

Case in Point

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CONDO DEFECTS: THE CLAIMS THAT GET REPAIRS DONE

ADAMS V. BESPOKE HARLEM W., LLC,

FEATURED CASES



CONDO DEFECTS: THE CLAIMS THAT GET REPAIRS DONE

Many newly constructed condos have construction defects, and getting these fixed can become a very expensive legal journey for new owners. Fifty condo owners at 300 West 122nd St. have embarked on one to get defects fixed, and Steven S. Anderson, Shareholder at Becker New York, breaks down their case and points to the claims that have been denied and those that might lead to success.



WHO'S RESPONSIBLE FOR THE SMOKE DETECTOR?

Smoke detectors aren't top of mind - until one goes missing, a fire breaks out, and lawsuits start flying. That's exactly what happened at a Clinton Hill co-op, involving a missing smoke detector, an unauthorized subletter, rent stashed in a freezer, a kitchen fire, and burned hands. Stewart Wurtzel, partner at Tane Waterman & Wurtzel, breaks down the case and the critical lesson boards and owners can't afford to ignore.



WHEN AN OLD ARRANGEMENT ISN'T BINDING ON NEW MANAGEMENT

Many shareholders and unit owners have sub-tenants, and disputes over who collects the rent — and in what amount — can quickly derail relationships. That's what happened at the Powells Cove Cooperative, where assumptions about rent collection and management responsibilities ultimately drew the board and its managing agent into a lawsuit. As Matthew Tobias, a partner at Belkin Burden Goldman, points out, clearly written contracts can make all the difference.

LEGAL EXPERTS

This publication features insights from a roster of experienced attorneys who regularly represent co-op and condo boards, managing agents, and building owners. Their commentary helps translate court decisions into practical guidance boards can use when navigating complex legal issues.



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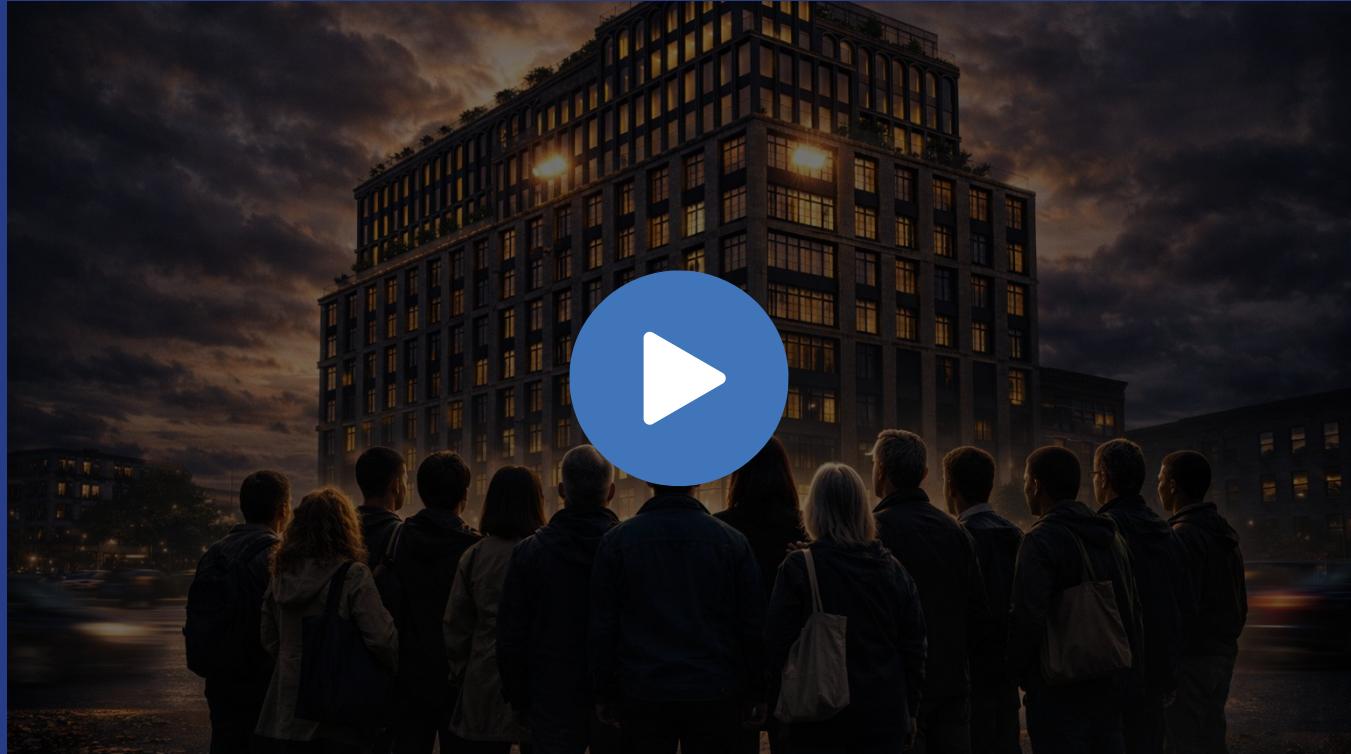
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Governing
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and condos*

HARD QUESTIONS EXPERT ANSWERS

Concise, problem-solving strategies to help you navigate your way in court and avoid problems before they escalate into lawsuits



Scan to watch, or click here:
<https://bit.ly/HabLegalTalk>



An artificial-intelligence tool created this video, which was based on court documents and checked by an editor.

More than 50 condo owners sued over problems in a building at 300 West 122nd Street in Manhattan. They claimed the developer and sponsor did poor construction work and that the sponsor-controlled condo board mismanaged the building.

According to the lawsuit, the building had a long list of serious problems: missing fire safety protections, a leaking roof, work that didn't meet building code, improperly installed heating systems, inconsistent hot water, excessive humidity inside apartments, and structural joints that were already breaking down—among other issues.

The owners also alleged that the sponsor and its principals set up the condo's governance in a way that made sure these problems wouldn't be properly fixed.

The lawsuit didn't just target the sponsor. It also named the sponsor's principals, the architects, and the law firm involved, accusing them of working together to falsely certify that the building met the offering plan and city building codes.

The owners sought millions of dollars in damages.

IN COURT

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Some claims survived and others did not. The court reviewed each claim carefully and allowed the case to move forward in part.

The developer did not attempt to dismiss the core claims for breach of contract and injunctive relief, so those claims remain fully in the case. The court also allowed a fraud claim to proceed based on allegations that the sponsor misrepresented the financial condition of its principals.

At the same time, the court dismissed fraud claims tied directly to the building's construction defects, as well as certain fiduciary duty claims, though some of those were dismissed with the option to re-plead. The court also dismissed part of the owners' challenge to certain financial distributions, but allowed claims relating to the alleged improper transfer of two condominium units to proceed.

Claims against the architect for fraud and against the sponsor's law firm for breach of fiduciary duty were dismissed.

The case is continuing on the remaining claims.

COMMENTS FROM COUNSEL

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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.

HABITAT'S BOARD CHECKLIST



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Property & Financial Management | Legal & Regulatory Support | Sustainability & Efficiency

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TRUSTED EXPERTISE IN NYC PROPERTIES

GOVERNANCE & INDEPENDENCE

- Ensure the board operates independently once unit owners are in place
- Avoid sponsor dominance or conflicts of interest during the sponsor-control period
- Document board decisions and votes, especially on repairs and finances

CONSTRUCTION DEFECTS

- Identify and track building defects early
- Clearly document which repairs are the sponsor's responsibility
- Do not use condo funds to fix sponsor-responsible defects without clear justification

FINANCIAL OVERSIGHT

- Monitor sponsor and board finances closely
- Maintain transparency around distributions and related-party transactions

CERTIFICATES OF OCCUPANCY

- Track TCO expiration dates and PCO requirements
- Regularly confirm progress toward obtaining a permanent certificate of occupancy

PROFESSIONAL ADVISORS

- Clearly define the roles and duties of architects, engineers, and escrow agents
- Keep written records of certifications and reliance on expert opinions