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CASE LAW TRACKER
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ACCESS

HW DEV. 3, LLC V. BD. OF MGRS. OF THE ART DECO CONDO.

2025 NY SLIP OP 32848(U) (SUP. CT. N.Y. CNTY. AUG. 8, 2025)

Court Orders Hearing After Revised Access Plan Creates New Issues

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

OUTCOME: Decided for Neither Party

WHAT HAPPENED: With plans to demolish and rebuild a new structure, the owner of a two-story building attempted to negotiate an agreement for access over its neighboring property, a 15-story condominium building. Specifically, the plan was to do a pre-construction survey, install and maintain protective scaffolding and safety measures over the respondent's rear terrace, protect windows abutting the shared wall, and then remove the protections later. The owner had deposited $10,000 in escrow and offered a monthly license fee of $2,500 (later saying $1,000 as more reasonable), while the condominium association demanded a much higher amount ($11,500 per month) and additional protections like indemnification. Unfortunately, the negotiations were unsuccessful, and the owner was not provided with access onto the condominium property.

IN COURT: The petitioner-owner initiated a proceeding pursuant to Real Property Actions and Proceedings Law (RPAPL) §881seeking a license for the temporary intrusion onto the respondent-condominium's property. The demolition and site safety plan had been approved by New York City Department of Buildings (DOB) on December 6, 2024.

The respondents opposed, claiming the submitted plans were insufficient, that the petitioner had mischaracterized the share wall as an "independent" wall, and the protections, window closures, and impacts on tenants were inadequately addressed. They also asked for an evidentiary hearing.

After oral argument, the petitioner amended its request, with almost an entirely new access proposal, including a construction fence on its own property

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OCTOBER 2025 HIGHLIGHTS

CONSTRUCTION DEFECTS
Condo Board Liable for Breach of Contract in Dispute with Contractor

DISCRIMINATION
FHA and Retaliation Claims Fall Short in Co-op City Dispute

FEDERAL COURTS SUPPLEMENTAL JURISDICTION
Court Finds No §1981 Standing for Individual Shareholder Alleging Discrimination Against His Corporation

NEGLIGENCE
Sidewalk Defect Was Not "Trivial," So Case Must Be Decided by a Jury

SPONSOR
Another Reminder: Condo Defect Claims Against Sponsors Rarely Survive

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CO-OP&CONDO CASE LAW TRACKER digest

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adjoining the condominium's terrace and suggested limited controlled access, to which the respondent did not respond.

In an RPAPL §881 proceeding, a mechanism by which an adjacent property owner may petition for a license over another's land for necessary construction work, courts must balance the interests of both parties: the burden or intrusion on the property owner versus the hardship to the petitioner if the access is denied. The standard is one of reasonableness. Factors include: the nature and extent of the access requested, its duration, whether protections are adequate, whether alternatives exist, the public interest in completing the project, and ensuring compensation or indemnification for the affected property. Opposition to a license premised on speculative future construction beyond demolition may be premature.

The court held that the petitioner's request was for the demolition phase only, and thus the respondent's objections tied to future construction were premature. However, the court found that the petitioner's submissions did not sufficiently detail the proposed protections and conditions to assure the respondent's rights would be protected. Specifically, there remained unresolved questions about the party wall, sufficiency of protective measures over the terrace and windows, and ambiguity as to how damage would be prevented or allocated.

Given these uncertainties and the change in the petitioner's proposal, and because the respondents had not yet had an opportunity to respond to the revised plan, the court determined that an evidentiary hearing was necessary to resolve those issues and declined to grant a license on papers alone.

TAKEAWAY:

Even when demolition is clearly authorized by DOB and the project is moving forward, a party seeking court-ordered access under RPAPL §881 must present detailed, robust protective plans and explicitly address party wall issues, proposed mitigations, indemnities, insurance, construction sequencing, etc., and have a clear and unwavering proposal. When a request is narrowly tailored to demolition, objections based on future construction are unpersuasive and best left for another day.

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ALTERATIONS

BD. OF MGRS. OF THE TRUMP PALACE CONDO. V. REGENCY CTRS., L.P.

2025 NY SLIP OP 33183(U) (SUP. CT. N.Y. CNTY. AUG. 22, 2025)

Getting Ahead of Problems Money Can't Solve

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

OUTCOME: Decided for Plaintiff Condo, Defendant

WHAT HAPPENED: The plaintiff is the board of managers of a mixed-use condominium building. The defendants are the owner of the condominium's commercial space and its two tenants. In or about 2024, the defendants began construction of the commercial space, including performing alterations to the condominium building's façade, without first obtaining the plaintiff's approval. During the defendants' demolition work, they caused damage to the building.

IN COURT: The plaintiff filed a complaint asserting causes of action against the defendants for a declaratory judgment, a permanent injunction, breach of contract, negligence and nuisance. Subsequently, the plaintiff moved by order to show cause for a preliminary injunction with a temporary restraining order, seeking to enjoin the defendants from performing certain construction-related activities at the condominium building without authorization. The court granted the plaintiff's temporary restraining order.

After reviewing the plaintiff's order to show cause and its accompanying moving papers, the court found that the plaintiff met its burden on its cause of action for a declaratory judgment to the extent it pertains to future unauthorized façade work. However, the court held that there was no irreparable harm as to any past modifications, as such harm could be remedied through monetary damages. The court also found the plaintiff met its burden on its cause of action for a permanent injunction, seeking to prevent the defendants from performing construction work in violation of the condominium's governing documents and/or which puts the building at risk, without the plaintiff's approval.

The court held that the plaintiff did not meet its burden on its remaining causes of action because it seeks money damages in the complaint and failed to establish irreparable harm.

TAKEAWAY:

If a board of managers is concerned that a unit owner is or will be performing unauthorized construction work that will cause harm to the building, it is of utmost importance that the board acts quickly and pre-emptively to stop the work. Once the unauthorized work has been performed, it is possible that the court will simply award the board monetary damages, as opposed to directing the unit owner to reverse the unauthorized work. Accordingly, if the board wants to repair and/or reverse the unit owner's modifications, it will be their responsibility to do so.

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BYLAWS

VANDERBILT MONROE LLC V. BD. OF MGRS. OF MARBURY CLUB CONDO.

56074/2025 (SUP. CT. WESTCHESTER CNTY. AUG. 4, 2025) NYSCEF NO. 30

Challenge to Condo Board Election Rule Fails Under Business Judgment Protection

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

OUTCOME: Decided for Condo Respondents

WHAT HAPPENED: Albert Zihenni wanted to run for an available seat on the board of managers of the Marbury Club Condominium. At the 2024 annual meeting when Zihenni's name was placed in nomination, the attorney for condominium, Richard Klein, intervened and explained that Zihenni's nomination could not be accepted because he did not own a unit. Zihenni's unit was owned by a limited liability company, Vanderbilt Monroe LLC, of which Zihenni was the sole member. Detailed minutes of the annual meeting showed that Klein's explanation included reading a portion of the bylaws which states, ". . .Except for the period during which the Board is controlled by the Sponsor, all officers must be Unit Owners.'" He also mentioned that the bylaws and the Declaration of Condominium referred to a "unit owner" as the "record owner" of a unit.

Klein explained that "[y]ou could have a unit owned by an LLC owned by 10 members and therefore, who is eligible to run?" Klein further explained, "To avoid having to address such issues and in fairness to all Unit Owners, upon the advice of counsel, the Board decided not to allow the members of an entity which owns a Unit to run for a position on the Board." Due to the rejection of Zihenni nomination, the incumbent board member ran unopposed and was re-elected.

The LLC sued the condominium and the individual members on the board, claiming that they breached their fiduciary duty and acted in bad faith. Zihenni averred that the LLC was not treated the same as other unit owners who were permitted to run, and that the board members acted in bad faith and used the rule as a pretext to prevent him from membership on the board. This was, according to Zihenni, because of his opposition to the board and because approximately two years earlier the board sued the LLC for allegedly making unauthorized alterations to his unit.

IN COURT: The court granted a motion for summary judgment made by the condominium and the board members and dismissed the case. The court stated that its role was to determine if the board acted within the scope of its authority and whether the action of the board was taken in good faith to further the legitimate interests of the condominium. In reaching its decision, the court addressed the scope of authority issue by reviewing sections of the bylaws which showed the board had the authority "[t]o regulate the qualifications of those individuals eligible to serve on the Board of Managers . . . ." The court found that the bylaws sections cited by the petitioner addressed voting procedures and notice requirements, not the authority of the board to regulate who was eligible to run for the board. As to the good faith issue and whether the action was a pretext who is not a record owner from serving on the board was adopted by the board in 2021, at a time when the condominium had different legal counsel and different board members, and the decision that Zihenni was not eligible to run for the board was made after review of the bylaws and advice of counsel, which itself was a rational basis for making their determination. The court concluded, "[a]s respondents established that it acted within the scope of its authority under the Condominium's By-Laws and that its action was taken in good faith to further a legitimate interest of the Condominium, such that the business judgment rule applies, the Court finds respondents have met their burden on summary judgment . . . ."

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

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TAKEAWAY:
Claims of bad faith or breach of fiduciary duty shouldn't be made every time a board makes an unpopular decision. Boards have broad discretion to act, and courts will usually defer to those decisions if they're made in good faith and within the board's authority. Under the business judgment rule, a court won't second-guess a board's decision unless there's evidence of fraud, self-dealing, or other misconduct.

If you're considering challenging a board decision, make sure you have solid proof to back up your claim. Courts expect more than just disagreement with a board's actions.

For boards, the lesson is clear: Know the limits of your authority and stay within them. Read your bylaws carefully, and seek advice from your attorney or other professionals when needed. Relying on counsel and acting within the bylaws gives the board a rational basis for its decisions—and ensures protection under the business judgment rule. That's exactly what carried the day in this case.

CONSTRUCTION DEFECTS

MURPHY KENNEDY GROUP LLC V. BD. OF MGRS. OF THE ST. TROPEZ CONDO.

652913/2019 (SUP. CT. N.Y. CNTY. AUG. 4, 2025) NYSCEF NO. 350

Condo Board Liable for Breach of Contract in Dispute with Contractor

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

OUTCOME: Decided for Plaintiff, Condo Defendants

WHAT HAPPENED: The plaintiff, Murphy Kennedy Group, is a general contractor engaged by the defendant condominium board in connection with a renovation project at the building. The plaintiff asserted that it had substantially completed the project work, but that the condominium board had failed to remit payment for its final three requisitions, an amount close to $400,000. The plaintiff claimed that the board's withholding of payment was unwarranted, and that any allegations of defective or incomplete work were merely pretextual. In support of its position, the plaintiff presented evidence that the condominium's architect had executed a certification confirming that the work in question was substantially complete.

In its defense, the condominium board argued that the work performed was defective, whereby the corrective work would cost the condominium approximately $500,000. The condo board indicated that it had rejected the contractor's recent invoice because it failed to provide lien waivers from the subcontractors involved with the project. In addition, the board asserted that the plaintiff had improperly processed change orders, with such being produced without sufficient backup documentation, with some being in excess of the permitted allowances under their agreement. In fact, the condominium board sent a formal termination letter to Murphy Kennedy Group in April of 2019, citing the failure to provide lien waivers therein.

The plaintiff brought a breach of contract claim against the defendant, along with claims for unjust enrichment and breach of contract. The condominium board brought counterclaims against the plaintiff alleging some of the same causes of action.

IN COURT: The court's analysis was largely focused on timing and the nature of the condo board's termination. First, the court reviewed the certification provided by the condominium's architect that certified substantial completion had occurred. This certification was provided in November of 2018, approximately five months prior to the condominium board sending a termination letter to the plaintiff. The architect's certification did not identify any incomplete or defective work, despite a section therein expressly included on the form for the purpose of identifying the estimated costs for correcting any such work. The amount on the form was left

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blank. Because of this, the court reasoned that the April 2019 termination letter was not sent "for cause," but rather "for convenience," as the letter made no reference whatsoever to defective or incomplete work. Although the court did not opine as to whether the failure to produce lien waivers was actually a justified cause for termination, it found the evidence clearly showed that the contractor had satisfied its obligation to substantially complete the project, and such obligation was satisfied months prior to the condominium board terminating its agreement with Murphy Kennedy Group. Accordingly, the court held that the plaintiff was entitled to summary judgment with respect to its breach of contract claim, but solely with respect to the question of liability, but not as to the damages sought by the plaintiff. The plaintiff's remaining causes of action were dismissed as being duplicative of its breach of contract claim.

The condominium board's counterclaims were also dismissed, in part because the contract in question was terminated "for convenience" and not "for cause," but also because the condo board failed to show that it had actually expended any amounts to correct the alleged defective work, and therefore could not show any damages.

While the court held that the plaintiff was entitled to damages as a result of the defendant's breach of contract, it also found that the plaintiff had failed to substantiate the amounts that it claims are due and payable. The plaintiff failed to include any supporting documentation to justify the amounts in its change orders, nor did the plaintiff show that the additional amounts included in such change orders were permissible under the agreement. Therefore, the court determined that the action would move forward with respect to the issue of damages, whereby the plaintiff would need to provide evidence supporting the amount it is seeking.

TAKEAWAY:

Virtually every co-op board and condominium board will need to enter into an agreement with a contractor for renovation projects at their buildings, so it is imperative that careful attention be given to the terms and conditions for rendering payment. Very often, the board's architect will be tasked with providing a certification as to whether "substantial completion" has been achieved. Boards and architects alike should be prudent to conduct necessary inspections before providing such certification, as such could serve to stop future claims for defective or incomplete work, particularly when the certificate fails to identify such. Further, boards should also carefully review every change order so that it has a proper remedy for challenging anything potentially improper.

It is said that timing is everything, and this case is an example of that old adage ringing true. The condominium board did not send its formal termination notice to the contractor until five months after the architect certified that substantial completion had been realized, which ultimately led the court to cast doubt on the termination being "for cause." In addition, the condo board's expert report identifying the defective work allegedly performed by the plaintiff was drafted six years after the work was certified as being "substantially complete." Given all of this, the court determined that there was no question of fact as to whether the contractor was entitled to payment for its work on the project (even if it declined to rule as to the amount in question).

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CONTRACTS

BD. OF MGRS. OF COUNTRY POINTE AT SMITHTOWN N. CONDO. V. COUNTRY POINTE AT SMITHTOWN HOMEOWNERS ASSOC., INC.,

2025 NY SLIP OP 04151 (2ND DEP'T. JULY 16, 2025)

Court Finds No Fiduciary Duty in Sewage Service Agreement Between Condominium and HOA

SQUIB BY KRISTIN PENDERGRASS, COUNSEL, SEYFARTH SHAW LLP

OUTCOME: Decided for Defendants

WHAT HAPPENED: Plaintiff Board of Managers of Country Point at Smithtown North Condominium, the board of managers of a condominium located in Suffolk County, commenced this action against defendant Country Pointe at Smithtown Homeowners Association, Inc., a neighboring homeowners' association, as well as several members of the association's board of directors. The defendant homeowner's association owns and operates a sewage treatment plant on its property that, in addition to serving the homeowner's association's members, also serves the plaintiff's condominium complex. The operation, care, and maintenance of the sewage treatment plant is governed by a connection agreement executed by the parties' predecessors in interest in 2002. That agreement provided that an annual fee would be charged for sewage treatment plant service, to be paid pro rata by the plaintiff and the defendant homeowner's association.

In January 2019, following an increase in the annual fee, the plaintiff commenced this action against the defendants, asserting causes of action for breach of contract, breach of fiduciary duty, declaratory judgment, and an accounting of the finances associated with the sewage treatment plant. The defendants filed a pre-answer motion to dismiss the plaintiff's claims. That motion was granted with respect to all of the plaintiff's claims except for the claim for an accounting.

IN COURT: After discovery was completed, the defendants moved for summary judgment seeking, among other things, dismissal of the plaintiff's remaining accounting claim, and the plaintiff cross-moved for summary judgment in favor of the claim. The lower court granted the defendants' motion, denied the plaintiff's cross-motion, and dismissed the plaintiff's claim for an accounting. The plaintiff then appealed the decision to the extent that it dismissed the accounting claim.

On appeal, the Second Department affirmed the lower court's decision. The Second Department held that in order to be entitled to an accounting, the plaintiff must have had a fiduciary relationship with the defendants or demonstrate "special circumstances" that could transform the parties' ordinary business relationship into a fiduciary one. The Second Department held that the defendants had demonstrated that the parties' relationship was a conventional business relationship without any special circumstances and that, accordingly, the plaintiff was not entitled to an accounting from the defendants.

TAKEAWAY:

An ordinary contract regarding the provision of utilities and similar services to a property is not, in and of itself, sufficient to create a fiduciary or special relationship between the parties, or to entitle a contract party to demand an accounting from another party. This is the case even where one party has superior information about and control over the service than the other. Here, although the defendants had control over the sewage treatment plant and the assessment of fees to be paid by the plaintiff, the parties still had an ordinary business relationship and, therefore, the plaintiff could not demand an accounting from the defendants. If a property owner entering into such a contract wants to ensure transparency regarding fees, costs, and finances, it should insist that a requirement for the other party to provide that information is included in the contract. Otherwise, the owner may not have the ability to obtain the information.

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DISCRIMINATION

GADSON V. RIVERBAY CORP.

NO. 1:25-CV-5182 (LTS) (S.D.N.Y. AUG. 26, 2025) ECF NO. 19

FHA and Retaliation Claims Fall Short in Co-op City Dispute

SQUIB BY DALE DEGENSHEIN, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: Riverbay Corporation is the corporate owner of Co-op City. Gadson is a shareholder. Riverbay commenced an action against Gadson in Housing Court, Bronx County. Gadson tried to remove the case to federal court, asking that the federal court stay Riverbay from evicting him. He also sought a declaration that Riverbay's actions were in violation of the Federal Fair Housing Act (FHA).

The court explained that Gadson's federal court claims were intertwined with Riverbay's Housing Court claims. Gadson resided in his apartment for more than 28 years. He resides in the apartment with his minor daughter. The court indicates that Gadson argued that Riverbay failed to issue a stock certificate and that, as a result, Gadson was unable to obtain emergency rental assistance monies to assist in paying monies due to Riverbay.

Riverbay commenced a non-payment proceeding against Gadson. The Housing Court granted possession to Riverbay on Gadson's default. Gadson made several motions for a stay of eviction. By a decision and order dated May 1, 2025, the Housing Court directed that if Gadson paid approximately $28,000 to Riverbay by May 30, the judgment and warrant would be vacated. If he did not pay, the eviction could go forward. Gadson did not pay the monies, and the Housing Court denied other requests to stay eviction.

IN COURT: In federal court, Gadson claims that the presence of his minor daughter in the apartment constitutes familial status under the FHA. He also asserted that Riverbay's actions constituted unlawful interference under the FHA in that it obstructed and frustrated his rights, and his daughter's rights, to enjoy the apartment.

The court detailed the reasons why Gadson's purported removal of the case from Housing Court to federal court was improper and ineffectual. In short, he attempted to remove the case after the Housing Court proceeding was concluded so that the claims had been adjudicated.

The federal court dismissed Gadson's claims to the extent they were made on behalf of his minor daughter without prejudice. Actions may be commenced by an attorney, or a pro se litigant. The pro se litigant may not represent the interests of another, including their minor child.

As to claims of housing discrimination on Gadson's behalf, the court explained that the FHA broadly prohibits discrimination in housing. Generally, to state a claim, a plaintiff must show that he is a member of a protected class who suffered relevant adverse treatment. A plaintiff must sustain a minimal burden of showing facts suggesting an interference of discriminatory motivation. The court found that Gadson did not meet this burden. However, because Gadson was pro se, the Court would allow him to replead.

As to retaliation, the court explained that a plaintiff must show that they engaged in a protected activity, that defendant took adverse action against a plaintiff and that there is a causal connection, in other words, that a retaliatory motive played a part in the adverse action. Gadson did not meet this burden. Rather, it appeared that any action taken by Riverbay was motivated solely by Gadson's failure to pay rent. As with the discrimination claim, the court dismissed the complaint but would allow Gadson to replead within 30 days.

TAKEAWAY:

The Housing Court matter was concluded and not removed to federal court. The discrimination claims would be heard, if at all, independent of the Housing Court claims. It appears as if the court went out of its way to allow Gadson to replead claims of discrimination given his pro se status even though he pleaded nothing to meet even the minimal burden required.

(**Takeaway** *continued on p. 10)*

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This is a scenario that we see all too often. A cooperative brings an action because the lessee does not pay maintenance and the lessee's defense is that the cooperative discriminated against them, requiring the cooperative to demonstrate that it sued the lessee because of non-payment and not for any other reason. Claims such as the one made here, where Gadson has done nothing to connect the suit for non-payment to his familial status, tend to cheapen actual claims of discrimination.

ELECTIONS

WANG V. HALSTEAD MGMT. CO., LLC

2025 NY SLIP OP 32815(U) (SUP. CT. N.Y. CNTY. JULY 18, 2025)

Court Dismisses Shareholder's Complaint for Improperly Mixing Individual and Derivative Claims

SQUIB BY KENNETH R. JACOBS PARTNER, SMITH BUSS JACOBS

OUTCOME: Decided for Co-op Manager Defendant

WHAT HAPPENED: Shareholder Hao Zhe Wang submitted a pro se complaint against Halstead Property Management, the managing agent of his cooperative, alleging eight claims, some of which were individual and some of which were derivative. Halstead made a motion to dismiss on the grounds that the complaint impermissibly mixed individual and derivative complaints. The court denied the motion, instead allowing Wang to amend his complaint to separate the causes of action. Wang refiled his amended complaint, alleging: (1) racial discrimination and retaliation; (2) intentional infliction of emotional distress; (3) false advertisement; (4) fraudulent and tortious interference with shareholder rights; (5) gross negligence in the management of the plaintiff's apartment; (6) fraud on the co-op; (7) unfair and deceptive business practices; and (8) gross negligence in co-op management. Halstead again filed a motion to dismiss on the same grounds, and both sides moved for sanctions against the other.

IN COURT: The court dismissed the action because the plaintiff had ignored the court's admonishment to file the derivative claims separately from the individual claims. While it might be appropriate to mix the claims if the alleged wrongs had occurred simultaneously and the facts were intertwined, in this case they addressed different actions over a widely dispersed time period.

The court then examined each claim as if it had not already dismissed the case on other grounds. The examination is useful largely because the court laid out the elements of each cause of action and specified how the complaint failed to satisfy the necessary elements. Generally, the claims lacked specificity, failed to identify legal damages, or improperly ascribed obligations to Halstead that should have been directed at others.

Some of the complaints arose in connection with Halstead's actions after it certified a board election in 2023 even after fraudulent proxies had been uncovered. However, the court declined to issue sanctions against either party because both Wang's and Halstead's interpretations of their evidence in support of their claims were made in good faith and were not "completely devoid of merit."

TAKEAWAY:

Judging from a quick Google search, it appears that Mr. Wang has filed numerous lawsuits over the years against disparate entities, including Halstead, the National Association of Realtors, AT&T, Verizon, Bank of America, and even Steven Sladkus. Unfortunately, when a cooperative or condominium association (or its managing agent) has to deal with an owner with a proclivity to sue, it faces the unpleasant choice either to defend the case or potentially to be bullied into a legally repugnant but economically less expensive settlement.

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FEDERAL COURTS SUPPLEMENTAL JURISDICTION

AHMAD V. RIVER POINT TOWERS COOP., INC.

NO. 1:24-CV-06926 (S.D.N.Y. AUG. 4, 2025) ECF NO. 52

Court Finds No §1981 Standing for Individual Shareholder Alleging Discrimination Against His Corporation

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

OUTCOME: Decided, in part, for Co-op Defendants

WHAT HAPPENED: Ahmad, a Syrian Muslim man, sued his co-op, together with six individual shareholders or agents, including Martin Sandler, alleging discriminatory conduct in violation of 42 USC §1981, as well as the New York City Human Rights Law. Ahmad leases a unit in the co-op and owns and operated M.A. Painting Corp., which from 1994 to 2022 had a contract with the co-op to make repairs in the building. M.A. Painting Corp. was also routinely hired by individual apartment lessees. All that swiftly deteriorated once Sandler moved into the building.

Shortly after becoming a resident in February 2020, Sandler complained to the building management and board that Ahmad was performing work for residents in violation of COVID-19 quarantine guidelines. Ahmad alleges that thereafter Sander began subjecting him to "racist harassment on almost a daily basis," distributed fliers advising residents not to vote for the then existing board, encouraged residents not to hire Ahmad's painting company, stalked Ahmad, and screamed at him in front of other residents and in public. Ahmad contended that Sandler's conduct was motivated by discriminatory animus towards his ethnicity and national origin, resulting in Ahmad contacting the police out of fear for his safety.

The remaining individual defendants, instead of addressing Ahmad's complaints, allegedly defended Sandler's conduct and joined in the harassment, and threatened Ahmad with financial harm after he complained about Sandler, delayed his payments, notified him that it would no longer approve his private projects, and told him that he should leave the co-op because of his ethnicity. The defendant co-op manager then told Ahmad to stop doing all work at the co-op and that the board was canceling their contract with him. When Ahmad threatened legal action with respect to the cancellation of the contract the manager responded with a racist tirade. Since then, M.A. Painting Corp. has performed no retainer or private work at the co-op.

IN COURT: Ahmad commenced this action pursuant to §1981 and NYCHRL seeking declaratory relief and monetary damages on account of discrimination against him based on his ethnicity and interfering with his contractual and private work. He claimed to have suffered severe mental anguish, emotional distress and economic loss. The defendants, except Sandler, moved to dismiss the §1981 claims pursuant to Federal Rule of Civil Procedure 12(b)(6).

Supporting his §1981 claim, Ahmad argued that because of the defendants' ethnically motivated conduct he suffered mental anguish, emotional distress and economic loss due to the termination of M.A. Painting Corp.'s contract and his private work for other residents. But the court found that the complaint failed to allege that these categories of work involved a necessary element. Specifically, "an impaired 'contractual relationship' under which [Ahmad] has rights." As a result, Ahmad lacked a legally sufficient federal cause of action for economic loss under §1981.

The court distinguished between harm caused to the non-party M.A. Painting Corp. and harm caused to Ahmad himself. That Ahmad was the shareholder of M.A. Painting Corp. was immaterial, as the harm to his not-party corporation, as a distinct legal entity, does not give him rights as an individual shareholder.

Ahmad's claim of mental anguish and emotional distress relied upon harm to the shareholder. These are harms that

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cannot be suffered by a corporate entity. The essence of a claim under §1981 is impairment of a contractual relationship and the right to enforce a contract. Here, those rights belonged to the non-party corporation, and not to Ahman individually.

The court dismissed the §1981 federal law claims as factually insufficient. As it was still early in the case, it declined to exercise its supplemental jurisdiction over the remaining state law claims. The court did grant leave to Ahmad to amend his complaint and to state a cause of action sufficient with the applicable law.

TAKEAWAY:

Regarding the cancelation of the contract with Ahmad's painting company, a more advantageous outcome might have resulted if he was doing business as a sole proprietorship and he alleged personal economic loss. In this case, M.A. Painting Corp. was not even named as a party in this action, so that its losses could not be based upon discrimination against Ahmad. One might feel that this distinction should have been overlooked in this case, but the court relied upon the over-riding legal principle that the separate legal entity status of a corporation must be respected. It could not confer §1981 rights of a corporation based upon discrimination against a shareholder. Whether there was a state cause of action based upon unlawful interference with a contract would depend upon state law. The federal court declined to exercise supplemental jurisdiction to adjudicate a state law case.

Had the case been brought under 42 U.S.C. §1983, the outcome might have been different. That civil rights statute does not require a predicate contract as does §1981. Doubtless, Ahmad will take advantage of the opportunity offered by the court to restate his claims or bring them in the state court.

INDEMNIFICATION

SUMBA V. MANHATTAN HOUSE CONDO.

2025 NY SLIP 32729(U) (SUP. CT. N.Y. CNTY. JULY 25, 2025)

Condo Secures Partial Win on Indemnification, Faces Trial on Liability Issues

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

OUTCOME: Decided for Plaintiff, Condo Defendants

WHAT HAPPENED: The board of managers of the Manhattan House Condominium and the Manhattan House Condominium retained a prominent plumbing company to remove and demolish old iron pipes in a steam room of the basement of 200 East 66th Street, New York. Prior to commencing the project, the parties signed a standard indemnification agreement which provided, among other provisions, that the contractor would indemnify condominium to the full extent required by law and hold the condominium harmless from any claims, suits, damages, liabilities and professional fees in connection with the performance of work by the contractor and its agents, servants, subcontractors or employees. During the course of his employment the plaintiff, who was a mechanic's helper for the contractor, tripped on pieces of broken pipe on a public staircase as he walked downstairs to the basement. After the plaintiff commenced litigation against the condominium, the condominium, relying on the triggered indemnification clause, asserted a third-party claim against the contractor. The condominium thereafter moved for dismissal of the entire complaint, alleging that it had no responsibility for the maintenance of the common area in which the plaintiff tripped. The condominium also argued that since it had provided an adequate safety device, namely, a permanent staircase, to protect the plaintiff from the potential risks associated with his transportation of a large broken boiler pipe between different floors in the subject premises, it had no liability under the relevant N.Y. Labor Laws. Alternatively, the condominium sought to enforce its full contractual indemnification claim against the contractor.

IN COURT: The court rejected the condominium's argument that the plaintiff was not engaged in work covered by the Labor Laws. In so doing, the court reiterated that because the condominium

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bylaws, which created the board of managers, specifically obligated the board of managers to "operate, maintain, repair, restore, add to, improve, alter and replace the Common Elements", it was responsible under Labor Law §240(1) for an accident that occurred on its public staircase. Further, according to the court, since there was no showing that the permanent staircase, which was the sole means of access between the basement and the first floor, was "[a]n adequate safety device to protect Plaintiff from the risks associated with transporting a large, broken pipe . . . .," there was no basis for dismissal. Further, video footage produced by the condominium, combined with testimony of the condominium's employee that there was debris on several steps near the area of the plaintiff's fall and holes in the bags transporting the pipe pieces, persuaded the court that the condominium was on notice of a "dangerous or hazardous condition" and arguably bore at least some responsibility for the plaintiff's injuries.

Although it denied summary judgment on the issue of the condominium's liability to the plaintiff, the court granted the condominium summary judgment against the contractor conditioned on an apportionment of negligence between the condominium and the contractor by the finder of fact at the time of trial. In so doing, the court observed that it was undisputed that the plaintiff was the contractor's employee who was injured while working for the contractor in connection with the contractor's plumbing work at the subject premises and that the only issue was whether the condominium had a full indemnity, including payment of all fees related to the plaintiff's personal injuries, because it was not at fault or a partial contractual indemnity because the condominium had been partially negligent.

TAKEAWAY:

Property owners are responsible for creating and maintaining safe working environments. As such, and consistent with public policy, the courts will not permit condominiums and cooperatives to be completely shielded by sweeping indemnification clauses. Nor can a contractor be blamed entirely for unsafe conditions on a work site which were, at least partially, of the cooperative's or condominium's own making (including debris on a staircase which, as here, posed a tripping hazard). Conversely, in the event that a contractor's employee is injured while "on the job", and a contractual indemnification clause is triggered, the courts will search the record to determine whether there is complete contractual indemnification by virtue of vicarious liability or partial contractual indemnification by virtue of partial negligence in causing a plaintiff's injuries. To avoid an apportionment of liability, cooperatives and condominiums, and their managing agents, must be vigilant by assuring compliance with all state and federal regulations, inspecting their properties regularly, and immediately curing potentially dangerous or hazardous conditions.

LICENSES

BAYOU V. 351 OWNERS CORP.

2025 NY SLIP OP 25181 (SUP. CT. N.Y. CNTY. AUG. 1, 2025)

Co-op Defeats Developer's Demand to Install Underpinning on Co-Op's Property

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

OUTCOME: Decided for Defendant Cooperative

WHAT HAPPENED: The plaintiffs are the owners of the residential building located at 353 West 20th Street in Manhattan (the 353 Building). The defendant, 351 Owners Corp., is a cooperative that owns the adjoining residential building located at 351 West 20th Street (the 351 Building). The two buildings share a common or "party" wall. The two properties are also separated by a second wall on the 351 Building's side of the property line that is contiguous with, but structurally independent from, the party wall and stands on its own footing.

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The plaintiffs are performing a substantial renovation of the 353 Building, including an expansion of the building's cellar. The project and excavation work will, absent protective measures, cause structural damage to the 351 Building. The plaintiffs proposed to underpin the party wall and the independent wall between the two properties to strengthen the foundation of the 351 Building. This underpinning would fall partially on the co-op's side of the property line.

The New York City Department of Buildings issued a stop-work order on the site and refused to lift the stop-work order absent a license agreement between the parties permitting underpinning. Although the parties negotiated over the terms of a license agreement that would allow the plaintiffs to underpin, the negotiations failed in part because the co-op sought protection against the possibility that it will lose property insurance coverage, or have to pay substantially higher premiums, should underpinning occur.

IN COURT: The plaintiffs commenced an action against the co-op for a declaratory judgment that the plaintiffs are entitled to underpin the party and independent walls or, alternatively, that the co-op is required to undertake that underpinning under the New York City Building Code. The plaintiffs also sought injunctive relief and money damages. The plaintiffs moved for partial summary judgment on their claim for declaratory judgment.

The court denied the plaintiffs' motion, and instead granted declaratory judgment in favor of the co-op. The court said that as a matter of law, the plaintiffs do not have an easement on the defendant's property to install underpinning. The court explained that while a party wall easement permits a property owner access to the adjoining owner's section of a party wall to support its own building, it does not entitle the property owner to underpin the adjoining property without consent to avoid liability for causing property damage. Moreover, the court said even if the plaintiffs could permissibly underpin the party wall, that conclusion would not extend to the independent wall separating the two properties.

The court also said that the co-op is not statutorily required by the building code to install underpinning on its own property. While §3309.5 of the building code does say that, if the party undertaking soil or foundation work is not afforded a license, the "duty to preserve and protect the adjacent property shall devolve to the owner of such adjoining property," the adjoining property owner is not required either to grant a license or to perform the underpinning themselves. Instead, the court said, the presence of a license or the adjoining property owner's efforts to protect its property from excavation-related harm in the absence of a license would be relevant in an action for money damages should the excavation damage the adjoining property.

TAKEAWAY:

While the developer did not prevail, new legislation might change the outcome the next time. In 2025, the New York State Legislature passed a sweeping amendment to Real Property Actions and Proceedings Law (RPAPL) §881. If signed by the governor, amended RPAPL §881 will enable a developer to seek a judicial license to install permanent encroachments including underpinning for demolition and support of excavation activities. Constitutional Takings Clause challenges are anticipated.

With the legislature tipping the scale in favor of developers, boards should endeavor to negotiate the most favorable license agreements they can with the assistance of counsel, architectural, and engineering professionals, and should seek reimbursement of their reasonable legal and professional fees from the developer. The record in this case reveals some of the major concerns that may arise from an adjacent building's construction including lack of adequate crack monitoring, rodent infestation, trespassing workers, attempted break-ins from the scaffolding, cancellation of the co-op's property insurance on account of possible underpinning, and a major increase in insurance premiums going forward. All of these issues should be accounted for in a well-crafted license agreement including, if appropriate, license fees and escrowed funds to cover ongoing professional fees and any damage that may be incurred.

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NEGLIGENCE

MILOV V. 135 BAY 26TH ST. CONDO ASSOCS.

2025 NY SLIP 33068(U) (SUP. CT. KINGS CNTY. JULY 24, 2025)

Sidewalk Defect Was Not "Trivial," So Case Must Be Decided by a Jury

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: The plaintiff slipped and fell on the condominium's sidewalk, so she sued the condo for personal injuries. The condominium moved for summary judgment and dismissal of the lawsuit, arguing that the defect in the sidewalk flag was trivial and did not legally constitute a hazard. The condominium submitted proof—in the form of photographs with a tape measure—purporting to show that the defect in the sidewalk flag elevation ranged from 1.25 inches to 1.5 inches. This difference in height, the condo argued, was trivial as a matter of law. In opposition, the plaintiff argued that New York does not have any "minimal dimension test" or per se rule that a defect must meet a certain height or depth. Moreover, the plaintiff argued, several photographs in the record showed the elevation defect was either 1.18 inches, 1.25 inches, or 1.5 inches. Because there was an issue of fact over the true elevation of the defect, the issue had to be resolved by a jury.

IN COURT: The court denied the defendant's motion. The court confirmed that there was no minimum width, depth, elevation, or irregularity standard for sidewalk flags. Moreover, New York City's Administrative Code states that a sidewalk flag raised by a half inch or more is deemed a "substantial defect." Given the differences in the record over the elevation defect, the court could not state as a matter of law that the defect was "trivial." The question of whether the sidewalk was defective or not had to be resolved by a jury.

TAKEAWAY:

Personal injury cases are a subspecialty of litigation, subject to various rules, doctrines, and standards. Here, the condominium endured discovery, a half dozen motions, and five years of litigation before its attorneys were able to file a motion for summary judgment and dismissal based on the "trivial defect doctrine." While the motion did not succeed, the litigation path and timing are fairly typical of a personal injury case. Here's the good news and the

If this condo had liability insurance, as seems likely, then the litigation costs and defense were not paid by the condo—they were paid by the insurance carrier. The value of having good insurance is not that the carrier will pay out to an injured party, though that is obviously important. The real, practical value is that the carrier has a duty to defend the condo against lawsuits like this; the carrier will select attorneys with suitable expertise from its own panelof law firms; and the law firm's fees will be paid directly by the carrier. As such, a good board will make sure that its condo or co-op community has a solid liability policy issued by a reputable carrier. A really good board will also keep an eye on the sidewalks, because it is easier to fix a tripping hazard than to engage in litigation.

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PERSONAL INJURY

SANTOS V. LEEWARD LIVING, LLC

2025 NY SLIP OP 04671 (2ND DEP'T. AUG. 13, 2025)

Court Finds Cooperative Liable for Violation of Labor Law

SQUIB BY ELISE J. KESSLER, ESQ., COUNSEL, BRAVERMAN GREENSPUN, P.C.

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: In November 2016, the plaintiff was removing excess insulation in the attic of a house under construction and fell through a hole in the attic floor. The house was located on land owned by defendant Breezy Point Cooperative, Inc., and the work was performed pursuant to a contract between a shareholder and Leeward Living, LLC, the general contractor. The plaintiff commenced an action against Leeward and the cooperative for personal injuries and moved for summary judgment on the cause of action alleging a violation of Labor Law §241(6). The Supreme Court granted the plaintiff's motion and the cooperative defendants appealed.

IN COURT: The Appeals Court found that the plaintiff had established, prima facie, that the Cooperative was an "owner" for purposes of Labor Law §§ 240(1) and 241(6). The court considered that the cooperative was the fee owner of the property where the accident occurred, the shareholder and the cooperative were parties under a proprietary lease, that prior to commencing construction work on their properties, the shareholders were required to submit applications to the cooperative's engineering department for review and authorization, a representative of the cooperative would inspect the site while the work was underway, and that once the work was completed, the cooperative had to approve the completion of the job. Based on the foregoing, the court found that there was a sufficient nexus between the plaintiff and the cooperative. The court also found that the cooperative was not entitled to a homeowner's exemption under Labor Law §§240(1) and 241(6). The court also found that the plaintiff was entitled to judgment as a matter of law on the issue of liability under Labor Law §240(1) for exposure to an elevation-related risk and under Labor Law §240(6) for failure to provide substantial cover or safety railing for the hole in the attic. However, the court found that the plaintiff had failed to establish that he was entitled to judgment as a matter of law alleging a violation of Labor Law §240(6) as it relates to violations of 12 NYCRR 23-1.15 and 23-1.16.

TAKEAWAY:

Even though it was the shareholder and not the cooperative who had contracted for the work to be performed in his house, the fact that the cooperative owned the property and was responsible for reviewing, authorizing and approving the work created a sufficient nexus between the plaintiff and the cooperative to impose liability under Labor Law §§240(1) and 241(6). Cooperatives have to carefully oversee any and all work performed on the property to ensure compliance with the Labor Law.

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RPAPL 881

550W21 OWNER LLC V. THE BD. OF MGRS. OF 120 ELEVENTH AVE.

152067/2025 (SUP. CT. N.Y. CNTY. AUG. 8, 2025) NYSCEF NO. 57

Court Awards Condo Legal Fees and Partial License Fee in RPAPL §881 Access Case

SQUIB BY STEWART E. WURTZEL PRINCIPAL, TANE WATERMAN WURTZEL

OUTCOME: Decided for Petitioner, Condo Respondents

WHAT HAPPENED: This is another proceeding brought by an adjacent property owner seeking access to enter the neighboring condominium's property—including the terrace appurtenant to the penthouse owned by respondent Atilla Properties to install necessary protections so it could develop a 20-story mixed use building on the adjoining property. Initially, the condominium unsuccessfully argued that the RPAPL §881 proceeding was premature because it has not expressly refused entry to the property. The court rejected that argument, finding that the failure of negotiations constitutes a constructive refusal of entry.

The unit owner requested an $8,000 per month license fee because he claimed that the proposed rooftop protection would harm the resale or rental value of the unit. The court awarded a $4,500 per month fee. The court noted that other RPAPL §881 cases involving terraces did not support the respondent's $8,000 per month request citing cases which awarded license fees between $1,000 per month and $4,500 per month for similar protections.

IN COURT: The court awarded attorney's fees to the respondents, rejecting the petitioner's assertion that the respondents negotiated in bad faith. The fact that the parties disagreed with the respective bargaining position of the other did not constitute bad faith. The court held that the respondents were entitled to an award of attorney's fees both for the pre-proceeding license negotiations and for the fees incurred in responding to the RPAPL §881 proceeding. The court rejected the respondents' request to compel petitioners to pay for the cost of extermination services and a security camera, noting that there is no authority for imposing those types of costs as a condition of the license. The court also denied the respondents' request for a $100,000 escrow as they did not establish any basis for their concern that petitioner could not pay the license fee or any damages that it may cause or that it had a history of performing unlicensed work that might warrant an escrow.

The court also ordered petitioner to install protections on the condominium's roof even though there was a disputed question as to whether the roof was within the 20-foot requirement imposed by the Department of Buildings. Lastly, the court did not require any more stringent testing requirements for groundwater or vibration monitoring then were required by and approved by the New York City Department of Buildings.

TAKEAWAY:

The number of RPAPL §881proceedings that have been commenced in recent years is mushrooming and have become a substantial time, energy and expense for co-ops and condominiums. In an unscientific review on Lexis, there were 261 reported cases in the 30-year period between 1984 and 2013 involving section RPAPL 881. In the 11 years subsequent to January 1, 2014, there was a 400% increase in reported cases to 1085 cases.

The decisions as to when and under what circumstances legal fees will be awarded as a condition of granting the license are not consistent. Here, the condominium will be entitled to recover its legal fees even though the court reduced the amount of the monthly license fee demanded, rejected some of the protection requests and denied the condominium the escrow it requested. On the flip side, it did require the petitioner to install some of the additional protections the condominium requested. The demands, while not all upheld, were not considered excessive or in bad faith.

Co-op and condominium boards need to carefully consider the requests they are going to make when faced with a request for RPAPL §881 access. It is

(**Takeaway** *continued on p. 18)*

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often easy to foresee that they might need access to that same neighbor's property at some point in the future, and they can be assured that the demands that it will have to consider will be in line with what the neighbor had to pay to them. Second, it is not hard to see that if the condominium's demands were somewhat higher, the court may not have deemed them to be so reasonable and would not have ordered recovery of the attorneys' fees incurred in connection with the petition. Do not assume you can demand anything you want and the court will compensate you for the legal fees incurred in defending that demand.

While we certainly urge every building to make all reasonable requests to protect their building and to compensate it for the inconvenience that the necessary access might impose, this should not be viewed as an opportunity to fund the building's treasury at the expense of a neighbor who is either doing a necessary repair or improvement.

SPONSOR

THOMIAN HOLDINGS LLC V. CYDONIA W71 LLC

655682/2023 (SUP. CT. N.Y. CNTY. AUG. 18, 2025) NYSCEF NO. 30

Another Reminder: Condo Defect Claims Against Sponsors Rarely Survive

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

OUTCOME: Decided, in part, for Defendant Condo Sponsor

WHAT HAPPENED: The plaintiff, Thomian Holdings, LLC, owns an Upper West Side condominium apartment unit. The defendant, Cydonia W71, LLC, is the condominium sponsor. The plaintiff purchased the unit from the defendant in November 2020.

The plaintiff alleges that the defendant did not fully repair or remediate material construction defects within the unit. These defects were not discovered until after closing. The plaintiff claims that the defendant has therefore breached the terms of the offering plan (incorporated by reference in the purchase agreement). The offering plan advertised that the condominium units were renovated in accordance with the filed plans, specifications, and applicable laws.

The plaintiff alleges the following deficiencies: (i) defective sound insulation of the walls, ceiling, and flooring between the unit and other units, and between the unit and common areas; (ii) leaky showers causing floor damage; (iii) defective HVAC system; and (iv) improperly installed sub-floors causing flooring to vibrate and squeak. The defendant took a substantial part in the construction and renovations of the condominium and unit. The plaintiff also claims that the defendant has breached locally acceptable building practices and the purchase agreement.

The plaintiff brought this action in November 2023. The complaint asserts nine causes of action and seeks $1 million in damages, plus attorney fees.

IN COURT: The court dismissed all causes of action in the complaint except for the one for breach of contract. These include for breach of warranty, multiple species of negligence and fraud, violations of the General Business Law provisions on sales practice, breach of the covenant of good faith, and attorneys' fees. Thus, the lawsuit did not even survive the pleading stage. Even worse for the plaintiff, leave to amend the complaint was denied.

TAKEAWAY:

It is really hard to sue a sponsor for condominium defects—claiming misrepresentations in the offering plan/sales process etc. There is a great deal of well-defined case law and while it is possible to get around the many legal hurdles by alleging fraud in one iteration or another, there must be something more than conclusory statements and allegations and generalities. It's simply a very uphill battle for a buyer as this case, essentially of a piece, shows. That said, the plaintiff's claim for breach of contract did survive.

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