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

ACCESS

PANASIA ESTATE, INC. V. 29 W. 19 CONDO.

2025 NY SLIP OP 32013(U) SUP. CT. N.Y. CNTY. JUNE 5, 2025

Court Sides with Condo in Neighbor Access Battle

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

OUTCOME: Decided for Defendant Condo

WHAT HAPPENED: In order to perform certain construction on its property, Panasia Estate needed access to the neighboring condominium property and attempted to negotiate an access agreement. Unable to agree on terms, Panasia Estate filed an action to compel the condominium to give access to its property.

IN COURT: This long-running dispute over access to perform a construction project led to years of litigation. During the pendency of the case, a court order was issued requiring Panasia Estate to furnish a proposed insurance package; however, only a sample policy was provided. The court gave Panasia Estate a further opportunity to furnish an actual insurance package for the property in question, despite the fact that they did not have a current contractor retained. Over the course of the litigation, the court also awarded to the condominium (and other respondents) its attorneys' fees incurred, which required that Panasia Estate to post an undertaking bond while it pursued an appeal.

In response to the court order Panasia Estate provided an actual—but old—insurance policy and sought to have the court find that any future contractor selected provide the same insurance, and to allow it to increase the amount of its undertaking and stay proceedings pending further appeal. The condominium opposed and filed its own motion seeking to have the undertaking bond released, the attorneys' fee award increased, and for permission to collect against Panasia Estate's assets for any amount not covered by the bond. The court agreed with the condominium in all respects, finding that

Panasia Estate's submission of the old insurance policy was again insufficient to satisfy the court's prior order. The court gave Panasia Estate a final opportunity to submit a proposed and specific insurance package as to the property in

(continued on p. 3)

AUGUST 2025 HIGHLIGHTS

ACCESS
Condo Secures Roof Repair Access After Prolonged Dispute

BREACH OF FIDUCIARY DUTY
Condo Board Faces Fiduciary Duty Claim Over Long-Standing Water Leaks

INJUNCTION
Doctor Wins Yellowstone Injunction in Co-op Lease Dispute

PERSONAL INJURY
Court Weighs Condo Liability in Flying Lounge Chair Incident

REPAIRS
Court Upholds Co-op's Roof Access Rights, Dismisses Penthouse Owners' Claims

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

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

ADVISORY PANEL:

Robert Braverman
Principal & Managing Partner, Braverman Greenspun

Andrew P. Brucker
Partner, Fox Rothschild

Dale Degenshein
Partner, Fox Rothschild

Michael P. Graff
Principal, Graff Dispute Resolution

Jeremy S. Hankin
Partner, Hankin & Mazel

Thomas P. Higgins
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

David J. Blessington
Associate, Braverman Greenspun

Thomas P. Higgins
Partner, Higgins & Trippett

Kenneth R. Jacobs
Partner, Smith Buss Jacobs

William D. McCracken
Partner, Moritt Hock & Hamroff

Michelle P. Quinn
Gallet Dreyer & Berkey

Lloyd F. Reisman
Partner, Belkin Burden Goldman

Steven D. Sladkus
Partner, Schwartz Sladkus Reich Greenberg Atlas
&
Madison N. Kelley
Associate, Schwartz Sladkus Reich Greenberg Atlas

Stewart E. Wurtzel
Principal, Tane Waterman Wurtzel

TABLE OF CONTENTS

ACCESS 1
Court Sides with Condo in Neighbor Access Battle
Condo Secures Roof Repair Access After Prolonged Dispute

BOARD MEMBER LIABILITY 4
Court Shields Condo Board Members Under Business Judgment Rule

BREACH OF FIDUCIARY DUTY 5
Condo Board Faces Fiduciary Duty Claim Over Long-Standing Water Leaks

BUSINESS JUDGMENT RULE 6
Access Fight and Retaliation Claims Survive to Trial

EVICTION/TERMINATION 7
Co-op's Eviction Case Fails Over Defective Notices

INJUNCTION 8
Doctor Wins Yellowstone Injunction in Co-op Lease Dispute

PERSONAL INJURY 9
Court Weighs Condo Liability in Flying Lounge Chair Incident

REPAIRS 10
Court Upholds Co-op's Roof Access Rights, Dismisses Penthouse Owners' Claims

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

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

Publisher: Carol J. Ott
Executive Editor: Heather L. Stone
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 3

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.

DISCLAIMER: Every reasonable effort has been made in this publication to achieve accuracy. The law changes constantly, however, and is subject to differing interpretations. Always consult your attorney, therefore, and act only on his/her advice. This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. The publisher shall not be responsible for any damages resulting from any inaccuracy or omission contained in this publication.

©2025 by The Carol Group Ltd. All rights reserved. No part of **CO-OP & CONDO CASE LAW TRACKER DIGEST** may be reproduced, distributed, transmitted, displayed, published, or broadcast in any form or in any media without prior written permission of the publisher. To request permission to reuse this content in any form, including distribution in educational, professional, or promotional contexts, or to reproduce material in new works, please contact contact Carol J. Ott at 212-505-2030 or *cott [at] habitatmag.com.*

the HABITAT group

question within 60 days of the order. The court also granted an award of additional attorneys' fees, the release of the funds in the undertaking bond, and permission to execute against the assets of Panasia Estate for amounts not covered by the bond.

TAKEAWAY:
Robert Frost wrote, "good fences make good neighbors." But when those boundaries fail to prevent disputes between neighboring buildings, the process to reach a resolution can be time consuming and expensive. When asking for something you need, be prepared to satisfy the conditions imposed on granting that request, especially when required to do so by a court order. Best practice is to pay close attention to and comply with court orders, or else risk increased costs in addition to a continued obligation to abide by the order. Neighboring buildings should endeavor to apply the message of the Frost poem, that mutual respect and understanding is essential for good relationships.

ACCESS

THE BD. OF MGRS. OF THE 444 HUMBOLDT ST. CONDO. V. MANCINI 442 LLC

NO. 503753/2025 (SUP. CT. KINGS CNTY. JUNE 6, 2025) NYSCEF NO. 24

Condo Secures Roof Repair Access After Prolonged Dispute

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

OUTCOME: Condo gets most requests for repair access

WHAT HAPPENED: The 444 Humboldt Street Condominium sought access to the property of its neighbor, Mancini 424 LLC, for the better part of a year in order to designate "controlled access zones" and install protections required for the condominium to perform repair work to address leaks into the condo building. However, Mancini 424 consistently rejected their request, demanding (among other things) that pipe scaffolding be reworked at the rear of the property to prevent loss of "light and air", that the pipes be primed and coated to avoid "rust stains", and that their roof be "silvered" and re-coated after work was completed. Mancini also demanded a $5,000 per month license fee and either a substantial escrow or posting a $1,500,000 undertaking. The condo's architect advised that it was willing to discuss all of those demands, but agreement could not be reached. Eventually the condominium, despairing of gaining permission from Mancini, commenced. a special proceeding to obtain a temporary license pursuant to §881 of the New York Real Property Actions and Proceedings Law ("RPAPL").

IN COURT: After hearing oral argument and reviewing briefs on the issues, the court granted the condominium virtually all of its requested relief, including (a) access

(continued on p. 4)

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

for 8 months to complete repairs, for a license fee of $3,500 per month; (b) access for 7-14 business days to install and remove protections on Mancini's property; and (c) a license to maintain a Controlled Access Zone on other portions of Mancini's property. The contractor was required to maintain insurance in accordance with a certificate previously submitted. Mancini's demand for payment of legal and professional fees was denied without prejudice to a future filing. No undertaking was required to be posted.

TAKEAWAY:

The decision again illustrates the maxim, "Chickens lay eggs. Pigs get slaughtered." The number and size of the demands made by Mancini, the length of time negotiations were taking, and the equities in favor of the condo led to the court taking decisive action to facilitate access.

These access agreements are currently the bane of our industry. In the absence of settled standards for insurance, indemnification and license fees, the negotiations are conducted on a case-by-case basis subject to the relative leverage of the parties and the personality and sense of professional responsibility of the owner whose access is requested. Many law firms have significantly reduced their timetable for meaningful negotiations before recommending formal legal action as a result.

BOARD MEMBER LIABILITY

BENT V. CIRONE

NO. 654827/2023 (SUP. CT. N.Y. CNTY. JUNE 27, 2025) NYSCEF NO. 48

Court Shields Condo Board Members Under Business Judgment Rule

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

OUTCOME: Decided, in part, for Condo Defendants

WHAT HAPPENED: The plaintiff's wife was/is the owner of a unit at the condominium building located at 99 Jane Street in Manhattan. The plaintiff assigned her litigation claims to her husband who sued the condominium and individual board members based upon various problems he and his wife alleged to have at the unit.

The plaintiff claimed their penthouse unit received water damage and mold arising from leaks from the building roof, thus causing unsanitary conditions, and additionally claiming that the air conditioning in hallways did not work, that roof top fans created excessive noise, and that his family was denied services by the board of managers because individual board members acted in "retaliation" against the plaintiff and his wife by, among other things, spreading "false and malicious communications" through building-wide communication systems. In other words, plaintiff claimed the board had it in for his wife/unit owner and him in retaliation for complaints about management of the building.

The plaintiff, in his complaint, brought myriad claims for damages, injunctive and declaratory relief arising from claimed breaches of the condominium bylaws, and asserting various torts: negligence, nuisance, trespass, gross negligence.

IN COURT: The board, and individual board members, moved to dismiss causes of action of, and in, the complaint against them—all considered by the court pursuant to applicable judicial standard, accepting all "well-pleaded allegations" of the complaint "as true."

The court dismissed several claims on the grounds that plaintiff, as assignee of his wife-unit owner's claims, was not a unit owner and did not possess unit owner rights as such. Both derivative causes were allegedly brought in the name of all condominium unit owners, and a claim to inspect condominium books and records.

As to the substantive claims (for breach of contract/tort) many of these were generally held by the court to at least be validly pleaded, but as to the condominium only. All claims against the individual board members were dismissed.

(***Takeaway*** *on p. 5)*

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

TAKEAWAY:
The decision reflects the court recognizing that individual board members should not have to be subjected to litigation or being a defendant in a lawsuit where they merely serve as board members in the absence of, and unless, they are alleged—generally with some/requisite specificity—to have committed wrongful and/or fraudulent and/or tortious acts. The business judgment rule—no liability where (mere) "business judgment" is exercised—protects board members, and can, and should, warrant dismissal of a lawsuit at the (earliest) pleading stage, and even accepting all allegations of complaint as true for pleading purposes. The case is another at least implied, if not explicit, judicial recognition that merely being named as a defendant in a lawsuit is a big deal—a burden and even a stain—and that the courts need to, and should, protect individual board members as much as lawfully possible. Indeed, underlying decisions such as this is the (often unstated) recognition that absent such judicial protections, no one will want or desire to serve on a cooperative or condominium board.

BREACH OF FIDUCIARY DUTY

KANAYAMA V. KESY LLC

NO. 152348/2014 (SUP. CT. N.Y. CNTY. JUNE 4, 2025) NYSCEF NO. 323

Condo Board Faces Fiduciary Duty Claim Over Long-Standing Water Leaks

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

OUTCOME: Decided for Plaintiff Condo Unit Owner

WHAT HAPPENED: In a case that started in 2014 and has already been actively litigated to the Appellate Division and back (and previously reported in the November 2023 Habitat Case Tracker), the court dismissed several of the plaintiff's claims against the condominium but allowed a breach of fiduciary duty claim to continue. This case involved water leaks which emanated from defendant's Kesy's unit (located directly above that of the plaintiff) which were allowed to persist for several years. A prior court decision found that the source of the leak was Kesy's unit and that Kesy was responsible for making the repairs and stopping the water incursions into plaintiff's apartment.

IN COURT: Based upon this earlier finding, the court, without any discussion, dismissed the plaintiff's claims against the condominium for trespass, negligence and nuisance. The court also dismissed all of the Kesy's cross claims against the condominium (for indemnification and contribution). However, it denied the summary judgment motion as to the condominium's attempt to dismiss the breach of fiduciary duty claim. The court found numerous allegations raised a question of fact as to whether the board, deferring to the principal of Kesy who was also a board member, acted in the best interest of Kesy as opposed to the condominium as a whole. Some of the factual disputes cited by the court included that the board assisted Kesy in obtaining Department of Buildings approval to install extensive plumbing in its unit, despite the fact that wet facilities are rarely allowed in the upper floors of Manhattan multi-story buildings; that the board never inspected or tested the waterproof insulation and alarm that Kesy was supposed to install as part of the permission to install its plumbing; and that Kesy and the board filed plans for a pipe that trespassed on plaintiff's property without plaintiff's prior permission. Kesy's principal was alleged to have intentionally allowed the leaks to continue by refusing access to its unit.

The defendant condo board filed a Notice of Appeal on July 7, 2025.

TAKEAWAY:
Clearly, the court was not going to allow the board of managers to make decisions to the detriment of another unit owner based upon the self-serving needs of a board member who owned the unit. The plaintiff alleged instances of disparate treatment by the board in addition to its failure to take any steps to protect plaintiff's unit from the substantial damage that the upstairs unit was causing. Board members must always recognize their obligation to the condominium as a whole and cannot take actions that promote their self-interest over that of the building. It also is a reminder that board members are not entitled to any special treatment simply because they are members of the board.

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

BUSINESS JUDGMENT RULE

CASTLE VILL. OWNERS CORP. V. GIRARDI

NO. 654284/2023 (SUP. CT. N.Y. CNTY. JUNE 24, 2025) NYSCEF NO.

Access Fight and Retaliation Claims Survive to Trial

SQUIB BY DAVID J. BLESSINGTON, ASSOCIATE, BRAVERMAN GREENSPUN

OUTCOME: Decided for Neither Party

WHAT HAPPENED: The plaintiff, a cooperative located in Hudson Heights, sought a temporary restraining order under CPLR §6301 to access a defendant-shareholder's apartment for (a) installation of a gas line and (b) repair of a leak. The gas line installation was required to comply with Local Law 152. The leak allegedly originated from a cracked shower pan in the defendant's unit, causing water damage to the apartment below.

The defendant eventually permitted access to replace the gas line in her apartment and allowed the co-op to investigate the alleged leak in her bathroom. After the co-op's handyman determined the leak stemmed from the defendant's cracked shower pan the defendant reversed course and did not allow the repair to go forward. The shareholder argued that the shower pan was not cracked and the co-op's demand for access was mere retaliation due to the shareholder's refusal to initially permit installation of a new gas line in her apartment. The defendant relied on a report from the New York City Department of Housing Preservation and Development (HPD), who did not find evidence of a leak to support her argument.

IN COURT: In September 2023, the plaintiff filed an order to show cause seeking an injunction to access defendant's apartment for two purposes: (a) replacing a gas line and (b) inspecting and repairing a bathroom leak. On October 3, 2023, the court granted the co-op's motion and preliminarily enjoined the defendant from obstructing access for both purposes.

The defendant later filed an order to show cause to vacate the October order. While that motion was pending, the defendant allowed access for gas line installation but refused access for leak-related repairs, asserting there was no leak and that the shower pan did not require repair. The defendant also filed counterclaims alleging harassment, claiming the leak allegations were retaliatory due to her initial reluctance to participate in the gas line project.

Both parties submitted conflicting affirmations concerning the existence of a leak and cracked shower pan in the defendant's apartment. The court ruled that the existence of the leak, as a threshold matter, was a factual issue and the determination was best reserved for trial. The co-op invoked the business judgment rule to dismiss defendant's harassment claims, arguing its decision to repair the leak was protected. However, the court clarified that the rule typically shields decisions regarding the manner of repairs, not the existence of the underlying issue. Furthermore, the rule does not bar review where there is a credible claim of targeted harmful treatment.

TAKEAWAY:

Co-op boards should be mindful of the effect perceived disparate treatment may have on litigation against uncooperative shareholders.

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

EVICTION/TERMINATION

415 E. 12TH ST. HOUS. DEV. FUND CORP. V. DURAN

2025 NY SLIP OP 32182(U) SUP. CT. N.Y. CNTY. JUNE 20, 2025

Co-op's Eviction Case Fails Over Defective Notices

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

OUTCOME: Decided, in part, for Defendant

WHAT HAPPENED: The plaintiff is an HDFC, a type of cooperative for residents with low to moderate income. The defendant is a tenant and shareholder of the HDFC, who lived there and served for many years as a building superintendent. In 2021, a newly elected board terminated the defendant's position as super. According to the defendant, the new board engaged in a campaign of "harassment" against him, but according to the plaintiff, the defendant himself engaged in "harassing" behavior in violation of the proprietary lease.

In 2023, the cooperative served the defendant with a 30-day notice to cure, then followed with a notice of termination. The plaintiff filed suit, seeking a declaration that the defendant's proprietary lease was duly terminated; a court order compelling him to surrender his shares and his proprietary lease; and a judgment ejecting him from possession of his apartment. The plaintiff also sought a money judgment for certain unpaid maintenance charges. The defendant, whose education level reached seventh grade, initially appeared pro se, but he later obtained counsel. His attorneys filed an answer that included several counterclaims, including for breach of lease, attorneys' fees, and harassment. The plaintiff moved, and the defendant cross-moved, for summary judgment against each other.

IN COURT: The court considered the plaintiff's motion, but found that the cooperative failed to establish service of valid notices. The notice of default submitted to the court was missing several pages, and therefore lacked factual details about the defendant's supposedly harassing behavior. The notice of termination listed dates when the defendant allegedly was "yelling loudly" and engaged in "cackling," neither of which constituted breach of the proprietary lease. Moreover, the dates of the defendant's acts described in the notice of termination did not occur after the notice of default was served, so the defendant apparently cured the defaults by no longer "cackling." Due to the service of defective notices, the plaintiff could not establish breach of the proprietary lease by the defendant. As for the defendant's cross-motion for summary judgment and dismissal of the cooperative's claims, that motion was granted with regard to the cooperative's claims for breach of the proprietary lease, based on the facially defective notices. While the cooperative's claim for unpaid maintenance remained, the court entered a declaration that the defendant was the sole owner of the shares in question, and that the proprietary lease remained in full force and effect.

The court winnowed out some of the defendant's other counterclaims; ordered the plaintiff to file an answer to certain counterclaims that remained; and declined to award the defendant his attorneys' fees against the cooperative. Attorneys' fees would be premature at this stage of the lawsuit, since other aspects of the dispute needed to be resolved. Plaintiff filed a notice of appeal on June 20, 2025.

TAKEAWAY:

There is a lot to learn from this lawsuit, but the primary teaching might be this: Landlord-tenant litigation in New York City is a dark art, full of intricacies and technicalities that the average litigator may not fully appreciate. If you represent cooperatives, you'd better understand some of what makes landlord-tenant cases such a challenge—or hire someone who does. One basic L&T tenet is that notices are strictly scrutinized, parsed, and reviewed. If you give the court a notice that is missing pages, or you cannot put your hands on the missing pages, you're better off withdrawing the lawsuit and starting over. Another basic L&T tenet is the court will lean in favor of the tenant, so a landlord better have facts to back up its case. Here, the

(**Takeaway** *continued on p. 8)*

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

cooperative claimed "harassing" behavior but only alleged "yelling" and "cackling." No judge in New York City will kick a residential tenant out of his apartment for laughing loudly. A final point is that a long-time resident who served as a super, who lacked any significant educational background, and who only got competent legal representation after the case was filed is surely going to be viewed sympathetically by any judge. "Put these factors together, and the cooperative must 'take the L' for engaging in an imprecise and ill-advised litigation campaign against a sympathetic tenant."

INJUNCTION

WEINTRAUB V. 791 PARK AVE. CORP.

152946/2025 (SUP. CT. N.Y. CNTY. JUNE 17, 2025) NYSCEF NO. 59

Doctor Wins Yellowstone Injunction in Co-op Lease Dispute

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

OUTCOME: Decided for Co-op Shareholder

WHAT HAPPENED: The plaintiff, a medical doctor, had a proprietary lease for space in a Park Avenue cooperative, which he used as a professional office. In 2024, the doctor began falling behind in maintenance payments, and after failing to make any payments for a six-month period, owed the cooperative in excess of $70,000. The doctor repeatedly apologized to the corporation for being in arrears, sent an email addressed to all shareholders explaining his financial difficulties, and wrote that he was trying to sell the unit. Eventually the cooperative issued a rent demand, threatening to terminate the lease unless the doctor paid in full.

However, the doctor did not pay. Instead, he filed a lawsuit in February 2025 seeking, among other things, a so-called Yellowstone injunction, whereby the cooperative would be enjoined from terminating the doctor's proprietary lease while the parties litigate their lease rights and responsibilities.

It turns out the issues between the doctor and the cooperative ran much deeper than a simple failure to pay rent. Back when the doctor purchased the space from the cooperative in 1999 (after subletting the space for 15 years prior), he was issued four stock certificates—200 shares for the main unit, plus three certificates of 20 shares each for three "servant's rooms," giving him 260 shares for which he owed maintenance.

In or about 2005, the cooperative accused the doctor of using certain "storage rooms" which did not belong to him, even though he had been using these storage spaces since he began renting in the building back in 1985. It appears that when the doctor purchased the shares, there had been a mix-up over whether he was buying "servant's rooms" or "storage spaces." On top of that, the cooperative had long since incorporated two of the doctor's three "servant's rooms" into the superintendent's apartment, making it impossible to reconfigure the spaces.

This issue had rumbled on for years without ever being settled. Thus, when the cooperative issued its rent demand, the doctor asserted that he was entitled to a Yellowstone injunction to try to resolve the ownership dispute once and for all.

IN COURT: The court granted the Yellowstone injunction. The court found that the elements establishing entitlement to Yellowstone relief were present here, namely that the doctor was a proprietary lessee of the cooperative, had requested injunctive relief prior to the termination of the lease, and had demonstrated the ability and desire to cure the default short of vacating the premises.

In opposing the motion, the cooperative had cited the doctor's admitted financial difficulties as a basis for denying injunctive relief, as it arguably showed he

(continued on p. 9)

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

did not, in fact, have the ability to pay. However, the court noted the ongoing ownership dispute as a reason to question whether the doctor did actually owe the amounts alleged by the cooperative, and granted the injunction to allow the parties time to litigate that issue. Nevertheless, to address the cooperative's concerns, the court directed the doctor to post a bond for the entire outstanding amount and also to pay monthly use and occupancy as a condition of the injunction.

TAKEAWAY:
Although a Yellowstone injunction is normally thought of as being applicable in the commercial context, both parties here agreed that it was available to the doctor as a proprietary lessee of the co-op.

The other interesting issue in this case is the parties' confusion about the allocation of shares and space between the "servant's rooms" and "storage spaces." Neither party seemed able to demonstrate what the parties had intended to purchase and sell back in 2000, and neither party had sufficient records to show what had been done (or intended to be done). In this, the co-op was handicapped by the fact that it had cycled through multiple management companies in the intervening years, meaning that records were lost and people with personal knowledge were no longer available. This can be a hidden cost of changing management companies when shareholder disputes later arise.

PERSONAL INJURY

SEN V. GR REALTY HOLDINGS LLC

2025 NY SLIP OP 32012(U) SUP. CT. N.Y. CNTY. JUNE 5, 2025

Court Weighs Condo Liability in Flying Lounge Chair Incident

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

OUTCOME: Decided in part for Condo Co-Defendants

WHAT HAPPENED: The plaintiff is an individual who was allegedly struck and severely injured by a lounge chair that was blown off a condominium unit's terrace by the wind. The defendants are the condominium in which the unit is located, the condominium's management company, the unit owner, and the individual tenants that were leasing the unit from the unit owner at the time of the alleged incident.

IN COURT: The plaintiff filed a complaint asserting a negligence claim against the defendants. In their answers, the defendants all asserted crossclaims against one another for common law contribution and indemnification. The unit owner also asserted additional contractual crossclaims against the tenants for contractual indemnification and breach of contract. The unit owner moved for summary judgment on its crossclaims against the tenants. The tenants separately moved for summary judgment dismissing the complaint and all crossclaims against them and the condominium and management company, jointly, did the same.

The court granted the tenants' motion to the extent it sought to dismiss the complaint, all crossclaims for contribution and indemnification, and the unit owner's crossclaim for contractual indemnification. The court held that the tenants were not negligent, as their lease with the unit owner expressly stated that the unit was fully furnished by the unit owner and that the tenants were strictly prohibited from removing or changing the location of the unit's furniture in any way. Thus, the tenants did not select, purchase, determine the placement of, or install the terrace furniture. The court also found that the tenants lacked any knowledge of impending dangerous weather conditions on the day of the alleged incident, as there were no weather advisories or warnings in New York City. Therefore, because the tenants were not negligent, the court held that the lease's indemnification provision was not triggered.

The court granted the condominium and management's motion to the extent it sought summary judgment dismissing all claims and crossclaims against

(continued on p. 10)

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

management because the management agreement made clear that management lacked authority to approve the installation of furniture on the unit's terrace. Notwithstanding, the court denied the condominium and management's motion to the extent it sought summary judgment dismissing all claims and crossclaims against the condominium because there are triable issues of fact, based on the condominium's governing documents, as to whether the condominium had control over the unit's terrace furniture.

TAKEAWAY:
While condominium unit owners may not be in possession of their units that they lease to tenants, condominium unit owners could be held liable for injuries caused by dangerous conditions that they created in advance of the tenancy, pursuant to the terms of the lease.

REPAIRS

SIRAGUSA V. 69 MURRAY HOUS. CORP.,

2025 NY SLIP OP 32541(U) SUP. CT. N.Y. CNTY. JUNE 23, 2025

Court Upholds Co-op's Roof Access Rights, Dismisses Penthouse Owners' Claims

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: In 2013, Plaintiffs—shareholders in a cooperative apartment building—purchased their penthouse apartment and were required to enter into a so-called Roof Rider Agreement as a condition of the cooperative's consent to their purchase. Pursuant to the Roof Rider Agreement, plaintiffs were granted exclusive use and control of the roof (including the obligation to periodically maintain and replace the roof surface), subject to limited exceptions allowing the cooperative to inspect or maintain specific infrastructure (e.g., skylights, bulkheads, existing HVAC units).

In or about May 2023, plaintiffs first learned that the cooperative planned to do façade work that would encroach on the roof. After accommodating various inspections of the building's façade from the roof, in December 2023 the shareholders became aware that the cooperative planned to mobilize and stage the work on the roof—access which the shareholders alleged was contrary to the terms of the Roof Rider Agreement.

In response to this anticipated breach of the Roof Rider Agreement, plaintiffs wrote to the cooperative to suggest that they enter into a mutually agreeable license agreement that would grant the access sought, preserve the shareholders' access to and from the roof, and protect the shareholders from any damage that the cooperative's contractor may cause to the roof—and sought the reimbursement for reasonable professional fees. The cooperative's response to this suggestion, in May 2024, was to proffer a heavy-handed agreement citing broad authority to access the roof under the proprietary lease, while never referencing the Roof Rider Agreement (or plaintiffs' rights thereunder). Needless to say, the cooperative's agreement was rejected and a stalemate ensued.

Plaintiffs were compelled to bring this action in December 2024, after plaintiffs' attorney's November 2024 letter went unanswered by the cooperative, and it became obvious to them that the cooperative intended to move forward with its project without any agreement with the plaintiffs.

IN COURT: Plaintiffs' action sought (1) declaratory relief to affirm (i) the validity of the Roof Rider Agreement, (ii) the cooperative's limited right to access the roof, and (iii) plaintiffs' right to withhold consent for roof use, (2) an injunction preventing the cooperative (and its contractors) from accessing or using the roof without plaintiffs' permission, and (3) attorneys' fees.

The cooperative responded by seeking to dismiss all claims. The cooperative's primary argument was that the proprietary lease and

(continued on p. 11)

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

the Roof Rider Agreement must be read harmoniously—that is, the rights granted pursuant to the Roof Rider Agreement must be consistent with those set forth in the proprietary lease. By its terms, the proprietary lease required the cooperative to "keep in good repair all of the building including all of the units," and gave the cooperative the right to have its agents (including workmen) visit or enter a unit and the roof to make or facilitate repairs in any part of the building. The cooperative argued that, essentially, plaintiffs were seeking to have the court rewrite the terms of the agreements by imposing additional obligations on the cooperative—essentially making the Roof Rider Agreement superior to the proprietary lease. The court rejected plaintiffs' arguments and granted the cooperative's motion to dismiss.

TAKEAWAY:

Cooperatives and shareholders alike should understand that rider agreements (like the Roof Rider Agreement) do not override proprietary leases unless explicitly stated. As shown here, a court will interpret such documents together, and exclusive-use provisions will not negate a cooperative's broader obligations to maintain the building. Put another way, exclusive use does not equate to unilateral control.

In addition, timely and transparent communication could have forestalled—if not prevented—this litigation. Cooperatives should try to respond promptly and substantively to shareholder concerns, especially when legal rights and property access are in dispute. Shareholders should document all communications and seek resolution before escalating to litigation.

© 2025 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com