CO-OP&CONDO
CASE LAW TRACKER
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ALTERATIONS

GOLDEN OX REALTY LLC V. THE BD. OF MGRS. OF THE COLDEN GARDEN CONDO.

2026 NY SLIP OP 014569 (1ST DEP'T MAR. 17, 2026)

Poor Recordkeeping as to Potential Conflict Waivers Fuels Years of Litigation

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

OUTCOME: Decided for Respondent

WHAT HAPPENED: In 2009, Golden Ox Realty LLC (GOR) purchased a commercial unit in the Colden Garden Condominium with the intention of converting it into a day care center. The principal of GOR, Mr. Shen, was also president of the condominium board.

According to Shen, he presented detailed plans and specifications for the conversion to the board at a meeting in 2009. He alleged that the board voted to approve both the alteration of the unit and an amendment to the certificate of occupancy (CO) permitting use of the unit as a day care center. Based on that approval, GOR filed plans with the New York City Department of Buildings (DOB), posted the required permits on the property and made significant alterations.

However, in 2011, after a change in board leadership, the board filed opposition to the proposed amendment to the CO with the DOB and took other actions to disavow the alterations. The new board asserted that it had never formally approved the alteration work and, in any event, lacked authority under the declaration or bylaws to authorize a change in the CO for preschool use. According to the new board, any purported approval was therefore void.

GOR filed suit asserting causes of action for breach of fiduciary duty, breach of contract, declaratory relief and injunctive relief relating to the proposed use of the unit, the election of board members who opposed the alteration and interference with its alterations.

The condominium moved to dismiss. The trial court dismissed the breach of fiduciary duty claims, the election-related claims and duplicative declaratory judgment claims, but declined to dismiss the claims for breach of

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Court Holds Unit Owner in Contempt Over Failure to Remedy Dangerous Alterations

CONSTRUCTION DEFECTS
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Unsold Shares Can Create Long-Term Liability

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Court Upholds Condo's Authority to Restrict Amenity Use

LABOR LAW
Labor Law Liability Attaches in Sidewalk Bridge Accident

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

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Volume 5, Issue 12

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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contract and injunctive relief. The condominium appealed.

IN COURT: The Appellate Division affirmed the trial court's refusal to dismiss the breach of contract and permanent injunctive relief claims.

The court confirmed that the condominium's declaration and bylaws constituted a contract. Assuming board consent was required under the bylaws for the proposed alterations, the allegations that the board granted consent and later interfered with GOR's work sufficiently stated a claim for breach of contract.

The court also found triable issues of fact as to whether the board actually granted approval at the 2009 meeting. In particular, the condominium was unable to produce minutes from the meeting where approval allegedly occurred, and the managing agent at the time testified that consent had in fact been granted.

The claim for injunctive relief allowing GOR to continue the alterations was also permitted to proceed because monetary damages alone might not provide an adequate remedy if the condominium continued interfering with the work.

The court further rejected the condominium's argument that the action constituted a "SLAPP" suit intended to chill the condominium's exercise of free speech and petitioning rights. Because GOR's claims had a substantial basis in law and fact and were supported by triable issues, the action could not be deemed a SLAPP suit.

TAKEAWAY:

This case highlights the importance of maintaining proper meeting minutes. The parties were litigating in 2026 over whether the board consented to alterations requiring a change in the certificate of occupancy at a meeting that occurred in 2009. Had accurate minutes existed, resolution of the dispute likely would have been far simpler.

The case also demonstrates the conflicts of interest that can arise when a board officer proposes a project that may personally benefit that officer. Boards too often defer to proposals advanced by fellow board members involving matters such as alterations, maintenance increases, consultant retention or purchaser approvals without taking adequate procedural safeguards.

Boards should ensure that such matters are considered and voted upon in a manner that avoids even the appearance of impropriety and minimizes concerns among directors regarding retaliation or undue influence.

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ATTORNEY FEES

KENNEDY HOUSE OWNERS, INC. V. CRAWFORD

2026 NY SLIP OP 50428(U) (N.Y. CIV. CT. QUEENS CNTY. MAR. 30, 2026)

Queens Co-op's Attorneys' Fee Claim Denied Under Kasowitz Ruling

SQUIB BY LLOYD F. REISMAN, PARTNER, BELKIN BURDEN GOLDMAN

OUTCOME: Decided for Petitioner Co-op; Respondent

WHAT HAPPENED: This holdover proceeding arose from a lengthy pattern of allegedly disruptive and threatening conduct by tenant-shareholders in a Forest Hills cooperative. The board documented repeated complaints involving screaming, confrontations with residents and staff, and other erratic behavior over an extended period.

In May 2023, the cooperative issued a notice of objectionable conduct and later held a special meeting advising that the board would consider terminating the respondents' proprietary lease. The tenant-shareholders did not appear at the meeting.

In September 2023, the board unanimously voted to terminate the lease pursuant to the objectionable conduct provision, and shortly afterward served a notice terminating the proprietary lease. The tenant-shareholders did not vacate the apartment, prompting the cooperative to commence a holdover proceeding.

The petition sought possession and eviction, unpaid maintenance and ongoing use and occupancy, and attorneys' fees pursuant to the proprietary lease.

IN COURT: By the time the court addressed the motions at issue, the cooperative had already prevailed in recovering possession of the apartment. The remaining dispute concerned whether the cooperative could recover its attorneys' fees from the tenant-shareholders under the lease.

The proprietary lease contained a standard fee-shifting provision requiring shareholders to reimburse the cooperative for legal fees incurred in enforcing the lease or defending litigation brought against it. The cooperative argued that, as the prevailing party, it was entitled to fees under longstanding Second Department precedent enforcing similar provisions.

The tenant-shareholders argued that the provision was unconscionable, relying heavily on the First Department's decision in Kasowitz, Benson, Torres & Friedman, LLP v. JPMorgan Chase Bank, N.A., 237 A.D.3d 499 (1st Dep't 2025).

Although the court agreed that the cooperative was the prevailing party and ordinarily would be entitled to fees if authorized by contract, it nevertheless held that the fee provision itself was unenforceable. The court found the clause materially similar to the provision invalidated in Kasowitz, where the First Department held that overly broad fee-shifting provisions could chill shareholders from asserting legitimate claims or defenses.

The court distinguished the Second Department cases cited by the cooperative because those decisions did not address the

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TAKEAWAY:

This case illustrates that even a cooperative board that successfully follows proper procedures and prevails on the merits may still lose its claim for attorneys' fees if the governing lease language is viewed as overbroad or unconscionable.

Following Kasowitz, boards should not assume that traditional proprietary lease fee provisions will automatically be enforced. Courts are increasingly scrutinizing provisions that could discourage shareholders from asserting legitimate claims or defenses in good faith.

Boards should work with counsel to review proprietary lease provisions addressing attorneys' fees and consider whether revisions are appropriate. Narrowly tailored provisions tied specifically to actual defaults and enforcement proceedings may be more likely to survive judicial scrutiny.

Boards and their counsel should also account for the possibility that attorneys' fees may not be recoverable even when the cooperative prevails in litigation.

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unconscionability analysis central to Kasowitz.

Applying New York precedent governing conflicts among Appellate Departments, the court held that where the local Appellate Department has not addressed a particular issue, trial courts should follow authority from another Department directly on point. Because Kasowitz squarely addressed the issue, the court followed it.

Accordingly, the cooperative's request for attorneys' fees was denied, and the tenant-shareholders' cross-motion dismissing the fee claim was granted.

BUSINESS JUDGMENT RULE

HAIMOVICI V. CASTLE VILL. OWNERS CORP.

2026 NY SLIP OP 31030(U) (SUP. CT. N.Y. CNTY. MAR. 17, 2026)

Court Upholds Lease Termination Under Business Judgment Rule

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

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: For several years preceding the termination of the plaintiff's proprietary lease, the board had expressed concerns about the plaintiff's alleged anti-social behavior. Following years of acrimony and accusations, as well as repeated complaints from building residents and staff regarding the plaintiff's purported vexatious conduct, the board held a special meeting to address those concerns.

Following the special meeting, the board voted to terminate the plaintiff's ownership interest in the co-op, and notice was sent to that effect. The plaintiff thereafter commenced litigation, alleging that he should have been served with a 30-day notice to cure and that the actions of the co-op and board were retaliatory and unjustified. The defendants, in addition to seeking dismissal of the complaint, sought an order of ejectment as well as legal fees.

IN COURT: All of the plaintiff's procedural and legal arguments, including claims of discrimination against his autistic child, were rejected by the court. After summarizing the extensive complaints against the plaintiff — including allegations that he shouted profanities at fellow residents, harassed staff members and used his cell phone to take "pictures of a 3-year-old boy when his pants were down" — the court concluded that the board's decision to terminate the plaintiff's proprietary lease was protected by the business judgment rule.

In reaching that determination, the court reiterated that the co-op and the individual defendants acted in furtherance of the cooperative's legitimate corporate purposes, within the scope of the co-op's and board's authority and in good faith. The court stated that it would exercise restraint and limit its role to assessing whether the board acted in good faith. The court also would not second-guess the decisions of the co-op or board of directors, including the decision not to serve a notice to cure. Given the plaintiff's alleged egregious conduct over a prolonged period, the court determined that a notice to cure would have been unnecessary and not beneficial.

Additionally, the co-op and board were entitled to an order of ejectment and an award of reasonable legal fees against the plaintiff.

TAKEAWAY:

The business judgment rule is designed to protect the common interests of a cooperative community. A board's decision to terminate the lease of a problematic shareholder based on objectionable conduct will not be disturbed by the courts, provided the shareholder had a full and fair opportunity to participate in a special meeting addressing the behavior at issue.

As long as a board complies with the relevant proprietary lease provisions, courts will not review the board's decision de novo or second-guess its reasoning. Absent a showing of bad faith, courts also will uphold a board's decision to hold shareholders responsible for their actions.

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BYLAWS

GOLDENBERG V. THEODORE

2026 NY SLIP OP 31003(U) (SUP. CT. KINGS CNTY. MAR. 17, 2026)

Court Dismisses Claims Against Condo and Upstairs Neighbor in Slip-and-Fall Case

SQUIB BY DALE DEGENSHEIN, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Condominium Defendants and Upstairs Neighbor

TAKEAWAY:

Condominium bylaws play a critical role in determining responsibility for maintenance and repair obligations following water leaks and similar incidents. Here, the bylaws clearly placed responsibility for interior unit repairs on the individual unit owner, shielding the condominium and managing agent from liability.

The case also illustrates that unit owners are not automatically liable for appliance leaks originating in their apartments. Promptly addressing the problem and taking reasonable corrective action may help defeat negligence claims.

At the same time, contractors performing repair work may still face liability where factual disputes remain concerning unsafe conditions at the work site.

WHAT HAPPENED: Plaintiff Joyce Goldenberg owned a condominium unit at The Gotham Condominium, located at 170 E. 87th St. in Manhattan. She allegedly slipped and fell inside her apartment following repairs related to a prior water leak.

Several months earlier, a leak had been discovered coming from a dishwasher in the unit directly above Goldenberg's apartment, owned by defendant Huhnsik Chung. Building employees located the source of the leak after removing a panel from beneath Chung's dishwasher. Once the leak was discovered, Chung shut off the water supply to the dishwasher and stopped using it. A replacement dishwasher was not installed until approximately six months later.

Water from the leak seeped into Goldenberg's hallway and allegedly caused her wood flooring to buckle. To repair the damage, Goldenberg hired defendant Theodore Floors. The contractor removed the damaged flooring, exposing bare concrete underneath. According to Goldenberg, the contractor advised that the concrete needed to dry naturally and that the process could take several weeks. When she asked how she was supposed to access her bedroom, a representative allegedly told her "to be careful."

Goldenberg claimed that nearly two months after the original leak, she observed puddles of water on the exposed concrete outside her bedroom that had remained there for several days. She allegedly slipped on the wet surface and fell. Goldenberg believed the standing water originated from the upstairs dishwasher leak.

Goldenberg sued Chung, Theodore Floors, the board of managers of The Gotham Condominium, and the condominium's managing agent, FirstService Residential New York. All defendants moved for summary judgment dismissing the claims against them.

IN COURT: The court dismissed all claims against The Gotham Condominium and FirstService Residential New York. The court relied on Article 6.9 of the condominium bylaws, titled "Maintenance and Repairs," which placed responsibility for maintaining and repairing the interior of each unit on the individual unit owner.

The court found that neither the condominium nor the managing agent had a duty to repair Goldenberg's floors. The court also found there was no evidence that either defendant created the allegedly dangerous condition or had notice of it.

The court additionally dismissed the claims against Chung, finding there was no evidence he knew of any defect in the dishwasher before the leak occurred. The evidence showed Chung shut off the water supply immediately after the leak was discovered and did not use the dishwasher afterward. Because the accident allegedly occurred nearly two months later, the court

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concluded Chung neither created nor failed to remedy the alleged dangerous condition.

The court denied summary judgment as to Theodore Floors, finding issues of fact remained regarding the condition of the hallway floor. Theodore Floors asserted the area was dry when it last worked there and that no moisture remained. Goldenberg, however, testified she observed puddles of water on the exposed concrete before her fall.

The court held these conflicting accounts regarding the existence of water, whether the condition was open and obvious, and whether the parties acted reasonably presented factual issues for trial.

CHARGES/FEES

LINDSEY V. METRO MGMT. DEV. INC.

2026 NY SLIP OP 50494 (U) (N.Y. CIV. CT. BRONX CNTY. APR. 8, 2026)

Court Rules Coop's Board of Directors Not a Proper Party to a Lawsuit

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

OUTCOME: Decided, in part, for Plaintiff and Defendant

WHAT HAPPENED: For more than 50 years, the plaintiff, Ann Lindsey, has been a tenant-shareholder at Kingsbridge Arms Inc., a Mitchell-Lama limited-profit cooperative in the Bronx. The terms of her occupancy are governed by a 1975 occupancy agreement. Defendant Metro Management Development Inc. is the managing agent for Kingsbridge Arms.

In 2023, the plaintiff received notice from management of a utility pass-through surcharge of $211.97 per month for 12 months, purportedly imposed to cover increased electric, gas and water costs. Although the plaintiff paid the surcharge, she believed it violated Paragraph Ninth of her occupancy agreement, which states, in relevant part, that Kingsbridge Arms must "pay or provide for the payment of all ... assessments levied against the project."

Accordingly, in 2024, the plaintiff, acting pro se, commenced an action in Bronx County Civil Court against Metro Management for breach of contract, seeking $2,543.64, the amount of the surcharge she paid.

Metro Management answered the complaint, denying the allegations and asserting an affirmative defense based on documentary evidence.

Although she initially sued Metro Management, the plaintiff later determined that the proper defendant was Kingsbridge Arms itself. She therefore moved to amend the caption to substitute Kingsbridge Arms for Metro Management and to add Kingsbridge Arms's board of directors and Yvonne Bumpurs, in her representative capacity as president of the board, as defendants.

IN COURT: The Bronx County Civil Court addressed both pending motions.

First, the court granted the plaintiff's motion to amend to the extent of substituting Kingsbridge Arms for Metro Management. The court rejected Metro Management's argument that adding Kingsbridge Arms would unnecessarily complicate the action or substantially alter the claims because Kingsbridge Arms and Metro Management were "united in interest."

However, the court denied the plaintiff's motion to the extent it sought to add the board of directors and its president, Yvonne Bumpurs, as defendants. The court held that a cooperative's board of directors is not a legal entity distinct from the corporation itself and therefore cannot be independently sued. The court further held that individual board members may be sued only for specific wrongdoing independent of the corporation's actions, and the plaintiff alleged no such separate wrongdoing.

Although the court denied Metro Management's motion to dismiss the complaint as moot with respect to Metro Management, it nevertheless considered the motion as applied to Kingsbridge Arms. Metro Management argued that the surcharge was valid and enforceable as a matter of law because HPD had approved it pursuant to the Mitchell-Lama Rules.

The court denied the motion, finding that although Paragraph Ninth of the occupancy agreement may conflict with the Mitchell-Lama Rules, the defendants had not established, as a matter of law or through documentary evidence, that the

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Mitchell-Lama Rules superseded the terms of the occupancy agreement. The court found counsel's conclusory assertions insufficient.

The court also found that Metro Management had not conclusively established that the corporation complied with all procedural requirements of the Mitchell-Lama Rules, including notice and disclosure obligations. The court noted that approximately 95% of Kingsbridge Arms shareholders are senior citizens living on fixed incomes and that the maintenance increase could impose a substantial hardship.

TAKEAWAY:

This decision highlights the importance of naming the proper parties in litigation involving a cooperative corporation. The corporation itself — not its board of directors — is generally the proper defendant. Individual directors or officers should be named only where there are allegations of separate and specific wrongdoing. Similarly, managing agents should not automatically be sued as substitutes for the corporation.

The case also demonstrates that governmental approval of a surcharge or policy does not automatically render it enforceable where it may conflict with a cooperative's governing documents. Cooperatives implementing government-approved policies should ensure strict compliance with all procedural requirements under both applicable regulations and their governing documents. Where governing documents arguably impose stricter standards, courts may require adherence to those standards as well.

CONSTRUCTION DEFECTS

BD. OF MGRS. OF THE 432 PARK CONDO. V. 56TH WSP USA BLDGS., INC.

2026 NY SLIP OP 31028(U) (SUP. CT. N.Y. CNTY. MAR. 18, 2026)

Court Keeps 432 Park Fraud Claims Alive

SQUIB BY KRISTIN PENDERGRASS, COUNSEL, SEYFARTH SHAW LLP

OUTCOME: Decided, in Part, for Plaintiff Condo

WHAT HAPPENED: On Sept. 23, 2021, the board of managers of The 432 Park Condominium commenced a construction defect action against the condominium's sponsor, 56th and Park (NY) Owner, LLC, and its principals, alleging defects in the construction of the condominium building and failure to comply with the offering plan.

The board alleged numerous defects in the construction of the 102-story building, including severe cracking and deterioration in the building's distinctive white concrete façade. During discovery in late 2024, after several years of litigation, the board uncovered emails and other evidence that it claimed showed the sponsor deliberately misrepresented and concealed defects in the building's façade and structure while constructing and marketing the condominium.

According to the board, the evidence showed that the sponsor had been advised, both before and during construction, that exposed white concrete was not a suitable material for the façade because it lacked sufficient strength to support the structure and withstand lateral wind forces. Despite those warnings, the sponsor proceeded with construction using exposed white concrete.

The board further alleged that when cracks and other defects later appeared, the sponsor rejected recommendations from its engineers in favor of a less comprehensive repair approach designed to preserve the building's aesthetic appearance. According to the board, the sponsor nevertheless continued to make inaccurate representations regarding the façade's condition in the condominium offering plan and in filings with the New York City Department of Buildings.

The board sought leave to amend its complaint to add fraud claims based on the alleged misrepresentations. Supreme Court denied that request, finding that amendment would substantially delay the litigation and prejudice numerous third-party defendants already involved in the construction defect action. Instead, the court directed the board to commence a separate fraud action.

On April 25, 2025, the board commenced this action, asserting fraud claims against the sponsor, the sponsor's engineer and architect, and the sponsor's

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marketing agent, as well as aiding and abetting fraud claims against the sponsor's engineer, marketing agent and parent company, CIM Group, LP.

IN COURT: Four of the five defendants, including CIM, moved pre-answer to dismiss the complaint for failure to state a cause of action. The court largely denied the motions, finding that the complaint was sufficiently pled. However, the court granted CIM's motion to dismiss the aiding and abetting fraud claim asserted against it.

The court held that the complaint alleged CIM directly participated in the alleged fraudulent conduct, rather than substantially assisting another party's fraud. The court further found that, as alleged, CIM and the sponsor effectively operated as the same entity because the sponsor acted entirely through CIM and its employees.

Based on those findings, the court dismissed the aiding and abetting fraud claim against CIM but granted the Board leave to replead and assert a direct fraud claim against CIM.

TAKEAWAY:

Developers cannot necessarily avoid liability for construction defect claims merely by operating through a single-purpose sponsor entity. Where a parent company is directly involved in the development, construction and marketing of a condominium, courts may permit claims against the parent company itself.

Here, the board alleged that the sponsor had no employees of its own and operated entirely through CIM and its personnel. The court concluded those allegations were sufficient to support a potential direct fraud claim against CIM, rather than merely an aiding and abetting theory.

Several parties have filed notices of appeal, and the Appellate Division, First Department, is likely to further address the scope of potential liability for parent entities in condominium construction defect litigation.

CONTEMPT

BD. OF MGRS. OF THE ALFRED CONDO. V. MILLER

653433/2020 (SUP. CT. N.Y. CNTY. APR. 15, 2026), NYSCEF NO. 266

Court Holds Unit Owner in Contempt Over Failure to Remedy Dangerous Alterations

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

OUTCOME: Decided for Plaintiff Condominium

WHAT HAPPENED: In a case previously reported by the Tracker, the condominium moved to hold a unit owner in contempt for repeatedly failing to comply with court orders directing him to "correct, repair and remedy all unauthorized alterations and illegal conditions created in his unit."

The court described the conditions as dangerous alterations within the unit that posed a threat to the remainder of the condominium building.

The initial remediation order was issued in July 2024. Rather than comply, the unit owner moved a tenant into the apartment, which interfered with the condominium's efforts to remedy the conditions. The unit owner

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TAKEAWAY:

Obtaining a court order does not necessarily guarantee compliance. Even where dangerous building conditions are involved, boards may still face prolonged enforcement battles requiring repeated court intervention.

This case illustrates the broad enforcement powers available to courts in contempt proceedings, including monetary sanctions and, in extreme circumstances, imprisonment. Courts, however, often provide parties with multiple opportunities to cure noncompliance before imposing the harshest penalties.

Boards confronting unauthorized alterations or unsafe conditions should be prepared for the possibility of extended litigation and ongoing enforcement efforts, even after securing favorable court orders.

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refused to permit repairs until the tenant vacated the apartment.

An earlier contempt application resulted in an order permitting the unit owner to purge the contempt by directing his architect to provide plans and descriptions explaining how the remediation work would be completed. The unit owner failed to comply with that order.

Subsequent interim orders establishing firm deadlines for specified corrective actions were likewise ignored. Nearly two years after entry of the original remediation order, the required work still had not been performed.

IN COURT: The court ultimately held the unit owner in contempt and directed him to pay the condominium's attorneys' fees, architect fees and remediation costs incurred to date.

The court stated that imprisonment was warranted under the circumstances but held imprisonment in abeyance for 60 days to permit the unit owner an opportunity to purge the contempt. To do so, the unit owner was required to provide specified documentation, ensure the tenants vacated the apartment, and confirm that contractors had been retained, paid and scheduled to commence remediation work.

CONTRACTS

SWART V. MERCER SQ. OWNERS CORP.

2026 NY SLIP OP 30858(U) (SUP. CT. N.Y. CNTY. FEB. 17, 2026)

Lease Language Limits Flood Liability

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: The plaintiff is a cooperative unit owner at 250 Mercer St. in Manhattan; the defendant is the cooperative corporation that owns the building. The dispute arose from a radiator leak and the resulting water damage to plaintiff's apartment.

A cracked radiator caused flooding in the apartment. The plaintiff claimed damages totaling several hundred thousand dollars, including the cost to reconstruct the apartment, repair damage, cover alternative living expenses, and pay legal fees. The co-op and its representatives agreed that the flooring was the building's responsibility and agreed to pay for replacement of the floors. The remainder of the claimed damages was disputed.

IN COURT: The matter proceeded to a bench trial. Testimony was heard from the plaintiff's design and architectural consultant who managed the repairs; the plaintiff; the plaintiff's tenant who occupied and later vacated the apartment; a representative of the co-op's managing agent; the building resident manager; and a building resident who also served as a board member.

Ultimately, the case turned on interpretation of the proprietary lease and whether the cracked radiator constituted "standard building equipment," which would have made the co-op legally responsible for the damage. The court analyzed the relevant lease provisions and concluded that the cracked radiator was not "standard building equipment" under the lease. The court further found that the plaintiff failed to establish otherwise.

As a result, the plaintiff's claims for hundreds of thousands of dollars in damages were denied. The plaintiff was awarded only the flooring replacement costs that the co-op had already agreed to pay.

TAKEAWAY:

As is often the case in co-op disputes, the proprietary lease controlled the outcome. Questions of fairness, causation and the scope of damages all took a back seat to the lease language and its interpretation.

The court held that the co-op's responsibility for "standard building equipment" did not extend to a cracked radiator. Boards, shareholders and their counsel should closely review proprietary lease provisions governing maintenance and repair obligations before assuming responsibility for water damage claims.

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DEFAMATION

VICTOR V. BD. OF MGRS. OF MANHATTAN PLACE CONDO.

2026 NY SLIP OP 31337(U) (SUP. CT. N.Y. CNTY. MAR. 31, 2026)

Court Dismisses Defamation and Fiduciary Duty Claims Against Condo Board

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

OUTCOME: Decided for Condo Defendant

WHAT HAPPENED: The plaintiff, Adam Victor, is a unit owner in the defendant condominium. He was a longtime board member and former president of the board of managers. The relationship between the plaintiff and the current board is "contentious," including prior and pending litigation between the parties.

At an annual meeting of the condominium's unit owners in July 2024, a PowerPoint presentation was shown in which one slide stated: "$519K are the estimated number which related to hallway holdover." The plaintiff interpreted this as communicating to other unit owners that he was more than $500,000 in arrears, with the "hallway holdover" referring to a pending Supreme Court action between him and the condominium concerning the hallway connecting his apartments.

Additionally, an email allegedly was sent to condominium unit owners claiming that plaintiff "wore an ankle bracelet for 6 months under house arrest mandated by a judge on financial corruption."

Plaintiff also alleged various instances of mismanagement by the condominium board, including settling a $6 million lawsuit for no money, instituting a $3 million assessment for an elevator project that allegedly could have been completed for $600,000 a decade earlier, removing a bromine system from the building's pool and replacing it with a chlorine system, unnecessarily renovating the lobby, removing landmark bricks from the sidewalk outside the building, promoting an employee accused of sexual assault, and failing to ensure 24/7 custodial care.

IN COURT: The plaintiff sued asserting causes of action for defamation, based on the PowerPoint slide and email, and breach of fiduciary duty based on the alleged mismanagement. The condominium moved to dismiss both claims.

The court held that the defamation claim based on the PowerPoint presentation was deficient because the complaint did not identify who made the statement or the manner in which it was published—whether spoken, displayed, distributed, or otherwise conveyed. The court also found that the slide did not sufficiently identify the plaintiff as its subject because it did not identify him by name, unit number, or otherwise on its face.

Further, the court found there was no reason to conclude that an ordinary unit owner viewing the slide would interpret it to mean plaintiff was $500,000 in arrears, as opposed to reflecting estimated litigation costs, projected exposure, settlement posture, or something else.

Regarding the email, the court found the complaint failed to state a cause of action because it did not specify when the email was sent, who sent it, or facts supporting plaintiff's allegation that the condominium published the statement. Plaintiff alleged only, upon information and belief, that the email was sent by a former employee, but pleaded no basis to attribute the email to the condominium.

The court further held that, even if plaintiff had adequately pleaded defamation, the claim would be barred by the qualified common-interest privilege because the statements concerned condominium affairs in which all unit owners shared an interest and plaintiff failed to plead malice.

The court also held that because the PowerPoint slide did not constitute defamation per se, plaintiff was required to plead special damages, which he failed to do. The alleged email, however, did constitute defamation per se because it imputed criminal conduct.

As to the breach of fiduciary duty claim, the court found the claim derivative in nature and dismissed it because plaintiff failed to plead it derivatively, failed to

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make the requisite pre-suit demand or adequately plead demand futility, and because most of the challenged conduct involved "quintessential discretionary governance decisions" protected by the business judgment rule.

Finally, the court found there was no basis for individual liability against board members because the complaint contained no allegations of conduct by the individual directors separate from the board's collective decisions.

TAKEAWAY:

Courts remain reluctant to second-guess discretionary board decisions absent clear allegations of bad faith, self-dealing or misconduct outside the protection of the business judgment rule.

Defamation claims arising from condominium disputes also face significant pleading hurdles. Plaintiffs must identify who made the alleged statements, how they were published and why the statements are actionable. Communications concerning condominium affairs may additionally be protected by the common-interest privilege.

Boards, however, should still exercise care when communicating with unit owners, particularly through presentations, newsletters and mass emails. Clear, accurate and measured communications can help reduce the risk of litigation, even where claims ultimately may lack merit.

DISCRIMINATION

BRUNI V. BD. OF MGRS. OF THE TRAFALGAR HOUSE CONDO.

2026 NY SLIP OP 01843 (1ST DEP'T MAR. 26, 2026)

Unequal Enforcement Keeps Bias Claims Alive

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

OUTCOME: Decided for Plaintiff Unit Owners

WHAT HAPPENED: The plaintiffs, Evelyn Bruni and her husband, Francesco Bruni, purchased apartment 11-C at The Trafalgar House Condominium, located at 120 E. 90th St. in Manhattan, for $650,000 in September 2004. Ms. Bruni, who is from the Dominican Republic, had lived in the building since approximately 1990. Mr. Bruni is an architect from Italy.

Ms. Bruni testified that when she applied for a position on the condominium board, the defendants selected a Caucasian man instead, despite her lengthy residency and relevant experience. According to her testimony and emails exchanged among the defendants, the plaintiffs were subjected to additional requirements for alterations to their apartment that were not imposed on nonminority owners. Internal emails also allegedly contained derogatory references to the plaintiffs.

Ms. Bruni was later elected to fill a vacancy on the board. She testified that she was treated differently from other board members. The plaintiffs further claimed that after their attorney sent letters complaining about unequal treatment, the board retaliated against them.

Among other things, the defendants allegedly required the plaintiffs to open newly tiled bathroom walls so the board could inspect whether "check valves" had been installed inside the shower wall, even though other non-Hispanic and non-immigrant owners performing similar work were not subjected to the same requirement. The plaintiffs also alleged selective enforcement of carpet and rug rules.

IN COURT: In 2009, the plaintiffs sued the board of managers, individual board members, and the property manager, alleging discrimination and retaliation in violation of the New York City Human Rights Law and the federal Civil Rights Act.

After years of litigation, the defendants moved in 2021 for partial summary judgment dismissing the discrimination and retaliation claims. The motion court denied the request, and the defendants appealed.

The Appellate Division, First Department, unanimously affirmed.

The court held that the plaintiffs met their initial burden of demonstrating that they belonged to protected classes and that the challenged conduct occurred under circumstances supporting

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an inference of discrimination.

The defendants argued there was no evidence that they used racial epithets or made overtly discriminatory comments concerning the plaintiffs' national origin, race, or accents. The court rejected that argument, finding that the derogatory language reflected in the emails could support an inference of discriminatory animus when considered together with the remaining evidence.

The defendants also contended that they had legitimate, non-discriminatory reasons for their conduct. The court found that argument unpreserved for appellate review because it had not been properly raised before the motion court. In any event, the court held that factual issues remained as to whether discrimination played a role in the defendants' conduct.

The court further held that factual disputes precluded dismissal of the retaliation claim because the alleged retaliatory actions could reasonably deter a person from engaging in protected activity.

TAKEAWAY:

Boards must enforce bylaws, house rules, and alteration requirements consistently among all unit owners. Board decisions should be carefully documented and often should be made with the guidance of counsel.

Boards and managing agents should exercise particular caution when actions affect members of protected classes. Federal law prohibits discrimination based on race, color, national origin, religion, sex, familial status, and disability. New York State and New York City Human Rights Laws extend protection to additional categories, including age, marital status, military status, lawful source of income, citizenship or immigration status, lawful occupation, partnership status, height and weight, status as a victim of domestic violence or sex offenses, and criminal history.

Once a unit owner raises allegations of unlawful discrimination, boards must also take care to avoid conduct that could later be characterized as retaliatory.

EVICTION/TERMINATION

MEADOWWOOD TOWERS II LLC V. STEWART

2026 NY SLIP OP 50316(U) (N.Y. CIV. CT. KINGS CNTY. MAR. 13, 2026)

Unsold Shares Can Create Long-Term Liability

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

OUTCOME: Decided for Respondent

WHAT HAPPENED: The petitioner, a landlord and corporate entity, commenced a holdover proceeding after serving respondent Debora Stewart with a 90-day termination notice. The petitioner alleged the apartment was exempt from Good Cause Eviction protections because it was part of a cooperative.

The respondent moved for summary judgment dismissing the proceeding, arguing that she was a non-purchasing tenant protected under the Martin Act and that the petition and predicate notice failed to plead a lawful basis for terminating her tenancy.

The respondent supported her motion with a 2021 lease, a 2023 renewal lease and documents concerning the ownership history of the cooperative, including a 2006 letter reflecting sponsor ownership and a 2021 deed transferring the property between corporate entities. The respondent argued that, under Paikoff v. Harris, 185 Misc. 2d 372 (2d Dep't 1999), tenants who take possession after a cooperative conversion may still qualify for Martin Act protection where shares remain unsold and have not been purchased for occupancy.

The petitioner, relying on First Department authority, opposed the motion and argued that recognizing the respondent's position would improperly create a perpetual tenancy not contemplated by the Martin Act. In reply, the respondent submitted the cooperative bylaws and proprietary lease to further demonstrate that the subject shares remained unsold and had never been purchased by an owner-occupant.

IN COURT: The court analyzed the motion under the summary judgment standard and found that

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the respondent met her burden by demonstrating the absence of any material issue of fact. The court reiterated that summary judgment is appropriate where the moving party establishes entitlement to judgment as a matter of law and that disputed inferences preclude relief only where they raise genuine factual issues.

On the merits, the court held that the Martin Act protects non-purchasing tenants in cooperative conversions and that sponsor-held or otherwise unsold shares remain unsold until purchased by someone for occupancy. Because the property had been transferred among related entities without any purchase by an occupant-owner, the court concluded the petitioner remained the holder of unsold shares and had not established any exemption from the Martin Act protections applicable to the respondent.

The court therefore granted the respondent's motion for summary judgment and dismissed the proceeding without prejudice. The court found that the petition failed to allege a lawful basis for terminating a tenancy protected under the Martin Act and improperly characterized the respondent's tenancy. The court's reasoning focused on the petitioner's failure to plead around the statutory protections and the continuing classification of the apartment as "unsold shares."

TAKEAWAY:

Where shares remain unsold and no purchase for occupancy has occurred, Martin Act protections may continue even after subsequent transfers among corporate owners. A landlord's eviction strategy therefore must account for the precise status of the shares and the governing conversion documents. Merely asserting that an apartment is part of a cooperative — and therefore exempt from Good Cause Eviction protections — does not override the separate protections afforded under the Martin Act.

For cooperative boards and owners, the broader lesson is that unsold shares can carry long-term legal consequences. Ownership history matters, and deeds, proprietary leases, offering plans and bylaws should be reviewed together before attempting to terminate a tenancy.

Before serving a termination notice or commencing a holdover proceeding, boards should confirm the apartment's exact status under the offering plan and related transfer documents. Where the records reflect sponsor or unsold-share status, the tenancy may carry statutory protections beyond those applicable to an ordinary holdover proceeding.

FIDUCIARY DUTY

SAWYER V. 1120 FIFTH AVE. CORP.

2026 NY SLIP OP 30987(U) (SUP. CT. N.Y. CNTY. MAR. 17, 2026),

Motion to Dismiss Derivative Action Denied

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

OUTCOME: Defendants' Motion Denied

WHAT HAPPENED: Plaintiff Elizabeth Sawyer initiated a shareholder derivative action against the co-op and its board members for breach of fiduciary duty. Her complaint alleged that things were fine throughout the first 17 years she resided in her apartment, but that during the following decade she was harassed, intimidated and retaliated against by the defendants through a series of actions. These included an effort to terminate her proprietary lease and evict her from her home during the COVID-19 pandemic, as well as allegedly fraudulently and surreptitiously notifying her mortgage lender that she owed the co-op tens of thousands of dollars that were not actually due.

She brought this action derivatively on behalf of the co-op and its shareholders, alleging breaches of fiduciary duty by the board members, who she claimed operated the co-op to promote their own self-interests rather than the best interests of the co-op and its shareholders. She further alleged that the board awarded an elevator contract to a company owned by a cousin of the president of the board and engaged in expensive litigation that resulted in increased insurance costs.

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IN COURT: The court held that motions to dismiss pursuant to CPLR 3211(a)(7), unlike motions for summary judgment pursuant to CPLR 3212, are governed by far more relaxed pleading standards. However, the court noted that this does not mean the legal elements required to bring a shareholder derivative action may be ignored.

Procedurally, shareholder derivative actions generally require a shareholder to make a demand upon the board to take appropriate action. The reason, the court explained, is the "basic principle of corporate control—that the management of the corporation is entrusted to the board of directors, who have the primary responsibility for acting in the name of the corporation and who are often in a position to correct alleged abuses without resort to the courts."

Here, Sawyer argued that after making several requests that the board take appropriate action, any further demand upon the board would have been futile because of the board members' self-interest in the outcome. The court accepted that argument and held that a demand upon the defendants would have been futile under the circumstances presented.

The court also noted that "the capacity of shareholders in a cooperative apartment building to bring a derivative action is without question since cooperatives are organized as corporations under the Business Corporation Law [§ 626] . . . ."

The decision has been appealed to the Appellate Division.

TAKEAWAY:

Shareholder derivative actions are a powerful legal remedy strictly governed by Business Corporation Law § 626, which specifies the elements that must be pleaded and proven when a shareholder seeks to assume some portion of management authority from a duly elected board.

Ironically, this case — based in part upon allegations that the board engaged in expensive litigation — has itself been pending for more than five years and generated more than 500 filed documents, 14 motions and three appeals to the Appellate Division. As an appeal of this decision is now pending, no end to the litigation appears to be in sight. The court has barely approached the underlying merits of the disputes.

Parenthetically, the BCL statutes pertaining to shareholder derivative actions and certain other matters are also applied to condominiums. In addition, although rarely in New York, condominium boards may incorporate under New York law. See Real Property Law § 339-v(1)(a). Such incorporation must remain consistent with the Condominium Act and the nature of the condominium form of ownership. One possible reason for incorporation is to limit personal liability of board members for actions taken on behalf of the board.

FRAUD

269 W. 87TH ST. APT. CORP. V. QSB 267 PROP. CO, LLC

2026 NY SLIP OP 50450(U) (SUP. CT. N.Y. CNTY. APR. 1, 2026)

Due Diligence Matters in Co-op Purchases

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

OUTCOME: Decided for Defendants

WHAT HAPPENED: The plaintiffs consisted of a residential cooperative corporation and certain shareholders. The defendants included the sponsor/developer of the cooperative, the sponsor's principals, and sponsor-appointed members of the cooperative's board of directors.

The sponsor originally held the ground lease for the cooperative building before assigning and conveying it to the cooperative. The plaintiffs alleged that the terms of the ground lease differed materially from representations made in the cooperative's offering plan, upon which the plaintiffs claimed they relied when purchasing their shares.

Based on those alleged misrepresentations, the plaintiffs commenced an action seeking monetary damages.

IN COURT: The plaintiffs asserted

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claims for breach of contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing, fraud, breach of fiduciary duty, and voidable transactions.

The defendants moved to dismiss the claims in a series of motions, all of which the court granted.

The court dismissed the breach of contract and unjust enrichment claims because the plaintiffs failed to adequately plead the required elements. The claim for breach of the implied covenant of good faith and fair dealing was dismissed as duplicative of the breach of contract claim. The breach of fiduciary duty claim was dismissed as time-barred.

The court also dismissed the fraud claims. The offering plan expressly directed purchasers to review the ground lease, which was available before the shareholders purchased their cooperative interests. The court held that had the plaintiffs reviewed the ground lease as part of their due diligence, they could not plausibly claim they were misled regarding the lease terms or the contents of the offering plan.

In addition, the court dismissed the fraud claims and the voidable transaction claim because the allegations were not pleaded with sufficient particularity as required under CPLR § 3016(b).

TAKEAWAY:

Prospective purchasers of cooperative shares should conduct careful due diligence before closing, including reviewing not only the offering plan itself but also all documents referenced in the offering materials.

Courts are often reluctant to allow fraud claims to proceed where the allegedly misleading information could have been discovered through reasonable review of available documents before purchase. Sponsors, boards, and purchasers alike should recognize the importance of clear disclosure and careful document review in cooperative transactions.

HOUSE RULES

10MSW17D LLC V. BD. OF MGRS. OF 10 MADISON SQUARE W., LLC

2026 NY SLIP OP 31427(U) (SUP. CT. N.Y. CNTY. APR. 6, 2026)

Court Upholds Condo's Authority to Restrict Amenity Use

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

OUTCOME: Decided for Defendant Condominium and Board of Managers

WHAT HAPPENED: A dispute arose between condominium unit owner 10MSW17D LLC and the condominium located at 10 Madison Square West concerning use of the building's amenities. The condominium was established pursuant to a declaration and bylaws dated Dec. 10, 2013, and recorded Jan. 24, 2014.

In September 2016, the LLC purchased a residential unit in the condominium. The LLC had five members, all immediate family members, who allegedly purchased the unit with the understanding that unit owners would be permitted to use the condominium's amenities.

The amenities included a fitness center, private workout rooms and a Pilates studio operated by affiliated entities collectively known as "The Wright Fit." One member of the LLC, Erica Rieders, regularly used the fitness center and Pilates studio.

On Dec. 7, 2023, Rieders arrived for a reserved Pilates session and allegedly encountered another unit owner and board member using the room. According to the complaint, the board member "accosted" Rieders after she opened the door.

The following day, the condominium's senior property manager circulated an email reintroducing amenity-use rules and explaining that the rules were intended to ensure "a safe and enjoyable visit." The email stated that use of the fitness center, pool area, locker rooms and children's playroom was limited to unit owners, occupants and members of their full-time households residing in the unit. Non-resident friends and family members could use the amenities only when accompanied by a unit owner or occupant.

A subsequent email from management further clarified the categories of permitted users and

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the restrictions applicable to daytime visitors and overnight guests. The rules also limited the ability of non-full-time residents to reserve private amenity spaces or bring in outside trainers or therapists.

Rieders nevertheless continued using the facilities. According to the complaint, The Wright Fit warned her that she was violating the condominium's rules and later advised her Pilates instructor that the instructor could be banned if sessions continued.

The LLC thereafter commenced an Article 78 proceeding combined with an action for declaratory and injunctive relief against the condominium, challenging the amended amenity rules. The LLC alleged that the board improperly amended the bylaws without the required vote of unit owners, violated the Condominium Act and lacked authority under the governing documents to restrict use of common elements. The LLC also asserted claims for breach of fiduciary duty, negligence and related relief.

The condominium and board members denied the allegations and maintained that the rules were adopted in good faith to prevent excessive wear and tear and ensure a safe and enjoyable experience for residents. The defendants moved to dismiss the action.

IN COURT: The court consolidated the related proceedings and first reviewed the standards governing motions to dismiss and Article 78 proceedings. The court explained that where a condominium board's actions are challenged, courts apply the business judgment rule and limit their review to whether the board acted within the scope of its authority, in good faith and in furtherance of legitimate condominium interests.

The court then conducted a detailed analysis of the condominium's declaration, bylaws and rules and regulations. The court found that the governing documents expressly authorized the board to adopt, amend and modify rules governing the operation of the condominium and use of the common elements.

Among other provisions, the court cited bylaws authorizing the board to "modify, amend or add to" the rules and regulations, subject to override by a majority of unit owners. The court also cited provisions authorizing the board to make determinations concerning the operation, maintenance and management of the condominium and to adopt rules necessary to preserve the building's safety, character and operation.

Based on those provisions, the court held that the board acted within its authority in adopting the amended amenity rules without a unit-owner vote. The court further found that the stated reasons for the amendments — preventing excessive wear and tear and maintaining a safe and enjoyable environment — were legitimate condominium purposes.

The court rejected the LLC's claims that the amendments were retaliatory or intended to provide competitive advantages to particular residents, finding those allegations speculative and unsupported by facts.

Accordingly, the court granted the defendants' motions to dismiss the LLC's claims in their entirety and granted declaratory relief in favor of the condominium and board. The court denied the condominium's request for sanctions. The decision has been appealed.

TAKEAWAY:

This decision strongly reinforces the broad authority condominium boards typically possess to adopt and amend house rules governing the use of common elements and amenities. Where governing documents expressly grant rulemaking authority, courts applying the business judgment rule generally will defer to board decisions made in good faith and for legitimate condominium purposes.

The case also highlights the importance of carefully reviewing governing documents before commencing litigation challenging board authority. Here, the court found that the condominium's bylaws and rules expressly authorized the board's actions, and the plaintiff's contrary arguments failed to overcome the deference afforded under the business judgment rule.

Yogi Berra, the Hall of Fame catcher who helped lead the New York Yankees to 10 World Series titles and won three American League MVP awards, was almost as famous for his quotable 'Yogisms' as for his baseball career. One of his best-known observations — 'You can see a lot by just looking' — fits this lawsuit perfectly. Just as Yogi's quote captured the value of paying attention on the baseball field, it also applies to condo owners and litigants who sue first and ask questions later. Here, the LLC and its members likely would have benefited from taking a closer look at the governing documents before challenging the board's authority to amend the rules and regulations.

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INJUNCTION

BD. OF MGRS. OF BRIDGE TOWER PLACE CONDO. V. CITY OF NEW YORK

2026 NY SLIP OP 31217(U) (SUP. CT. N.Y. CNTY. MAR. 27, 2026)

Court Dismisses Condo Board Challenge to Manhattan Shelter Project

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

OUTCOME: Decided for Defendants

WHAT HAPPENED: The City of New York and a nonprofit organization planned to open a homeless shelter housing approximately 200 women in the Lenox Hill neighborhood of Manhattan, across the street from a residential condominium building.

The New York City Department of Homeless Services (DHS) approved the project after completing an environmental assessment statement concluding that the facility would have no adverse environmental impact. The local community board also voted to support the proposal.

Residents expressed concerns regarding the shelter's potential effect on neighborhood safety, congestion, quality of life and overall neighborhood conditions. The board of managers of the condominium commenced an Article 78 proceeding challenging DHS's approval of the project and seeking injunctive relief preventing the shelter from opening.

The board alleged DHS failed to comply with required environmental review and land-use procedures.

IN COURT: The court denied the condominium board's motion for a preliminary injunction and granted the nonprofit organization's motion to dismiss.

The court held that the board's claims seeking to annul DHS's approval of the project were time-barred because the proceeding was commenced more than eight months after DHS issued its approval. Under Article 78, proceedings challenging determinations by governmental bodies or officers must be commenced within four months after the determination becomes final and binding.

The court further held that, although timely, the board's claim seeking to void the contract relating to the shelter project was not properly brought in an Article 78 proceeding because DHS's determination was discretionary and therefore not subject to judicial review in that context.

The decision has been appealed to the Appellate Division.

TAKEAWAY:

Courts generally afford substantial deference to municipal agencies in matters involving homeless shelters and supportive housing, particularly where the agency has completed the required environmental review process.

Community opposition alone is rarely sufficient to overturn agency determinations. Courts are reluctant to second-guess discretionary governmental decisions absent clear evidence of statutory violations, procedural defects or unaddressed environmental impacts.

The case also serves as a reminder that Article 78 proceedings are subject to strict filing deadlines. Challenges to governmental determinations generally must be commenced within four months after the agency decision becomes final and binding.

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INSURANCE

ARGONAUT INS. CO. V. CIVIN

1:24-CV-00808-OTW (S.D.N.Y. MAR. 13, 2026) ECF NO. 77

Condo Insurer's Subrogation Claim Against Unit Owner Survives Summary Judgment

SQUIB BY ANDREW P. BRUCKER, PARTNER, FOX ROTHSCHILD

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: Michael Civin owned a residential condominium unit at Windows on 123 Loft Condominium Association. Civin hired Lillis to perform work in the unit. After finishing work for the day, the contractor allegedly left the balcony door open, causing a pipe in the unit to freeze and burst. The resulting flood caused damage to the building.

Argonaut, the condominium's insurer, paid for the repairs and then commenced a subrogation action against Civin and Lillis, alleging they caused the loss.

Civin moved for summary judgment seeking dismissal of the claims, arguing that subrogation rights had been waived under both the condominium's bylaws and the insurance policy itself.

IN COURT: The court denied the motion for summary judgment.

The court held that neither the bylaws nor the insurance policy contained an express waiver of subrogation rights. The court noted that waivers of subrogation must be stated clearly and unambiguously.

The insurance policy provided that "you may waive your rights against another party in writing . . . ." The court found this language merely permissive and held that it did not, by itself, constitute a waiver of subrogation rights.

The condominium bylaws similarly stated that "[t]o the extent obtainable at a cost deemed reasonable by the Board . . . all [insurance policies] shall contain waivers of subrogation . . . ." The court concluded this language also fell short of creating an actual and express waiver. At most, the language suggested a conditional or aspirational requirement rather than an unequivocal waiver.

TAKEAWAY:

Boards should periodically have insurance professionals review both their governing documents and insurance policies. Waivers of subrogation can significantly affect the rights and liabilities of unit owners and shareholders.

If a building intends to waive subrogation rights, the waiver language must be explicit and carefully drafted. Otherwise, unit owners may unexpectedly find themselves facing lawsuits brought by the building's own insurer after a loss — a potentially expensive surprise.

LABOR LAW

SANCHEZ V. 21-23 S. WILLIAM ST. LLC,

2026 NY SLIP OP 31215(U) (SUP. CT. N.Y. CNTY. MAR. 24, 2026)

Labor Law Liability Attaches in Sidewalk Bridge Accident

SQUIB BY INGRID C. MANEVITZ, PARTNER, SEYFARTH SHAW

OUTCOME: Decided for Plaintiff Against Condominium and Contractor; Decided for Commercial Unit Owne

WHAT HAPPENED: Defendant Block Hall Condominium Board of Managers retained defendant Amsterdam Restoration LLC to perform exterior façade work, including installation of a sidewalk shed and suspended scaffolding. Amsterdam subcontracted part

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of the work to defendant Modern Restoration Corp.

Plaintiff Gustavo Sanchez, an employee of Modern, was assigned to assist in dismantling components of a sidewalk bridge. While working on the bridge, a portion of the decking or planking shifted, causing him to lose his footing and fall to the sidewalk below. Sanchez was not provided with a safety harness, net, lifeline or other fall-protection device. He fractured his left heel and underwent surgery approximately one week later.

Sanchez asserted claims under Labor Law §§ 200 and 240(1), as well as common-law negligence, against Block Hall, Amsterdam, Modern and defendant Stone Street Partners LLC, a commercial unit owner in the building.

Sanchez moved for partial summary judgment on liability under Labor Law § 240(1) against Block Hall and Amsterdam. Amsterdam and Stone Street separately moved for summary judgment dismissing the complaint and all cross-claims against them.

IN COURT: The court granted Sanchez's motion for partial summary judgment against Block Hall and Amsterdam under Labor Law § 240(1). The court held that the statute imposes absolute liability on owners and general contractors when a violation proximately causes injury, regardless of whether the injured worker was employed by a subcontractor or whether the owner or contractor supervised the work.

The court rejected Block Hall's attempt to create a factual dispute based on a workers' compensation acupuncture intake record stating that Sanchez "slipped and fell." The court found the record lacked foundation, constituted hearsay and did not contradict Sanchez's testimony that he fell after planking shifted beneath him.

The court also rejected Amsterdam's argument that it lacked day-to-day supervision over Sanchez's work, holding that a contractor cannot avoid statutory liability by delegating work to a subcontractor.

However, the court granted Amsterdam summary judgment dismissing the Labor Law § 200 and common-law negligence claims because Amsterdam did not employ Sanchez, direct his work or supervise the dismantling operation.

The court denied Amsterdam's request to dismiss cross-claims for contribution and indemnification as premature.

The court granted Stone Street's unopposed motion for summary judgment, finding that the commercial unit owner did not own, manage or control the building's common elements and had no authority over the work being performed. Accordingly, Stone Street could not be held liable under Labor Law §§ 200 or 240(1) or for common-law negligence. The court also dismissed all cross-claims against Stone Street.

TAKEAWAY:

Labor Law § 240(1) continues to impose broad liability on condominium owners and contractors in construction-related fall cases. Even where the injured worker is employed by a subcontractor and the owner or contractor exercises limited supervision, liability may still attach if proper fall-protection devices are not provided.

The decision also highlights the distinction between ownership and control of common elements. Here, the commercial unit owner avoided liability because it lacked authority over the work site and the building's common areas.

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PERSONAL INJURY

LIBERSON V. FELDMAN

2026 NY SLIP OP 30859(U) (SUP. CT. N.Y. CNTY. MAR. 9, 2026)

Plaintiff's Toxic-Exposure Claim Survives Dismissal Attempt

SQUIB BY PETER T. SALZLER, PARTNER, BRAVERMAN GREENSPUN, PC

OUTCOME: Decided, in Part, for Co-defendants

WHAT HAPPENED: The plaintiff was a rent-stabilized tenant at 235 West 75th St. As the building was converted into a condominium by the defendants, he became a month-to-month tenant in an apartment owned by the sponsor defendants.

The plaintiff alleged that in November 2014 he was exposed to an unspecified hazardous chemical or toxin released during renovation work in the building, causing vocal cord dysfunction and other respiratory issues. In March 2015, he sued the sponsor and related parties, asserting claims for negligence (toxic tort), breach of the implied warranty of habitability, breach of contract and covenant of quiet enjoyment, negligent misrepresentation, retaliation under the New York City Human Rights Law (NYCHRL), and piercing the corporate veil against the principal of the sponsor entity.

The defendants moved for summary judgment.

IN COURT: The court dismissed all claims except the negligence claim.

In toxic-tort cases, a plaintiff ultimately must establish both the identity of the toxin and sufficient exposure levels to support causation. However, on a summary judgment motion, the initial burden rests with the defendants to affirmatively establish that no such exposure occurred.

Here, the court found the defendants failed to meet that burden and instead merely attempted to highlight weaknesses in the plaintiff's proof by arguing that he had not performed sufficient testing. The court held that the plaintiff's circumstantial evidence — including the timing of his symptoms and the appearance of dust during renovations — was sufficient to raise triable issues of fact as to whether airborne irritants caused or contributed to his injuries.

The court dismissed the plaintiff's warranty of habitability, breach of contract/covenant of quiet enjoyment, and negligent misrepresentation claims because the plaintiff knowingly agreed to remain in the apartment during ongoing renovations, never vacated the premises, and failed to establish the existence of a dangerous condition within the apartment itself.

The retaliation claim was dismissed because the plaintiff failed to establish that he engaged in protected activity under the NYCHRL (Administrative Code of City of NY § 8-107[7]). The court also dismissed the veil-piercing claim because the plaintiff failed to present evidence that the sponsor's principal dominated the corporation or committed fraud or wrongdoing.

TAKEAWAY:

Although plaintiffs in toxic-tort cases ultimately bear the burden of proving both the identity of the harmful substance and sufficient exposure to it, defendants moving for summary judgment must "unequivocally establish" that no such exposure occurred.

Merely pointing to gaps in the plaintiff's testing or proof is insufficient to satisfy a defendant's prima facie burden. Had the defendants hoped to prevail on summary judgment, they likely needed affirmative expert proof establishing the absence of any causal connection between the renovation work and the plaintiff's alleged medical conditions.

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