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

BOOKS AND RECORDS

LEVY V. 285 PROSPECT OWNERS CORP.

2026 NY SLIP OP 30773(U) (SUP. CT. N.Y. CNTY. MAR. 4, 2026)

Books-and-Records Demand Largely Granted; Privacy Argument Rejected

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

OUTCOME: Decided, in part, for Petitioner

WHAT HAPPENED: Michael Levy, a shareholder of 285 Prospect Owners Corp., a Brooklyn cooperative, sent a demand letter in October 2025 seeking to inspect the co-op's books and records pursuant to Business Corporation Law § 624 and common law. He submitted the required affidavit stating his purposes.

Levy requested the full shareholder register, including names, apartment numbers, stock certificate numbers, number and class of shares, dates of ownership, and last known mailing and email addresses. He stated that he sought the information to gather support for calling a special meeting and addressing building issues.

He also requested board meeting minutes, balance sheets, and income statements from September 2023 forward to understand the board's decision-making and ensure compliance with corporate formalities. In addition, he sought contracts and invoices with engineers, as well as construction-related contracts, quotes, and invoices from May 2023 through August 2025, to aid in litigation concerning the co-op's alleged failure to perform required repairs under the proprietary lease.

The co-op objected to copying the records and offered instead to distribute a letter to shareholders on Levy's behalf through management's portal. Levy rejected that proposal and commenced a special proceeding pro se to compel compliance, as well as fees and costs.

IN COURT: Levy relied on his right under BCL § 624 to inspect corporate records, including shareholder names and contact information. The co-op did not dispute the general right but argued that Levy's purpose—calling a special meeting to amend the certificate of incorporation—was improper, that

(continued on p. 3)

MAY 2026 HIGHLIGHTS

DISCOVERY
From Groceries to Grievances: Sidewalk Dispute Becomes Discovery Fight

EVICTION/TERMINATION
HDFC Co-op Wins Possession After 12-Year Dispute with Holdover Tenant

PROPRIETARY LEASE
Court Upholds Succession Rights Over Divorce Settlement in Mitchell-Lama Case

SPONSOR
Court Dismisses Two of Sponsor's Three Indemnification Claims Against Architect

YELLOWSTONE INJUNCTION
Court Grants Yellowstone Injunction, Revives Parking Dispute Against Co-op

© 2026 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, PC

Moshe C. Bobker
Partner, Tane Waterman & Wurtzel, PC

Dale Degenshein
Partner, Fox Rothschild

Thomas P. Higgins
Partner, Higgins & Trippett

William D. McCracken
Partner, Moritt Hock & Hamroff, LLP

Scott J. Pashman
Member, Cozen O'Connor

Kristin Pendergrass
Counsel, Seyfarth Shaw, LLP

Richard J. Shore
Partner, Nixon Peabody, LLP

Matthew Tobias
Partner, Belkin Burden Goldman, LLP

Steven R. Wagner
Of Counsel, Adam Leitman Bailey, PC

TABLE OF CONTENTS

BOOKS AND RECORDS 1
Books-and-Records Demand Largely Granted; Privacy Argument Rejected
Moshe C. Bobker, Partner, Tane Waterman & Wurtzel, PC
LEVY V. 285 PROSPECT OWNERS CORP.

CONTRACTS 3
Missing Condo Coverage: Scaffolding Contractor in Breach
Matthew Tobias, Partner, Belkin Burden Goldman, LLP
SCHIFF V. INTERSYSTEM S&S CORP.

DEFAMATION 4
Court Dismisses Defamation Suit by Construction Manager Over Condo Project Dispute
William D. McCracken, Partner, Moritt Hock & Hamroff, LLP
FINE CRAFTSMAN GROUP, LLC V. DWYER

Court Dismisses All Claims in Condo Dispute, Including Defamation
Richard J. Shore, Partner, Nixon Peabody, LLP
HARRINGTON V. ORTOLANI

DISCOVERY 6
From Groceries to Grievances: Sidewalk Dispute Becomes Discovery Fight
Steven S. Anderson, Shareholder, Becker New York, PC
BD. OF MGRS. OF THE 100 W. 93 CONDO. V. 660 COLUMBUS RETAIL OWNER

EVICTION/TERMINATION 7
HDFC Co-op Wins Possession After 12-Year Dispute with Holdover Tenant
Scott J. Pashman, Member, Cozen O'Connor
322 W. 47TH ST. HDFC V. GUARINO

PERSONAL INJURY 8
Head Injury Claim Fails Against Condo with No Control of Garage
Dale Degenshein, Partner, Fox Rothschild
RENDON-DUQUE V. LAZ PARKING

PROPRIETARY LEASE 8
Court Upholds Succession Rights Over Divorce Settlement in Mitchell-Lama Case
Kristin Pendergrass, Counsel, Seyfarth Shaw, LLP
MOLINA V. TIGANI

SPONSOR 9
Court Dismisses Two of Sponsor's Three Indemnification Claims Against Architect
Thomas P. Higgins, Partner, Higgins & Trippett
BD. OF MGRS. OF THE 12 E. 88TH ST. CONDO. V. 12 E. 88TH LLC

YELLOWSTONE INJUNCTION 10
Court Grants Yellowstone Injunction, Revives Parking Dispute Against Co-op
Steven R. Wagner, Of Counsel, Adam Leitman Bailey, PC
ATTA, INC. V. 450 W. 31ST OWNERS CORP.

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

Publisher: Carol J. Ott
Editor: Barbara Manning Grimm
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 11

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.

©2026 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

his request was mooted by its offer to circulate a letter, and that disclosure raised privacy concerns.

The court found Levy's right to inspect undisputed and held that the co-op failed to articulate a valid basis to deny access. It granted the petition to the extent of ordering the co-op to permit inspection and copying of the shareholder information, board minutes, balance sheets, and income statements.

The court denied Levy's request for engineering and construction contracts and invoices, finding those documents irrelevant to his stated purpose of calling a special meeting. It also denied his request for fees and costs.

TAKEAWAY:
Co-op boards—and condos as well—should recognize that shareholders' rights to inspect books and records are broad and routinely enforced. Unless a request clearly overreaches, lacks a proper purpose (a relatively low bar), or otherwise falls outside the statute, courts are likely to grant it. Boards should weigh whether resisting such requests is a prudent use of resources.

CONTRACTS

SCHIFF V. INTERSYSTEM S&S CORP.,

2026 NY SLIP OP 01294 (1ST DEP'T MAR. 5, 2026)

Missing Condo Coverage: Scaffolding Contractor in Breach

SQUIB BY MATTHEW TOBIAS, PARTNER, BELKIN BURDEN GOLDMAN, LLP

OUTCOME: Decided For Plaintiff; Defendant Condominium on Breach of Contract Claim

WHAT HAPPENED: The Apple Bank Building Condominium, located at 2112 Broadway, hired defendant Intersystem S&S Corp. on or about Jan. 30, 2017, to erect a sidewalk shed. Although the contract listed the condominium's managing agent, the Andrews Organization, at the top, it was signed by Richard Rathe on behalf of the condominium.

On Feb. 20, 2017, plaintiff Joseph Schiff was walking along the sidewalk outside the building when he tripped and fell over scaffolding materials. Intersystem was actively erecting the sidewalk shed at the time.

Schiff sued, among others, Intersystem and the condominium. The condominium asserted cross-claims against Intersystem for common-law indemnification and breach of contract, alleging Intersystem failed to procure insurance naming the condominium as an additional insured, as required by contract. The contract provided: "Intersystems Corporation agrees to name Customer and such other entities as the customer shall request in writing, as additional insured as evidenced by a Certificate of Insurance."

(continued on p. 4)

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

IN COURT: Supreme Court, New York County, denied the condominium's motion for summary judgment on its common-law indemnification cross-claim, finding issues of fact as to the condominium's potential negligence. The court also denied summary judgment on the proposed breach of contract claim as premature because the answer had not yet been amended.

The First Department affirmed denial of summary judgment on common-law indemnification, agreeing that factual issues remained regarding the condominium's negligence. However, it held the motion court should have considered the breach of contract claim and that summary judgment should have been granted. The court found no issue of fact that Intersystem failed to procure insurance naming the condominium as an additional insured. Although the contract did not define "the Customer," the record established that the condominium was the intended insured party.

TAKEAWAY:
This case underscores the importance of ensuring that construction contracts both require insurance in favor of the building and that such coverage is actually obtained. Boards and managers should obtain and review certificates of insurance before work begins. Contracts should clearly identify all parties to be covered.

Insurance and indemnification provisions may not fully shield a board from liability. If a condominium or cooperative bears responsibility for a condition in a shared area, it may still be found partially negligent. Clear contracts, inspection practices and documentation strengthen a board's position in the event of a claim.

DEFAMATION

FINE CRAFTSMAN GROUP, LLC V. DWYER

2026 NY SLIP OP 30699(U) (SUP. CT. N.Y. CNTY. FEB. 26, 2026)

Court Dismisses Defamation Suit by Construction Manager Over Condo Project Dispute

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

OUTCOME: Decided for Condo Defendants

WHAT HAPPENED: 125 Broad St. is a commercial condominium whose unit owners include Sullivan & Cromwell, LLP and the American Civil Liberties Union. In 2021, the condominium and its unit owners—led principally by Sullivan & Cromwell—entered into agreements with the defendants, a group of energy consultants and their principals, to install cogeneration and other energy-efficiency measures to comply with Local Law 97.

The plaintiff, Fine Craftsman Group LLC, was hired to provide supervision and construction management. The project faltered, and the condominium terminated the plaintiff about a year later. The plaintiff claimed it was owed more than $1 million in unpaid fees.

As the relationship deteriorated, the defendants allegedly accused the plaintiff of, among other things, "embezzl[ing] millions of dollars" and having "stole[n] more than $4 million." The plaintiff sued for defamation, seeking $10 million in damages.

TAKEAWAY:
Defamation claims arising from internal project disputes face steep hurdles. Where statements are substantially true or fall within a shared business interest, they are unlikely to survive.

In the condo and co-op context, parties sometimes attempt to elevate internal conflicts into defamation suits, but those efforts often fail. Communications among participants in a shared enterprise—about performance, misconduct or termination—will frequently be protected by the common-interest privilege.

IN COURT: More than a year after the complaint was filed—and after

(continued on p. 5)

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

the plaintiff conducted little to no discovery—the defendants moved for summary judgment. They argued the plaintiff had no evidence the statements were false, while they had substantial evidence the statements were true.

At the same time, the plaintiff was involved in a separate RICO action alleging it had "perpetrated a multimillion-dollar fraud through the submission of fabricated invoices and requisition requests" at the same project and another site. That action included sworn statements from individuals with knowledge.

The defendants also argued the statements were protected by the common-interest privilege because they were made to others involved in the project who had a shared interest in the reasons for the plaintiff's termination.

The court agreed, holding that the allegedly defamatory statements—that the plaintiff embezzled or misappropriated funds—were substantially true and protected by the common-interest privilege. The court granted summary judgment dismissing the case.

The plaintiff has appealed and moved for leave to reargue and/or renew.

DEFAMATION

HARRINGTON V. ORTOLANI

2026 NY SLIP OP 01186 (2ND DEP'T MAR. 4, 2026)

Court Dismisses All Claims in Condo Dispute, Including Defamation

SQUIB BY RICHARD J. SHORE, PARTNER, NIXON PEABODY, LLP

OUTCOME: Decided for Defendant-Respondent-Appellant

WHAT HAPPENED: The plaintiff, John Harrington, and the defendant, Theresa Ortolani, each own units in a four-unit condominium at 368 Gates Ave. in Brooklyn. In 2017, Ortolani became president of the condominium board.

The building later experienced leaks and water damage after Harrington constructed a rooftop terrace garden and irrigation system. Inspectors retained by the condominium identified the terrace construction as the source of the leaks. The condominium's insurer ultimately canceled the policy because of the ongoing conditions.

In a separate action, Ortolani commenced a property damage action against Harrington and obtained a preliminary injunction limiting use of the terrace. She contends this lawsuit is retaliatory. Harrington, however, alleged Ortolani engaged in a pattern of defamatory and tortious conduct, including statements to the building's insurer and to prospective renters and buyers of his unit, causing deals to fall through.

In August 2022, the plaintiff brought this action asserting six causes of action, including defamation. The lower court dismissed all claims except breach of fiduciary duty. The plaintiff appealed, and the defendant cross-appealed the denial of dismissal of the fiduciary duty claim.

IN COURT: The Appellate Division, Second Department, affirmed dismissal of the first through third, fifth, and sixth causes of action and reversed the lower court's ruling on the fourth, dismissing the complaint in its entirety.

On the defamation claims, the court held the alleged statements lacked specificity, were nonactionable opinion, or were substantially true.

The court dismissed the tortious interference claim because the plaintiff failed to allege facts showing the defendant acted solely out

(continued on p. 6)

TAKEAWAY:

Not every neighbor dispute gives rise to a viable lawsuit. Defamation claims, in particular, require specific, provably false statements; opinions and substantially true statements will not suffice.

In the condominium context, courts are reluctant to convert internal conflicts into tort claims, especially where the challenged statements relate to documented building conditions. Claims against board members in their individual capacity face additional hurdles absent a clear legal duty.

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

of malice or used wrongful means.

The breach of contract claim failed because individual unit owners do not have a contractual relationship with one another, and none arose from the defendant's role as board president.

The statutory claim failed for lack of allegations supporting a violation of Business Corporation Law § 624 or Real Property Law § 339-w.

Finally, the court dismissed the breach of fiduciary duty claim, finding the plaintiff failed to plead the existence of a fiduciary relationship or a breach.

DISCOVERY

BD. OF MGRS. OF THE 100 W. 93 CONDO. V. 660 COLUMBUS RETAIL OWNER

2026 NY SLIP OP 30913(U) (SUP. CT. N.Y. CNTY. MAR. 12, 2026)

From Groceries to Grievances: Sidewalk Dispute Becomes Discovery Fight

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

OUTCOME: Decided, in part, for Condo Board

WHAT HAPPENED: A condominium on the Upper West Side of Manhattan sued the defendant, 660 Columbus Retail Owner LLC ("660"), the owner of a commercial condominium unit that, in turn, leased the space to a Trader Joe's that staged and effectuated deliveries of groceries on the sidewalk. The condominium board claimed the sidewalk was obstructed, causing a nuisance. The board fined 660, the commercial unit owner. It all escalated into litigation.

IN COURT: The first dispute was regarding who, on behalf of the board, would be the "custodian of records." The board wanted to designate two of its seven members for this role. The defendant 660 sought to designate all seven board members, claiming that absent this, the board would "hide" documents. The court agreed two of seven was sufficient.

Second, defendant 660 wanted the court to appoint an "ESI vendor" to collect electronically stored materials for discovery production. The court found, in the first instance, that the board should be able to produce documents "in-house" without having to retain an outside vendor.

Third, the court ordered certain nonprivileged engineering reports to be produced by the condominium board with regard to a separate dispute as to common charge formulations and the applicable amounts owed by defendant 660 to the condominium.

Fourth, with respect to issues regarding videos of the sidewalk within the board's possession, the court found it was sufficient that the board made them available to defendant 660 for inspection, but held that defendant 660 could pay for obtaining its own copies if it wanted them.

TAKEAWAY:

Classic New York City real estate litigation about something that arguably shouldn't have escalated this far. Blocking a sidewalk—allegedly—led to fights, fines, and extended battles over discovery, i.e., the production of documents in a lawsuit. After more than two years, the case has barely started. All about blocking sidewalks in an attempt to sell and deliver groceries. Only in New York.

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

EVICTION/TERMINATION

322 W. 47TH ST. HDFC V. GUARINO

2026 NY SLIP OP 30591(U) (SUP. CT. N.Y. CNTY. FEB. 13, 2026)

HDFC Co-op Wins Possession After 12-Year Dispute with Holdover Tenant

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

OUTCOME: Decided for Petitioner HDFC Co-op

WHAT HAPPENED: The petitioner is a housing development fund corporation (HDFC) co-op formed pursuant to Section 402 of the Business Corporation Law and Article XI of the Private Housing Finance Law. The HDFC owns 322 W. 47th St. in Manhattan and was organized to develop housing for persons meeting specified income caps. The building is exempt from rent stabilization.

The respondent, Lawrence Guarino, became a tenant of apartment 5F pursuant to a written lease dated June 1, 1993, for a six-month term through Dec. 31, 1993, at a monthly rent of $215. In January 1994, management informed Guarino that he had passed a probationary period and could buy apartment 5F for $250. The offer was never consummated because Guarino did not proceed to closing.

In 2013, the HDFC offered Guarino a one-year lease renewal commencing May 1, 2013, through April 30, 2014, at a monthly rent of $700. Guarino did not sign the renewal.

In 2014, the HDFC commenced an action seeking a judgment of possession and Guarino's eviction. Guarino counterclaimed, seeking a declaration that he was not a holdover tenant but a shareholder and proprietary lessee of apartment 5F. In May 2017, the HDFC sent Guarino a 30-day notice of termination.

IN COURT: After 12 years of proceedings in Supreme Court, Housing Court and the Appellate Division, the case was tried over three days in February 2026. The court held that the HDFC was entitled to a judgment of possession and that Guarino's tenancy was terminated effective June 30, 2017.

At trial, Guarino's only remaining claim to shareholder status was based on an alleged closing in June 2009. The court found that no valid closing occurred. No contract of sale had been executed, and Guarino failed to establish that he paid the required $250. The credible evidence showed the HDFC never received payment toward the alleged purchase.

No proprietary lease was admitted into evidence, and no stock certificate had been issued. Guarino also failed to provide income documentation at or before the alleged closing, and no documentation or payment was submitted to the New York City Department of Housing Preservation and Development afterward.

The court scheduled further proceedings to determine use and occupancy owed to avoid issuance of a warrant of eviction, as well as attorneys' fees recoverable by the co-op.

TAKEAWAY:

HDFC co-ops offer below-market housing and often receive favorable tax treatment under Article XI of the Private Housing Finance Law. To maintain these benefits, buyers must meet income limits; resale prices are restricted by formula; units must be used as primary residences; and purchases require board approval.

Failure to comply can lead to loss of tax benefits, financing difficulties, violations and fines, invalidated sales and litigation. In severe cases, a court may appoint a receiver.

Here, the record showed a succession of self-interested boards mismanaged the co-op — failing to raise rents, maintain the building or enforce income requirements, and allowing ineligible shareholders to serve as directors. The action followed the election of a new board member and findings in a separate case that prior board members breached fiduciary duties. If possession is regained, the co-op intends to sell the unit at an appropriate price to raise needed funds.

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

PERSONAL INJURY

RENDON-DUQUE V. LAZ PARKING, 2026 NY SLIP OP 30579(U)

(SUP. CT. N.Y. CNTY. FEB. 18, 2026)

Head Injury Claim Fails Against Condo with No Control of Garage

SQUIB BY DALE DEGENSHEIN, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Defendant Condominium

WHAT HAPPENED: The plaintiff claimed he was injured in a parking garage when he struck his head on an unoccupied car lift that was in a raised position. He alleged that the lift constituted a dangerous condition.

The plaintiff was in the garage to photograph a motorcycle for an insurance claim. After losing consciousness for approximately two minutes, he stood up, took the photos, and then walked 15 to 20 minutes to Bellevue Hospital.

The plaintiff sued the condominium, the garage manager, and the out-of-possession owner of the garage unit, which asserted that possession and control had been transferred to a nonparty.

IN COURT: As to the condominium, it moved to dismiss, arguing that it did not own or control the garage unit, had no duty to maintain the garage or the lift, and therefore owed no duty to the plaintiff. The court agreed and dismissed the claims against the condominium, finding that it lacked ownership and control of the garage.

The court also dismissed the claims against the garage manager but found issues of fact precluding dismissal as to the out-of-possession owner.

TAKEAWAY:
This case is a reminder that a condominium will not be liable for accidents occurring within a unit over which it has no ownership or control.

PROPRIETARY LEASE

MOLINA V. TIGANI

2026 NY SLIP OP 30938(U) (SUP. CT. N.Y. CNTY. MAR. 11, 2026)

Court Upholds Succession Rights Over Divorce Settlement in Mitchell-Lama Case

SQUIB BY KRISTIN PENDERGRASS, COUNSEL, SEYFARTH SHAW, LLP

OUTCOME: Decided for Respondents

WHAT HAPPENED: On Sept. 1, 2004, petitioner Orlando Molina and his then-wife, Migdalia Lopez, entered into an occupancy agreement with respondent Village East Towers, Inc. for Mitchell-Lama apartment 10B in the building at 170 Avenue C in Manhattan. They subsequently occupied the apartment with their daughter, respondent Madison Rose Lopez-Molina, who was 4 years old at the time. The three resided in the apartment together until September 2016, when Molina and Lopez separated and Molina moved out of the apartment.

On Oct. 4, 2016, Molina and Lopez entered into a divorce stipulation of settlement, which provided that Lopez would be required to vacate the apartment and Molina would have the right to reoccupy it in the event that Lopez remarried.

On March 10, 2025, after learning that Lopez had remarried, Molina sent Lopez a notice demanding that she vacate the apartment in accordance with the divorce settlement. Around that same time, Lopez-Molina, now 24 years old, applied for succession rights to the apartment. Although the specific date of the application is unclear, as there are conflicting documents, in March 2025, Lopez-Molina submitted an application to Village East Towers and respondent New York City Department of Housing Preservation and Development (HPD) for

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

succession rights to the apartment.

Village East Towers and HPD approved Lopez-Molina's application. Lopez-Molina subsequently notified Molina of the approval and demanded that he vacate the apartment, which he had reoccupied with Lopez-Molina, purportedly based on the divorce settlement.

IN COURT: Molina commenced this Article 78 proceeding to nullify the grant of succession rights to Lopez-Molina, alleging that HPD's decision was arbitrary and capricious, based on legal error and contrary to applicable regulations, and violated due process. HPD cross-moved for dismissal of the petition.

The court denied Molina's petition in its entirety and granted HPD's motion to dismiss, holding that Molina had not met his burden to overturn HPD's grant of succession rights to Lopez-Molina. The undisputed evidence showed that Lopez-Molina was entitled to succession rights to the apartment because, among other things, she had lived there continuously with her mother for at least two years prior to her mother vacating. The court also found that granting Lopez-Molina succession rights was in keeping with the spirit of the Mitchell-Lama program, which was intended to prevent the dislocation of long-term residents.

The court held that Molina, who had not resided in the apartment for more than eight years at the time Lopez-Molina filed her application, did not meet the statutory requirements for succession rights. The court further held that the terms of the divorce settlement did not grant Molina the right to occupy the apartment because parties to an occupancy agreement for affordable housing may not modify or override statutory requirements associated with such housing by contract. An agreement to do so is void.

TAKEAWAY:
Statutes and regulations governing apartments in affordable housing control over private agreements between residents and/or owners. Here, although Molina and Lopez had previously entered into an agreement for Molina to take over occupancy of the apartment under certain conditions, that agreement was unenforceable because it conflicted with the statutes governing Mitchell-Lama housing. Occupants or owners of apartments in affordable housing should review the statutes and regulations governing their apartments before entering into agreements concerning their apartments. In the event of a conflict between such an agreement and the law, the law will control, and the agreement may be deemed void.

SPONSOR

BD. OF MGRS. OF THE 12 E. 88TH ST. CONDO. V. 12 E. 88TH LLC

2026 NY SLIP OP 30685 (U) (SUP. CT. N.Y. CNTY. FEB. 24, 2026)

Court Dismisses Two of Sponsor's Three Indemnification Claims Against Architect

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

OUTCOME: Decided, in part, for Defendant

WHAT HAPPENED: The board of managers of a residential condominium sued the sponsor and its principals, alleging the renovation and conversion did not conform to the specifications in the sponsor's marketing materials and offering plan. The board claimed unit owners were fraudulently induced to purchase units based on material misrepresentations about the building's condition. Among other issues, the roof leaked and a wheelchair lift was not code-compliant.

The sponsor, in turn, brought a third-party action against entities involved in the design and construction, including an architectural firm. The architects moved to dismiss the sponsor's three claims against them: common-law indemnification, common-law contribution and contractual indemnification. The sponsor opposed the motion.

IN COURT: The court first addressed the common-law indemnification claim and rejected the architects' argument that it must be dismissed because the sponsor sought indemnity for its own negligence. While the law bars indemnification where

(continued on p. 10)

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com

a party is even partially at fault, factual issues remain unresolved at this stage. The sponsor alleged the architects were solely responsible for certain design defects—an allegation that, if proven, could support indemnification. The motion to dismiss that claim was denied.

The court dismissed the contribution claim as barred by the economic loss doctrine, which precludes contribution for purely economic losses arising from a breach of contract. Here, the sponsor's claims against the architects stemmed from alleged contractual breaches, not tortious conduct.

The court also dismissed the contractual indemnification claim because the sponsor failed to allege the existence of any written agreement with the architects containing an indemnification provision. The sponsor's assertion that discovery might uncover such a contract was insufficient.

TAKEAWAY:

As the old song goes, two out of three isn't bad. The architects succeeded in narrowing the sponsor's claims to a single surviving theory: common-law indemnification. That claim remains vulnerable if evidence shows the sponsor bears any share of fault.

For boards, the third-party disputes may seem peripheral, but they shape the litigation in practical ways. Competing defenses among defendants can affect discovery, motion strategy and settlement posture. Expect multiple parties, multiple insurers and multiple law firms—each advancing distinct interests.

YELLOWSTONE INJUNCTION

ATTA, INC. V. 450 W. 31ST OWNERS CORP.

2026 NY SLIP OP 01295 (1ST DEP'T MAR. 10, 2026)

Court Grants Yellowstone Injunction, Revives Parking Dispute Against Co-op

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

OUTCOME: Decided for Plaintiff-Appellant

WHAT HAPPENED: 450 W. 31st Owners Corp. adopted a rule prohibiting apartment owners from parking vehicles in outdoor areas appurtenant to their units, limiting parking to assigned spaces in a co-op-owned lot.

Atta, Inc., which owns a ground-floor unit, claimed its governing documents granted it exclusive use of a portion of the parking lot, including a parking space as part of its outdoor area. Atta parked its vehicle in that space.

After the co-op issued a notice directing Atta to remove the vehicle, Atta sued to declare its rights and sought a Yellowstone injunction to toll the cure period. The co-op moved to dismiss and sought sanctions.

IN COURT: Supreme Court, New York County, denied the injunction, granted dismissal, and imposed sanctions, finding Atta failed to show a likelihood of success on the merits.

The Appellate Division modified. It granted the Yellowstone injunction, denied dismissal, and vacated sanctions. The court held that, for a Yellowstone injunction, a plaintiff need only demonstrate readiness, willingness, and ability to cure—not likelihood of success. The lower court should not have rejected Atta's repeated statements that it was prepared to cure any alleged default.

The court did, however, affirm dismissal of Atta's claim for declaratory relief. Atta had already sought the same relief in a prior action, which the Appellate Division had reinstated. The duplicative claim could not proceed here. The court noted the injunction in this case related to a later notice and constituted a separate transaction.

TAKEAWAY:

Yellowstone injunctions remain a powerful tool for commercial unit owners and tenants. To obtain one, the movant need not prove ultimate success—only the ability and willingness to cure.

Boards cannot override governing documents by adopting conflicting rules; amendments must follow the procedures set forth in those documents.

The decision also underscores the procedural guardrails: duplicative claims will be dismissed, even where related disputes proceed in parallel actions.

© 2026 by The Carol Group Ltd. Any reproduction is strictly prohibited. For more information, visit coopcondocaselawtracker.com