CO-OP & CONDO
CASE LAW TRACKER
digest

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ALTERATIONS

THE BD. OF MGRS. OF THE ONE LINCOLN SQUARE CONDO. V. SAG 150 COLUMBUS LLC

2026 NY SLIP OP 30146(U) (SUP. CT. N.Y. CNTY. JAN. 13, 2026)

Unit Owner Can't Evade License Fees as Court Enforces Alteration Agreement

SQUIB BY SCOTT J. PASHMAN, MEMBER, COZEN O'CONNOR

OUTCOME: Decided for Plaintiff Condominium Board

WHAT HAPPENED: The defendant owns Unit PH2A in The One Lincoln Square Condominium located at 150 Columbus Ave., New York, N.Y. The defendant entered into an alteration agreement with the board of managers for substantial renovations to Unit PH2A.

The agreement provided that the work shall be completed within 150 calendar days. Otherwise, the condominium would be entitled to license fees of $100 per calendar day for up to 30 days and $200 per calendar day thereafter that the work remained incomplete.

The renovation exceeded the allotted term by 251 days. The board sent the unit owner a notice showing the calculation of the license fees due, which were added to the unit owner's next common charge statement. The unit owner did not pay the outstanding balance. After repeated demands, the board sued to collect.

IN COURT: The unit owner answered and asserted counterclaims for negligence and breach of contract arising from alleged leaks or flooding into Unit PH2A from the roof and from work on the building façade. The board moved for summary judgment on its breach of contract claim, which the court granted.

The unit owner contended that the alteration was supposed to proceed in two phases, each with its own alteration agreement. The court held that the unit owner's unilateral belief was insufficient to raise an issue of fact regarding the validity of the executed alteration agreement.

The unit owner also argued that the board lacked authority under the condominium's by-laws to require the alteration agreement because the work was allegedly non-structural. The court found

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Principal & Managing Partner, Braverman Greenspun

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Dale Degenshein
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Partner, Hankin & Mazel

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Partner, Higgins & Trippett

Richard Klein
Partner, Klein Greco & Associates

Michelle P. Quinn
Partner, Gallet Dreyer & Berkey

Stewart E. Wurtzel
Principal, Tane Waterman Wurtzel

CONTRIBUTORS:

Steven S. Anderson
Shareholder, Becker New York, PC

Moshe C. Bobker
Partner, Tane Waterman & Wurtzel, PC

Manu Leila Davidson, Esq.
Partner, Boyd Richards Parker & Colonnelli, PL

Thomas P. Higgins
Partner, Higgins & Trippett

William D. McCracken
Partner, Moritt Hock & Hamroff, LLP

Scott J. Pashman
Member, Cozen O'Connor

Richard J. Shore
Partner, Nixon Peabody, LLP

Matthew Tobias
Partner, Belkin Burden Goldman, LLP

Steven R. Wagner
Of Counsel, Adam Leitman Bailey, PC

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that neither party adequately supported its position as to whether the work was structural. However, the court emphasized that the parties did, in fact, enter into the alteration agreement. The unit owner cited no authority supporting the proposition that the agreement was unenforceable because the owner believed it should not have been required to sign it or did not anticipate that the board would enforce its terms.

The unit owner further contended that the board failed to provide notice of the authorized commencement date of the work. The court rejected that argument, noting that the alteration agreement placed responsibility for notice of commencement on the unit owner.

Because there was no issue of fact that the renovation exceeded the permitted period by 251 days, the court held that the board was entitled to recover $47,200 in license fees, plus interest and attorneys' fees and costs incurred in collecting those fees.

TAKEAWAY:
Boards should regularly review and update their alteration agreements to manage risks associated with owner renovations, including potential damage to common elements, consistency with updated declarations and bylaws, incorporation of modern construction practices, and allocation of liability.

The record reflects that the managing member of the limited liability company that owns the unit is a real estate developer and that the owner determined it would be less expensive to pay daily license fees than to negotiate a second alteration agreement for a second phase of work. However, the owner may not have anticipated liability for the board's attorneys' fees, which may exceed $100,000.

This may not be the final decision in this litigation, as the owner may continue to pursue its potentially significant counterclaims.

BOOKS & RECORDS

KLEPPER V. 118 E. 60TH OWNERS, INC.

160268/2025 (SUP. CT. N.Y. CNTY. JAN. 14, 2026) NYSCEF NO. 49

Speculation About Board Motive Insufficient to Overturn Denial

SQUIB BY MOSHE C. BOBKER, PARTNER, TANE WATERMAN & WURTZEL, PC

OUTCOME: Decided for Respondent Co-op

WHAT HAPPENED: James and Mitra Klepper are the shareholders of Apartment 4A in 118 East 60th Owners Inc. They purchased the apartment in 2017 after receiving board approval.

In January 2025, when the adjacent Apartment 4B was listed for sale, they entered into a contract to purchase it and submitted a board application seeking approval for the sale and, upon closing the sale, to combine the two units. The board denied the purchase application.

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

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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

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The Kleppers alleged that the board president, Scott Curtis, owns a combined apartment on the same floor and speculated that the board rejected their application at his behest to preserve the value and uniqueness of his own unit.

They demanded access to the cooperative's books and records under Business Corporation Law § 624, including minutes of the meeting at which their purchase application was rejected and any other meetings where the application was discussed.

IN COURT: The Kleppers commenced a hybrid action and special proceeding challenging both the denial of their purchase application and the cooperative's alleged failure to produce corporate records.

They sought a temporary restraining order and a preliminary injunction to prevent the sale of Apartment 4B to another purchaser approved by the board. The court denied the temporary restraining order, finding that the Kleppers failed to allege sufficient facts to demonstrate discrimination, bad faith or self-dealing — the limited grounds on which a court may overturn a board's decision.

The court decided the request for a preliminary injunction together with the underlying petition, denying the injunction and dismissing the proceeding.

The Kleppers argued that the cooperative's failure to produce meeting minutes demonstrated improper motive. The court rejected that argument, noting there were no formal minutes to produce because the board discussion occurred by telephone. The court also declined to infer wrongdoing from an email sent by Curtis to the managing agent reporting that another purchaser had been approved. The court found that the email merely reflected the board's decision.

The court denied the Kleppers' application under Business Corporation Law § 624 as moot. The shareholder list had already been provided, and there were no relevant minutes to produce.

Finally, the court held that the Kleppers failed to demonstrate that the denial of their application was arbitrary and capricious. There was no evidence supporting their claim that the denial was intended to protect the uniqueness of Curtis' combined unit.

Notably, the court did not address the cooperative's asserted reason for denying the application — that the Kleppers' 2017 application represented they would be the sole occupants of Apartment 4A, but the unit was instead occupied by their daughter, whose alleged conduct created noise and nuisance complaints in the building.

The Kleppers have moved for re-argument and renewal and have appealed to the Appellate Division.

TAKEAWAY:
Courts reviewing co-op board decisions remain constrained by the business judgment rule. Allegations of favoritism or self-interest must be supported by specific, concrete facts, not speculation.

Here, the board followed its usual procedures, and there was no documentary evidence of bad faith or self-dealing. Absent proof that the board acted outside its authority or in furtherance of improper personal interests, the court declined to second-guess its determination.

The decision also underscores that a books and records demand under Business Corporation Law § 624 does not require a cooperative to create documents that do not exist.

COMMERCIAL UNIT

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

2026 NY SLIP OP 00005 (1ST DEP'T. JAN. 06, 2026)

Board Successfully Appeals on Unit Alterations, but Dispute Far from Over

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

OUTCOME: Decided for Plaintiff-Appellant Condo Board

WHAT HAPPENED: This ongoing dispute pits an Upper East Side mixed-use condominium against its commercial unit owner. The building, located at the northeast corner of 80th Street and Madison Avenue, features a granite-clad, double-height base containing the

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residential lobby and a single large commercial unit.

After struggling to lease the space, the commercial unit owner proposed subdividing it into three retail units. The plan required cutting new shop windows into the granite façade, removing a mezzanine and catwalks that provided access to building pipes and valves above the 20-foot-high interior, and installing new exterior signage anchored into the façade.

There was no dispute that board consent was required under the declaration and bylaws. The parties negotiated an alteration agreement at length. To address access to building systems after removal of the catwalks, the unit owner agreed to purchase a scissor lift. The agreement was nearly finalized when negotiations collapsed over the board's demand that the unit owner contribute $100,000 toward prior legal fees incurred during negotiations.

Rather than resolve the fee dispute, the unit owner proceeded with the work without board approval. It installed the windows and signage and removed the mezzanine and catwalks. The board sued.

The amended complaint sought: (1) a declaratory judgment that the alterations violated the governing documents; (2) a mandatory injunction requiring removal of the signage; and (3) damages and attorneys' fees. During litigation, it emerged that the contemplated lift solution for access was not permitted under the Building Code. The board amended again, seeking to compel restoration of the mezzanine and catwalks.

On cross-motions for summary judgment, the lower court denied most relief to both parties. Although it recognized the board's easement rights, it denied declaratory and injunctive relief regarding the catwalks, reasoning that contractual remedies were available and irreparable harm had not been shown. As to the façade and signage, the court denied relief despite the lack of consent, citing hardship to the unit owner if removal were ordered.

The board appealed.

IN COURT: The Appellate Division, First Department unanimously modified the lower court's decision. It held that the board was entitled to a declaratory judgment establishing that the unit owner lacked authority to alter the façade or demolish the mezzanine and catwalks without board approval. The court emphasized that irreparable harm is not required for declaratory relief.

However, the appellate court largely upheld the denial of injunctive relief. It concluded that requiring restoration of the catwalks and removal of signage would be "extremely costly" and disruptive to the unit owner's tenants. The court did grant a permanent injunction prohibiting any additional façade signage without board consent.

TAKEAWAY:

The decision clarifies the board's authority but leaves the practical conflict unresolved.

The immediate issue is restoration of access to critical building systems. Beyond contractual rights, access to pipes and valves raises regulatory and life-safety concerns. The board may now need to exercise its contractual authority to enter the unit and restore that access itself—work likely to be just as disruptive as the injunction the court declined to impose.

Although the appellate court noted that the unit owner previously granted access upon request, future cooperation is uncertain. If access is denied, further litigation is likely. If granted, the unit owner may seek to block the restoration work.

The issue of damages and attorneys' fees also remains open. The board has likely incurred significant expenses negotiating the alteration agreement and litigating the dispute—costs that will continue to accrue until a workable resolution is reached.

In short, the appellate ruling defines the board's rights but does not end this high-stakes dispute.

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EASEMENT

BD. OF MGRS. OF THE 190 MESEROLE AVE. CONDO. V. BD. OF MGRS. OF THE 188 MESEROLE AVE. CONDO.

2026 NY SLIP OP 26007 (SUP. CT. KINGS CNTY. JAN. 6, 2026)

Temporary Fences Didn't Kill a Recorded Driveway Easement

SQUIB BY MATTHEW TOBIAS, PARTNER, BELKIN BURDEN GOLDMAN, LLP

OUTCOME: Decided for Plaintiffs

WHAT HAPPENED: In 2004 and 2005, developers Ted Wozniak and Jon Kimszal purchased three adjacent Brooklyn lots located at 175 Diamond Street, 188 Meserole Avenue, and 190 Meserole Avenue. Their plan was to construct three separate, but attached, condominium buildings.

In 2006, before units were sold, they recorded a Driveway Agreement creating a twelve-foot-wide easement running west across 175 Diamond — the only parcel with direct access to Diamond Street — and continuing across 190 and 188 Meserole. The easement was intended to allow pedestrian and vehicular ingress and egress to the rear of 190 and 188 Meserole so that ground-floor unit owners could access rear parking spaces. The agreement expressly prohibited either party from obstructing the other's reasonable use of the easement and stated that it was a covenant running with the land. The three condominium Offering Plans, filed in 2007, incorporated and described the driveway rights.

The driveway, however, was never built. Before any units were under contract, the developers decided the layout was impractical. Instead, they installed grass- and shrub-filled rear yards with non-permanent wooden fencing between the properties. Each fence contained a pedestrian gate.

Notably, the Driveway Agreement was never rescinded, and the Offering Plans were never amended to remove references to it.

Years later, the owners of the ground-floor unit at 175 Diamond installed an electronic gate between their driveway and Diamond Street. The owners of the ground-floor unit at 188 Meserole — the property farthest from Diamond Street — asserted their right under the Offering Plan and Driveway Agreement to extend and use the easement to access parking at the rear of their building. When access was refused, litigation followed.

The plaintiffs sought declaratory and injunctive relief enforcing the easement, along with damages for breach of the Driveway Agreement.

IN COURT: The trial court initially granted summary judgment in favor of the plaintiffs, but the Second Department reversed, finding factual issues as to abandonment. After trial, however, the Supreme Court concluded that the defendants failed to meet the heavy burden required to prove abandonment of a recorded easement.

The court emphasized that the Driveway Agreement remained recorded and that the Offering Plans continued to reference the easement. Those written documents, the court held, superseded any alleged oral intent to abandon the driveway.

The court also found that the physical obstructions — wooden fences, landscaping, and pedestrian gates — were temporary and non-permanent. The relevant events unfolded over approximately two years. That short time frame, combined with the non-permanent nature of the obstructions, was insufficient to establish acquiescence or the unequivocal intent necessary to prove abandonment. Cases finding abandonment typically involve permanent obstructions lasting a decade or more.

Accordingly, the easement remained valid and enforceable.

TAKEAWAY:

Recorded easements — particularly those expressly incorporated into Condominium Offering Plans — are presumptively valid and enforceable, even if never physically constructed or used.

Abandonment is difficult to prove. It requires clear evidence of an unequivocal intent by the dominant estate owner to relinquish the easement, together with conduct that demonstrates the owner no longer claims any interest in it.

Temporary fencing, landscaping, or short-term obstruction will not suffice. Nor will informal or oral expressions of intent. Courts look for permanence, long duration, and unmistakable relinquishment. Without those elements, recorded rights endure.

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ESTATE

ELLISON V. SCHULTE

2026 NY SLIP OP 00440 (1ST DEP'T. JAN. 22, 2026)

Estate Wins Possession After Two Decades of Litigation Over Share Transfer

SQUIB BY RICHARD J. SHORE, PARTNER, NIXON PEABODY, LLP

OUTCOME: Decided for Plaintiff-Respondent Estate

WHAT HAPPENED: This dispute began in 2005 in surrogate's court. The estate of the decedent, and later the decedent's widow, sought to transfer the decedent's cooperative apartment shares to a marital trust created for the widow's lifetime benefit. The cooperative corporation denied the transfer.

The estate and the widow claimed the denial was made in bad faith. The surrogate's court granted summary judgment to the cooperative, holding that its decision was protected by the business judgment rule. Because there were no allegations of discrimination, the cooperative was permitted to deny the transfer for any reason or no reason at all. The appellate division later affirmed that ruling.

After those decisions, the plaintiff executor commenced a separate action against the widow seeking ejectment and a declaratory judgment that her right to occupy the apartment had ended when any license she may have had was terminated. The lower court granted judgment to the estate and awarded possession of the apartment.

IN COURT: After 21 years of litigation, Ms. Schulte was ultimately denied the right to continue occupancy of the apartment in question. The court decisions are generally silent as to misconduct by Ms. Schulte, although there are general references to some disputes with board members. Was the 20+ years of litigation worth it for the co-op to finally evict an 84-year-old who only had a lifetime interest?

The appellate division affirmed the judgment awarding possession to the estate.

The court held that the doctrine of res judicata barred the widow from relitigating her right to occupy the apartment. The prior rulings had already upheld the cooperative's denial of the transfer of shares to the marital trust. As a result, the widow had no independent legal right to possession.

Because her claim to occupancy depended on the validity of the proposed share transfer, and that issue had already been decided, the estate was entitled to judgment on its ejectment and declaratory judgment claims.

TAKEAWAY:

After more than two decades of litigation, the widow was ultimately denied the right to remain in the apartment.

The case highlights the importance of coordinating estate planning with cooperative governing documents. The proprietary lease permitted transfer upon death to a financially responsible immediate family member, subject to a standard prohibiting unreasonable withholding of consent. However, the will directed transfer to a lifetime trust, which is a legally distinct entity. That distinction triggered application of the business judgment rule rather than the "unreasonable withholding" standard.

A different estate structure — or adding the surviving spouse to the proprietary lease during the decedent's lifetime — might have avoided years of litigation and the eventual loss of possession.

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FIDUCIARY DUTY

239 E. 18TH OWNERS CORP. V. WADE

2025 NY SLIP OP 06384 (1ST DEP'T. NOV. 20, 2025)

The Perils of Small Building Conflicts of Interests

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

OUTCOME: Decided, in part, for Defendants

WHAT HAPPENED: The plaintiff, a cooperative housing corporation that owns a small residential apartment building in Manhattan, sued a shareholder who lives in the building with her husband. The husband performed work at the building as superintendent and also served as the building's treasurer. He claimed he was an employee.

The plaintiff alleged that the defendants combined two apartment units without board approval, causing damage to the building. The plaintiff also alleged they built a personal storage area in the basement without approval and removed or altered support beams. In addition, the plaintiff claimed the husband misappropriated building funds while serving as treasurer. The amended complaint included claims for breach of contract, conversion and breach of fiduciary duty.

The defendants filed counterclaims seeking unpaid wages, alleging retaliation under New York Labor Law Section 215 and asserting a violation of the Freelance Isn't Free Act under Article 44-A of the New York General Business Law. All of the counterclaims were based on work the husband said he performed for the building.

IN COURT: The defendants moved to dismiss the complaint and sought summary judgment. The plaintiff requested depositions and other discovery.

The trial court ruled that the husband could not pursue employment-based claims because he had already lost that issue in a prior administrative proceeding before the New York State Unemployment Insurance Appeal Board. The court found that the employment issue had been decided against him. The court also noted that the case had been pending for years and allowed the plaintiff to proceed with discovery, finding it was too early to decide the merits of the plaintiff's claims or the defendants' motion for summary judgment.

The Appellate Division reversed the trial court's ruling that the husband's employment-related claims were barred. The appellate court held that, despite the administrative determination, he could still pursue a claim for quantum meruit as an independent contractor.

TAKEAWAY:

Disputes in small cooperative buildings can quickly become complex, particularly when shareholders perform paid work for the building. When a shareholder also serves in a governance role, such as treasurer, conflicts of interest are almost unavoidable.

Even if an employment claim fails, courts may allow alternative quasi-contract claims, such as quantum meruit, to proceed. Boards should avoid informal compensation arrangements with shareholders, especially when fiduciary responsibilities overlap with paid services. Clear written agreements, defined roles and separation between governance duties and compensated work can help reduce litigation risk.

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LABOR LAW

ALMENDARES V. THE CITY OF NEW YORK

158042/2017 (SUP. CT. N.Y. CNTY. JAN. 15, 2026) NYSCEF NO. 198

Summary Judgment Granted to Injured Worker Under Labor Law

SQUIB BY MANU LEILA DAVIDSON, ESQ., PARTNER, BOYD RICHARDS PARKER & COLONNELLI, PL

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: The plaintiff, a painter and plasterer employed by Nationwide Maintenance, was injured while working at 890 Broadway Condominium. He was painting the underside of a staircase while standing on an A-frame ladder when the ladder suddenly shifted. The ladder and the plaintiff fell to the bottom of the stairwell.

The condominium is a commercial building with four units. Two of the units are owned by another defendant. The stairwell where the accident occurred is classified as a common element under the condominium's bylaws. Responsibility for maintaining common elements rests with the condominium, whether the area is located inside or outside a unit.

The plaintiff moved for summary judgment under Labor Law Section 240(1). The defendants cross-moved to dismiss.

Labor Law Section 240(1) requires property owners, contractors and their agents to provide proper safety devices to protect workers from elevation-related risks during construction, repair and similar work. The statute covers equipment such as ladders and scaffolds.

The plaintiff relied on testimony from the condominium's managing agent, who admitted that the condominium paid Nationwide Maintenance to perform the work. The plaintiff argued that this established the condominium's status as an owner, contractor or statutory agent under the statute. The plaintiff also argued that painting from a ladder is protected work and that a statutory violation is established when a ladder shifts or slips and causes a fall.

IN COURT: The court granted summary judgment to the plaintiff on the Labor Law Section 240(1) claim. It held that the condominium qualified as a proper Labor Law defendant and that the plaintiff was engaged in protected work. The court further held that a ladder that shifts or slips, causing a worker to fall, establishes a violation of the statute.

For the same reasons, the court denied the condominium's cross-motion to dismiss. The court also denied that motion as untimely because it was filed 134 days after the note of issue, exceeding the 120-day deadline under the CPLR and the court's part rules.

As to the unit-owning defendant, the court granted the motion in part and denied it in part. Viewing the evidence in the light most favorable to the plaintiff, the court found a question of fact as to whether that defendant could be held liable under the Labor Law. The accident occurred in a common area. The condominium's governing documents stated that the unit owner was responsible for maintenance and repair. The contract for the work was signed by the unit owner and its executive director, who also served on the condominium's board. There was evidence that Nationwide Maintenance performed work for both the condominium and the unit owner.

The court also denied the unit owner's motion to dismiss the Labor Law Section 241(6) claim. That claim was based on Industrial Code Section 23-1.21(b)(4)(ii), which requires ladder footings to be firm and prohibits the use of slippery or insecure materials as ladder supports. The evidence showed that the ladder was placed on paper covering the stairs and shifted. It was unclear whether the paper caused the movement, leaving an issue of fact.

However, the court dismissed the Labor Law Section 200 and common-law negligence claims against the unit owner. Those claims require proof that the defendant had authority to supervise or control the work or that a dangerous condition on the premises caused the injury. The court found no evidence that the injury resulted from a premises defect. Instead, it arose from the manner in which the work was performed. There was no evidence that the unit owner directed or controlled the plaintiff's work.

(*Takeaway* on p. 10)

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TAKEAWAY:
Labor Law Section 240(1) imposes a nondelegable duty on property owners and qualifying entities to provide proper safety devices for elevation-related work. Once a statutory violation is shown, liability is strict. A ladder that shifts and causes a fall is often enough to establish liability.

This decision also shows how difficult it can be for condominium entities and unit owners to avoid exposure when work takes place in common areas and contractual responsibilities overlap. Even when some claims are dismissed, Labor Law exposure may remain.

Boards and managing agents should consult experienced Labor Law counsel before undertaking construction or maintenance projects. Careful drafting of contracts, along with appropriate insurance and indemnification provisions, is critical to reducing risk.

TAX

MATTER OF DG 1096 BROADWAY, LLC V. NEW YORK CITY DEPT. OF HOUS. PRESERV. & DEV.

2026 NY SLIP OP 00127 (2ND DEP'T. JAN. 14, 2026)

Condo's J-51 Eligibility Reinstated After Cured Violation

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

OUTCOME: Decided for Petitioner Condo

WHAT HAPPENED: A two-story mixed-use building in Manhattan was converted into a six-story residential condominium between February 2018 and February 2020. A temporary certificate of occupancy was issued in September 2019, followed by a final certificate of occupancy in February 2020.

In March 2020, the petitioner condominium applied for J-51 tax benefits, which provide partial reimbursement for qualifying renovation costs. The New York City Department of Housing Preservation and Development denied the application. In reviewing the rent roll, the agency found that an apartment had been occupied in August 2019 — one month before the first temporary certificate of occupancy was issued. The agency concluded that the building had violated residential occupancy laws and therefore was not eligible for the J-51 program.

The petitioner commenced an Article 78 proceeding challenging the determination. It argued that any violation had been cured once the proper certificates of occupancy were issued. The trial court upheld the agency's decision, and the petitioner appealed.

IN COURT: The appellate division reversed the trial court and annulled the agency's determination.

The court agreed that occupancy before issuance of a certificate of occupancy constitutes a violation of residential occupancy laws. However, the applicable provision of the Real Property Tax Law provides that J-51 benefits are unavailable "unless and until" the building complies with applicable laws.

Here, the violation was cured when the certificates of occupancy were issued. At the time the petitioner submitted its J-51 application, the building was in compliance. Because there was no ongoing illegality at the time of the application, the agency lacked statutory authority to deny the benefits.

The court directed that the petitioner's J-51 application be allowed to proceed.

TAKEAWAY:
The J-51 program is designed to encourage renovation and rehabilitation of residential buildings. Although often associated with rent-regulated properties, the program is also available to qualifying affordable condominiums

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

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and cooperatives that meet statutory value thresholds.

This decision makes clear that an agency may not deny J-51 benefits based solely on a past violation that has been fully cured. The statute focuses on compliance at the time of application.

While Article 78 proceedings can be expensive and time-consuming, this case shows that challenging an improper denial may be worthwhile when significant tax benefits are at stake.

WARRANTY OF HABITABILITY

BATT V. 77 BLEECKER ST. CORP.

157277/2016 (SUP. CT. N.Y. CNTY. JAN. 7, 2026) NYSCEF NO. 363

Estate Prevails on Habitability and Lease Claims After Repeated Leaks

SQUIB BY STEVEN R. WAGNER, OF COUNSEL, ADAM LEITMAN BAILEY, PC

OUTCOME: Decided, in part, for Plaintiff Estate

WHAT HAPPENED: In 2014, two separate leaks within seven months damaged a cooperative apartment owned by Robin Siegel. The first leak occurred when a sprinkler head froze and burst while she was away. The second leak, which lasted about eight months, originated from plumbing in the bathroom of the apartment above. Siegel claimed she could not use her apartment for approximately 16 months while repairs were pending and ongoing.

The defendant cooperative corporation asserted that it was responsible only for building components that were "original" to the structure. It denied breaching the statutory warranty of habitability or the proprietary lease and argued that it neither caused nor was at fault for the leaks.

Siegel submitted claims to her own insurer. The cooperative and its insurer retained their own adjusters. The cooperative offered to perform the repairs through its contractor or reimburse Siegel if she used her own contractor, but only if she paid part of the cooperative's insurance deductible and the cooperative's adjuster's fee. Siegel rejected those conditions and retained her own contractor, citing concerns about quality and timing.

The repairs cost $234,568.70. Siegel received $75,390.74 from her insurer for dwelling coverage and $19,983.26 from the cooperative in connection with a settlement of a housing court non-payment proceeding that followed her withholding of maintenance.

Siegel died before the dispute was resolved. The plaintiff administrator of her estate commenced this action in 2016 against the cooperative, its managing agent, individual board members and the adjuster defendants. The court consolidated summary judgment and discovery motions and issued a detailed decision.

IN COURT: The estate prevailed on the principal claims. The court granted summary judgment to the estate on its claims for breach of the warranty of habitability and breach of the proprietary lease against the cooperative. The estate was also awarded attorneys' fees as the prevailing party, with the amount to be determined.

The court further sanctioned the cooperative for spoliation after it lost the valve and pipe that had burst.

Quoting the statutory warranty of habitability, the court emphasized that landlords warrant that premises are fit for human habitation and for their intended use. The court reiterated that the warranty establishes a minimum standard protecting occupants from conditions that render an apartment uninhabitable or unusable.

Although the estate did not establish that mold rendered the apartment uninhabitable for the entire 16-month period, photographic evidence showed conditions that prevented residential occupancy. The court held that the estate was not required to prove the cooperative caused the leaks in order to establish a breach of the warranty. The court rejected the cooperative's reliance on contrary case law and found portions of its expert report internally inconsistent regarding mold conditions.

(*Takeaway* on p. 11)

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TAKEAWAY:

Water leaks often lead to mold and habitability claims. When conditions make an apartment unsafe or unusable, the warranty of habitability may be breached regardless of fault.

The cooperative's position that its responsibility was limited to "original" building elements was inconsistent with the broader obligations imposed by statute and the proprietary lease. Conditioning repairs on the shareholder's payment of part of the insurance deductible and adjuster fees effectively amounted to a refusal to make repairs. The shareholder was entitled to reject those terms and retain her own contractor.

Boards should understand that repair obligations are shaped not only by the proprietary lease's repair clause, but also by casualty provisions, established case law and the statutory warranty of habitability. The decision also serves as a reminder that spoliation of key evidence can result in sanctions.

When significant water damage occurs, early consultation with experienced counsel is critical. Relying solely on insurance adjusters for legal guidance can increase exposure.

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