional to execute, at minimum, an insurance and indemnification agreement prior to arriving that would have, among other things, obligated the roofing professional to maintain primary insurance coverage and indemnify/hold harmless the association from any negligence on the part of the contractor and its employees. If it had, it is very likely that the association would have been able to pass through any monetary exposure from a judgment in this lawsuit to the roofing contractor under a theory of contractual indemnification.

NUISANCE

CADMAN PLAZA N., INC. V. BOTKIN

2025 NY SLIP OP 31869(U) (SUP. CT. KINGS. CNTY. MAY 20, 2025)

Court Ends "Reign of Terror" by Barring Disruptive Tenant from Mitchell-Lama Co-op Building

SQUIB BY WILLIAM D. MCCRACKEN, PARTNER, MORITT HOCK & HAMROFF

OUTCOME: Decided for Plaintiff Co-op

WHAT HAPPENED: The plaintiff, Cadman Plaza North, Inc., a Mitchell-Lama cooperative in downtown Brooklyn, brought an ejectment action against the defendant, a tenant-shareholder of the cooperative. The cooperative then moved for injunctive relief permanently barring the defendant from the building.

The basis for this relief was that the defendant had allegedly "conducted a reign of terror over a span of many years" in the building. The defendant was accused of behavior constituting an "incurable nuisance," supported by, among other things, video evidence of the defendant physically attacking a fellow shareholder, a cache of answering machine messages containing death threats against people, and other outrageous and harassing behavior.

In prior litigation with the cooperative beginning in 2009, the defendant had agreed to a settlement whereby she agreed "not [to] engage in physical altercations with anyone at the building," "refrain from cursing or using racial epithets," and "not [to] threaten or harass" anyone in the public areas of the building.

However, the offensive behavior continued, and in January 2024 the cooperative then filed this lawsuit and moved to eject her from the building. As a Mitchell-Lama development, the cooperative had first requested, and had been granted, a waiver of HPD eviction proceedings before filing this lawsuit. The defendant opposed the motion.

IN COURT: Finding that the defendant's residency "jeopardizes the health and safety" of the residents of the cooperative, the court enjoined the defendant from any further occupancy of the building pending a final resolution of the case.

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TAKEAWAY:
This case described extremely egregious behavior of the defendant tenant-shareholder, as well as the extreme lengths that the Mitchell-Lama cooperative had to go to successfully (if only provisionally) remove the defendant from the building. The first litigation against her had been filed in 2009 and had resulted in an 11-day hearing. The most recent motion had resulted in a hearing with four witnesses for the cooperative and an extensive documentary record. In the end, the evidence that the defendant's behavior constituted an incurable nuisance was overwhelming.

NUISANCE

THE BD. OF MGRS. OF THE 7 METROTECH CONDO. V. DERUYTTER

2025 NY SLIP OP 31651(U) (SUP. CT. N.Y. CNTY. MAY 6, 2025)

Commercial Unit Owner Guilty of Civil Contempt for Violating Injunction Barring His Tenant's Objectionable Conduct

SQUIB BY KENNETH R. JACOBS, PARTNER, SMITH BUSS JACOBS

OUTCOME: Decided for Plaintiff Condo Board

WHAT HAPPENED: Defendant Wouter Deruytter owned several units in the 7 Metrotech Condominium including Unit 16PRO, a professional unit. Metrotech had procured a preliminary injunction against him in August 2024 restraining the defendant from: (1) permitting anyone to sleep overnight in the professional unit; (2) creating a nuisance or interfering with "peaceful possession" of the premises by its residents by engaging in "objectionable conduct", including causing excessive noise and loitering; (3) disobeying, threatening, harassing, or intimidating the building staff by words or actions; and (4) violating the condominium's bylaws and Rules and Regulations (including making unauthorized alterations).

Metrotech subsequently filed separate motions seeking a new preliminary injunction as well as criminal and civil contempt against Mr. Deruytter due to alleged violations of the 2024 preliminary injunction. These included several incidents where guests of the occupant of the professional unit ("Sands") created a nuisance within the building and needed to be escorted out by police. (In one particular incident, the police removed an unauthorized guest of Sands who had been wandering nude through the building for almost an hour.) At other times Sands failed to escort guests from the lobby to the units owned by Mr. Deruytter, as required under the bylaws; and Sands continued to use Unit 16PRO for overnight occupancy. The board also sought attorney's fees and a default judgment in connection with an earlier claim.

Mr. Deruytter opposed both motions. He claimed that he had not violated the provisions of the bylaws relating to alterations since his alterations were cosmetic in nature (which did not require board consent). As to the criminal contempt motion, he denied liability because he had instructed Sands that unescorted guests were not permitted and that Sands could not stay overnight in the professional unit. He also claimed that he had no control over the activities of the guests because they were guests of Sands, not the unit owner. As for the civil contempt motion, the defendant also asserted that building staff had allowed the offending guests to proceed from the lobby to the unit unescorted and without notifying him.

IN COURT: The judge reviewed the standard arguments for granting a preliminary injunction and found that Metrotech had satisfied the requirements for a new injunction. However, the court limited the injunction to a restatement of the August 2024 court order.

The court then reviewed the requirements for a grant of criminal and civil contempt. To find a defendant guilty of criminal contempt, the violation must

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be "willful" (intentional) and the contempt must be proven beyond a reasonable doubt since it may result in imprisonment.

To find a defendant guilty of civil contempt, though, (1) a lawful order of the court must be in effect; (2) the alleged violator must have known about the order and disobeyed it; and (3) the violation must have damaged or prejudiced the litigant seeking the order.

The court determined that the defendant was guilty of civil contempt but not criminal contempt. It denied criminal contempt because Metrotech had not proven beyond a reasonable doubt that Deruytter's disobedience of the 2024 court order was "willful." However, it found Deruytter liable for civil contempt because the defendant knew about the court order and disobeyed it by enabling unauthorized guests to enter the building and to stay in the professional unit. Further, the condominium was definitely prejudiced by the actions of Sands's guests, many of which required police intervention. The court also granted the condominium's request for attorney's fees, but apparently based on the court's rights to award fees under the Judiciary Law rather than the provisions of the condominium bylaws.

TAKEAWAY:
The case illustrates the scope of discretion available to a court to fashion remedies based on its evaluation of the relative fault of the parties. The court simply looked at the facts and decided whether they justified the remedies sought by the defendants based on satisfying the elements of each cause of action. Apparently neither the condominium nor the unit owner have been able to secure the eviction of Sands to date notwithstanding the aggressive actions taken by Metrotech to protect its rights.

PERSONAL INJURY

SARITA V. W. RIVER APARTMENTS INC

2025 NY SLIP OP 31642(U) (SUP. CT. N.Y. CNTY. MAY 5, 2025)

Co-op Liable for Injuries Contractor Suffered While Working in Shareholder's Apartment

SQUIB BY MICHAEL P. GRAFF, ATTORNEY/MEDIATOR, GRAFF DISPUTE RESOLUTION

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: The plaintiff was contracted by the shareholder to renovate the apartment. The defendant co-op corporation owned the building in which the apartment was located. While working, the plaintiff was standing on an A-shaped ladder provided to him by the apartment owner, about four or five feet up, installing a piece of wood. The ladder suddenly moved, and he fell. He did not know what caused the ladder to move. The plaintiff moved for summary judgment against the co-op, pursuant to New York Labor Law §240(1), to establish liability for the injuries he sustained in his fall.

IN COURT: Section 240(1) "imposes a nondelegable duty on owners to provide devices which shall be so constructed, placed and operated as to give proper protection to those individuals performing the work." This absolute liability "is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein."

Where a ladder is offered as a work-site device, it must be sufficient to provide proper protection. It must be properly secured to ensure that it remain steady and erect while being used.

Unrefuted evidence that the unsecured ladder moved, combined with evidence that no other safety devices were provided to the plaintiff, warranted a finding that the owner was liable under §240(1). The co-op corporation was unable to refute the plaintiff's allegations. Its defense that the accident was not witnessed was unavailing.

Similarly, the question of whether the ladder was provided

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by the plaintiff himself or the owner of the apartment shares was irrelevant to the issue of whether the defendant provided the plaintiff with proper protection under §240(1).

Nor was the question of whether there was any defect in the ladder. It had been long-established that ladder "collapse or malfunction for no apparent reason" is sufficient to establish a presumption that the ladder was not good enough to afford proper protection.

Finally, there could be no inference that the plaintiff was the sole proximate cause of the accident. Accordingly, the court granted the plaintiff's motion for summary judgment against the co-op owner of the building.

TAKEAWAY:

From the standpoint of the co-op owner of a building where third-party workers, whether single individuals or corporate entities, are performing services, there are three major concerns that must be considered: liability, indemnity, and insurance.

Liability of an owner, where there is a fall from a height, is presumed.

Indemnity is in the form of a written contract term often found in the agreement permitting contractors to do work or employ workers in the premises. The employer-contractor agrees to indemnify the owner against claims of the worker who seeks to recover damages from the owner, such as may be provided pursuant to the provisions of Labor Law §240(1).

Insurance is more problematic. Construction contracts generally provide that the owner is not totally reliant upon the contractor's ability to make good upon its indemnity agreement; owners also require contractors to obtain insurance policies naming the owner as an "additional insured." Importantly, a properly advised owner will specify that the contractor's insurance policy not only extend coverage to the owner but also include endorsements that do not exclude liability for personal injury and property damage suffered by their employees working on the premises, or exclude liability injuries and property damage incurred, including, for example, in buildings over six stories in height.

Typically, the ACORD 25 Certificate of Insurance (COI) issued by the contractor's broker does not alert the building owner of the existence of such policy exclusions and endorsements. Even if the broker-issued COI did express that the policy offered the expected coverage, it is not binding on the insurance company. The ACORD 25 COI states that nothing contained in it shall vary the terms of the actual policy. Then, when a claim arises, the insurer may disclaim on a claim against the owner, and the owner is left with the sole remedy of reliance upon the indemnity provision of the contract with the contractor, which may be a shell entity that is not able to cover the owner's cost of defense and indemnification. Note that in this case, the contractor is an individual. The contract with the individual plaintiff was provided to him by the apartment owner. He testified that he did not even read it.

The takeaway, in such cases is that, prior to allowing any work to proceed, the building owner must have its attorney or broker examine the actual policy proffered by the contractor, to verify that there are no exclusions or endorsements to permit the contractor's insurer to disclaim.

A related issue, not discussed in this above decision, is the liability of the apartment owner. The apartment owner should also be named as an indemnity and an additional insured in the same policy covering the co-op building owner. It is further noted that proprietary leases and bylaws typically provide that the apartment owner must defend and indemnify the building owner in all cases where its workers or contractors file claims against the building owner.