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CASE LAW TRACKER
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BUSINESS JUDGMENT RULE

CUNNINGHAM V. FERRARA MGMT. GROUP RIVERVIEW CLUB
INDEX NO. SC-0224-25 (CITY CT. YONKERS, WESTCHESTER CTY. DEC. 5, 2025)

Condo Board's "Five-Foot Rule" Upheld Under Business Judgment Rule

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

OUTCOME: Decided for Defendant Condo

WHAT HAPPENED: The plaintiff, Cunningham, owns a condominium unit. In June 2025, his bathtub drain clogged. He reported the problem to management, and a licensed plumber was dispatched to his unit to auger or snake the drain. The plumber succeeded, and the condominium billed Cunningham for the cost. Cunningham paid, but then sought reimbursement in small claims court.

IN COURT: The board president testified that the board had previously implemented rules requiring that only licensed

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TAKEAWAY:
The court did not explain why the board was entitled to enforce the "five-foot rule," making unit owners responsible for fixing clogs within common elements located beyond the boundaries of the unit's walls, despite the allocation of responsibility in the bylaws. It simply declared that those particular rules fell within the business judgment of the board, so they were legal.

The court might have justified its decision by stating (for example) that unit owners are barred from doing or permitting anything that damages the common elements of the condominium. Clogs occurring within five feet of a bathroom fixture are almost certain to be caused by an action of the unit owner (as confirmed by the author's plumber son). Thus, a regulation making an owner responsible for clearing such clogs merely took another path to reach the correct result.

The plaintiff has filed a notice of appeal, which has not yet been perfected.

APRIL 2026 HIGHLIGHTS

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Warranty Dispute Over Roof Leaks Survives Summary Judgment

GROUND LEASE
Co-op's Preemptive Challenge Deemed Premature

INDEMNIFICATION
Court Decides Competing Claims Arising from Water Leak on Condo Unit Terrace

LABOR LAW
Summary Judgment Granted to Worker Under Labor Law § 240(1)

NEGLIGENCE
Economic Loss Doctrine Bars Negligence and Indemnification Claims in Construction Dispute

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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 January 2026. For additional cases, visit https://coopcondocaselawtracker.com.

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Volume 5, Issue 10

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.

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plumbers could perform repairs to drainpipes, and that unit owners would be responsible for restoring clogged drainpipes located within the first five feet of piping beneath a unit owner's bathroom fixture. The board also required unit owners to use "strainers" to prevent clogs.

The bylaws provide that the condominium is responsible for all repairs involving areas behind the walls. Cunningham asserted that since the clog occurred in a section of the drainpipe located behind the walls, the condominium was responsible for paying for it. He also noted that the pipe was a limited common element and that the condominium was responsible for repairs to common elements. He claimed that any change in that allocation of responsibility would require an amendment to the bylaws.

The court ruled in favor of the board, stating that the board had the authority to enact regulations requiring plumbing repairs to be performed by licensed plumbers, and that it was authorized to adopt the "five-foot" rule regarding repairs to drain lines located behind the walls of units. The court deemed such rules to be an exercise of "prudent and sound business judgment" and did not require an amendment to the bylaws.

CONSTRUCTION DEFECTS

3041 OCEAN INC. V. R AND R 3041 LLC

2026 NY SLIP OP 30604(U) (SUP. CT. KINGS CNTY. FEB. 10, 2026)

Creative Pleading Ineffective to Overcome Condominium Construction Defect Statute of Limitations Bar

SQUIB BY WILLIAM J. GELLER, PARTNER, BRAVERMAN GREENSPUN PC

OUTCOME: Decided for Defendants

WHAT HAPPENED: The 3041 Ocean Avenue Condominium is a 40-apartment condominium in Sheepshead Bay, Brooklyn. The condominium began operating in January 2016, when the building obtained a final certificate of occupancy and the sponsor held the first closing of a unit sale. In May 2016, the sponsor turned over control of the condominium to a board of managers elected by the unit owners. The condominium was incorporated as 3041 Ocean Inc., an unusual but permitted structure under Real Property Law § 339-v(1)(a), and that corporation was the plaintiff in this action, filed in December 2023.

The amended complaint alleged that the building was defectively constructed, resulting in premature wear and deterioration of its façade and balconies, with damages discovered in March 2022. Because the defects were identified more than six years after the first unit sale closing, the plaintiff could not bring a standard breach of offering plan claim, which is subject to a six-year statute of limitations running from the first closing.

Instead, the plaintiff asserted claims for negligence and fraudulent inducement against the sponsor, its affiliates, and the project architects. The negligence claim, subject to a three-year statute of limitations, alleged negligent design and construction. The fraudulent inducement claim, which may be brought within two years of discovery, alleged that the

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TAKEAWAY:

The statute of limitations for condominium and co-op construction defect claims is six years from the first unit closing, and courts will not permit plaintiffs to evade that deadline through creative pleading. Boards and unit owners should identify and investigate potential defects well before that deadline and, if necessary, file protective claims or seek tolling agreements.

The decision also underscores the difficulty of sustaining tort-based claims alongside contract claims in construction defect cases. While negligence and fraud claims may be asserted, they must be carefully pleaded and genuinely distinct from the underlying contract claim. Even then, defendants will often move early to dismiss those claims, potentially delaying resolution of the core dispute.

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offering plan falsely represented that the building would be properly constructed and that purchasers relied on those representations.

IN COURT: The sponsor and architect defendants moved pre-answer to dismiss based on the applicable statutes of limitations and other grounds.

The plaintiff argued that its negligence claim was timely because there was no contractual privity with the defendants and, therefore, the limitations period should run three years from the date of injury, which it alleged was March 2022. It similarly argued that the fraudulent inducement claim was timely because the alleged fraud was discovered within two years of the 2023 filing.

The court rejected these arguments and dismissed all claims. It held that construction defect claims accrue upon completion of the work, regardless of how they are labeled in the pleadings, because liability arises from the construction contract. Since the project was completed upon issuance of the certificate of occupancy in January 2016, the 2023 action was untimely under the six-year statute of limitations.

The court also dismissed the fraudulent inducement claim as duplicative, finding that it was essentially a restatement of the contract-based claim.

As to the architects, the court held that claims for architectural malpractice—whether framed in contract or tort—are subject to a three-year statute of limitations running from completion of construction, not from discovery. On that basis, all claims were dismissed.

CONTRACTS

THE BD. OF MGRS. OF THE KEYSTONE CONDO. V. AM&G WATERPROOFING LLC

656590/2022 (SUP. CT. N.Y. CNTY. JAN. 29, 2026) NYSCEF NO. 79

Warranty Dispute Over Roof Leaks Survives Summary Judgment

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

OUTCOME: Decided for Plaintiff Condo Board & Co-Defendant

WHAT HAPPENED: In 2016, the Keystone Condominium, located on Warren Street in Manhattan, retained AM&G Waterproofing, LLC to perform repairs to its roof, including installing a new roof membrane. The roof membrane was manufactured by Sika Corporation and included a 20-year warranty.

The roof later suffered leaks, requiring AM&G to perform repairs in late 2020 and throughout 2021. The condominium sued AM&G, alleging improper installation of the roof membrane, and also sued Sika, seeking a declaratory judgment that its warranty remained in full force and effect.

IN COURT: Sika moved for summary judgment, arguing that the warranty was void because AM&G negligently installed the membrane. Sika also sought contractual indemnification from AM&G under an applicator agreement requiring AM&G to indemnify Sika for losses arising from AM&G's work.

The court denied Sika's motion in its entirety. It found that Sika failed to support its position with admissible evidence from a witness with personal knowledge or from an expert capable of opining on the cause of the leaks. Instead, Sika relied on testimony from the condominium's president, who is a lawyer and not a roofing expert, and who first observed the membrane nearly six years after installation.

The court further held that Sika failed to establish the absence of a material issue of fact. There were disputes regarding the cause of the leaks and the respective roles of each defendant. The court noted that Sika had inspected the roof membrane in June 2016, and a fact finder could attribute some responsibility to Sika for negligent inspection.

Because the cause of the leaks could not be determined as a matter of law, summary judgment was inappropriate.

TAKEAWAY:
A motion for summary judgment requires proof in admissible form based on personal knowledge and must establish the absence of any material issue of fact. Where there are competing accounts—particularly on a central issue such as causation—courts will not grant summary judgment.

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DAMAGES

PS 90 BD. OF MGRS. V. L&M DEV. PARTNERS,

2026 NY SLIP OP 30504(U) (SUP. CT. N.Y. CNTY. FEB. 10, 2026)

Lost Rental Income Deemed Direct Damages; Diminution Claim Rejected

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

OUTCOME: Decided for Plaintiff Condo Unit Owners

WHAT HAPPENED: This action, originally commenced by the board of managers of the condominium and an individual unit owner against the sponsor/developer of the condominium, related to construction issues in the unit. The board discontinued all of its claims against the defendant, and the decision dealt solely with the calculation of damages (liability having already been determined in a prior decision) owed to the unit owner by the sponsor. The unit was purchased as investment property and suffered from water leaks and related damages. The court found that the plaintiffs were entitled to damages for lost rental income but not for the diminution of the market value of the unit.

The offering plan contained a provision that the sponsor would not be liable for any consequential damages arising out of claims for repairs and/or defects. Consequential damages are damages that do not flow directly from the breach; direct damages cover the immediate, natural loss, such as the cost to repair damaged property. Here, there were periods when the unit owners could not rent the apartment because of the conditions caused by the leaks and repairs. At other times, the unit owners had to provide their tenants with a rent abatement because they could not use the entire apartment. The plaintiffs eventually sold the apartment at a profit over their purchase price but at a price lower than current market value.

IN COURT: Lost profits, such as lost rental income, may sometimes be considered direct damages and at other times consequential damages. Here, the court found that the lost rental income suffered by the unit owners was direct damages because it flowed directly from the breach of the agreement, which contemplated the unit owner's ability to rent the apartment at a profit. The court denied the claim for diminution in value, finding that the evidence presented regarding market value was speculative, and noted that the apartment was sold for a profit and the price was lowered to garner a faster sale. The court awarded $96,200 in damages.

TAKEAWAY:

Although this decision dealt with damages recoverable by a unit owner against the selling sponsor, boards should be aware that they could face similar claims where they fail to make repairs they are obligated to make. If the building allows subletting or a shareholder purchased the unit for investment purposes, an owner could seek to recover the same type of lost profits against the building as the sponsor was held liable for here. This is another reason for a board to take its repair obligations very seriously.

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EVICTION

EDELSTEIN LLC V. RODRIGUEZ,

2026 NY SLIP OP 26011 (CIV. CT. N.Y. CNTY. JAN. 21, 2026)

An Exemption That Isn't Permanent

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

OUTCOME: Decided for Petitioner and Respondents

WHAT HAPPENED: The petitioner is the owner of a residential apartment building and sublessor of particular units therein. The respondents are five individuals who each sublease one of the petitioner's units in the building. The parties do not dispute that the building was subject to the Rent Stabilization Law prior to being converted to a cooperative, which rendered the building exempt. The petitioner, however, alleges that the building is still operating as a cooperative and therefore continues to be exempt from the Rent Stabilization Law. In accordance with that belief, the petitioner served each of the respondents with a notice of termination and a notice of nonrenewal, thereby terminating each tenancy. The respondents believe that the building is no longer operating as a cooperative—as the petitioner holds nearly all of the shares associated with at least 83 of the building's 85 apartments—and is instead operating as a for-profit rental building. This would make it subject to the Rent Stabilization Law and would prevent the petitioner from terminating the respondents' leases. Accordingly, the respondents failed to vacate their apartments upon receiving the petitioner's notices.

IN COURT: The petitioner commenced five summary holdover proceedings to recover possession of each of the respondents' apartments. In their answers, the respondents pleaded, among other things, that the petitioner was operating the building as a "sham cooperative" and that the apartments should revert to rent-stabilized status, which would prevent the petitioner from terminating their leases. The respondents also each moved for leave to conduct discovery, as discovery is not automatically permitted in a summary proceeding. The petitioner opposed each of the respondents' motions and contemporaneously moved to strike various of their affirmative defenses and counterclaims. The five proceedings were then joined for determination of these motions.

The petitioner moved to strike the "sham cooperative" defense, arguing that the respondents' apartments were deregulated because the tenants moved in after a valid cooperative conversion occurred. The court denied the petitioner's motion to strike this defense, finding that the respondents put forth sufficient evidence to support their theory that the building's operations were no longer consistent with those of a cooperative. The court, however, granted the petitioner's motion to strike the respondents' defense pursuant to General Business Law (GBL) 352-eeee, which attempted to challenge the building's cooperative conversion, because the respondents assumed occupancy post-conversion and thus did not have standing to assert that defense.

Given the above determination, the court also granted the respondents' motion for leave to conduct discovery related to their regulatory defense. The court held that the respondents had viable grounds for discovery based on their "sham cooperative" theory and that their proposed discovery demands were reasonably calculated to result in the discovery of admissible evidence.

TAKEAWAY:

While a building that operates as a cooperative is exempt from the Rent Stabilization Law, that exemption is not permanent. A building may be exempt while under cooperative ownership and later revert to rent stabilization if ownership or operations change to those of a rental property.

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GROUND LEASE

CARNEGIE HOUSE TENANTS CORP. V. GEORGETOWN 57, LLC

2026 NY SLIP OP 00832 (1ST DEP'T. FEB. 17, 2026)

Co-op's Preemptive Challenge to Potential Deconversion Deemed Premature

SQUIB BY ANDREW P. BRUCKER, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Defendant

WHAT HAPPENED: Carnegie House Tenants Corporation is a co-op located in mid-Manhattan that was built on leased land and is therefore subject to a ground lease. The lease had recently been renewed, but the amount of rent to be paid by the co-op was to be determined either by agreement between the landowner and the co-op or, failing that, by arbitration. Negotiations were unsuccessful.

The co-op feared that an arbitrator might award significant increases in ground rent. This would likely result in substantial increases in maintenance and could cause the co-op to default on its ground lease obligations. If the default resulted in a termination of the ground lease, a "deconversion" would take place, as the co-op would no longer own the building, and the shareholders would be converted to tenants of the landowner, who would now own both the land and the building.

The Rent Stabilization Code provides a process to determine rents paid by residents following a deconversion. The co-op, along with certain shareholders, commenced an action seeking a determination of whether the Code's provisions governing forced deconversion would apply. The co-op argued that, upon deconversion, the landowner could impose rents far exceeding those permitted under rent stabilization laws and sought confirmation that the Code instead required the New York State Division of Housing and Community Renewal (DHCR) to determine those rents.

IN COURT: The lower court dismissed the case as premature, and the co-op appealed. The appellate court affirmed, holding that because no deconversion had occurred—and might never occur—the co-op failed to allege a concrete injury. Although the court acknowledged the co-op's concerns, it found that the potential application of the Code remained hypothetical.

The court also held that the co-op misinterpreted the Code. It explained that, following a deconversion, rents are to be determined by the parties—not unilaterally by the landowner.

However, the court noted that if a deconversion were caused by the landowner, DHCR would determine the rents. Even so, the co-op's claim was premature. If and when rents were set, the co-op could then argue that a forced deconversion had occurred and seek DHCR intervention. The court suggested, however, that such a scenario might not constitute a "forced" deconversion, but rather a consequence of the co-op's decision not to meet increased ground rent obligations.

TAKEAWAY:

Many New York City co-ops were built on leased land and now face the prospect of ground lease renewals that can significantly increase rent obligations. While long lease terms and renewal provisions offer some protection, most require recalculation of rent based on current property values, which have risen dramatically over time.

Until legislative solutions emerge, co-ops on leased land should address this issue well in advance of any rent reset. Early negotiations with landowners are critical. Where feasible, co-ops should also consider purchasing the underlying land to avoid exposure to substantial future rent increases and the risk of deconversion.

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HOUSING DEVELOPMENT FUND CORPORATION

545 WARREN ST. HOUS. DEV. FUND CORP. V. NEW YORK STATE DIV. OF HOUS. & CMTY. RENEWAL

2026 NY SLIP OP 26020 (SUP. CT. KINGS CNTY. FEB. 7, 2026)

Affordability Period Challenge Rejected; 30-Year Restriction Upheld

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

OUTCOME: Decided for Defendant

WHAT HAPPENED: The plaintiff in this case is a cooperative apartment corporation that owns eleven apartments at 545 Warren Street in Brooklyn. The cooperative was developed with interest-free federal loans through the U.S. Department of Housing and Urban Development's HOME Investment Partnerships Program (the "HOME Program"), which is designed to provide low-income persons with affordable housing to rent or own.

The defendant, the New York State Division of Housing and Community Renewal ("DHCR"), administers the HOME Program on behalf of New York State's Housing Trust Fund Corporation ("HTFC"), which was also named as a defendant, along with the DHCR commissioner in her official capacity.

As a condition of the financing received through the HOME Program, the property was required to be operated as affordable housing (in the form of a shareholder-owned cooperative) for a period of thirty years (i.e., until 2032). During this "affordability period," ten of the apartments had to be reserved for qualified low-income owner-occupants and were subject to resale restrictions required by law. These restrictions were expressly set forth in the cooperative's governing documents, including the proprietary lease and offering plan.

The cooperative brought an Article 78 petition seeking to terminate the affordability restrictions, arguing that applicable federal regulations limit the affordability period to fifteen years and that the restriction had therefore expired in 2017. The plaintiff sought a declaratory judgment that the defendants no longer had authority over the apartments and that shareholders could sell their units on the open market without restriction.

IN COURT: As a preliminary matter, the court found that the plaintiff's claims were not brought in the proper procedural form, as the action did not constitute a true challenge to a governmental determination. However, the court declined to dismiss the case on that basis and instead treated the Article 78 petition as an action seeking declaratory and injunctive relief pursuant to CPLR § 103(c), which permits courts to convert improperly brought proceedings.

On the merits, the court rejected the plaintiff's interpretation of the federal regulations. It found that the regulations establish minimum affordability periods—not maximum limits—and therefore do not prohibit longer restrictions. The court further noted that the U.S. Department of Housing and Urban Development has issued guidance confirming that participating jurisdictions may impose longer affordability periods.

Accordingly, the court held that the cooperative remains subject to the thirty-year affordability period, expiring in 2032, and that DHCR and HTFC retain authority to review, approve, and reject sales of units during that time.

TAKEAWAY:

Many cooperatives remain subject to long-term affordable housing restrictions, and shareholder dissatisfaction or financial pressure is not sufficient to invalidate those obligations. Although the plaintiff argued that shareholders needed relief to address rising property tax costs, the court focused solely on the governing federal regulations and found no basis to shorten the affordability period.

The decision underscores that courts will apply a plain reading of regulatory language and will not override clearly imposed affordability requirements based on financial hardship.

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INDEMNIFICATION

MAKKOS V. BRAKA

2026 NY SLIP OP 30558(U) (SUP. CT. N.Y. CNTY. FEB. 11, 2026

Court Decides Competing Claims Arising from Water Leak on Condo Unit Terrace

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

OUTCOME: Decided for the Plaintiff, in Part, and Condo Defendants, in Part

WHAT HAPPENED: This case concerns a water leak that occurred on January 11, 2015, at the Galleria Condominium on East 57th Street in Manhattan. The leak started from a garden hose on the terrace of a unit owned by Centurian Credit Corp., a corporate entity wholly owned by Ivor Braka. Ivor and his wife used the apartment as a pied-à-terre and, through Centurian, had hired a vendor, Plantus, Ltd., to take care of the plants on the terrace and monitor the irrigation system.

The leak, which followed an apparent miscommunication between Plantus and the building's management about whether the irrigation system had been properly winterized (specifically, whether water to the pipes had been disconnected), caused damage to a downstairs apartment owned by George Makkos.

Makkos sued Braka, Braka's wife, and Centurian, triggering a chain of counterclaims and cross-claims. Centurian cross-claimed against the Brakas for negligence, and the Brakas brought a third-party action against the Galleria. Centurian then asserted a second third-party action against Plantus for contribution and indemnification, followed by a third third-party action against the Galleria's managing agent. After discovery, the Brakas, the Galleria and its managing agent, and Plantus all moved for summary judgment.

IN COURT: The court granted the Galleria's motion to dismiss the Brakas' third-party claims for indemnification and contribution because, under the declaration and bylaws, the condo association had no contractual duty to maintain the terrace irrigation system, and the record showed that the drains were clogged, thereby contributing to the incident.

The Brakas had also sued the Galleria for failure to procure liability insurance as required by the bylaws. Despite noting that the bylaws did not require the condo's insurance policy to name unit owners or residents as additional insureds, the court refused to dismiss this claim because the board failed to show that it had secured insurance that otherwise complied with the bylaws.

Centurian had sued Plantus for contribution, indemnification, and failure to procure insurance. The court granted Plantus's motion for summary judgment dismissing the two contractual claims because the agreement did not require Plantus to indemnify Centurian or procure insurance for Centurian's benefit, but denied the motion to dismiss the contribution claim because there was a material issue of fact as to whether Plantus "cause[d] or contribute[d] to the happening of the accident."

The court refused to dismiss Makkos's claims piercing the corporate veil against the Brakas individually because it found issues of fact as to whether Centurian existed only to protect the Brakas from liability, noting that invoices from Plantus were issued to the Brakas, not Centurian, and the unit's insurance policy named the Brakas, not Centurian.

TAKEAWAY:

This decision is a useful reference point for understanding how a condo's declaration and bylaws interact with vendor contracts and insurance policies in the context of a water leak. In short, a common occurrence can become very complicated very quickly.

This litigation also illustrates why the Avoiding Vexatious Overuse of Impleading to Delay (AVOID) Act, effective April 18, 2026, was enacted. The law imposes strict deadlines on the commencement of third-party actions to curb the use of impleader as a delay tactic. Here, the original complaint was filed in 2017, but the third third-party complaint was not filed until late 2020, helping explain why the case remains in pretrial litigation in 2026.

Finally, for anyone owning property through a corporate entity, this case is a reminder to observe and maintain corporate formalities—or risk courts disregarding the corporate form and exposing the beneficial owner to individual liability.

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LABOR LAW

OLECKI V. BP 399 PARK AVE., LLC

2026 NY SLIP OP 30484(U) (SUP. CT. N.Y. CNTY. FEB. 9, 2026)

Court Grants Summary Judgment to Worker for Labor Law § 240(1)

SQUIB BY INGRID C. MANEVITZ, PARTNER, SEYFARTH SHAW

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: Defendants 399 Park Avenue, LLC; Board of Managers of the 399 Park Avenue Condominium; and 399 Park Avenue Advisors hired third-party defendant Atlantic Cooling Technologies and Services, LLC to replace a leaking pinion oil seal cap in one of the condo's four cooling towers. Atlantic directed its employee, plaintiff Robert Olecki, to repair the oil leak. To do so, the plaintiff was required to climb down from the top of the cooling tower to replace the cap. When he lowered himself to stand on top of a drift eliminator, the drift eliminator broke and he fell at least 12 feet. He was not given any wooden planks to put on surfaces such as the drift eliminator. The plaintiff brought suit against defendants for, among other things, violating Labor Law § 240(1). Defendants, in turn, brought a third-party complaint against Atlantic for indemnification. Thereafter, the plaintiff moved for summary judgment on his Labor Law § 240(1) claim, Atlantic moved for summary judgment on defendants' third-party claims against Atlantic, and defendants moved for summary judgment on the plaintiff's claims and defendants'/third-party plaintiffs' claims against Atlantic.

IN COURT: The Supreme Court granted the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim because "he fell multiple feet when his foot broke through an unsecured drift eliminator which he had to traverse to complete his assigned task" and because "no wooden planks were provided on the date of plaintiff's accident." The court rejected arguments by defendants and Atlantic that the plaintiff was engaged in "routine maintenance" not covered by Labor Law § 240(1) because in the 20 years Atlantic served the premises, the pinion oil seal cap had never required maintenance, replacement of the cap required specialized equipment and expertise, and the task involved a significant elevation risk. The court also found that the task involved "renovation, alteration, or repair" under Labor Law § 240(1) because without the work, the condo's entire cooling system could have become significantly impacted. Any comparative negligence on the part of the plaintiff, such as if he failed to observe a warning sign, is not a defense to a Labor Law § 240(1) violation. The court denied mirror-image summary judgment motions by defendants and Atlantic seeking to dismiss the plaintiff's Labor Law § 240(1) claim.

The court, however, granted Atlantic's summary judgment motion on defendants' indemnification claims. The court held that the parties' contractual indemnification clause was void under General Obligations Law § 5-322.1 because it was "so broadly worded that it calls for indemnifying defendants in the event of their own negligence," and defendants "could be found negligent" in the case. The court also held that defendants' common-law indemnification and contribution claims were barred by Workers' Compensation Law § 11 because the plaintiff's injuries do not constitute "grave injury" as defined by that statute.

The court denied the defendants' summary judgment motion on the plaintiff's Labor Law § 200 and common-law negligence claims. Although the parties' agreement required that the plaintiff be provided site safety training, no such training took place. The court also found that defendants may be liable for creating a dangerous condition in the cooling tower because the drift eliminator may have degraded due to defendants' failure to maintain it and defendants had constructive notice of the drift eliminator's degradation.

TAKEAWAY:
Labor Law § 240(1) continues to wreak havoc for New York condos. In this case, one wrong step by a contractor working at an elevation led to significant liability for the condo, irrespective of whether the contractor was himself negligent in taking that one wrong step.

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NEGLIGENCE

THE BD. OF MGRS. OF THE A BLDG. CONDO. V. 13TH & 14TH ST. REALTY LLC

2026 NY SLIP OP 30475(U) (SUP. CT. N.Y. CNTY. JAN. 28, 2026)

Economic Loss Doctrine Bars Negligence and Indemnification Claims in Construction Dispute

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

OUTCOME: Decided for Defendants, Third-Party Defendants

WHAT HAPPENED: The A Building Condominium, located at 425 East 13th Street in New York City, was created in 2007 by the sponsor, 13th & 14th Street Realty LLC. The condominium is an unincorporated association of unit owners holding 96 residential units. The sponsor-developer retained contractors and professionals to construct the building in accordance with the offering plan.

Shortly after unit owners moved in, they began experiencing conditions indicating defective design and construction. Complaints included substandard workmanship, Building Code violations, and deviations from the offering plan. After the sponsor relinquished control, the board retained an independent engineer, who identified numerous defects. The sponsor nevertheless refused to perform repairs required under the offering plan.

IN COURT: The board sued multiple parties involved in the project, asserting claims including breach of contract, negligence, professional malpractice, fraud, negligent misrepresentation, and indemnification and contribution.

The court dismissed third-party claims by the construction company against a subcontractor, holding that claims for purely economic loss arising from construction defects do not support contribution or common-law indemnity and that negligence cannot be based solely on contractual obligations.

The court also granted summary judgment dismissing claims against the architect defendants because the condominium lacked contractual privity and was not an intended third-party beneficiary. Fraud claims based on offering plan statements were barred by the Martin Act, and remaining fraud claims were dismissed for lack of particularity.

TAKEAWAY:

Construction defect claims based solely on economic loss generally will not support negligence, contribution, or common-law indemnification claims. Fraud claims against sponsors are also difficult to sustain. They must be pleaded with specificity, and claims based on offering plan disclosures may be barred by the Martin Act.

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PERSONAL INJURY

TODOROVIC V. ROOSEVELT ISLAND OPERATING CORP.

2026 NY SLIP OP 30349(U) (SUP. CT. N.Y. CNTY. JAN. 28, 2026)

Unresolved Questions of Ownership and Notice Defeat Summary Judgment in Sidewalk Fall Case

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

OUTCOME: Decided for Defendants

WHAT HAPPENED: The plaintiff was walking along Main Street on Roosevelt Island when her foot was allegedly caught in an irregular hole in the concrete and she fell. Damages were sought against two defendants, Rivercross Tenants' Corp. ("Rivercross"), a cooperative corporation, and Roosevelt Island Operating Corp. ("RIOTC"), a municipal corporation that manages facilities on Roosevelt Island.

According to the plaintiff, both defendants owned the stretch of sidewalk where she fell and were negligent in failing to maintain it in a reasonably safe condition. Both defendants denied liability and asserted that they never owned, maintained, or controlled the area in dispute.

Following discovery, the plaintiff moved for summary judgment, arguing she had established a prima facie case for statutory liability under the New York City Administrative Code §§ 7-210(b) and 19-152(a)(4). RIOTC opposed the motion and challenged the sufficiency of the evidence. Rivercross similarly argued it was not liable for a sidewalk that did not abut its property. The plaintiff presented no evidence that Rivercross controlled the sidewalk and admitted that ownership remained "unclear."

IN COURT: The court concluded that summary judgment was premature because multiple triable issues of fact existed as to duty and negligence. The parties disputed (a) the precise location of the defect and whether it abutted property owned by either defendant; (b) the extent of post-accident repairs; (c) whether the plaintiff's expert inspected the actual defect; and (d) whether the condition existed long enough to establish constructive notice.

The plaintiff's admission that she frequently traveled the area without noticing the condition also raised questions as to causation. In addition, no deed, survey, or documentary evidence established that the defect abutted property owned by RIOTC. Accordingly, liability could not be established as a matter of law. Nor could liability be imposed under Administrative Code § 7-210 absent proof of ownership or a contractual assumption of duty.

TAKEAWAY:

A court must be satisfied that a defendant owns the property at issue before granting the drastic remedy of summary judgment. Where questions remain regarding ownership, causation, or credibility, summary judgment is inappropriate.

The mere exercise of control over, or performance of repairs on, a sidewalk is not sufficient on its own to impose liability on a municipality under the City Sidewalk Law.

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TERMINATION

141 MACDONOUGH ST. HOUS. DEV. FUND CORP. V. WIMBUSH

2025 NY SLIP OP 34593(U) (CIV. CT. KINGS CNTY. DEC. 1, 2025)

Defective Termination Notice Dooms HDFC Eviction Proceeding

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

OUTCOME: Decided for Respondent

WHAT HAPPENED: The lessee failed to pay rent for five years. The Housing Development Fund Corporation ("HDFC") co-op served a 90-day Notice of Termination on the defendant shareholder, stating that she was required to surrender her unit because her lease was being terminated due to nonpayment of rent and because the HDFC intended to place the unit up for sale.

The lessee did not vacate the apartment, and the co-op commenced a holdover proceeding seeking eviction, along with costs, disbursements, and attorneys' fees. The lessee moved to dismiss the petition.

IN COURT: The lessee sought dismissal based on the co-op's failure to properly plead both the regulatory status of the premises and a valid cause of action.

The Notice of Termination included language referencing the Good Cause Eviction Law ("GCEL"), asserting that the premises were exempt because the unit was part of a cooperative or subject to an offering plan under Real Property Law § 214(7). However, that exemption does not apply to tenants in government-assisted housing such as an HDFC.

The court agreed with the tenant that the notice was legally insufficient. A termination notice must be clear and unequivocal and must provide enough detail to allow the tenant to understand the basis of the claim and prepare a defense.

Here, the notice stated only that the tenant was being terminated for failure to pay rent and because the unit would be sold. It did not specify the amount of rent allegedly owed, the time period of the arrears, or provide a good-faith calculation of the claim. The court found that these omissions rendered the notice defective under the GCEL.

Because the notice failed to state a legally sufficient ground for a holdover proceeding, and such defects cannot be cured by amendment, the petition was dismissed.

TAKEAWAY:

The case turned entirely on the adequacy of the Notice of Termination. The co-op failed to specify the amount of rent owed, the relevant time period, and the factual basis for the nonpayment claim—details that are essential in any eviction proceeding and particularly critical under the GCEL framework.

The decision also highlights the heightened procedural requirements applicable to HDFC and other government-assisted housing. Even where substantial rent arrears exist, failure to comply strictly with notice requirements will defeat an eviction proceeding.

Notably, the court did not indicate whether the dismissal was without prejudice. Whether the HDFC can re-serve a proper notice and pursue recovery may depend on additional issues not addressed by the court, including potential claims related to the warranty of habitability or registration requirements.

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