CO-OP&CONDO
CASE LAW TRACKER
digest
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ALTERATIONS

BD. OF MGRS. OF THE TRIBECA V. SMITH

2025 NY SLIP OP 33730(U) (SUP. CT. N.Y. CNTY. OCT. 3, 2025)

Summary Judgment Denied in Tribeca Build-Out Case

SQUIB BY ANDREW P. BRUCKER, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Co-Defendants

WHAT HAPPENED: In 2006, Smith, a Tribeca condo owner, asked to enclose his roof deck and take over nearby common roof space to enlarge his duplex. The board sent him a letter approving the project, but only if he paid $20,000 and signed an alteration agreement. The agreement required engineering review and full code compliance. Smith paid the money, but the alteration agreement was never signed.

In 2008, Smith became board president. From then on, the only board involvement in the project appears to have come from Smith himself.

A decade later, in 2018, Smith was voted out. The new board looked into his construction. After a 2020 inspection, it discovered that Smith had not simply enclosed a deck—he had added three extra floors, installed a rooftop pool, and triggered nine DOB violations, including one that blocked renewal of the building's Temporary Certificate of Occupancy.

The condo sued in 2021. It claimed that Smith secretly expanded the project far beyond what he originally presented and used his board position to conceal it. It also alleged that the plans filed with DOB misrepresented the true scope of the work.

According to the condo, Smith's construction forced the building to undertake costly Local Law 11 work, add a second means of egress, and install standpipes. The board also said the project raised real estate taxes, increased gas usage due to a pool heater, fireplace, and grill, and caused an 18-month gas shutdown.

The lawsuit sought to force Smith to remove the unauthorized construction (or allow the condo to remove it), and asserted claims for damages, unjust enrichment, fraud, continuing fraud, and breach of fiduciary duty.

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PROPRIETARY LEASE
HVAC and Mold Fight Heads to Discovery

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CO-OP&CONDO CASE LAW TRACKER digest

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IN COURT: The condo moved for summary judgment on its first four claims. The court denied the motion, reminding the parties that summary judgment requires proof that no material facts are in dispute. Here, the court found the record "replete with issues of fact."

A major obstacle was the missing alteration agreement. Without it, the court could not determine the original, approved scope of Smith's project—an essential point in the dispute.

The court also found factual questions about the DOB violations. The condo argued the violations were caused by Smith's work. Smith argued DOB was conducting a "special audit" that prevented him from correcting anything.

There were also factual issues about whether real estate taxes rose because of Smith's construction or because of other work in the building.

Because these disputes remained unresolved, the court denied summary judgment.

TAKEAWAY:
Even when the facts seem outrageous, a party seeking summary judgment must show that no real factual disputes exist. Courts require a clear, evidentiary showing—known as a prima facie case—before granting judgment as a matter of law. If key documents are missing or the record shows open questions, the motion will fail. Summary judgment cannot substitute for a full factual examination when the evidence is incomplete.

ARBITRATION

140 SCHERMERHORN ST. PROP. OWNER LLC V. THE BD. OF MGRS. OF THE BOERUM CONDO.

2025 NY SLIP OP 33694(U) (SUP. CT. N.Y. CNTY. SEPT. 26, 2025)

Board Can't Dodge Settlement with Arbitration

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: Former owners of a hotel and three commercial units in a condo had settled a past dispute over unpaid common charges with the board. They paid $350,000 and received a general release. When they sold the units, the board confirmed via an estoppel certificate that all fees were paid. Six months later, the board demanded over $1 million for newly calculated utility charges, claiming ongoing obligations.

IN COURT: The former owners asked the court to declare that they owed nothing, to stay arbitration, and to award attorneys' fees. The board tried to dismiss the case and force arbitration, pointing to the condo bylaws and the settlement agreement. The court ruled that arbitration couldn't be compelled because the agreement's terms were broad and the bylaws didn't clearly cover the disputed charges. The agreement's language and the bylaws didn't resolve all factual issues, so the court allowed the declaratory judgment claim to proceed. Since the release in the agreement didn't carve out future charges, the board couldn't collect additional fees.

TAKEAWAY:
A broad settlement and release really count—if the language is clear, it can prevent future claims. When negotiating, make sure to note any exceptions or reservations for future claims. Also, just because bylaws include an arbitration clause doesn't automatically force arbitration if the underlying agreement is disputed; the court will look closely at the specific terms of the contract.

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ATTORNEYS' FEES

ZURICH AM. INS. CO. V. 56TH AND PARK (NY) OWNER, LLC

160495/2022 (SUP. CT. N.Y. CNTY. SEPT. 25, 2025) NYSCEF NO. 164

Attorneys' Fees Are Not Guaranteed

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

OUTCOME: Decided, in part, for Defendant Condo Sponsor

WHAT HAPPENED: The plaintiff is the insurance carrier of a luxury residential condominium building. The defendants are the sponsor of the condominium building and a contractor that was retained to repair a leak. Around June 2021, while the contractor was performing its work, it caused an arc flash incident in the condominium building. The condominium building sustained substantial damage to its property and, therefore, submitted a claim to the plaintiff. Concurrently, it commenced a litigation against, inter alia, the sponsor for myriad construction defects, including, but not limited to, the arc flash incident. The plaintiff paid the condominium $932,694.93 for the damage it sustained and thereafter, brought this subrogation action against the defendants.

IN COURT: In this subrogation action, the plaintiff sued the sponsor for negligence and breach of contract and sued the contractor for negligence. The sponsor filed an answer with cross claims against the contractor for, among other things, contractual indemnification. The sponsor moved for summary judgment on its contractual indemnification claim against the contractor. The court granted the sponsor's motion on the grounds that the parties executed an agreement with a valid indemnification provision and ordered the sponsor's damages to be determined at an inquest on submission.

Thereafter, the sponsor filed a motion to recover its attorneys' fees and costs from the contractor. The sponsor submitted detailed invoices to support its claim for attorneys' fees, which included attorneys' fees for this action and the related construction defect action. The court held that the sponsor was entitled to recover its attorneys' fees accumulated in both actions, as they are both related to the same claims. However, the court held that where the sponsor's attorneys billed for more than one timekeeper when collaborative efforts were unnecessary in those circumstances, a 10% reduction of those attorneys' fees was appropriate.

TAKEAWAY:

Although courts will enforce attorneys' fees provisions, including those in indemnification agreements, a condominium board should not expect a court to simply rubber-stamp their application for attorneys' fees. Rather, a condominium board should be prepared to submit its attorneys' fee invoices as part of its application to the court, so the court can determine whether the work performed and claimed attorneys' fees are reasonable and whether a discount of the attorneys' fees is required.

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DISCRIMINATION

NEW YORK STATE DIV. OF HUMAN RIGHTS V. 229 E. 28TH ST. OWNERS CORP.

2025 NY SLIP OP 33230(U) (SUP. CT. N.Y. CNTY. SEPT. 2, 2025)

Co-op Beats Accommodation Claim—But Retaliation Lives On

SQUIB BY KENNETH R. JACOBS PARTNER, SMITH BUSS JACOBS

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

WHAT HAPPENED: Rori Montali ("Montali") had a recognized disability resulting in severe panic attacks, depression and other mental impairments. Montali needed a companion to stay with her at night to mitigate the effects of these conditions.

Montali frequently traveled to California to obtain treatment for her disability. She requested that 229 East 28th St. Owners Corp. (corporation) make a "reasonable accommodation" by allowing a companion or home health care aide who could remain there while Montali obtained treatment out of state. To help defray the expense of a live-in helper, though, the companion also would pay rent to Montali. Therefore, Montali initially phrased the "reasonable accommodation" as a request to allow her to sublease her apartment to the companion or aide.

The proprietary lease contained typical restrictions on occupancy while the shareholder was not in residence, allowing roommates and "domestic servants" to reside in the unit, as well as guest occupancy for up to one month. Based on that language, the corporation denied Montali's request, stating that no special accommodation was needed because Montali was free to bring in a roommate as long as she was occupying the apartment as a primary residence, or she was free to employ a home health aide (a version of a "domestic servant") who also could reside there. The corporation asked for proof of employment of the aide, which Montali did not provide. The corporation also asserted that Montali actually retained her permanent residence in California, not New York, so she was not entitled to a roommate.

Montali filed a complaint of disability discrimination with the United States Department of Housing and Urban Development (HUD) due to the refusal. In addition, Montali alleged that the corporation had retaliated against her by placing a camera outside the apartment to track her movements, assessing improper legal fees "penalties" for subleasing, taking away her parking space for nine days, improperly informing her that the DHR had ruled against her, and failing to make requested repairs to her unit. She also claimed that the board president had told her that she was not wanted in the building and should move out.

HUD forwarded the complaint to the New York State Division of Human Rights ("DHR") for review. The corporation elected to have the matter adjudicated in civil court rather than through the DHR.

IN COURT: The corporation moved to dismiss the complaint, arguing that the true accommodation sought by Montali was a sublease, not the right to have a second person reside in the apartment. Since Montali's request was focused on allowing someone to reside in the apartment when Montali was absent, it could hardly be a necessary element of a claim to use and enjoy the apartment. Further, Montali had several other legal avenues to obtain a full-time companion under the proprietary lease as long as she didn't charge her companion or employee rent in violation of the law. The corporation submitted documentary evidence to support its motion, including evidence that Montali had subleased the apartment between 2012 and 2019 and had been placing new advertisements to "sublease" the apartment before making her request.

In response, DHR asserted that despite how her original request had been characterized by her attorney, fundamentally she was requesting a companion in the form of a roommate/guest/aide, not a sublease. Accordingly, the claims should not be dismissed at this time. Further, the submissions made by the corporation in opposition to the retaliation claim were not "documentary evidence" sufficient to support a motion to dismiss, especially if the court were accepting Montali's claims as true (as required when considering a motion to dismiss).

The court granted the motion to dismiss the complaint with respect to the denial of a reasonable accommodation. The Executive Law prohibits a landlord or owner

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from refusing to make a reasonable accommodation that is "necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling." [Emphasis in original.] However, the corporation is not obligated to provide the exact remedy that is being requested if other reasonable avenues exist that meet the disabled person's needs. The corporation demonstrated that Montali had several other available remedies under state law and the Proprietary Lease that would enable her to fulfill her request for companionship. Likewise, Montali's request for a de facto sublease was not sufficiently related to the hardship created by her disability as to justify the type of reasonable accommodation under the Fair Housing Act that she was seeking.

However, the court declined to dismiss the allegations of retaliation. To show retaliation the plaintiff must show that they engaged in a protected activity, the defendant was aware of the activity, and the defendants took "adverse action" against the plaintiff because of the protected activity. Obviously, the reasonable accommodation request was a protected activity. If all of the plaintiff's claims of conduct were accepted as true, then a fact-finder might infer retaliatory intent. In addition, neither the board president nor the managing agent could be dismissed from the case since knowledge or participation in some of the conduct might be ascribed to them based on Montali's claims in the complaint. Finally, the documents submitted by the corporation to rebut Montali's claims needed to be "indisputably" authenticated in discovery.

TAKEAWAY:
The keys to the court's decision lay in evaluating whether the precise request was necessary to enable the plaintiff to use and enjoy the apartment. The court determined that less extreme alternate remedies were available to address the problem caused by Montali's disability (as opposed to, say, her finances). But the question of the intent behind the alleged "adverse action" needed to be explored more closely. We are reminded again that board members and managing agents should be cautioned to consult with counsel before engaging directly with owners on issues that could lead to legal action.

ELECTIONS

KUSCHNER V. 123-25 E. 102ND ST. HOUS. DEV. FUND CORP.,

153653/2025 (SUP. CT. N.Y. CNTY. OCT. 23, 2025) NYSCEF NO. 169

Court Orders New Vote at Troubled HDFC

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

OUTCOME: Decided, in part, for Plaintiffs

WHAT HAPPENED: This case arises from a series of disputes concerning the governance, financial management, and compliance with bylaws of the 123-25 East 102nd Street Housing Development Fund Corporation (HDFC). Further, this action concerns the assault and harassment to shareholder-tenants of the HDFC.

The plaintiffs, a group of shareholders, allege significant misconduct by the defendants, including members of the HDFC board and associated individuals, which has undermined the integrity and purpose of the cooperative. The HDFC, established under Article XI of the Private Housing Finance Law, is intended to provide affordable housing for low-income individuals. Despite the HDFC's mission, defendants have engaged in self-dealing, mismanagement, and other actions that contravene the HDFC's bylaws and corporate purpose.

The plaintiffs further allege that they have made repeated demands for transparency and accountability, including requests for access to books and records, financial audits, and adherence to election procedures. Despite these efforts, the defendants have obstructed these requests, further exacerbating tensions within the cooperative. The defendants' actions have not only violated the HDFC's bylaws but have also caused harm to the shareholders and the cooperative as a whole.

Central to this dispute are allegations of improper transfers of apartments, failure to conduct required financial audits, and the

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use of the HDFC for personal gain rather than its intended purpose of providing affordable housing. The plaintiffs also highlight incidents of harassment and intimidation by certain defendants, which are part of a broader effort to suppress dissent and maintain control over the HDFC. These issues have culminated in the present action, as the plaintiffs seek judicial intervention to restore proper governance, ensure compliance with the bylaws, protect the rights of the shareholders, and protect the lives of the tenants.

IN COURT: The court partially granted and partially denied relief sought. The relief granted included these measures: compelled the board to provide plaintiffs access to, and inspection of, cooperative books and records; declared the election unlawful for failure to give requisite notice under bylaws; directed holding a new election for directors; provided for hiring an accountant to perform audits of prior years' financials, and enjoined the board members from harassing and assaulting and taking retaliatory actions against plaintiffs or other co-op occupants.

The court denied requests to appoint a receiver to oversee the next election and management of the cooperative; compel the board to commence foreclosure/eviction proceedings; and restrain sale or lease of co-op apartments absent court or receiver approval.

TAKEAWAY:
Judicial relief, where warranted, will be granted to protect the integrity of corporate (cooperative) elections, but will not necessarily be granted to compel boards to take explicit, specific mandatory actions that a board, presumed in its business judgment, may not wish to take, or to be taken.

EVICTION

135 W. 89TH ST., HOUS. DEV. FUND CORP. V. POWELL

2025 NY SLIP OP 51534(U) (APP. TERM 1ST DEP'T, SEPT. 29, 2025)

Tenant Wins: Defective Notice Ends Holdover Case

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

OUTCOME: Decided for Respondent

WHAT HAPPENED: A Housing Development Fund Corporation co-op tried to evict a tenant-shareholder failing to maintain his apartment. They first issued a 30-day notice to cure, listing six problems, like unclean conditions, fire hazards, vermin, odors, and unauthorized alterations. Adult Protective Services even stepped in and did multiple cleanings, but the co-op said the problems weren't fixed.

After the 30-day cure period, the co-op sent a 5-day notice of termination, saying the tenant hadn't corrected the issues. However, this termination notice didn't explain what facts showed the problems weren't fixed, nor did it include the original notice to cure. When the 5 days expired, the co-op filed a holdover proceeding to evict the tenant.

IN COURT: The tenant moved to dismiss the petition on the grounds that the notice to cure failed to provide the necessary additional information to enable the tenant to frame a defense to meet the test of reasonableness and due process. Essentially, because the notice of termination did not specify exactly what facts supported the lease default, nor did it explain how or to what extent the cleanings by APS fell short of curing the lease defaults, the notice of termination was legally defective.

The housing court agreed, and dismissed the petition, and the co-op then appealed the dismissal. The appellate term affirmed the dismissal: "[T]he notice failed to contain any factual allegations to support the conclusion that the defaults specified in the notice to cure had not been cured during the cure period," which failure was "[p]articularly noteworthy in this case given that [APS] performed multiple cleanings of the apartment during the cure period." Even if the co-op had "verbally notified" the tenant that his cleaning efforts had not gone far enough, that did not rescue the defective notice.

(***Takeaway*** *on p. 9)*

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TAKEAWAY:
This decision emphasizes the importance of strictly complying with the technical requirements of predicate notices if a co-op wishes to terminate a tenant-shareholder's proprietary lease. In this case, there is little question that the respondent had received actual notice of what the co-op believed were material lease defaults, because the original notice to cure described six separate conditions which constituted lease defaults. However, even if the co-op had also verbally informed the respondent that his cleaning efforts had been insufficient to cure the defaults, none of that made its way into the notice of termination. And because the notice of termination was defective on that basis, the entire proceeding was tossed out.

FRAUD

GOKHBERG V. 200 CORBIN OWNERS CORP.

NO. 1:24-CV-7010 (E.D.N.Y. SEPT.30, 2025) ECF NO. 50

Rooker-Feldman Ends Shareholders' Case

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

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: After years of back-and-forth litigation between a Brooklyn co-op and two of its shareholders, the shareholders brought a new round of claims in federal court. They sued a wide cast of defendants—the co-op, the sponsor, the managing agent, the co-op's lawyers, and others—asserting a sweeping mix of federal and state theories. Their complaint included a RICO claim based on alleged false and misleading conduct, a Fair Housing Act claim for supposed retaliation and discrimination, and several additional state-law theories. The two shareholders represented themselves, and most defendants responded by filing motions to dismiss the complaint in its entirety.

IN COURT: The motions to dismiss were granted. Even those defendants who did not file a motion to dismiss were granted relief by the court, as the whole complaint was flawed and rejected. To state a claim for racketeering and other fraudulent activity under RICO, a complaint must allege with specificity some false or improper action, but the plaintiffs only set forth vague and conclusory allegations of purported improprieties. Similarly, the claim for retaliation and discrimination under the FHA was vague and non-specific, and moreover it was barred as untimely under a two-year statute of limitations. Finally, the other state law claims were dismissed under what is known as the Rooker-Feldman doctrine (see Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983))., which prevents federal district courts from entertaining claims filed by "state-court losers" who seek to continue to litigate in federal court. Here, the plaintiffs had partaken, and lost, in several state court lawsuits, including a Housing Court holdover proceeding and a Supreme Court action filed by plaintiffs against many of the same defendants. Under the Rooker-Feldman doctrine, litigants who lose in state court cannot take the idiomatic second bite at the apple in federal court by claiming harm from the state courts' actions. The two plaintiffs fell into that category, so the case was dismissed.

TAKEAWAY:
One lesson, and one dirty legal secret revealed. The lesson is that a motivated plaintiff who loses in state court will not be able to use that loss as a basis for continued litigation in federal court. The Rooker-Feldman doctrine

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

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bars federal courts from hearing such cases, and the federal judiciary will decline the invitation to oversee or undo what a state court has done. The dirty legal secret is this: pro se litigants get away with a lot of mischief. If a lawyer filed a case like this, he would almost surely get sanctioned. Yet the two plaintiffs not only weren't sanctioned, they did not even get admonished verbally by the judge. Perhaps out of a sense of being open and inclusive to all, the courts tend to be solicitous of those who proceed without an attorney. Judges are particularly loath to punish pro se litigants by forcing them to pay the other side's attorneys' fees, even when there is a complete absence of legal merit to a claim. But after years of state court litigation that did not go their way, perhaps the plaintiffs merited something more severe than dismissal of the complaint when they chose to continue the brawl in federal court. A modest award of some fees to defendants, and a stern rebuke, seem appropriate here, as well as to warn others who might consider similar tactics.

INSURANCE

THE COBBLESTONE LOFTS CONDO. V. GREAT AM. INS. CO.

2025 NY SLIP OP 04749 (1ST DEP'T. AUG. 21, 2025)

Coverage Ruling Goes Condo's Way in Water Damage Case

SQUIB BY INGRID C. MANEVITZ, PARTNER, SEYFARTH SHAW

OUTCOME: Decided for Plaintiff Condo

WHAT HAPPENED: The Cobblestone Lofts Condominium was sued in an underlying action for property damage and bodily injury allegedly caused by unintended water and moisture infiltration that led to toxic contamination in a condominium unit. The infiltration was claimed to have resulted from the condo's breaches of its contractual obligations under its declaration and bylaws, as well as violations of its statutory duties under Multiple Dwelling Law §78 and Administrative Code §27-345.

Great American Insurance Co., the condo's excess insurer, notified the condo that the policy did not provide coverage for any liability in the underlying suit. The insurer said a breach of contract is not an accident and therefore not an "occurrence" under either the primary or umbrella policy, and that the primary policy excludes coverage for breach of contract.

The condo then filed a declaratory judgment action seeking a ruling that Great American was obligated to provide coverage. The Supreme Court in New York County granted the condo's motion for summary judgment, declaring that the insurer was required to provide coverage. Great American appealed, arguing there was no justiciable controversy and no coverage obligation.

IN COURT: The Appellate Division, First Department, affirmed summary judgment for the condo. The court held first that a justiciable controversy existed. Great American's notice denying coverage was "direct, definitive notice" that constituted a repudiation of the condo's rights. The fact that the letter also requested additional information that "might impact" the coverage analysis did not undermine the insurer's clear position that no coverage was available.

The court also held that Great American is obligated to indemnify the condo for any liability in the underlying action that exceeds the limits of the primary policy issued by Admiral Indemnity Co. The court rejected the insurer's argument that there was no "occurrence" because the alleged injuries and damage

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stemmed from the condo's breaches of its declaration and bylaws rather than from an accident. The policy defines an accident to include "continuous or repeated exposure to substantially the same general harmful conditions," which is what the underlying action alleged. The insurer could not redefine "accident" by tying the damages to alleged contractual breaches.

Finally, the court found that the contractual liability exclusion in Admiral's primary policy—which Great American's policy follows—did not apply. The exclusion applies when an insured assumes liability through an indemnification agreement, and no such agreement was at issue.

TAKEAWAY:
Nobody's perfect, including insurance companies. When insurance coverage is denied on a condo's claim, it's important to get counsel involved to evaluate the insurance company's coverage determination and, if appropriate, to dispute the determination. This case demonstrates how both the substance and wording of correspondence with insurance companies can significantly affect the resolution of coverage disputes.

LABOR LAW

MORINA V. 250 BROADWAY ASSOCS. CORP.

2025 NY SLIP OP 33791(U) (SUP. CT. N.Y. CNTY. OCT. 6, 2025)

Board Still on the Hook Despite Contractor Control

SQUIB BY DANIELLA ZELEFSKY, COUNSEL, BRAVERMAN GREENSPUN

OUTCOME: Decided, in part, for Plaintiff

WHAT HAPPENED: On October 1, 2021, Veli Morina was working as a stone mechanic on a lobby renovation at 250 Broadway. While he and his team were loading a 300–350-pound travertine slab onto an A-frame dolly, the slab allegedly tipped over and struck him in the head. He says no safety devices were provided to secure the slab, and that this failure caused his injuries.

The defendants tell a different story. They claim the slab never fell. Instead, they say Morina was distracted by his phone and walked into the slab while his co-workers were holding it at ground level. They also argue that Harvard Maintenance—the plaintiff's employer—supervised the work, supplied the equipment, and directed Morina's tasks. Witness testimony from Harvard employees conflicted, with some backing Morina's account and others supporting the defendants.

Morina sued under Labor Law §§200, 240(1), and 241(6), as well as for common-law negligence. He sought partial summary judgment under §240(1), arguing that his injury resulted from an unsecured, heavy object—a classic gravity-related risk covered by the statute. The defendants countered that the slab never "fell" in the way the law requires because both the slab and Morina were on the same level, so no elevation risk existed.

He also alleged violations of Industrial Code §§23-1.5(c) and 23-1.7(a), which require safe equipment and protection from overhead hazards. His §200 / negligence claims were based on the theory that the defendants had notice of a dangerous condition or exercised enough control to be responsible for it.

IN COURT: The court granted Morina partial summary judgment under Labor Law §240(1). It held that the heavy slab posed a real gravity-related hazard and that it was not properly secured. The lack of braces, ropes, or other safety devices was a proximate cause of the accident. The court also rejected the defendants' claims that the slab never fell or that Morina's phone use broke the chain of causation. Under §240(1), comparative negligence is not a defense.

On the §241(6) claims, the court denied the defendants' motion for summary judgment. It found factual disputes about whether Industrial Code §§23-1.5(c) and 23-1.7(a) were violated. It noted that §23-1.5(a) is too general to support liability, but the more specific requirements in subsection (c) and the overhead-hazard rule in §23-1.7(a) could apply.

The court also refused to dismiss the §200 and negligence claims. It

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held that defendants had not shown they lacked notice of the alleged dangerous condition, and that there were factual issues about whether the unsecured slab created a hazard they could be liable for.

In the end, the plaintiff won summary judgment under §240(1), and the defendants' entire summary-judgment motion was denied.

TAKEAWAY:
Boards and property managers can be held liable for unsafe conditions even when independent contractors control the work and supervise their own employees. If the board knew—or should have known—about a dangerous condition and failed to correct it, liability may follow. Regular inspections and safe storage and handling of construction materials are essential. If a hazard exists long enough that the board could have found and fixed it with reasonable care, constructive notice may be inferred.

PROPRIETARY LEASE

FRIEND V. 333 TENANTS CORP.

2025 NY SLIP OP 33792(U) (SUP. CT. N.Y. CNTY. OCT. 6, 2025)

HVAC and Mold Fight Heads to Discovery

SQUIB BY DALE DEGENSHEIN, PARTNER, FOX ROTHSCHILD

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

WHAT HAPPENED: The plaintiff, a co-op shareholder, claimed that the co-op, its board president, and its managing agent failed to maintain and repair building systems inside her apartment. She said these problems forced her to relocate. She also argued that she had to pay remediation costs that should have been the co-op's responsibility, and that the co-op improperly billed her for attorney's fees. The dispute began after an inspection of her apartment—including the HVAC system—uncovered mold.

She brought claims for breach of the proprietary lease, violation of General Business Law §349, and negligence. She also sought a declaration that the co-op may not continue charging her legal fees.

IN COURT: At an early stage of the case, the defendants moved to dismiss all claims except the breach of lease claim, arguing that the complaint failed to state valid causes of action. They also said the declaratory judgment claim was unnecessary because it overlapped with the contract claim.

The court noted that on a motion to dismiss, it must accept the plaintiff's allegations as true and give her the benefit of every reasonable inference.

The judge first addressed the GBL §349 claim. The court held that the statute does not apply to private contract disputes. It is meant for consumer-oriented conduct that affects the public at large, which was not the case here. Even if everything the plaintiff alleged were true, the dispute was solely between her and the co-op, so the statute did not apply.

As for the negligence and declaratory judgment claims, the court declined to dismiss them at this stage. The plaintiff's allegations about responsibility for maintaining the HVAC system may support a negligence claim separate from breach of contract. And the declaratory judgment claim could proceed because it concerns future legal-fee charges, not past ones.

TAKEAWAY:
Because the case is still in its early stages, most of the plaintiff's claims will move forward. The co-op has also brought a third-party claim against the contractor that worked in the building, pointing to an indemnification clause. The main parties will now proceed to discovery.

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VIOLATIONS

440 E. 62ND ST. V. CHAVEZ

160303/2025 (SUP. CT. N.Y. CNTY. SEPT. 24, 2025) NYSCEF NO. 58

Co-op Investigation Needed Even After City Check

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

OUTCOME: Decided for Plaintiff Co-op

WHAT HAPPENED: The cooperative was compelled to bring an action against one of its shareholders who had refused to provide access to the cooperative to investigate a leak allegedly emanating from his apartment into the apartment below. The shareholder made a pre-answer motion to dismiss the complaint based upon documentary evidence. After disposing of the motion by finding that the documentary evidence relied upon was not authenticated and could not serve as a basis for the motion to dismiss, the court addressed the substance of the argument. The shareholder alleged that the New York City Department of Housing Preservation and Development (HPD), in responding to a complaint, did not issue a violation for the leak (but did issue one for a collapsed ceiling) and reported that no leak was found. He argued that conclusively established no leak existed.

IN COURT: The court disagreed and wrote that "the HPD report does not definitively say that there is no leak. Furthermore, the report is a snapshot in time and does not rule out a leak that was not active at the time of the inspection. Additionally, as a violation was issued, the report substantiates the contention that the ceiling collapsed. Accordingly, the HPD report does not conclusively establish that there is no leak and therefore, does not serve to conclusively establish a defense." The motion to dismiss was denied.

TAKEAWAY:

TAKEAWAY: While the cooperative won in this instance, the court's rationale could easily be used against a cooperative who relies solely on a HPD inspection to determine that a condition does not exist. When faced with a potential violation or damage, the cooperative needs to conduct its own independent investigation. Relying solely on the determination of a city agency, may not give the cooperative the protection it seeks.

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