CO-OP&CONDO
CASE LAW TRACKER
digest
COOPCONDOCASELAWTRACKER.COM
BROUGHT TO YOU BY HABITAT

ALTERATIONS

ROSENTHAL V. PARK HILL TENANTS CORP.

2025 NY SLIP OP 33614(U) (SUP. CT. N.Y. CNTY. OCT. 1, 2025)

Co-op Board Can't Stonewall Renovations

SQUIB BY ANDREW P. BRUCKER, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided, in part, for Plaintiff Co-op Shareholder

WHAT HAPPENED: The plaintiff, a shareholder in an Upper East Side co-op, bought one apartment in 1999 and the adjacent unit in 2012, intending to combine them. After obtaining NYC Department of Buildings approval in 2013, he submitted the required co-op alteration agreement and plans in early 2014.

Over the next several years, the board and management repeatedly delayed approvals, requested additional documentation—even when already provided—and imposed new conditions, including removing a fireplace and later a bathroom from the plans. Despite the shareholder complying with each request, the board denied the original application in October 2016 and required the shareholder to start the board unreasonably withheld consent, breaching both the proprietary lease and its fiduciary duties.

IN COURT: The court dismissed the claims against management, noting that while the managing agent owes a fiduciary duty to the co-op, it has no duty to individual shareholders and is not a party to the lease.

Regarding the board, the court rejected its defense under the business judgment rule. The lease explicitly prohibits the board from unreasonably withholding consent for alterations. Because the board failed to provide reasons for its repeated delays and piecemeal requests, there was a genuine issue of fact for trial. If the board is found to have acted unreasonably, the shareholder may prevail on claims for breach of lease and fiduciary duty.

TAKEAWAY:

One of the most common mistakes made by co-op boards is that they believe they have unfettered control over any alteration by a shareholder. This is not true. One must review the proprietary lease and examine the exact language. If the board must

*(**Takeaway** continued on p. 4)*

FEBRUARY 2026 HIGHLIGHTS

CO-OP&CONDO CASE LAW TRACKER digest

TABLE OF CONTENTS

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

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 December 2025. For additional cases, visit https://coopcondocaselawtracker.com.

Publisher: Carol J. Ott
Editor: Barbara Manning Grimm
Creative Director: Pablo Turcios
Librarian: Alyssa Rosen
Database Content Manager: Heather Hess
Director of Operations and Sales: Leslie Strauss
Marketing Director: Peggy Mullaney

Volume 5, Issue 9

SUBSCRIPTIONS: **CO-OP & CONDO CASE LAW TRACKER DIGEST** is published by The Habitat Group. Annual subscription rate to the database at www.coopcondocaselawtracker.com and monthly digest: $498 for single user access; $1,800 for team access.

the HABITAT group

TABLE OF CONTENTS

consent to an alteration but cannot unreasonably withhold its consent, the board must be careful: It will not be protected by the business judgment rule. On the contrary, if the lease states that the board cannot unreasonably withhold its consent, the court has the right to review the board's decision to determine that the board acted reasonably (given all of the facts), and there could be serious consequences to a board that has not acted properly. The court may find a breach of both the lease and its fiduciary duty, and the consequences might be severe.

BOOKS & RECORDS

AUTUMN RIVER, LLC V. 795 FIFTH AVE. CORP.

659569/2025 (SUP. CT. N.Y. CNTY. NOV. 30, 2025) NYSCEF NO. 99

Shareholders Denied Access to Pierre Hotel Records

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: In what is likely to be the first of many decisions involving the potential dissolution and sale of the Pierre Hotel cooperative, several shareholders sued the cooperative seeking access to the books and records.

IN COURT: The court dismissed the petition finding that the cooperative provided "just and proper" information well in excess of what is required by the Business Corporation Law and the common law rights of inspection without interfering with the board's ability to consider alternatives for all shareholders. Specifically, the court found that the cooperative provided a slide presentation from its counsel explaining the options the board was considering about repairs and the potential sale transaction. In addition, it provided the shareholders with the term sheet and the agreement between the cooperative and the potential purchaser. The cooperative also offered to provide three years' worth of board minutes so the shareholders could see the deliberative process undertaken by the board and copies of the various term sheet drafts.

Finally, although the petition was brought by eight shareholders, only one provided the affidavit required by Business Corporation Law, so the petition would need to have been dismissed to the extent brought by those seven other shareholders.

TAKEAWAY:

Transparency about board actions is always crucial but never more so than when dealing with contentious issues which have substantial impact on the shareholders. By providing as much relevant information as the board did, it allowed the cooperative to avoid the need for an inspection of books and records at a time that the board and management were dealing with critical survival issues for the building.

COMMERCIAL UNIT

METROSPEEDY OPERATIONS, LLC V. NORDSTROM

161716/2024 (SUP. CT. N.Y. CNTY. DEC. 18, 2025) NYSCEF NO. 214

Residents' Complaints Protected; Delivery Hub Suit Dismissed

SQUIB BY JOSEPH GOLJAN, ASSOCIATE, BRAVERMAN GREENSPUN, PC

OUTCOME: Decided for Co-defendants

WHAT HAPPENED: The plaintiffs are MetroSpeedy Operations, LLC, and related corporate entities that operate a "last-mile" delivery business, along with the company's founder, Nancy Korayim.

The defendants fall into three groups. The co-op defendants include 107 West 25th Street Corp., its managing agent, Cornerstone Management Systems, and property manager Michelle Greenspan. The tenant defendants consist of individual cooperative shareholders, including the co-op's board president, as well as a neighboring commercial tenant, Renew Body Spa Center. The city defendants include the City of New York, a New York City Police Department officer, and unnamed municipal employees.

In July 2021, MetroSpeedy entered into a 10-year sublease for a street-level commercial unit at 113 West 25th Street in New York City, a residential cooperative building owned by 107 West 25th Street Corp. MetroSpeedy began operating a high-volume "micro-fulfillment" delivery hub from the premises. In September 2023, the company consolidated its business operations at the location. Building residents soon complained about sidewalk congestion, fire safety concerns, lithium-ion battery storage, noise, and other disruptions.

The co-op issued a notice to MetroSpeedy's sublessor alleging objectionable conduct. The sublessor served a notice of termination on MetroSpeedy, which was later withdrawn. During this period, residents repeatedly contacted the New York City Police Department, the New York City Fire Department, and City Council offices to complain about MetroSpeedy's operations.

MetroSpeedy and its principal sued, alleging the defendants engaged in a coordinated campaign of harassment, unlawful eviction efforts, and improper political pressure. The plaintiffs claimed this conduct caused MetroSpeedy's primary client, FreshDirect, to sharply reduce its business. Against the tenant defendants, the plaintiffs asserted claims for tortious interference, conspiracy, abuse of process, malicious prosecution, nuisance, and trespass based on alleged complaints, harassment, and intimidation. Against the co-op defendants, the plaintiffs alleged breach of contract, conspiracy, trespass, and wrongful eviction efforts. Against the city defendants, the plaintiffs asserted tort claims and federal civil rights violations based on alleged regulatory pressure and police harassment.

IN COURT: The court granted motions to dismiss filed by tenant defendants Ye, Noren, Van Almelo, and Nordstrom, as well as by the city defendants.

The court held that nearly all claims failed as a matter of law. It found no basis for malicious prosecution or abuse of process because no actual legal proceedings had been commenced. The tortious interference claims failed because the residents' conduct consisted of complaints to government authorities regarding safety and quality-of-life issues, which the court found were lawful and motivated by legitimate self-interest. The emotional distress and conspiracy claims were dismissed as conclusory and unsupported by specific facts.

The court also held that the residents' complaints to police and city officials constituted protected public petitioning activity under New York's anti-SLAPP statute, N.Y. Civil Rights Law § 70-a. Because the lawsuit targeted protected speech and lacked a substantial legal basis, the resident defendants were entitled to recover attorneys' fees.

TAKEAWAY:

As the court noted, the case centered on issues of "good corporate citizenship."

For co-op and condo boards and their counsel, the decision reinforces that courts strongly protect communications by residents and boards with regulators, even when those communications are motivated by opposition to a commercial neighbor. Boards

*(**Takeaway** continued on p. 6)*

do not incur tort liability simply by raising safety or quality-of-life concerns with city agencies, even when those complaints lead to inspections, police visits, or business disruption.

At the same time, the opinion implicitly cautions against informal or personal tactics. Allegations involving the publication of a tenant's phone number, encouragement of harassment, or staged confrontations, while insufficient here, illustrate how easily governance disputes can escalate into reputational and litigation risk.

Best practice remains disciplined and procedural enforcement: written notices of violations, documented inspections, centralized communication through counsel, and reliance on formal regulatory mechanisms. Boards should avoid acting as neighborhood activists and instead operate as corporate fiduciaries. When boards remain institutional, neutral, and process-driven, they benefit from both substantive tort defenses and the added protection of New York's anti-SLAPP statute.

CONSTRUCTION DEFECTS

ADAMS V. BESPOKE HARLEM W., LLC

2025 NY SLIP OP 34669(U) (SUP. CT. N.Y. CNTY. DEC. 4, 2025)

High Bar for Fraud, Lower Bar for Contract in Condo Defect Case

SQUIB BY STEVEN S. ANDERSON, SHAREHOLDER, BECKER NEW YORK, PC

OUTCOME: Decided, in part, for Condo Sponsors

WHAT HAPPENED: Suit was brought by over 50 condominium unit owners regarding a building located at 300 West 122nd Street in Manhattan for alleged construction defects and shoddy workmanship caused by the condominium developer and sponsor and the sponsor-controlled board's mismanagement of the condominium. A "laundry list" of defects was alleged: lack of firestopping, leaky roof, not built to code, improperly installed heat pumps, problems with hot water through the building, excessive humidity in units, deteriorating building to building joints and then some. All the while the sponsor and its principals set up a governance structure that insured the salient construction defects would not be addressed. For those in the field, a tale as old as time.

Causes of action were alleged against the sponsor, its principals, architects and law firm, including that they all "schemed together to falsely certify that the condo complied with the offering plan and building code standards and laws." The plaintiffs sought millions of dollars in damages.

IN COURT: Some claims survived and some did not. The Supreme Court NY County systematically analyzed all and decided as follows:

As to the sponsor, it did NOT move to dismiss causes of action for breach of contract and injunctive relief—in a word, a major concession to such claims. As to other causes of action in this context—always a challenge for unit owners in construction defect cases—the court dismissed a claim for fraud in the inducement, a cause of breach of fiduciary duty and for fraudulent conveyance, as well against the sponsor's principal. The court did sustain a claim that the sponsor affirmatively misrepresented the financial condition of its principals, and, as well certain fraudulent transfer claims.

The architect also succeeded in obtaining dismissal of a claim for fraud in the inducement against it. The sponsor's law firm likewise succeeded in obtaining dismissal of a claim for breach of fiduciary duty asserted against it.

The plaintiffs have appealed this decision.

(***Takeaway*** *on p. 7)*

TAKEAWAY:

TAKEAWAY: Claims for fraud and breach of fiduciary against developers, architects, engineers and lawyers all on the sponsor's team, are often too high a pleading mountain to climb, but not always as evidenced here and as described above. That said—and the court's thoughtful analysis aside—an interesting aspect, and teaching, of the case, reading between the lines, is that the condominium unit owners' claims for millions of dollars goes forward unimpeded on theories of breach of contract and injunctive relief—a much lower standard of pleading and proof, than is the case for fraud claims.

DEFAMATION

BESPOKE HARLEM W. LLC V. ADAMS

2025 NY SLIP OP 34703(U) (SUP. CT. N.Y. CNTY. DEC. 9, 2025)

Anti-SLAPP Law Sinks Sponsor's Defamation Suit

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

OUTCOME: Decided for Defendant

WHAT HAPPENED: Bespoke Harlem West LLC converted 300 West 122nd Street into condominium units. After construction, unit owners raised complaints about building defects.

Defendant Daniel Adams created a website titled "Unhappy Living, 300 West: Advertisement vs. Reality," criticizing the building and the sponsor. The sponsor threatened legal action, and the website was later taken down. Adams also allegedly made negative statements about the building and the sponsor to a broker showing a unit to a prospective purchaser and encouraged others to do the same. According to the sponsor, the purchaser declined to sign a contract as a result.

Adams and other unit owners later sued the sponsor for construction defects. That action remains pending. About three months after the construction defect case was filed, the sponsor brought this separate lawsuit. It alleged that Adams and others interfered with sales of sponsor-owned units.

The sponsor asserted claims for tortious interference with prospective business relations, business disparagement, prima facie tort, and aiding and abetting those torts. Adams moved to dismiss under CPLR §3211(g), invoking New York's Anti-SLAPP statute. He argued the suit was retaliatory and sought dismissal, attorney's fees, costs, and damages under Civil Rights Law §70-a.

IN COURT: The court first addressed whether the sponsor's action qualified as a SLAPP suit. It found that Adams's website constituted speech in a public forum and that the marketing and sale of condominium units to the public involved issues of public interest. The lawsuit therefore fell within the Anti-SLAPP statute.

As a result, the burden shifted to the sponsor to show that its claims had a substantial basis in law.

The court analyzed each cause of action and concluded that none met that standard. The sponsor submitted no third-party affidavits or concrete evidence showing that Adams made false statements, acted with legal malice, or caused actual harm to the sponsor's business reputation or integrity. Nor did the sponsor offer evidence supporting its aiding and abetting allegations.

Adams, by contrast, submitted affidavits from other residents supporting his statements and disputing the sponsor's claims. The court dismissed the action in its entirety.

The court also held that Adams was entitled to attorney's fees under the Civil Rights Law. It declined, however, to award compensatory or punitive damages.

(continued on p. 8)

Compensatory damages require proof that the suit was intended to intimidate the defendants from exercising their constitutional rights, and punitive damages require proof that intimidation was the sole purpose of the action. The court found those showings were not made and denied damages without prejudice on procedural grounds, leaving open the possibility of a separate action.

TAKEAWAY:
Some developers have thin skins; this sponsor apparently preferred to blame the unit owners for its failure to sell units rather than taking responsibility for building conditions. Other sponsors insist on treating purchasers of units as tenants rather than partners. By now a sponsor should anticipate that purchasing unit owners in a new construction condominium will have higher expectations than a rental tenants, and that they ultimately will organize and engage an engineer to verify that they purchased what the sponsor had promised. A sponsor who ignores them essentially dares them to take stronger action to protect their interests. At this stage, though, most condo unit purchasers in New York City have the resources to finance legal and professional support for their claims.

FIDUCIARY DUTY

EDOUARD V. THE BD. OF DIRS. OF 32083 OWNERS CORP.

2025 NY SLIP OP 34714(U) (SUP. CT. N.Y. CNTY. DEC. 10, 2025)

Old Sponsor Control vs. Resident Interests

SQUIB BY DALE DEGENSHEIN, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided, in part, for Plaintiff Co-op Shareholder

WHAT HAPPENED: The plaintiff, a shareholder, sued the cooperative board, individual board members, and the holder of unsold shares. He brought the case both on his own behalf and on behalf of the cooperative. He alleged improper corporate governance, breach of contract, and breach of fiduciary duty.

The plaintiff claimed the board was improperly formed because the holder effectively selected the entire board in 2020, even though the offering plan bars holders from electing a majority of directors. He also alleged that board vacancies in 2021 were filled by appointments made by the holder.

He further claimed that the bylaws and house rules require most directors to live in the building, a requirement that was not met.

Beyond governance issues, the plaintiff alleged that the board failed to maintain the property, did not pursue claims against third parties when appropriate, skipped annual shareholder meetings for several years, refused to provide financial records, and imposed a 2023 special assessment that was not fairly allocated.

Finally, the plaintiff claimed the offering plan violated New York regulations because it failed to account for the transfer of unsold shares to the current holder.

IN COURT: The court considered three separate motions to dismiss: one from the board and most board members, one from an individual board member, and one from the holder of unsold shares.

The plaintiff's first claim sought a declaration that the holder improperly elected or appointed the entire board. At the motion-to-dismiss stage, the court is required to accept the plaintiff's allegations as true. As a result, this claim survived and was not dismissed.

The court dismissed the plaintiff's claim that the offering plan violated state regulations by failing to disclose the current holder. The court ruled that this claim was pre-empted by the Martin Act and could only be brought by the New York Attorney General. The claim was therefore dismissed as against the holder. The court noted, however, that the plaintiff's argument had merit.

The court allowed breach of contract claims to proceed based on allegations that the board failed to hold annual meetings since 2020, refused to provide required financial records, and imposed special assessments that were

(continued on p. 9)

not proportional. If proven, these actions would violate the bylaws, which function as a contract between shareholders and the cooperative.

The court also ruled that the plaintiff could not seek individual damages for harm to common areas, such as the roof and trees. Those claims must be brought on behalf of the cooperative, not by a single shareholder. To the extent the case was brought as a derivative action, those claims remain viable.

The board argued that its decisions were protected by the business judgment rule, which shields boards from court review when decisions are made in good faith and in furtherance of corporate purposes. The court rejected that argument at this stage, finding that the business judgment rule does not protect a board that fails to act or abandons its responsibilities. The plaintiff alleged the board made no decisions at all in the face of potentially serious risks.

The court also ruled that the plaintiff was not required to first demand that the board take action before filing a derivative lawsuit because such a demand would have been futile.

TAKEAWAY:
Some cooperatives remain controlled by sponsors or holders of unsold shares far longer than expected. In this case, the building was converted in 1980, and the holder reportedly still owns rent-regulated apartments. The case highlights how a sponsor or holder's interests can diverge from those of shareholders who live in the building—and how governance disputes can follow when that imbalance persists.

INDEMNIFICATION

HARRIS V. MANSFIELD OWNERS, INC.

512941/2023 (SUP. CT. KINGS CNTY. DEC. 11, 2025) NYSCEF NO. 91

Lease Indemnity Protects Co-Op in Fall Case

SQUIB BY MICHELLE P. QUINN, ESQ., GALLET DREYER & BERKEY, LLP

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: In July 2022, Michelle Harris slipped and fell on the exterior walkway of a parking garage leased by 1699 New York Ave. Parking, located in a cooperative building owned by Mansfield Owners, Inc. and managed by Medallion Real Estate LLC. She suffered injuries and filed a lawsuit against all three entities.

Property owners are generally responsible for sidewalk conditions. Here, Mansfield had leased the parking garage to 1699, which made 1699 responsible for structural and non-structural repairs.

IN COURT: Mansfield and Medallion filed motions to dismiss. The court dismissed the case against Medallion, finding it owed no statutory, common law, or contractual duty to Harris.

Dismissal against Mansfield was denied. There were questions of fact about whether Mansfield was an out-of-possession landlord that had not retained control of the premises.

The court ruled that 1699 is liable to both Mansfield and Medallion for indemnification to the extent of their own negligence.

TAKEAWAY:
Slip and fall claims are often made against everyone possibly liable, which frequently includes those not responsible. But strong indemnification provisions in contracts can limit or entirely avoid liability and place it on the appropriate party.

INSPECTION OF RECORDS

GIOMMETTI V. WATERFALL APTS INC.

156722/2025 (SUP. CT. N.Y. CNTY. DEC. 1, 2025) NYSCEF NO. 24

Board Must Produce Records After Missed Demand Deadline

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

OUTCOME: Decided for Petitioner Co-op Shareholder

WHAT HAPPENED: This books and records proceeding was brought by a resident co-op shareholder who sought to investigate alleged mismanagement of her building. She claimed the co-op was controlled by a sponsor entity and was being operated for the sponsor's benefit rather than in the best interests of shareholders.

Relying on Business Corporation Law § 624 and her common law information rights, the shareholder demanded access to extensive financial records dating back to January 1, 2022. Her request included monthly bank statements, records of transfers and withdrawals, copies of canceled checks, invoices, service contracts, and annual fiscal reports for 2023 and 2024.

When the co-op's counsel did not promptly respond, the shareholder filed a petition in Supreme Court, New York County. After the filing, the co-op offered to allow inspection of most of the requested documents if the petition were withdrawn. The co-op also asserted that it had few records from before June 2023, when a new management company took over, because the prior managing agent allegedly failed to turn over most documents.

The parties were unable to resolve the dispute. The petition was fully briefed and submitted to the court.

IN COURT: The court granted the petition to the extent it directed the co-op to provide the documents sought in the demand letter for inspection. The petition was otherwise denied.

In reaching its decision, the court acknowledged that a co-op is not required to produce documents that are not within its possession, custody, or control. However, the court found that the co-op had not adequately shown that it lacked the authority or practical ability to obtain records from its former managing agent.

After the decision was issued, the shareholder applied for clarification as to whether the order required inspection only, or inspection and copying. The co-op opposed the application, arguing that the decision expressly required only inspection. That issue remains contested.

TAKEAWAY:

The co-op has insisted throughout that it was willing to provide the documents requested—at least, those documents post-dating the managerial transition, and only for inspection. However, it did not immediately respond to the shareholder's initial demand, and did not substantively respond for more than two weeks after the shareholder warned that she would file the petition if the co-op did not immediately respond. Thus, one important takeaway for co-ops is that if you do intend to comply (or substantially comply) with a books and records demand, make sure that you do so within the time periods set forth in the demand. In this case, the co-op was sued and had to litigate despite it insisting that it was not intending to withhold documents.

Another takeaway is that while it is common for documents to get lost in a management transition, in these books and records proceedings, courts may require boards to take practical steps to try to recover files from prior management companies rather than just throw up their hands and say they do not have those files anymore.

Separately, one odd fact about this litigation is it is actually the second books and records proceeding contested by the parties in recent years, but for whatever reason, there are only oblique references to the first proceeding by either party in the new proceeding. The prior proceeding had been filed in Brooklyn, which is actually where the building is located and the shareholder lives. In that prior proceeding, which had been filed in December 2023, the shareholder had sought a broad swathe

*(**Takeaway** on p. 11)*

of documents from the same period, and the co-op had agreed, via so-ordered stipulation, to produce most of the them for inspection – but not copying, as the petitioner had wanted. This might explain why the shareholder filed the second proceeding in New York County (basing venue on the management company's Manhattan address) rather than in Kings County. If that is the case, it is ironic that a second judge has (at least so far) refused to make the co-op copy all of the documents sought by the shareholder.

INSURANCE

ABRAMOWITZ V. LEX TENANTS CORP.

2025 NY SLIP OP 34887(U) (SUP. CT. N.Y. CNTY. DEC. 15, 2025)

Primary Insurer Can't Dodge Defense of Co-op Director

SQUIB BY DAVID S. FITZHENRY, PARTNER, MORITT HOCK & HAMROFF, LLP

OUTCOME: Decided for Plaintiff, Defendant Co-op

WHAT HAPPENED: In December 2021, Deane Gross, a board member of Lex Tenants Corp., emailed all shareholders ahead of a co-op election. Although she was not running for re-election, she stated which candidates she supported. Her email made clear that she did not endorse one candidate, Ryan Ackerhalt.

Mr. Ackerhalt sued Lex Tenants Corp. and Ms. Gross personally, asserting a defamation claim. Both Lex and Ms. Gross submitted the claim to the co-op's insurers: Insurance Company of Greater New York, the primary carrier, and Chubb, which issued an excess directors and officers liability policy. Both sought defense and indemnification.

Greater New York initially denied coverage and directed the insureds to Chubb. Chubb denied coverage entirely, asserting that its policy was excess and only triggered after exhaustion of the primary coverage. After months of delay, Greater New York agreed to defend and indemnify, but only for claims against Ms. Gross in her capacity as a board member, not for claims against her individually.

Because of that position and the delay, Ms. Gross retained her own counsel. The defamation action was ultimately dismissed, but by then she had incurred legal fees. Ms. Gross then sued Greater New York, Chubb, and Lex, seeking reimbursement of her defense costs. She alleged that the insurers wrongfully failed to provide a full defense from the outset and that Lex was required to indemnify her under the co-op's bylaws.

Ms. Gross passed away before the case concluded, and her estate continued the action on her behalf.

IN COURT: Ms. Gross's estate moved for summary judgment against all three defendants. The court addressed each claim separately.

The court granted summary judgment against Greater New York. It reiterated that when a claim arguably arises from a covered occurrence, the insurer has a duty to defend the entire action. That obligation exists even if some allegations may ultimately fall outside coverage. Once the duty to defend is triggered, the duty to pay defense costs follows. Greater New York therefore was required to reimburse Ms. Gross's legal expenses.

The court denied summary judgment against Chubb. It agreed that Chubb's policy was excess coverage, and its obligations were not triggered unless and until the primary policy was exhausted. Because there was no evidence that damages exceeded Greater New York's policy limits, Chubb had no duty to defend or indemnify at this stage.

The court also denied summary judgment against Lex Tenants Corp. The motion was procedurally defective because the plaintiff failed to submit an authenticated and admissible copy of the co-op's bylaws. The court held that providing the bylaws for the first time in reply papers did not cure the defect.

(**Takeaway** *continued on p. 12)*

TAKEAWAY:
Disputes between co-op and condo boards and their insurers are common, particularly over whether a claim falls within coverage. Board members are frequently named individually, raising questions about whether directors' and officers' policies apply based on the capacity in which they acted.

This case underscores a key principle: When there is a reasonable possibility that a claim is covered, the insurer must provide a defense. That duty continues unless and until there is a final determination that the conduct at issue is not covered under the policy.

If an insurer improperly refuses to defend and the insured is forced to retain counsel, the insurer may be required to reimburse those defense costs. For boards and board members, understanding the scope—and strength—of the duty to defend is critical.

NEGLIGENCE

FERRARA V. MERCER SQUARE OWNERS CORP.

655185/2023 (SUP. CT. N.Y. CNTY. DEC. 18, 2025) NYSCEF NO. 43

Co-op Can't Toss Stored Property Without Notice

SQUIB BY KRISTIN PENDERGRASS, COUNSEL, SEYFARTH SHAW, LLP

OUTCOME: Decided for Plaintiff, Defendant

WHAT HAPPENED: Plaintiff Nicholas C. Ferrara is a shareholder and proprietary lessee of apartment B1004 at 250 Mercer Street in Manhattan. He sued Mercer Square Owners Corp., the cooperative that owns the building.

In 1999, the co-op's board offered Ferrara two basement storage units at no charge. Ferrara accepted and stored personal property in the units, securing them with his own locks. Although the co-op later began charging for storage units and required written license agreements from other shareholders, Ferrara was never charged and never entered into a license agreement.

In 2022, Ferrara discovered that the locks on his storage units had been cut and most of his stored property was gone. He received no prior notice that his property would be removed. Although he later recovered a few items, most were never found and appeared to have been discarded.

On April 13, 2023, Ferrara's counsel demanded compensation for the lost property. The co-op did not provide a substantive response. Ferrara commenced this action in October 2023, asserting claims for bailment and negligence and seeking at least $75,000 in damages.

The co-op answered and claimed that the property was either removed by Ferrara's subtenant or destroyed during a basement flood.

IN COURT: After discovery, the co-op moved for summary judgment dismissing all claims.

The court granted summary judgment on the bailment claim. It held that a bailment was not established because Ferrara used his own locks. As a result, the co-op never obtained lawful possession or control over the stored property.

The court denied summary judgment on the negligence claim. It found triable issues of fact as to whether the co-op cut the locks and removed the property. The co-op also failed to submit evidence supporting its alternative explanations that the property was removed by a subtenant or destroyed by flooding.

The court further held that the proprietary lease's reference to storage units being provided under a revocable license did not authorize the co-op to cut locks or remove property without notice. The lease also contained no limitation on the co-op's liability for lost or damaged items stored in the basement.

(**Takeaway** *continued on p. 13)*

TAKEAWAY:
Generic proprietary lease language stating that storage areas are provided under a revocable license does not, by itself, protect a co-op from liability for lost or damaged property. Nor does it permit a co-op to access storage units or remove property without notice.

Here, the absence of a separate written license agreement proved critical. Without one, the co-op lacked defined rights to enter the storage units or limit its exposure.

Co-op boards that provide storage space should require shareholders to execute written license agreements. Those agreements should clearly address access rights, notice requirements, and limitations on liability for lost or damaged property.

NUISANCE

WASHINGTON B.C. STUDIO CORP. V. 451 WASHINGTON ST LEASECO LLC

659374/2025 (SUP. CT. N.Y. CNTY. DEC. 10, 2025) NYSCEF NO. 57

Be A Good Neighbor, Not A Nuisance

SQUIB BY STEVEN D. SLADKUS, PARTNER, & MADISON N. KELLEY, ASSOCIATE, SCHWARTZ SLADKUS REICH GREENBERG ATLAS, LLP

OUTCOME: Decided for Plaintiff Co-op

WHAT HAPPENED: The plaintiff is a residential housing cooperative. The defendant subleases the plaintiff's commercial space from its proprietary lessees, pursuant to a sublease agreement, wherein the defendant operates a private social club. During the defendant's tenancy, the plaintiff claimed that both the defendant's use of the commercial space's kitchen and the noise emanating from the social club was a nuisance. Therefore, the plaintiff commenced this litigation seeking to enjoin the defendant's conduct that it deemed to be a nuisance.

IN COURT: In this action, the plaintiff filed a motion for a preliminary injunction, seeking to enjoin the defendant from: (i) using the commercial space's kitchen entirely; (2) creating and/or permitting excessive noise to emanate from the social club; and (3) allegedly illegally using the commercial space's cellar. The court held a hearing on the preliminary injunction motion. At the hearing, the defendant openly agreed to cease its operation of the kitchen in violation of the FDNY guidelines and advised the court that its experts were working to cure the violation. The court deemed this sufficient and therefore did not enjoin the defendant from using the kitchen entirely.

However, the court found that the evidence presented by the plaintiff was sufficient to demonstrate that the defendant was creating and/or permitting excessive noise to emanate from the social club. The plaintiff demonstrated (and the defendant did not dispute) that the noise could be heard in the shareholders' apartments from 11 p.m. until 8 a.m., and that the noise included loud music and guests loitering outside of the building. The court found that there was a likelihood of success on the merits because the excessive noise that the defendant was creating and/or permitting was in violation of the terms of the sublease, as the sublease was subject to the terms of the proprietary lease which restricted the creation of a nuisance. The court found that there was irreparable harm because shareholders who reside in the cooperative building have suffered loss of sleep. Finally, the court found that the balance of the equities was in the plaintiff's favor because it would be inequitable for the defendant to not abide by the terms of the sublease. Therefore, the court granted the plaintiff's request for

(continued on p. 14)

a preliminary injunction restricting the defendant from playing loud music that disturbed the plaintiff's shareholders and/or residents from 11 p.m. to 8 a.m. The court also required the plaintiff to post a $100,000 bond. The court denied the plaintiff's application as it pertained to the defendant's use of the cellar. This decision has been appealed.

TAKEAWAY:
When a cooperative is reviewing a shareholder's potential sublease, it is essential to ensure that the sublease is carefully drafted. The sublease should explicitly require the subtenant to comply with all terms of the proprietary lease and/or include clear and specific provisions that address potential issues such as nuisances. By incorporating these provisions, the cooperative strengthens its ability to enforce its rules and protect its shareholders from disturbances. As demonstrated in this case, having both provisions in the sublease not only reinforced the cooperative's position in court but also weakened the subtenant's defenses against nuisance claims.

PERSONAL INJURY

SANTOS V. BRAM AUTO. MGMT. CORP.

2025 NY SLIP OP 34601(U) (SUP. CT. N.Y. CNTY. NOV. 25, 2025)

Summary Judgment Denied: Trial to Resolve Slip & Fall Incident

SQUIB BY HELENE W. HARTIG, ESQ., FOUNDER & PRINCIPAL, HARTIG LAW

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: After he slipped and fell during a construction project, the plaintiff asserted claims against a condominium board of managers, its managing agent, and various contractors for negligence and breach of the New York State Labor Laws. The crux of the plaintiff's claim against the board of managers and its managing agent was that wet plastic that was left on a pile of stored rebar on the fourth floor of the subject premises which, in turn, created an "unsafe and dangerous" condition in the workplace. The defendants, in addition to denying liability, commenced a third-party action against Gotham Drywall, who purportedly provided the rebar that caused the plaintiff to slip, fall, and sustain injuries. Gotham contended, however, that it could not be held liable because its responsibilities were limited to carpentry, framing and insulation of drywall. In addition to claiming that it had no connection to the accident, Gotham alleged that it had no obligation, pursuant to law or its contract with the defendants, to indemnify the defendants or provide insurance. Following depositions, in which the witness for Gotham stated that he had no personal knowledge of the events in question, Gotham moved for summary judgment dismissing the complaint. The defendants also moved for summary judgment dismissing the complaint and alleged that, in any event, they were protected by an indemnity from Gotham.

IN COURT: The court disagreed with the defendants and with Gotham. The condition of the fourth-floor passageway and work areas could not be determined from the evidence submitted to the court, which was confusing, contradictory, and missing critical information (including the complete contract upon which the defendants relied). An alleged indemnity could also not be used as a shield against liability because the defendants had not yet proven that they were "free of negligence" and that they did not cause or contribute to the plaintiff's accident or injuries. Additionally, affidavits from individuals who were not at the work site in which the plaintiff's accident occurred had no probative value and were insufficient to award summary judgment, which is considered a drastic remedy. A trial was required for the court to rule on the many disputed factual issues, including which party was ultimately liable if slippery conditions in the passageways and/or obstructions in the common areas were found to exist (which, in turn, created an impermissible tripping hazard). This decision has been appealed to the Appellate Division, First Department.

(**Takeaway** *continued on p. 15)*

TAKEAWAY:
Summary judgment will not be granted prior to trial if there is any doubt as to whether the movant has proven his claims. Persuasive admissible proof, including photographs, work logs, and conflicting affidavits, that call into question a party's version of events will typically be sufficient to justify a trial, in which all of the relevant evidence will be presented and the finder of fact will determine, based on a full and complete record, the credibility and veracity of each witness. Affidavits that are not based on a witness' first-hand knowledge of the events in question or that conflict with other evidence submitted to the court, such as work logs, will also be given little, if any, probative value.

PROPRIETARY LEASE

1049 PARK AVE. APTS. CORP. V. SOCKOLOW

LT-313650-24/NY (N.Y. CIV. CT. N.Y. CNTY. MAY 15, 2025) NYSCEF NO. 30

Absence of a Signed Proprietary Lease Not Fatal to Nonpayment Proceeding

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

OUTCOME: Decided for Petitioner Co-op

WHAT HAPPENED: A Manhattan cooperative filed a petition in landlord-tenant court against a respondent-shareholder, alleging nonpayment of rent in breach of the proprietary lease. The case was sent to the trial part. At a pretrial conference, it was disclosed to the court that the cooperative did not have a copy of an executed proprietary lease with the respondent. After the conference, the cooperative served the respondent with a discovery demand called a "Notice to Admit," requiring the respondent to either admit or deny two facts: one, that she was a shareholder of the cooperative, and two, that she had a proprietary lease with the cooperative. The respondent admitted the truth of both assertions. After learning about all this, the court, on its own initiative, elected to address the sufficiency of the proceeding.

IN COURT: The critical inquiry for the court was whether the absence of an executed proprietary lease compelled dismissal of the proceeding. While the lack of an executed lease would ordinarily be fatal in a landlord-tenant proceeding, a cooperative could obtain relief against a shareholder even in the absence of signed copy of the proprietary lease. Shareholders in a cooperative are members of a self-governing community of tenants, and the board of directors has authority to set the amount of rent, commonly called maintenance. Because the respondent admitted that she was a shareholder and a tenant under the proprietary lease, the proceeding could continue. The court placed the matter on the calendar for further proceedings.

TAKEAWAY:
Under the general rules of evidence, a landlord suing for nonpayment of rent under a lease must submit an original or suitable copy of the lease, which in turn must show that the tenant signed the lease and agreed to its terms, including the amount of rent to be paid. A cooperative is a bit different from the usual landlord-tenant relationship, because the tenant is also a shareholder of the landlord. As a shareholder, the tenant has agreed to the terms of a proprietary lease which, in all respects except the description of each particular apartment, is identical to the proprietary leases of all other shareholders. Finally, a proprietary lease does not recite the rent to be paid like ordinary leases do, but instead the lease states that rent shall be established by the board of directors of the cooperative. The judge here acknowledged the foregoing, and allowed the proceeding to continue. While the unique nature of the relationship between cooperatives and tenant-shareholders alone might have saved the proceeding from dismissal, three cheers for the cooperative's attorneys for serving the Notice to Admit, which established the critical facts beyond dispute.

VEIL PIERCING

OWENS V. NEW EMPIRE CORP.

2025 NY SLIP OP 06788 (1ST DEP'T. DEC. 4, 2025, 2025)

Veil-Piercing and Warranty Claims Revived in Condo Defect Case

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

OUTCOME: Decided, in part, for Plaintiffs Condo Unit Owners

WHAT HAPPENED: The plaintiffs own six units in the Six Garfield condominium. They sued the project sponsor, its agents, the contractor, the managing agent, and the sponsor-controlled board of managers.

The plaintiffs alleged that major building systems were defectively designed and constructed. These included the roof, terraces, windows, and façade. They claimed that the defendants failed or refused to remediate most of the defects.

The managing agent, which was owned and controlled by the sponsor, allegedly took no action to address the problems. The sponsor-controlled board allegedly breached its fiduciary duty by failing to enforce the unit owners' rights.

The plaintiffs sought more than $2.5 million in damages and an injunction transferring control of the board from the sponsor to the unit owners. They also alleged that the sponsor failed to assign certain transferable warranties as required.

The motion court denied the defendants' motion to dismiss.

IN COURT: On appeal, the Appellate Division modified the motion court's decision. It dismissed the claims for fraudulent misrepresentation, aiding and abetting fraudulent misrepresentation, negligent supervision, and negligence as against defendant New Empire Building Corp. The court otherwise affirmed the denial of the motion to dismiss the plaintiffs' core claims.

The court held that both the derivative claims on behalf of the sponsor-controlled board and the plaintiffs' direct claims were sufficiently pleaded. It also found that the plaintiffs adequately pleaded demand futility, given the board's alleged inactivity in addressing the defects.

The plaintiffs alleged facts sufficient to support veil-piercing claims against the sponsor's principals. They claimed the sponsor entity was created to evade liability, that a controlled board was installed to delay repairs, and that the sponsor's conduct rendered the entity judgment-proof.

The court held that the plaintiffs adequately pleaded breaches of the offering plan, including failure to construct the building in accordance with the plan and failure to assign warranties. Claims for breach of the limited warranty were also properly pleaded, and the plaintiffs satisfied the plan's notice requirements. That notice provision, intended to allow the sponsor an opportunity to cure, did not bar the claims.

The court rejected the sponsor's reliance on "as-is" language in the purchase agreements. That provision conflicted with the sponsor's obligation to construct the building in compliance with applicable laws and plans.

Claims for breach of contract against the managing agent were allowed to proceed. The court found no evidence, at the pleading stage, that the plaintiffs lacked contractual privity or third-party beneficiary status.

The court also allowed claims for breach of fiduciary duty against individual board members to proceed. Those claims were not duplicative of contract claims because they arose from the board members' duties to address owner complaints and act in the owners' best interests. If bad faith for the sponsor's benefit were shown, the business judgment rule would not apply.

The court permitted the injunction claim seeking transfer of board control to proceed, finding that irreparable harm could result if the sponsor-controlled board remained in place.

Negligence claims against the sponsor were also allowed to proceed. The sponsor has an independent, nondelegable duty to maintain the building in good repair under the Multiple Dwelling Law.

However, the court held that negligence and negligent

(continued on p. 17)

supervision claims against the contractor should have been dismissed. The contractor had no contractual relationship with the unit owners. For similar reasons, fraud claims against the sponsor's representatives and the contractor were dismissed, as no independent duty or additional damages were adequately alleged.

In sum, the plaintiffs retained sufficient causes of action to seek remediation, assuming they can prove their case, and the defendants were found to have the means to satisfy potential obligations.

TAKEAWAY:

Construction defect litigation is a near-constant feature of new condominium projects, and it is fraught with procedural and substantive traps.

Unit owners should retain qualified architects and engineers early to review plans and inspect all building systems. Specialized consultants—such as mechanical or HVAC engineers—may also be necessary. Owners themselves can often identify issues that professionals may overlook.

Experienced legal counsel is equally critical. Counsel should review the offering plan and construction documents to identify all responsible parties, including sponsors, contractors, subcontractors, and individual principals. Strict compliance with notice provisions and contractual time limits is essential. If remediation is delayed, owners must either commence litigation or negotiate a tolling agreement to preserve claims.

Veil piercing remains a powerful tool, particularly where the sponsor is a shell entity. To succeed, plaintiffs must allege that the entity was improperly operated and used to evade liability, as was claimed here. When properly pleaded, it can prevent sponsors from insulating themselves from responsibility for defective construction.