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

BOARD OF MANAGERS

PEREZ V. THE BD. OF MGRS. OF THE LANGSTON CONDO.

654287/2025 (SUP. CT. N.Y. CNTY. OCT. 23, 2025) NYSCEF NO. 276

Court Refuses to Halt Board Ahead of Vote

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

OUTCOME: Decided for Condo Defendants

WHAT HAPPENED: The plaintiff, a unit owner in the condominium, filed a pro se lawsuit seeking to enjoin the board of managers of the condominium from taking any action on behalf of the condominium on the grounds that the board was improperly constituted. All of the board of managers but one were appointed by the sole remaining director and were not elected. He also moved for a preliminary injunction preventing the board from acting while the action was pending.

The court denied the motion for a preliminary injunction on several grounds. First, the court found that the plaintiff was not able to demonstrate a likelihood of success on the merits as the bylaws do not contemplate or address the situation where only one elected director was able to make appointments to fill vacancies. The court found that the bylaw was too imprecise and ambiguous to warrant a conclusion that the current board was seated in violation of the plaintiff's rights.

The court also found that the alleged illegitimacy of the board does not constitute irreparable harm warranting an injunction especially since the condominium had scheduled an election to fill all board positions two weeks after the decision was issued. The election for all directors satisfied the relief that the plaintiff was requesting.

The court also found that the equities did not balance in the plaintiff's favor as the condominium would be at a standstill and unable to operate if there was an injunction as there was only one remaining elected director who did not have authority to take independent action.

Finally, the court also noted that the plaintiff asserted no authority for the proposition that he represents all of the building's unit owners and that granting the preliminary injunction would impermissibly grant the ultimate relief he sought in the action.

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

NOVEMBER 2025 HIGHLIGHTS

COMPANION ANIMAL
Board Can't Duck Dog-Accommodation Claims

CONTRACTS
No Contract, No Case: Co-op Management Wins

DEFAMATION
Opinion, Not Defamation, Says Court

ELECTIONS
Article 78 Bid Fails: Wrong Party, Wrong Pleading

INJUNCTION
Federal Law Violation Sinks Pot Dispensary Bid

© 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 P.C.

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

Dale Degenshein
Partner, Fox Rothschild

David S. Fitzhenry
Moritt Hock & Hamroff LLP

Helene W. Hartig, Esq.
Founder & Principal of Hartig Law

Thomas P. Higgins
Partner, Higgins & Trippett

Kenneth R. Jacobs
Partner, Smith Buss Jacobs

Mohit Karwasra
Associate, Braverman Greenspun PC

William D. McCracken
Partner, Moritt Hock & Hamroff LLP

Scott J. Pashman
Member, Cozen O'Connor

Michelle P. Quinn, Esq.
Gallet Dreyer & Berkey, LLP

Matthew Tobias
Partner, Belkin Burden Goldman

Stewart E. Wurtzel
Principal, Tane Waterman Wurtzel

TABLE OF CONTENTS

BOARD OF MANAGERS 1

Court Refuses to Halt Board Ahead of Vote
Stewart E. Wurtzel, Principal, Tane Waterman Wurtzel
PEREZ V. THE BD. OF MGRS. OF THE LANGSTON CONDO

COMPANION ANIMAL 4

Board Can't Duck Dog-Accommodation Claims
Mohit Karwasra, Associate, Braverman Greenspun PC
CHARUGUNDLA V. LASALA

CONSTRUCTION DEFECTS 6

Court Tosses Sponsor's Indemnification Suit Against Door Subcontractor
Scott J. Pashman, Member, Cozen O'Connor
BD. OF MGRS. OF THE 443 GREENWICH ST. CONDO. V. SGN 443 GREENWICH ST. OWNER LLC

CONTRACTS 7

No Contract, No Case: Co-op Management Wins
Matthew Tobias, Partner, Belkin Burden Goldman
TOMAINO V. METRO MGMT. DEV., INC.

DEFAMATION 8

Opinion, Not Defamation, Says Court
Steven S. Anderson, Shareholder, Becker New York P.C.
TRUMP VILL. SECTION 4, INC. V. LUCA

ELECTIONS 9

Article 78 Bid Fails: Wrong Party, Wrong Pleading
David S. Fitzhenry, Moritt Hock & Hamroff LLP
AHUJA V. BD. OF MGRS. OF THE CORINTHIAN CONDOS

EVICTION 10

Co-op Wins Eviction Over Years of Shareholder Misconduct
Helene W. Hartig, Esq., Founder & Principal, Hartig Law
61 E. 72ND ST. CORP. V. MODELL

HOARDING 11

Judge Forces Cleanup in Repeat Hoarding Case
Michelle P. Quinn, Esq., Gallet Dreyer & Berkey, LLP
BD. OF MGRS. OF 48-54 W. 138TH ST. CONDO. V. BURDOCK

© 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 September 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 6

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

TABLE OF CONTENTS

INJUNCTION 12
Federal Law Violation Sinks Pot Dispensary Bid
Thomas P. Higgins, Partner, Higgins & Trippett
STONY BROOK TECH. CTR. ASSOC., INC V. SRM 23 LLC

LICENSES 13
Court Tosses 881 Bid Over Sidewalk-Only Access
WILLIAM D. McCracken, PARTNER, MORITT HOCK & HAMROFF LLP
CAMERON SKY, LLC V. THE BD. OF MGRS. OF THE NEW YORKER CONDO

NUISANCE 14
Tenant Flooding Dispute Resolved with Accessible Shower
Kenneth R. Jacobs Partner, Smith Buss Jacobs
545 W. CORP. V. WILLIAMS

PROPRIETARY LEASE 15
$4K Abatement Glitch Becomes $100K War
Dale Degenshein, Partner, Fox Rothschild
SCHUSTERMAN V. SUTTON HOUSE, INC.

STOCK SHARES 16
Co-op Wins Dispute Over Alleged Share Transfer
Manu Leila Davidson, Esq., & Nicholas Reyes, Boyd Richards Parker & Colonnelli, Pl
KIM V. 16 PARK AVE. OWNERS CORP.

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

TAKEAWAY:
It appears from a review of the docket that the board did move swiftly to schedule an election as the contested appointments to the board were made in June 2025 and the election was scheduled for September 2025 only three months later (after the summer was over). The decision to get the unit owners involved and have a proper election shortly after the vacancies occurred was completely appropriate. Filling the vacant seats on the board by appointment in the interim so that one person was not making all the decisions in a building that appears to be divided is also prudent. The building is 180 units and no doubt time was needed to organize an election, send out notices and find candidates warranting the three-month passage of time (especially over the summer when many residents might have been away). The court was very practical in its determination noting that the building needed to be able to act and that scheduling an election for all board seats in short order would solve the plaintiff's concerns.

COMPANION ANIMAL

CHARUGUNDLA V. LASALA

NO. 1:25-CV-02314-AS (S.D.N.Y. SEPT.22, 2025) ECF NO. 43

Board Can't Duck Dog-Accommodation Claims

SQUIB BY MOHIT KARWASRA, ASSOCIATE AT BRAVERMAN GREENSPUN PC

OUTCOME: Decided, in part, for Condo Defendants

WHAT HAPPENED: Kent and Marguerite Charugundla, plaintiffs and residents of the Monarch Condominium, submitted a request to Monarch's board of managers in August 2021 to keep a service dog. The dog was to assist with Marguerite's mental health and with Kent's hearing loss in one ear. In response, the board retained a psychiatrist, Dr. Michael First, to perform an independent evaluation of Marguerite's disability and allegedly asked Kent to provide additional medical documentation, in contravention of Monarch's own policy to not request medical records for disabilities. In February 2022, the plaintiffs submitted another request for the same accommodation, which too went unaddressed up until December 2024 when the Monarch notified the plaintiffs that their request will be reviewed, but without any further action.

As a result, in January 2025, the plaintiffs filed a lawsuit against Monarch, the individual board members, and Dr. First, for failure to accommodate under the Fair Housing Act (FHA), New York State Human Rights Laws (NYSHRL), New York City Human Rights Laws (NYCHRL), and New York Civil Rights Law (NYCRL) § 47; and, against Dr. First under the same statutes for aiding and abetting the discrimination by accepting the retainer to evaluate Marguerite. After removing the case from the state court to the Southern District of New York (SDNY), all the defendants moved to dismiss the complaint for being time barred and for failing to state a claim.

IN COURT: Judge Arun Subramanian (SDNY) rejected the defendants' statute-of-limitations argument, holding that it was not "clear from the face of the complaint" that the plaintiffs' claims were time-barred. In support of its assertion, the defendants relied on an old email exchange between Kent and Dr. First, but the court refused to take judicial notice of it—as the email was neither incorporated into the complaint by reference nor was it integral to the plaintiffs' allegations, rendering it ineffective in making the assertion that the plaintiff had knowledge of

(continued on p. 5)

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

their accommodation request being denied as early as 2021. Even if the court were to take judicial notice of this email, it would have merely established that the board sought more information, not that the accommodation was denied.

The board defendants' position that claims against them must be dismissed for the plaintiff's failure to allege each of their personal involvement was also held to be without merit, as the court found that the plaintiffs had plausibly alleged that each of the board defendants served on the board during the relevant period and participated in the decisions underlying the alleged conduct. Whether the board defendants in fact did so was recognized as a factual issue that must be tested in discovery, not at the pleading stage.

Turning to the substantive claims, the court held that while Kent adequately alleged a qualifying disability under the FHA, Marguerite did not. Deafness in one ear, the court reasoned, "plainly constitutes a physical impairment," and hearing itself is a major life activity. By contrast, even though Marguerite's doctor's note made a reference to her "emotional mental-health issues" and "limitations related to social interactions and coping with mental stress" it failed to provide any information on what such impairments were and how they resulted in substantial limitation of any major life activity. The court emphasized that whether an impairment substantially limits such an activity is ordinarily a question of fact for the jury, so Kent's claim could proceed. The court did however provide the plaintiffs additional time to amend their complaint to allege additional facts that would satisfy FHA's disability requirements as to Marguerite.

The court also found that Kent plausibly alleged that the requested service dog was "necessary" to afford him an equal opportunity to use and enjoy his home, because the animal would alert him to alarms and doorbells—an accommodation that "alleviates the effects of a disability," not merely a personal preference.

Applying similar reasoning, the court allowed Kent's failure-to-accommodate claims under the NYSHRL and NYCHRL to proceed, while dismissing Marguerite's for lacking sufficient factual details to meet the definition of disability under these statutes, despite NYSHRL and NYCHRL having a broader definition to disability than the FHA.

Finally, the court dismissed all aiding-and-abetting claims against psychiatrist Dr. First, because the FHA lacks a stand-alone aiding-and-abetting provision, and because the complaint lacked allegations that he "actually participate[d]" in, or shared the intent of, the alleged discriminatory conduct under the NYSHRL and NYCHRL. Simply accepting a retainer to conduct an evaluation did not meet such standard. However, once again, the court went on to provide the plaintiffs additional time to amend their complaint to allege additional facts that would satisfy aiding-and-abetting allegations against Dr. First.

As for the claim pursuant to NYCRL §47, it was dismissed because that provision only protects individuals already accompanied by service animals, thus it is inapplicable to the facts on hand.

TAKEAWAY:

Boards must tread carefully when reviewing requests for emotional support or service animals and should treat every request as a matter requiring timely, transparent, and consistent handling. Since prolonged inaction or imposing extra-statutory documentation burdens—even under the guise of due diligence—can expose boards to liability, prompt and policy-compliant responses remain the best protection against exposure to scrutiny.

For practitioners, this opinion illustrates that while independent medical evaluations may be permissible, retaining outside professionals does not insulate a board from statutory scrutiny. Moreover, individual board members can remain in the case if the complaint plausibly alleges their participation, and courts will allow disputes to proceed where pleadings show potential factual ambiguity, according to this opinion. To safeguard against such risks, practitioners must emphasize to boards the importance of narrowly tailoring any inquiries pertaining to medical conditions and carefully documenting not only the board's decision-making processes but also that of handling and addressing accommodation requests in accordance with policies.

It also underscores that courts will not infer denial of accommodation requests from ambiguous correspondence, that partial physical impairments (such as partial hearing loss) which restrict a major life activity qualify as a disability under the relevant statutes, and reaffirms that accommodations need only plausibly "alleviate the effects" of an impairment rather than prove medical necessity with clinical precision.

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

CONSTRUCTION DEFECTS

BD. OF MGRS. OF THE 443 GREENWICH ST. CONDO. V. SGN 443 GREENWICH ST. OWNER LLC

2025 NY SLIP OP 33303(U) (SUP. CT. N.Y. CNTY. SEPT. 4, 2025)

Court Tosses Sponsor's Indemnification Suit Against Door Subcontractor

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

OUTCOME: Decided for Third-Party Defendant Subcontractor

WHAT HAPPENED: The defendants are the sponsor of the 443 Greenwich Street Condominium, its corporate affiliates, and the individual principals of the sponsor. The defendants converted a 130-year-old factory building into a luxury residential condominium. After moving in, unit owners experienced leaks in the roof and penthouse walls. That led the board of managers to commission a forensic architect's report that found building-wide construction defects. After placing the sponsor on notice and not receiving an adequate response, the board sued.

The sponsor defendants, in turn, sued certain subcontractors who worked for the sponsor on the condominium building renovation including LIF Industries Inc., doing business as Long Island Fireproof Door, Inc. The board claimed that certain walls and doors enclosing the children's playroom amenity space, the gym, and leading to the garage were supposed to be made of non-combustible construction having 45 minutes of fire resistance. In fact, according to the board, those walls and doors were composed of non-fire rated glass. The sponsor defendants alleged that LIF was responsible for those defects and for failing to maintain the insurance required under LIF's contract. The sponsor defendants sued LIF for common law indemnification, common law contribution, contractual indemnification, and breach of contract for failing to procure the requisite insurance. After discovery, LIF moved for summary judgment.

IN COURT: The court granted the motion and dismissed the third-party complaint as against LIF. The court said that LIF had shown, by affidavit and the terms of its contract, that its responsibilities were limited to providing wood and metal doors, frames, and associated hardware. LIF did not provide any glass doors or garage doors and was not responsible for the installation of any doors. The court also said that the sponsor defendants failed to demonstrate that any particular discovery was needed to oppose the motion or why any relevant information was not already available to them. Accordingly, the causes of action for common law and contractual indemnification would be dismissed.

The sponsor defendants did not contest dismissal of the cause of action for common law contribution. As the court explained, pure economic loss from a breach of contract is not a cognizable injury for a common law contribution claim. Lastly, the court said that the claim for breach of contract would be dismissed because LIF had shown through submission of insurance documentation that it had procured the requisite insurance for the period of time that it worked on the condominium project.

TAKEAWAY:

A board's claims seeking recovery for construction defects typically lie directly against the sponsor for breach of contract and breach of warranty. While claims such as fraud, breach of fiduciary duty, and fraudulent transfers may lie against the sponsor principals and related entities, a board is generally barred from suing the architects, engineers, and contractors who performed work for the sponsor directly. The sponsor, however, may sue for indemnification and contribution for damages against contractors and subcontractors whose work led to defective conditions, design professionals such as architects and engineers whose flawed designs caused defects, and material suppliers and manufacturers if the defect stems from a faulty product. The sponsor may typically seek indemnification and contribution after the sponsor would otherwise be barred from suing on its own contracts as beyond the statute of limitations or by limitations of liability in those contracts. Accordingly, third-party practice may substantially expand the universe of parties and insurance carriers from whom a board may ultimately recover. But as the case under review demonstrates, third-party practice can be complex, and success may turn on the particular terms of the various contracts the sponsor made with its design team, contractors, and suppliers.

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

CONTRACTS

TOMAINO V. METRO MGMT. DEV., INC.

2025 NY SLIP OP 04805 (2ND DEP'T. AUG. 27, 2025)

No Contract, No Case: Co-op Management Wins

SQUIB BY MATTHEW TOBIAS, PARTNER, BELKIN BURDEN GOLDMAN

OUTCOME: Decided for Defendant Co-op Management Company, Affirmed on Appeal

WHAT HAPPENED: In February 1991, the plaintiff Santino Tomaino and his now deceased wife, Janet, purchased a cooperative apartment from the cooperative corporation, defendant Powells Cove Owners Corp. At the time, the apartment was subject to an existing rent regulated sublease with Carolyn Nelson.

Upon purchasing the apartment, the Tomainos entered into a management contract with Finkelstein Moran Agency, who was also the cooperative's managing agent. Pursuant to this management contract, Finkelstein Moran was to act as the Tomainos' managing agent for the apartment, with duties that included, but were not limited to, collecting rent from the subtenant. The management contract expressly provided that it would last "for as long as the agent manage[s] the premises in which the Apartment is located," in other words, for as long as Finkelstein Moran was the managing agent for the cooperative.

Finkelstein Moran stopped acting as managing agent for the cooperative in or about January 1994. From then until May 2001, the cooperative had at least three different managing agents, with the cooperative hiring defendant Metro Management Development, Inc. as its managing agent in or about May 2001. The plaintiffs never entered into any management contracts with any of the subsequent managing agents, including Metro Management Development, Inc. However, when the plaintiff fell into arrears on its maintenance obligations to the cooperative, Metro Management collected rent directly from the plaintiff's subtenant in the apartment.

In 2019, the plaintiffs sued Metro Management, among others, for breach of contract, alleging that Metro Management failed to perform its obligations as the plaintiffs' managing agent, including failing to collect rents from the subtenant and failing to notify the plaintiffs that the subtenant had moved out and the apartment was vacant.

IN COURT: Following discovery, the defendant Metro Management moved for summary judgment dismissing the complaint. The court granted the defendant's motion, finding that there was no issue of fact inasmuch as the plaintiffs had never entered into a contract with Metro Management. The plaintiffs admitted that there was no written contract, but argued that an implied contract existed based on Metro Management's collection of rent from the subtenant. The court nevertheless found that Metro Management's collection of rent from the subtenant was not indicative of an implied contract. The court found that, because the plaintiff had been in arrears of its maintenance obligations, Metro Management's collection of rent from the subtenant was for the benefit of the cooperative, not the plaintiff. The court thus granted summary judgment in favor of Metro Management, and dismissed the complaint. On appeal, the Second Department affirmed the lower court's decision, holding that "the parties' conduct did not manifest an intent that Metro act as the plaintiff's agent."

TAKEAWAY:
It is crucial for boards and owners alike to enter into a clear written management contract with its managing agent. While an implied management contract may be enforceable based on conduct, the managing agent's conduct must clearly indicate a meeting of the minds and must be taken for the benefit of the board or owner alleging the existence of an implied management contract. To avoid issues as to enforceability, there is no replacement for a written management contract to ensure that the parties' duties, obligations and expectations are clearly memorialized.

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

DEFAMATION

TRUMP VILL. SECTION 4, INC. V. LUCA

2025 NY SLIP OP 05118 (2ND DEP'T. SEPT. 24, 2025)

Opinion, Not Defamation, Says Court

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

OUTCOME: Decided for Defendants

WHAT HAPPENED: This case arises out of postings allegedly made by the defendants in a private online forum for residents of the plaintiff Trump Village Section 4, Inc., a cooperative complex located in Coney Island, New York. The summons and complaint were filed on June 13, 2023. The complaint alleges that the defendants Alexander Kats, Violeta Luca, and two unknown individuals with the online usernames "ME" and "ANONYMOUS," made various postings in an online forum known as OneRoof. The complaint further alleges that these postings defamed the plaintiff Igor Oberman, the general manager and assistant secretary of TV4. The complaint describes OneRoof as a "phone application and website where "[a]nyone with an app-assigned building code" could write and read "community-minded posts." Kats and Luca are both residents of TV4. It is unknown if ME and ANONYMOUS are residents of the building. The complaint alleges that all defendants wrote various defamatory messages on OneRoof, accusing TV4's board and Oberman of accepting kickbacks for co-op projects, theft, harassment, mismanagement and ineptitude, and engaging in illegality and corruption

Both Kats and Luca filed pre-answer motions to dismiss the complaint against them. Both motions share in the arguments that the statements attributed to Kats and Luca, when viewed in the context they were posted, are not slanderous per se or defamatory. Kats goes further to point out that the plaintiffs had not pleaded any special damages, and therefore could maintain their causes of action under the theory that the statements were slanderous per se. In opposition, the plaintiff argued that the statements attributed to the defendants are statements of "fact," not opinion, or at the very least "mixed opinion" and therefore actionable.

IN COURT: The court found the plaintiffs failed to state a cause of action for damages and dismissed the complaint, finding that the plaintiff had not alleged the requisite special damages or alleged any specific facts, anything other than "opinions" which did not support a defamation cause of action. "Some of the allegedly defamatory statements constituted rhetorical hyperbole, some lacking in precise meaning, and some were not capable of being proven true or false" and thus did not support a defamation claim.

The defendants sought attorney's fees, but the court did not find the action involved "public petition and participation" such as would support a claim under New York's Anti-SLAPP statute (Civil Rights Law §§70-a, 76-a) and, as such, there was no award of attorney fees or damages to defendants warranted.

The appellate court affirmed the trial court decision and reasoning adding that "reasonable readers would have concluded that they were reading opinions rather than facts." Likewise, the appellate court found no attorney fees award was appropriate since the suit did not involve issues of the "public interest" but only "to a limited, private audience . . . ."

TAKEAWAY:

Whether statements are "facts" (that state a legal cause) or "opinions" (that do not) is a common battleground in the world of libel law as applicable to co-ops and condominiums, and elsewhere. Bottom line: A claimant/plaintiff needs to be as specific as possible in setting forth the objectionable statements a defendant made trying to allege a claim for defamation. Alleging "harassment" and "ineptitude" won't do it. The underlying policy the courts are mindful of surely is the "floodgates" argument and concerns—to wit, is there anyone who can't just allege "harassment" and thus keep a court busy with a libel claim?

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

ELECTIONS

AHUJA V. BD. OF MGRS. OF THE CORINTHIAN CONDOS.

152476/2025 (SUP. CT. N.Y. CNTY. SEPT. 15, 2025) NYSCEF NO. 41

Article 78 Bid Fails: Wrong Party, Wrong Pleading

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

OUTCOME: Decided for Respondent Condo

WHAT HAPPENED: This matter involved a condominium unit owner's Article 78 petition seeking a declaratory judgment annulling the results of the condominium's recent election for its board of managers, as well as an order requiring that a new election be held. The petitioner claimed that the condominium board had improperly prevented another unit owner's name from appearing on the ballot, arguing that the condominium board members had selectively enforced certain condominium rules and regulations in order to prohibit the election of new unit owners to the board, effectively providing themselves with an unjust advantage in the election. The petitioner argued that the board's practices with respect to the election were unfair, and thus afforded the petitioner to seek relief from the court pursuant to Business Corporation Law §619 (which permits aggrieved shareholders to seek judicial relief with respect to unfair elections).

IN COURT: The condominium board brought a motion to dismiss the petitioner's Article 78 petition. The respondent condo board made several arguments in favor of dismissal, including that the petition was time-barred due to the expiration of the four-month statute of limitations. Ultimately, the court granted the condo board's motion to dismiss due to the unit owner's lack of standing. Specifically, the court agreed with the respondent's contention that the petitioner's arguments could only have been brought as a derivative claim, and not in the petitioner's individual capacity.

TAKEAWAY:

In order to assert claims against a condominium board or an apartment corporation for damage to the corporate or common property, or breach of fiduciary duty relating to corporate decision-making, such claims must be brought as derivative claims on behalf of the corporation or condominium, and not by shareholders or unit owners in their individual capacity. In the case at bar, the petitioner sought to challenge the board's actions based upon the petitioner's assertions that the board had improperly held another unit owner as being ineligible for election. Notably, the unit owner that had been disqualified by the board was not a party to this petition, and because a shareholder or unit owner generally does not have standing to assert claims on behalf of another party, the court determined that the petitioner lacked standing. Board, owners, and attorneys should all be sensitive to the pleadings in this type of situation, as the nature of the damages and relief sought could be determining factors as to whether a claim should be brought derivatively or in one's individual capacity.

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

EVICTION

61 E. 72ND ST. CORP. V. MODELL

2025 NY SLIP OP 33433(U) (SUP. CT. N.Y. CNTY. SEPT. 11, 2025)

Co-op Wins Eviction Over Years of Shareholder Misconduct

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

OUTCOME: Decided for Plaintiff Co-op

WHAT HAPPENED: The plaintiff alleged that over a nine-year period, the defendant repeatedly engaged in objectionable conduct. These breaches included but were not limited to failing to maintain the interior of the defendant's apartment, leading to leaks in her fellow shareholders' units, refusing access requests by building staff, failing to address hazardous conditions that the defendant created or exacerbated, damaging other shareholders' premises, failing to provide keys or proof of insurance, leaving garbage in the elevator and abusing the building staff. Following verbal warnings as well as cease and desist letters, the plaintiff notified the defendant of a special meeting to consider terminating her proprietary lease and ownership interest. Thereafter, the defendant was instructed to surrender her stock certificate and vacate her unit. When she failed to do so, litigation was commenced seeking an immediate order of ejectment plus payment of use and occupancy, damages and attorneys' fees.

IN COURT: The court agreed with the plaintiff, finding that the defendant had failed to act in the cooperative spirit and had endangered the health, safety, and well-being of her fellow residents. The defendant had also harmed the value of her fellow shareholders' investments by refusing to pay monthly maintenance (despite a court ordered stipulation) and failing to take any remedial action to correct defective conditions within the interior of her unit. Despite a years-long delay from the beginning of the litigation to the decision on summary judgment (approximately three years) the court awarded the plaintiff immediate possession of the subject unit and directed that the defendant's stock certificate be surrendered. The court also awarded legal fees, unpaid use and occupancy, including assessments, and legal fees. The defendant has appealed.

TAKEAWAY:

Prior to terminating a proprietary lease based on objectionable conduct, it is critical to document the specific incidents of default and to explain how the shareholder's actions harmed other residents. The dates and times of the incidents as well as the specific clauses of the proprietary lease and house rules that are allegedly breached should be sufficiently detailed as well. In appropriate circumstances, especially in view of a well-drafted complaint, the court will order an eviction/ejectment of the defaulting shareholder as well as referral to a referee for a calculation of damages. This, in turn, enables the apartment corporation to bypass landlord-tenant court and tenant friendly judges who may sympathize with the shareholder and provide an unjustified opportunity to cure.

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

HOARDING

BD. OF MGRS. OF 48-54 W. 138TH ST. CONDO. V. BURDOCK

2025 NY SLIP OP 33260(U) (SUP. CT. N.Y. CNTY. SEPT. 2, 2025)

Judge Forces Cleanup in Repeat Hoarding Case

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

OUTCOME: Decided for Plaintiff Condo Board

WHAT HAPPENED: For over two years, the condominium's board of managers tried to work with unit owner Flora Burdock to remedy hoarding conditions in her apartment which presented health and safety concerns and for which the board had received numerous complaints from other residents. The conditions even caused the NYC Department of Health and Mental Hygiene to issue a notice about the foul odor emanating from the apartment. In a prior related action brought by the board for these conditions, Ms. Burdock was ordered to work with the board to permit access to her apartment to clear the unsafe conditions. As of August 2023, the apartment was cleaned out, sanitized, and fumigated. Unfortunately, the conditions recurred.

IN COURT: The condominium's board of managers again sued Ms. Burdock for the hoarding conditions, alleging nuisance, foul odor, vermin, and breach of the condominium contract, and moved for summary judgment, including a request for a permanent injunction and attorneys' fees, and to have the case transferred to the judge who had presided over a prior related action.

The court denied the transfer request and the request for a preliminary injunction, finding that the board's evidence of a few photographs of the apartment and the building manager's affidavit to be insufficient to warrant that relief, as they were based on inspections performed more than eight months before the board's motion, and denied the request for attorney's fees as premature. However, the court did order that Ms. Burdock be compelled to allow inspection and cooperate with cleaning and remediation, and that she allow access within 14 days or be held in contempt. The board was also ordered to contact Adult Protective Services to determine if Ms. Burdock needs assistance maintaining safe and hygienic apartment conditions.

TAKEAWAY:

With our population aging, hoarding conditions unfortunately are becoming more common. If direct efforts to get the apartment owner's cooperation and amelioration, boards of both condominiums and cooperatives may obtain court orders to compel unit owners to address and remediate hazardous conditions that affect health and safety, especially when such conditions impact other residents and the building as a whole. It is key for a board to have the emergency contact information for each of its owners who could aid in addressing these situations. In some circumstances, agencies such as Adult Protective Services may be called upon to assist.

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

INJUNCTION

STONY BROOK TECH. CTR. ASSOC., INC V. SRM 23 LLC

2025 NY SLIP OP 25210 (SUP. CT. SUFFOLK CNTY. SEPT. 10, 2025)

Federal Law Violation Sinks Pot Dispensary Bid

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

OUTCOME: Decided for Plaintiff Condo

WHAT HAPPENED: The Stony Brook Tech Center is a 103-acre technology park owned and operated as a commercial condominium. One of the unit owners, defendant SRM, leased its unit to defendant Strong Strains, which sought to operate a retail cannabis dispensary on site. The condominium units contained restrictions on usage in the condo's declaration and bylaws, as well as a restrictive covenant filed with the county clerk. The condo's bylaws stated that no unit owner may operate any business "in violation of any law or regulation." The restrictive covenant barred any usage that "violates any federal, state, county or town laws." Before Strong Strains opened its cannabis dispensary, the condo sent a cease-and-desist letter to SRM and Strong Strains, outlining the restrictions on use. The letter was ignored, the cannabis shop opened, and the condominium filed suit for a temporary restraining order, a preliminary injunction, and for damages for breach of contract. SRM and Strong Strains opposed.

IN COURT: The court ruled in favor of the plaintiff condominium, issuing a preliminary injunction in its favor and barring the operation of a cannabis dispensary in the unit by SRM or Strong Strains. While New York State has recently enacted laws that permit the sale and usage of cannabis, it is undisputed that federal law bars the manufacture, possession, and/or distribution of cannabis. As such, the restrictions on usage of the unit were plainly being violated by the defendants, and the plaintiff was entitled to injunctive relief to enforce the rules of the condominium.

TAKEAWAY:

About 15 years ago, many states sought to authorize the medical use of marijuana, despite the fact that federal law, the Controlled Substances Act, banned its possession and use. Strictly speaking, cannabis refers to all products derived from the plant cannabis sativa, while marijuana refers to specific products from the plant that contain substantial amounts of THC. New York joined the marijuana legalization movement and authorized the medicinal use of cannabis, then went further in subsequent years. New York decriminalized cannabis use entirely for adults in 2021, and actively funded and licensed cannabis retail distribution. Court cases challenging New York's actions as being in conflict with federal law have been resolved against the challengers, and New York has an uneasy legal scenario where cannabis is legal under state law, but still illegal under federal law. The court here noted those cases, but declined to get into federal-state conflict issues. Instead, the court focused entirely on what the condominium documents said, and what they said was clear: no usage in violation of any law, which obviously includes federal law banning the sale of cannabis.

One might be tempted to say the cannabis dispensary went deep into the weeds with blunt and half-baked arguments, but the court wasn't dopey so the defendants got rolled tight, took a big hit, and got stoned by the decision. Sorry, I couldn't resist.

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

LICENSES

CAMERON SKY, LLC V. THE BD. OF MGRS. OF THE NEW YORKER CONDO.

2025 NY SLIP OP 33435(U) (SUP. CT. N.Y. CNTY. SEPT. 8, 2025)

Court Tosses 881 Bid Over Sidewalk-Only Access

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

OUTCOME: Decided for Respondent Condo

WHAT HAPPENED: A clothing boutique on the Upper East Side brought a so-called "reverse licensing" against the building next door to it after the neighboring building erected a sidewalk shed on the sidewalk in front of their store without prior permission as part of the building's Local Law 11 work.

The boutique, which leased the space from the commercial unit owner in its building's condominium association, argued that the court should require that the neighboring building enter into a license agreement directly with the store, whereby the neighbor would, among other things, be required to pay the store a fee of $2,800 per month as compensation for the store's lost revenues resulting from the erection of the shed.

The neighboring building moved to dismiss on several grounds. First, respondent argued that the store did not have standing to seek relief under Real Property Actions and Proceedings Law (RPAPL) §881 because the sidewalk shed did not encroach on the store's property, but only on the public sidewalk. Despite this, the neighboring building did enter into a license agreement from the adjacent owner (the condominium association which included the store's landlord), and that license agreement specifically provided that the store would not be entitled to a separate license fee. Moreover, the neighbor argued that even if the store was entitled to a license, it had not shown it was entitled to any compensation in the form of a monetary license fee.

IN COURT: The court agreed with the respondent and dismissed the petition. As an initial matter, the court held that the boutique did have standing under RPAPL §881 to bring this "reverse license" proceeding, even though the boutique neither owned the property nor was the entity seeking access.

Nevertheless, the court dismissed the proceeding because the sidewalk shed was only on the public sidewalk and did not actually encroach on the adjacent building's property itself. Under those circumstances, permission from the commercial tenant was not required, at least not where the boutique was unable to "conclusively establish" that any loss of revenue it allegedly suffered was because of the sidewalk shed.

TAKEAWAY:

This is an interesting case because it contains a few wrinkles to the "typical" RPAPL §881 proceeding. In the typical proceeding, the petitioning party will be the property owner needing to gain access to an adjacent property in connection with its own construction project. Here, the petitioning party was not seeking access, but rather arguing that the neighboring building needed its permission to erect a sidewalk shed in front of its store.

Another wrinkle is that the petitioner here was a commercial tenant, not the building owner, and the court held that such tenant had standing to seek relief despite it not owning the entire building—indeed, despite there being a license agreement in place with the boutique's landlord (technically, the landlord's condominium association).

Finally, this proceeding turned on the fact that the only property being "accessed" was the public sidewalk in front of the boutique, and not any property owned or leased by the store. Accordingly, the court found that no license agreement was required here at all, at least not where the petitioner was unable to conclusively show that it had suffered any tangible loss of use and enjoyment of its property as a result of the sidewalk shed.

That last small caveat is perhaps why the respondent entered into a license agreement with the neighboring condo in the first place, to avoid the possibility that a court might find that "justice requires" that some sort of monetary compensation was required despite the sidewalk shed only being on the public sidewalk.

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

NUISANCE

545 W. CORP. V. WILLIAMS,

2025 NY SLIP OP 33411(U) (SUP. CT. N.Y. CNTY. SEPT. 10, 2025)

Tenant Flooding Dispute Resolved with Accessible Shower

SQUIB BY KENNETH R. JACOBS PARTNER, SMITH BUSS JACOBS

OUTCOME: Decided for Defendant

WHAT HAPPENED: Judy Williams, a rent-regulated tenant of proprietary Lessee 545 West LLC, had repeatedly clogged her bathtub drain with clothing, causing her tub to overflow at least seven times and resulting in more than $100,000 in damage to other apartments at 545 West 111th Street. The co-op complained to 545 West but apparently no action was taken. Therefore, the co-op started a holdover proceeding against 545 West to terminate their proprietary lease. While the flooding incidents continued, Ms. Williams's situation also had been referred to Adult Protective Services (APS), but—according to the co-op's court papers—APS had taken no action to turn off the water supply to Ms. Williams's apartment in order to prevent further flooding, and seeking to compel APS to issue a ruling regarding Ms. Williams's case and to actually provide care to her.

IN COURT: At the initial conference, the court flatly barred the co-op from turning off the water supply to Ms. Williams's apartment, deeming it against public policy to render the apartment uninhabitable. The court's position was restated in its decision denying the temporary restraining order. Instead, the court looked for the "least restrictive option," such as implementing the recommendations made by a plumber to restructure Ms. Williams's bathing facility. To that end, it ordered shareholder 545 West to install a shower (in place of a tub) with lever-style handles, grab bars, a shower chair and other amenities which would prevent overflows while preserving Ms. Williams' "dignity and tenancy." 545 West was also ordered to move Ms. Williams to another unit in the building or nearby while the work was ongoing, and to provide moving assistance and other help to make sure she was comfortable during her enforced vacation. The court determined that installation of an accessible shower provided a "balanced, humane, and legally sound resolution."

The plaintiff made two demands regarding APS: first, to compel it to make any decision regarding Ms. Williams's case; and second, to compel it to provide services to her. APS simply responded that the court lacked the authority to instruct APS as to how to provide its services. The court accepted APS's arguments and denied the co-op's motion, but instructed APS to monitor Ms. Williams and report to the court what efforts it was making to provide home care to her.

TAKEAWAY:

Dealing with tenants who are unable to take care of themselves is an ongoing problem. In this case, it was convenient for the court (and the co-op) to task the non-resident shareholder with the obligation to make all of these expensive changes to the apartment (with no guarantee of success). Holders of unsold shares should take note. One wonders what action the court would take if the offending party were a tenant-shareholder rather than a subtenant, though.

How the court dealt with APS is also significant. We have found that APS tends either to back-burner complaints by community associations about occupant conduct, or to take the most superficial approach to dealing with it (such as cleaning up a hoarder's apartment once and leaving). APS tends to pay more attention to requests for intervention coming from a court. In this case, the court accepted APS's claim that the court couldn't tell it how to do its job (despite the damaging delays). It also tried to deal with the length of time that APS had held the file without taking any action by ordering APS to report its efforts to find a solution to the court.

Like most government offices, APS is overburdened and understaffed. But the failures of APS to intervene can be very frustrating to community associations seeking help to deal with legally incompetent owners.

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

PROPRIETARY LEASE

SCHUSTERMAN V. SUTTON HOUSE, INC.

2025 NY SLIP OP 33526(U) (SUP. CT. N.Y. CNTY. SEPT. 18, 2025)

$4K Abatement Glitch Becomes $100K War

SQUIB BY DALE DEGENSHEIN, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: Tracey Schusterman has lived in her apartment in the Sutton House co-op since 2002. Because it is her primary residence, she is eligible for a New York City property tax abatement. However, in January of 2020, the co-op told her that her tax abatement was revoked by the city. She was charged an assessment on her maintenance bill roughly equal to the amount of the abatement. Schusterman told the co-op that the revocation was in error and followed up with the managing agent for two years to get this straightened out. At first, she was assured that she would not have to pay the assessment, but in July 2022 the co-op formally demanded payment and said it was her responsibility, not the co-op's, to resolve the abatement issue with the Department of Finance (DOF). She responded that as an individual shareholder she didn't have the standing to challenge the DOF decision, but the co-op insisted otherwise. Schusterman paid the assessment. When Sutton House changed management companies in 2023 the co-op revisited the issue and in April 2023, DOF confirmed via email that she was entitled to the abatement going all the way back to 2018. She notified the co-op of the incorrect billing and requested reimbursement for the fees that were charged in error, but Sutton House ignored this request.

IN COURT: In August 2023, Schusterman sued the co-op asserting several causes of action, including damages for the money she paid and for approximately $18,000 in legal fees. This resulted in months-long settlement discussions where the co-op finally refunded the tax abatement amount, but argued that it was not responsible for the attorney's fees. It then filed a motion to dismiss the case, which the court did, but it said only because Schusterman did not clearly explain how the co-op violated the "implied covenant of good faith and fair dealing" in her proprietary lease. In 2024 Schusterman filed a new lawsuit, making the same claim but drafting the complaint differently. She also sought attorney's fees for both lawsuits under the terms of the lease. The co-op again asked the court to dismiss the case, arguing that the matter had already been decided (using legal principles called res judicata and collateral estoppel). However, the judge ruled that the first case had not been decided on the merits—it was only dismissed because the complaint was not written clearly enough. Since the earlier dismissal was not a final decision on the actual issues, the court refused to dismiss the new case.

TAKEAWAY:
Challenging decisions made by city agencies are almost never straightforward. In a case like this, where the mistake seems to have come from the Department of Finance rather than the co-op, the real questions become: Who is responsible for fixing it? Should the shareholder have taken the lead, or was it the co-op's job to push the agency for correction? What's clear is that the situation snowballed. A relatively routine $4,000 assessment grew into a years-long dispute that ultimately cost Tracy Schusterman more than $100,000 in legal fees.

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

STOCK SHARES

KIM V. 16 PARK AVE. OWNERS CORP.,

2025 NY SLIP OP 33439(U) (SUP. CT. N.Y. CNTY. AUG. 20, 2025)

Co-op Wins Dispute Over Alleged Share Transfer

SQUIB BY MANU LEILA DAVIDSON, ESQ., AND NICHOLAS REYES*, BOYD RICHARDS PARKER & COLONNELLI, PL

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: The defendant, a cooperative corporation, served the non-party shareholder of record with a notice of default for unpaid fees. The non-party shareholder failed to cure the default and the defendant terminated the non-party shareholder's tenancy, and a lawsuit followed.

The plaintiff, Sara Kim, moved for a preliminary injunction to enjoin the cooperative from proceeding with the termination of the shares and proprietary lease and staying a non-payment proceeding filed in housing court. She also sought a declaratory judgment that the sums demanded in the notice of default were exaggerated or invalid. The shares and proprietary lease were issued to the plaintiff's estranged husband, who is the non-party shareholder of record. The plaintiff occupied the apartment, and claimed that her estranged husband validly transferred the shares and proprietary lease to her. The plaintiff further alleged the cooperative improperly refused her tendered maintenance payments related to the apartment.

IN COURT: The defendant opposed the motion, arguing that the plaintiff lacked standing to bring the action because she was not the shareholder of record, that the alleged transfer of shares was never approved as required under the cooperative's governing documents, and that both the shares and lease had already been terminated due to the non-party shareholder's arrears. The defendant emphasized that neither the plaintiff nor the non-party followed the established procedures for obtaining the board's consent or submitting a formal application for transfer, as required by the cooperative's bylaws, proprietary lease and stock certificate.

The court analyzed the motion under the well-established standard for injunctive relief. A party seeking such relief must show: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor. Although the plaintiff presented evidence of an attempted share transfer and partial payment of maintenance, the court found that the plaintiff failed to demonstrate the threshold element of a likelihood of success on the merits and denied the motion.

The record demonstrated that no legitimate transfer of shares occurred in accordance with the cooperative's bylaws. The bylaws required that a proper written assignment be delivered to the corporation, all outstanding sums paid, all consents be obtained, and all related covenants be assumed. No evidence suggested that these requirements were satisfied.

In addition, the court further determined that the plaintiff failed to substantiate her claim that the amounts listed in the notice of default were inflated or improper. Although a prior housing court decision dismissed claims related to additional charges, that decision merely required the defendant to seek recovery through a plenary action and did not invalidate the charges themselves. The cooperative's ledger clearly supported its assertion of owed maintenance charges.

TAKEAWAY:

Disputes between boards and residents in cooperative buildings often hinge on strict compliance with the governing documents that define the relationship between the parties. These documents establish the contractual conditions governing share ownership and lease rights. A purported transferee's equitable claims will generally fail where procedural requirements for board approval, payment of outstanding fees, and proper documentation of transfer, are not satisfied. Here, the plaintiff failed to substantiate compliance with procedural prerequisites for transfer and could not overcome documentary evidence of existing arrears, both of which proved fatal to her claim for equitable relief.

**Nicholas Reyes also contributed to this article. He is not licensed to practice law in any jurisdiction; New York State bar admission pending.*

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