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ACCESS

BD. OF MGRS. OF THE CLAREMONT S. CONDO. V. HUDSON MEWS APT. CORP.

2026 NY SLIP OP 31858(U) (SUP. CT. N.Y. CNTY. APR. 30, 2026)

Court Rejects Premature Access Petition Under Revised RPL 881

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

OUTCOME: Decided for Respondent Co-op

WHAT HAPPENED: Hudson Mews Apartment Corp., a cooperative at 256 W. 10th St. in Manhattan, owns a courtyard containing planters and two mature maple trees that predate the cooperative's conversion.

The neighboring Claremont South Condominium alleged that water infiltration into its basement was caused by tree roots penetrating its foundation. The condominium relied on an architect's report supporting that conclusion based on a non-invasive visual inspection. Hudson Mews disputed the claim and retained an arborist who (on the basis of a limited invasive inspection) reported that the tree roots ran parallel to the foundation and showed no evidence of penetrating the wall.

In 2025, the condominium sought access to the courtyard to perform repairs. The proposed work included demolition of the planter, removal of the trees, and excavation of a trench approximately 45 feet long and 8 feet deep.

Hudson Mews questioned whether the proposed work was necessary and requested additional information regarding alternative repair efforts and the alleged source of the water infiltration. It also sought access for its own professionals to inspect the condominium's basement conditions.

The condominium refused those requests and commenced a proceeding under Real Property Law §881 seeking a court-ordered license to enter the neighboring property.

IN COURT: The court dismissed the petition without prejudice.

The court found that Hudson Mews had not refused access, but instead had conditioned access on receiving additional information and conducting further investigation. As a result, one of

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the statutory prerequisites for relief under Real Property Law §881 (refusal of access) had not been satisfied.

The court also found that the condominium had failed to demonstrate whether the proposed repairs could not be accomplished without access to the neighboring property. According to the court, the record did not adequately address possible alternative repair methods or other potential causes of the water infiltration.

Both of these criteria needed to be satisfied as a condition of making a §881 filing. As a result, the court ruled that the petition was filed prematurely and dismissed the case without prejudice.

Before any renewed petition could proceed, though, the court directed the Condominium to undertake additional investigation and make the results part of its filing, including allowing access for inspections, a review of prior repair efforts, examination of the trees and root systems, and an appraisal addressing any potential diminution in value resulting from the permanent removal of the trees and planters.

The court indicated that it would consider an award of certain professional fees but declined to award attorneys' fees at that time for other reasons.

TAKEAWAY:

The 2024 amendments to Real Property Law §881 did not eliminate a petitioner's obligation to make a meaningful effort to resolve access disputes before seeking judicial intervention. Courts may require evidence that access was actually refused and that the proposed work could not reasonably be completed without entry onto neighboring property, both statutory requirements for filing.

The decision also demonstrates the increasing importance of documentation and pre-petition investigation in access-license proceedings. Property owners seeking access should be prepared to explain why alternative repair methods are inadequate and to address the impact of the proposed work on adjoining property owners.

Where significant alterations to neighboring property are proposed, including removal of mature landscaping or permanent changes to the site, the statute provides that courts also may require additional information regarding potential damages and diminution in value of the adjoining property before granting relief.

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BUSINESS JUDGMENT RULE

BD. OF MGRS. OF THE CENT. CONDO. V. JZ VILLA REALTY CORP.

2026 NY SLIP OP 31661(U) (SUP. CT. N.Y. CNTY. APR. 17, 2026)

Business Judgment Rule Bars Venting Dispute Claim

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

OUTCOME: Decided for Plaintiff Condominium Board

WHAT HAPPENED: The plaintiff is the board of managers of the Central Condominium, which contains 61 residential units and one commercial unit that is located in a portion of the basement and the first floor. The defendant owns the commercial unit at the condominium, which the defendant has leased to a deli.

In conjunction with the deli lease, the defendant wished to install venting along the courtyard roof of the building and proposed its plan to the board. The defendant requested the board's approval for its venting plan despite maintaining that the commercial unit owner had the right to install such venting under the bylaws. The board denied the request. According to the defendant, certain members of the board said that compensation would be required in order to approve the request.

IN COURT: In 2025, the board commenced this action against the defendant seeking to foreclose on a lien for unpaid common charges assessed to the defendant. The defendant answered and asserted a counterclaim against the board for breach of fiduciary duty related to the alleged request for compensation and denial of the venting request.

The board moved to dismiss the counterclaim for failure to state a claim, arguing that the decision to deny the venting installation was protected by the business judgment rule and that any request for compensation in return for permitting the venting installation could not be deemed a breach of fiduciary duty. The board further contended that the defendant, having brought a proceeding under Real Property Actions and Proceedings Law § 881 seeking a judicial license to enter upon the common elements to install the venting, had admitted that compensation in exchange for the installation would be proper. The board also contended that the claim for breach of fiduciary duty was not stated with sufficient particularity.

The defendant argued that the fiduciary duties owed to it as a unit owner were breached by demanding consideration in order to approve the venting expansion and by treating the defendant unequally and unfairly. The defendant further contended that its allegations of bad faith were sufficient to state a claim at this stage of the litigation.

The court sided with the board and dismissed the breach of fiduciary duty counterclaim. The court said that the board was correct in that the defendant had acknowledged, through the filing of an RPAPL license proceeding, that there might need to be compensation in exchange for the taking of the common elements in question. The court said that, on the facts alleged, the defendant had not alleged a valid claim for breach of fiduciary duty that would override the business judgment rule.

TAKEAWAY:

Under the business judgment rule, courts will not substitute their own judgment for the decisions of a board taken in good faith, for the overall purposes and goals of the condominium or cooperative, and within the scope of its delegated authority. As the court noted, allegations that a board acted in bad faith and out of animus toward a particular unit owner or shareholder may be sufficient to prevail at the motion-to-dismiss stage on a claim for breach of fiduciary duty.

However, the record showed that the proposed vent installation would take away a portion of condominium common elements. That went beyond the commercial unit owner's rights under the governing documents to perform renovations within the confines of its own unit. As a result, the court saw no merit in the commercial unit owner's allegations of bad faith or unfair treatment.

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CONSTRUCTION DEFECTS

BD. OF MGRS. OF THE 51 JAY ST. CONDO. V. 201 WATER ST., LLC

2026 NY SLIP OP 02812 (2ND DEP'T. MAY. 6, 2026)

Sponsor Board Members Face Fiduciary Duty Claims

SQUIB BY DALE J. DEGENSHEIN, PARTNER, FOX ROTHSCHILD LLP

OUTCOME: Decided, in Part, for Condominium Plaintiff

WHAT HAPPENED: The sponsor formed 201 Water Street, LLC to develop and sell units in a condominium building in Brooklyn. Beginning in 2017, units were sold and occupied while the condominium's board of managers remained controlled by three individuals who allegedly were principals of the sponsor.

In 2019, the board expanded from three members to five, giving unit owners a majority of seats. After assuming control, the owner-elected board allegedly discovered significant construction defects and claimed the sponsor had failed to properly repair and maintain the building.

The board further alleged that the sponsor distributed proceeds from unit sales to affiliates and members, leaving the sponsor without sufficient assets to satisfy potential liabilities arising from the alleged defects.

The condominium commenced an action asserting claims for breach of contract, fraudulent inducement, breach of fiduciary duty, and fraudulent conveyance. Following a motion to dismiss, both sides appealed portions of the trial court's ruling.

IN COURT: The Appellate Division held that the fraudulent inducement claim should be dismissed because it was based on the same allegations underlying the breach of contract claim. The court noted that a fraud claim cannot be maintained where it merely duplicates a contract claim.

The court reached a different conclusion regarding the fiduciary duty claim against the sponsor-appointed board members. Accepting the allegations as true for purposes of the motion, the court found the complaint adequately alleged that the sponsor board members engaged in self-dealing and actively participated in conduct detrimental to the unit owners.

The court also reinstated claims alleging fraudulent conveyances under the Debtor and Creditor Law. The complaint sufficiently alleged that proceeds from unit sales were distributed to affiliates and members, potentially rendering the sponsor insolvent or inadequately capitalized to meet its obligations.

Accordingly, the court allowed the fiduciary duty and fraudulent conveyance claims to proceed.

TAKEAWAY:

Sponsor-controlled boards owe fiduciary duties to the condominium and its unit owners. Although board members generally receive the protection of the business judgment rule, that protection may not apply where allegations involve self-dealing, fraud, or other misconduct.

The decision also illustrates the risks that can arise during the period when a sponsor controls a condominium board. Once unit owners obtain control, they may wish to review the building's physical condition, financial records, and significant transactions undertaken during sponsor control.

Finally, construction defect claims may be accompanied by allegations that sponsor assets were transferred to related parties. Where a complaint adequately alleges that such transfers left a sponsor unable to satisfy potential liabilities, fraudulent conveyance claims may survive a motion to dismiss.

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DISCRIMINATION

FORRESTER V. 640 PARK AVE. CORP.

2026 NY SLIP OP 02779 (1ST DEP'T. MAY. 5, 2026)

Discrimination Claims Revived in Failed Co-op Unit Sale

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

OUTCOME: Decided for Plaintiff Purchaser

WHAT HAPPENED:
Plaintiff Forrester, a Black female nurse practitioner, sought to purchase a medical office unit in a cooperative building at 640 Park Ave. in Manhattan.

The unit owner, Dr. Tichenor, had marketed the unit for approximately two years before Forrester submitted a full-price cash offer. She also agreed to escrow two years of maintenance payments. Tichenor initially accepted the offer and forwarded a contract for execution.

After Forrester signed and returned the contract, Tichenor declined to proceed with the transaction. According to the complaint, he provided no explanation for the decision and instead sold the unit to a white male board member who was not a medical professional and had not previously expressed interest in purchasing the space.

Forrester subsequently commenced an action alleging unlawful discrimination based on race and gender against Tichenor, the cooperative, its managing agent and others.

IN COURT: The cooperative and its managing agent moved to dismiss the claims against them. The motion did no seek to dismiss the complaint against Dr. Tichener, the seller. The trial court granted the motion, but the Appellate Division reversed and reinstated the claims against the co-op and its managing agent, who also acted as the broker.

The appellate court held that the complaint adequately alleged facts supporting an inference of discrimination at the pleading stage. The court noted that Tichenor withdrew from the transaction after receiving a signed contract and shortly thereafter sold the unit to a board member who allegedly had no apparent need for a medical office.

The court found that the complaint sufficiently alleged potential involvement by the cooperative and its managing agent. The managing agent allegedly participated in Forrester's application process and also acted as broker for the board member who ultimately purchased the unit.

Accepting the allegations as true, as required on a motion to dismiss, the court concluded that discovery should proceed. The defendants' submissions were insufficient to conclusively refute the allegations or eliminate the inference of discrimination at this stage of the case.

TAKEAWAY:
Discrimination claims may survive a motion to dismiss where the alleged facts support a reasonable inference that a real estate transaction with a member of a protected class was treated differently. At the pleading stage, courts generally must accept well-pleaded allegations as true and permit discovery where those allegations support a viable claim.

The decision also serves as a reminder that cooperative corporations, its board members, and its managing agent may face potential liability if they participate in, facilitate, or are otherwise involved in allegedly discriminatory housing decisions. Boards should ensure that application reviews are conducted consistently and in compliance with applicable fair housing laws.

Because litigation involving housing discrimination often focuses on the decision-making process itself, timely action, careful documentation and adherence to reasonable and established procedures may help reduce legal risk.

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DISCRIMINATION

MANCULICH V. FIVE RIVERSIDE TOWERS OWNERS, INC.

2026 NY SLIP OP 50635(U) (SUP. CT. BROOME CNTY. APR. 27, 2026)

Co-op Defeats Disability Discrimination Claim After Trial

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: The plaintiff resided in a cooperative apartment with her husband, the shareholder of record, who owned several apartments in the building. After her husband's death, she applied to become a tenant of the cooperative.

The board denied her application, citing alleged violations of cooperative rules and deficiencies in the application, including the omission of requested income information. A subsequent application was also denied as incomplete.

Following those denials, the plaintiff informed the board that a dog she kept in the building, despite its no-pet policy, was an emotional support animal. The board responded that the dog's status had played no role in its decision to deny her application.

The plaintiff thereafter commenced an action alleging disability discrimination and failure to provide a reasonable accommodation.

IN COURT: Following a trial, the court dismissed the plaintiff's claims.

The court found that the plaintiff had multiple opportunities to disclose a disability or request a reasonable accommodation before her applications were denied, but failed to do so. The court further found that she did not obtain a diagnosis supporting her request for an emotional support animal until after the board had already denied her application.

According to the court, the evidence demonstrated that the board's decision was based on the plaintiff's failure to comply with cooperative rules and application requirements rather than any claimed disability.

The court concluded that there was no connection between the reasons for the denial and the plaintiff's later accommodation request.

TAKEAWAY:

The cooperative was able to prevail here because there was a very clear record that the plaintiff's disability and request for a reasonable accommodation had played no role in its denial of her application. In this record, the board was helped by the fact that there was a track record of the applicant not following building rules, and there was also a failure of the applicant to secure a medical basis for an emotional support animal, much less make a request for a reasonable accommodation, until the board's decision had already been made.

It must be noted with some dismay that this positive result for the board came after extensive motion practice and a full trial, meaning that even the fully successful outcome achieved here came at a substantial cost to the co-op and/or its insurance carrier.

DISCRIMINATION

LORELLI V. WOODLANDS APT. CORP.

2:24-CV-05606 (E.D.N.Y. MAR. 31, 2026) ECF NO. 65

Disability Claims Dismissed Against Co-op and Board

SQUIB BY NICHOLAS ALEXANDER REYES, ESQ., BOYD RICHARDS PARKER & COLONNELLI, PL

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: Patricia Lorelli, a shareholder-tenant in a cooperative apartment complex, sued the cooperative corporation, its managing agent, the board, the cooperative's attorneys and a neighboring shareholder, alleging disability discrimination arising from holdover

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litigation, selective enforcement and neighbor harassment.

Lorelli alleged that after new management took over, she experienced disability-related comments from neighbors, received violations arising from noise and smoke incidents, was overcharged for maintenance, and was subjected to repeated harassment by a neighboring shareholder who stated that she should be moved to a home for people with disabilities.

She further alleged that the board and management failed to investigate or intervene when she complained and that this failure, together with the holdover proceedings, created a hostile housing environment and amounted to disability discrimination.

IN COURT: The cooperative defendants moved to dismiss, arguing that the complaint failed to allege facts showing that their actions were motivated by Lorelli's disability. They further argued that even if neighbors engaged in objectionable conduct, that conduct could not be imputed to the board absent allegations of agency, substantial control or a specific duty to intervene.

The court agreed and granted the motions to dismiss.

Addressing the Fair Housing Act disability-discrimination claim under Section 3604(f), the court held that Lorelli failed to allege the required causal connection between her disability and the challenged actions, including the holdover proceeding, violations and fees. Although the complaint described adverse actions, it did not allege concrete facts demonstrating discriminatory motive by the board or management.

The court also rejected Lorelli's hostile-housing-environment claim under Section 3617. While she alleged serious harassment by neighbors, she failed to plead facts showing that the board or management exercised substantial control over those residents or their conduct. The court found such control was necessary before liability for third-party harassment could be imputed to the cooperative defendants.

The court further noted that Lorelli failed to identify any lease provision, bylaw or established practice creating a defined duty for the board to investigate and resolve the shareholder disputes at issue.

For substantially the same reasons, the court dismissed the related claims under the New York State Human Rights Law. However, Lorelli was granted leave to amend her FHA Sections 3604(f) and 3617 claims and her NYSHRL Sections 296(5) and 296(6) claims against the cooperative defendants.

The claims against the law-firm defendants and neighboring shareholder were dismissed in their entirety. The court held that the claims against counsel arose from ordinary legal representation in the holdover proceeding and that the complaint failed to plausibly allege that the neighboring shareholder acted as an agent of the cooperative or exercised authority over the lease.

TAKEAWAY:

This decision serves as a reminder that discrimination claims against cooperative boards require more than allegations of conflict, unfair treatment or even offensive comments. Plaintiffs must connect the board's own actions to discriminatory motive through specific factual allegations.

The case also highlights the limits of board liability for resident-on-resident harassment. Absent meaningful control over the conduct at issue or a defined duty to intervene, courts generally will not impute a resident's conduct to a cooperative board or managing agent.

Boards should continue to document enforcement decisions and ensure they are supported by legitimate, nondiscriminatory reasons. Governing documents also should be reviewed carefully to determine whether they impose obligations to investigate or resolve disputes between shareholders.

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ELECTIONS

GUSEL V. KING

2026 NY SLIP OP 03118 (APP DIV, 1ST DEPT 2026)

Election Dispute Produces Competing Co-op Boards

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: The courts are fond of saying, as the highest court of the state has itself said, a cooperative is a "little hub of democracy." Well, as we all know, that means a lot of fighting these days. And that is what has been going on with Inwood Tower, a Mitchell-Lama residential cooperative in Fort George/Upper Manhattan, for over a decade.

Most recently, the cooperative board of directors and insurgent directors have been battling in court for governance control. There was a failure to achieve a quorum at the December 2022 shareholder meeting, leaving a nine-member board in place. Alas, no quorum was achieved at the 2023 annual shareholder meeting either, and the insurgents had had enough and served notice of a special meeting—after the board refused to do so at the insurgents' request—calling for removal of the existing board and for a vote to reduce the number of directors from nine to five. Lo and behold—the incumbent board hired an "election monitor" and declared a quorum achieved in January 2024 by "absentee ballots," with six (incumbent) directors remaining in office being duly elected.

Nonetheless, again, the insurgents went forward with the special meeting they served notice of in March 2024, with amendment to corporate documents passing, reducing the board from nine to five members and the insurgents being elected to the board. Resulting in, as the Appellate Court pithily stated, "two boards claiming legitimacy." The incumbent board and its management indeed failed to give up control and turn over the co-op's books and records.

IN COURT: The insurgent shareholders commenced an action seeking declarations that the results of the March 2024 special meeting were valid and enforceable and that the incumbent directors had been removed from office.

The defendants argued that the claims were barred by the applicable four-month statute of limitations and further contended that factual disputes precluded relief.

The trial court rejected those arguments. The Appellate Division affirmed, allowing the action to proceed.

TAKEAWAY:

It's hard, and an uphill battle, to challenge an incumbent board—and management, and with lawyers paid by the cooperative monies—but it can be done. In this author's experience, all that is required is a few angry insurgents who are willing to marshal a proxy campaign, and a lawyer willing to represent a group for a discounted fee, but with hopes of one day becoming general counsel to the cooperative about whose governance the fight is for.

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EVICTION

MUTUAL REDEV. HOUSES, INC. V. MANYEVITCH

2026 NY SLIP OP 26067 (N.Y. CIV. CT. N.Y. CNTY. MAY 8, 2026)

Spouse Retains Succession Rights Despite Missing Share Transfer

SQUIB BY BRETT GOSSETT, ASSOCIATE, BOYD RICHARDS PARKER & COLONNELLI, PL

OUTCOME: Decided for Co-respondent Manyevitch and Petitioner Co-op

WHAT HAPPENED: Mutual Redevelopment Houses Inc., an Article V housing cooperative organized under the Private Housing Finance Law, commenced a licensee holdover proceeding against Oraya Manyevitch and Frederick Mardis following the death of George Nestor.

Nestor previously had been granted succession rights by the New York City Department of Housing Preservation and Development (HPD). However, neither shares nor an occupancy agreement were formally issued to him before his death.

Manyevitch, Nestor's wife, claimed succession rights to the apartment under the governing City Agreement. Mardis, Nestor's longtime friend, roommate and caregiver, also asserted succession rights based on an alleged family-type relationship.

IN COURT: The court held that Manyevitch was entitled to succession rights.

The court found that she satisfied the requirements of the City Agreement because she maintained the apartment as her primary residence and was the spouse of a recognized successor occupant. The court further concluded that HPD's prior determination granting succession rights to Nestor was not invalidated by the failure to formally issue shares or an occupancy agreement.

According to the court, denying succession rights based solely on those omissions would be inconsistent with the purpose of redevelopment housing laws, which are intended to preserve affordable housing opportunities.

The court reached a different conclusion with respect to Mardis. Although he claimed succession rights based on a family-type relationship, the court found that he failed to present sufficient admissible evidence establishing the emotional and financial interdependence necessary to support such a claim.

Accordingly, the court granted summary judgment to Manyevitch, dismissed the proceeding against her, and granted the cooperative a possessory judgment and warrant of eviction against Mardis.

TAKEAWAY:

Courts evaluating succession claims in redevelopment housing cooperatives may look beyond technical deficiencies in documentation where a claimant otherwise satisfies the substantive requirements for succession rights. Administrative recognition of a successor occupant may carry significant weight, even where shares or occupancy agreements were never formally issued.

The decision also underscores the differing standards applicable to spousal succession claims and family-type relationship claims. While spouses may be able to establish succession rights through proof of residency and marital status, claimants relying on a nontraditional family relationship must present evidence demonstrating the emotional and financial interdependence required by applicable law.

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FORECLOSURE

CONCEPT 914 LLC V. ALPINE ACRES CONDO.

2026 NY SLIP OP 31456(U) (SUP. CT. SULLIVAN CNTY. APR. 14, 2026)

Condo Foreclosure Defeats Later Ownership Claim

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

OUTCOME: Decided for Condominium Defendants

WHAT HAPPENED: Title to a condominium unit changed hands several times through various transactions, including a quitclaim deed and a common-charge lien foreclosure action, resulting in competing ownership claims.

Alpine Holding, LLC originally owned the unit and allegedly transferred it to BMG Southern Equities, LLC in 2011. Alpine Acres Condominium later commenced a common-charge lien foreclosure action against BMG. Before the foreclosure sale occurred, however, Alpine executed a quitclaim deed transferring the unit to Concept 914 LLC in 2016.

Concept subsequently filed for bankruptcy, temporarily staying the foreclosure sale. After the bankruptcy stay was lifted, the condominium completed the foreclosure sale and became the record owner of the unit.

IN COURT: Concept argued that it was the rightful owner pursuant to the quitclaim deed from Alpine. It further contended that the condominium wrongfully foreclosed because it knew Concept claimed ownership and should have accepted payment of the outstanding common charges rather than proceeding with the foreclosure.

The condominium moved for summary judgment dismissing the complaint, arguing that Concept's deed was void ab initio because Alpine no longer had any ownership interest to convey, having previously transferred the unit to BMG.

The court agreed. It held that the condominium became the rightful owner through the foreclosure sale and found that Concept had notice of the previously recorded deed history and could not claim ignorance of BMG's ownership interest. The complaint was dismissed.

TAKEAWAY:

Common-charge liens are powerful enforcement tools for condominium associations. A condominium's foreclosure of a properly recorded common-charge lien can defeat later ownership claims based on improper transfers.

A party cannot avoid a foreclosure by obtaining a last-minute deed from an entity that no longer owns the unit. Due diligence, including review of condominium records and prior conveyances, remains critical when acquiring distressed property interests.

INJUNCTION

KAPOOR V. 271 TENANTS CORP.

2026 NY SLIP OP 31458(U) (SUP. CT. N.Y. CNTY. APR. 8, 2026)

Court Orders Additional Investigation of Persistent Water Intrusion

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

OUTCOME: Decided, in Part, for Plaintiff Shareholders

WHAT HAPPENED: Vikas and Jaishri Kapoor are shareholders of 271 Tenants Corp., a cooperative located at 271 Central Park West in Manhattan, and proprietary lessees of Apartment 12W.

Beginning in 2021, the Kapoors experienced recurring water intrusion into their apartment that allegedly resulted in mold contamination. They claimed the

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cooperative delayed remediation efforts and, when repairs were undertaken in 2023, performed only limited remediation while prioritizing other building projects.

The shareholders commenced an action and immediately sought a preliminary injunction requiring the cooperative and its managing agent to repair the roof, remediate mold conditions, restore the apartment, monitor for future mold growth, and abate maintenance charges during the remediation process.

The court granted that application and directed the cooperative to complete testing and repairs identified in an engineer's report. The shareholders later moved to hold the cooperative in contempt, alleging noncompliance with the court's order.

IN COURT:
The court denied the shareholders' contempt motion, finding that the board was complying with the preliminary injunction and remained entitled, under the business judgment rule, to determine the methodology and timing of the repair work.

The shareholders subsequently sought additional injunctive relief requiring comprehensive testing to determine the source of continued water infiltration from the terrace deck and exterior walls. They also requested appointment of a temporary receiver to oversee the repair project and related expenditures.

The court granted the request for additional testing. It noted that its earlier determination that the shareholders were entitled to injunctive relief constituted the law of the case and supported further relief designed to identify and remedy the source of the water intrusion.

The court denied the request for appointment of a receiver, finding no special circumstances warranting displacement of the board's authority. The cooperative filed a notice of appeal.

TAKEAWAY:
Water infiltration and mold disputes can generate extensive litigation when the parties disagree about the source of the problem or the adequacy of proposed repairs. Courts may grant injunctive relief requiring investigation and remediation where shareholders demonstrate ongoing harm and a likelihood of success on the merits.

At the same time, courts generally remain reluctant to interfere with a board's authority to manage building repairs. Even where injunctive relief is granted, boards typically retain discretion over the means and methods of performing the work, absent evidence of bad faith or noncompliance with court orders.

Early communication, prompt investigation, and clear documentation of remediation efforts may help boards avoid protracted and expensive disputes over building conditions.

INJUNCTION

CHENAULT V RIVERBAY CORP.

2026 NY SLIP OP 50364(U) (CIV. CT. N.Y.C. BRONX CNTY. MAR. 17, 2026)

No Access, No Remedy: Co-op Wins Dismissal

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

OUTCOME: Decided for Respondent Co-op

WHAT HAPPENED: This matter was before the Bronx County Civil Court of the City of New York, where the petitioner, the occupant of a cooperative apartment in a complex of buildings in Co-op City, alleged that the respondent, a cooperative apartment corporation, failed to remedy allegedly dangerous conditions in the apartment, including the presence of asbestos, mold, flooding issues, chipping paint, and broken bathroom tiles.

In her pleadings, the petitioner not only claimed that the conditions in her apartment made the apartment unlivable, but also that the corporation had engaged in harassing behavior by having its bookkeeper place a "hold" on her rent payments, thereby causing arrears to accrue, and by bringing prior cases against her without justification.

In fact, while this petition was brought by the purported

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tenant-shareholder, there was also an ongoing nonpayment proceeding brought by the co-op corporation against the petitioner that was scheduled for trial, in which the apartment corporation alleged that the petitioner was more than $100,000 in arrears.

It is worth noting that the petitioner in this case was not the actual named shareholder, but rather was an undertenant of that named shareholder. However, the petitioner ultimately claimed to have been "granted succession rights to this co-op apartment," and thus represented herself to be "the legal rightful Shareholder/Primary Tenant as of September 2023 following a succession approved by the State of New York."

Because the apartment corporation recognized that status, she was treated as the tenant-shareholder with respect to the apartment in question despite refusing to execute a proprietary lease.

The petitioner sought an order from the court requiring that the co-op remedy the allegedly unsafe living conditions in her unit, as well as a judgment for civil penalties due to the co-op's failure to correct such violations.

The apartment corporation moved to dismiss the petition, noting, among other things, that it had offered to inspect and cure any dangerous conditions, but the petitioner repeatedly refused to allow its representatives access to the unit.

The petitioner did not deny refusing access, noting that she would not provide access unless the co-op first agreed to transfer her to a different apartment. However, the corporation refused to provide an alternate unit because attorneys for the New York City Department of Housing Preservation & Development ("HPD") indicated that the existing HPD violations of record did not rise to the level requiring relocation of the tenant.

IN COURT: The respondent co-op corporation raised several grounds for dismissal.

First, the co-op alleged that the petitioner's claims were barred under the doctrine of res judicata. The respondent asserted that the petitioner's claims were identical to those raised in a previously adjudicated Supreme Court action and that the court in that matter had dismissed those claims.

In addition, because the petitioner specifically noted in her pleading that she was suing only the apartment corporation and not HPD, the court determined that it could not order the respondent to cure the violations and/or relocate the tenant to another apartment.

The court held that an action of this nature seeking to enforce the Housing Maintenance Code required HPD's presence as a party because it is HPD that has the authority to issue violations and seek the imposition of civil penalties where violations remain outstanding after the lessor is granted reasonable access to the premises.

Furthermore, the petitioner's insistence upon relocation to a new apartment as a precondition for access to her unit made it impossible for the court to grant injunctive relief.

With respect to the petitioner's claims that she was a victim of harassment by the co-op corporation, the court granted the respondent's motion to dismiss as a matter of law. The New York City Tenant Protection Act, which provides statutory protection for residential tenants in New York City, expressly provides that the statute does not apply where the tenant is the shareholder of record on a proprietary lease (or to other persons who lawfully reside with such tenant-shareholder).

TAKEAWAY:

The court in this case granted the apartment corporation's motion to dismiss. However, the case could have gone in a different direction had the tenant-shareholder agreed to provide access to the co-op for purposes of performing repairs.

The court even noted that a tenant's refusal to provide access is not a defense to an order to correct Housing Maintenance Code violations, but that the tenant's insistence on being provided with a new apartment was the determining factor.

Had the petitioner not been so rigid in her demand for this specific relief, the court may have ordered the respondent to cure the violations. Instead, because the petitioner did not want the court to order the co-op to cure the violations unless the court first ordered the respondent to relocate her to a new apartment, the court's hands were tied, as it lacked the authority to order such a relocation without HPD first indicating a legal basis for it to occur.

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INSURANCE

450 W. 31ST ST. OWNERS CORP. V. CHUBB & SON

1:25-CV-705-JGK (S.D.N.Y. APR. 30, 2026) ECF NO. 43

Prior Litigation Bars Co-op's Insurance Coverage Claim

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

OUTCOME: Decided for Defendant Insurers

WHAT HAPPENED: 450 W. 31st St. Owners Corp., which owns a commercial cooperative building in Manhattan, sought insurance coverage in connection with litigation brought by a shareholder concerning the use of a roof terrace adjoining the shareholder's unit.

The dispute had its origins in earlier litigation dating to 1999, when a prior shareholder obtained a preliminary injunction concerning use of the same roof terrace.

Years later, the current shareholder commenced litigation against the cooperative and its board president after the cooperative declined to permit installation of HVAC equipment on the roof terrace. The shareholder alleged that the decision limited the number of operating rooms available for use in the unit and resulted in business losses.

The cooperative sought defense and indemnification coverage under its directors and officers liability policies. The insurers denied coverage, relying on exclusions relating to prior or pending litigation and claims involving substantially similar facts or circumstances. The insurers also relied on a policy exclusion for property damage claims.

IN COURT: The federal court granted summary judgment to the insurers and dismissed the cooperative's complaint.

Applying New York contract law principles, the court concluded that the relevant policy language was unambiguous. The court found that the prior-litigation exclusion applied because the earlier lawsuit and the current litigation involved the same property interest, substantially similar facts, and similar relief.

The court therefore held that the insurers had no duty to defend or indemnify the cooperative or its board president.

The court further determined that coverage was independently barred by the policy's property-damage exclusion.

TAKEAWAY:

Prior-litigation exclusions can significantly limit insurance coverage where a new dispute arises from circumstances that are substantially similar to earlier litigation. Even when different individuals are involved, courts may focus on whether the underlying facts, property interests, and claims are closely related.

The decision also underscores the importance of carefully reviewing policy exclusions when evaluating potential coverage. Courts generally will enforce unambiguous policy language according to its plain meaning, particularly in disputes involving coverage exclusions.

Boards and managing agents should consult coverage counsel early when disputes arise that may have connections to prior litigation, as those earlier proceedings may affect the availability of defense and indemnification coverage.

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INSURANCE

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

2026 NY SLIP OP 02234 (1ST DEP'T. APR. 14, 2026)

Sponsor Wins Contractual Indemnification Claim

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

OUTCOME: Decided for Defendant/Respondent

WHAT HAPPENED: The plaintiff is the insurance carrier for a residential condominium building. The defendant/respondent is the building's sponsor, and the defendant/appellant is the waterproofing contractor that the sponsor retained to perform work at the building. The sponsor also retained a construction management firm, a co-defendant, to supervise the design and construction project.

Pursuant to its contract with the sponsor, the waterproofing contractor agreed to indemnify and hold the sponsor harmless from all losses, except to the extent caused by the active negligence or willful misconduct of the sponsor or its indemnitees.

While performing its work, the waterproofing contractor caused an arc-flash incident that resulted in substantial damage to the building. The plaintiff paid the condominium's insurance claim for repair costs and commenced this subrogation action to recover those amounts.

IN COURT: The plaintiff sued the sponsor, the waterproofing contractor and others due to their alleged involvement in the arc-flash incident. The sponsor answered and asserted crossclaims against the waterproofing contractor for, among other things, contractual indemnification.

The sponsor then moved for summary judgment on its contractual indemnification claim, and the trial court granted its motion. The waterproofing contractor appealed.

The First Department affirmed the trial court's decision and held that the sponsor was entitled to contractual indemnification under its agreement with the waterproofing contractor. The sponsor established that neither it nor its indemnitees were negligent and that it did not supervise or direct the work that caused the incident.

The court further held that the construction management firm did not fit within any contractual category of "indemnitee" and therefore its alleged negligence could not be imputed to the sponsor.

TAKEAWAY:

A party may enforce a contractual indemnification provision by showing that it was not negligent and did not control, supervise or direct the work that caused the loss.

Where another party's negligence is alleged, courts will look to the contract's express indemnity language to determine whether that party qualifies as an indemnitee whose negligence may be imputed.

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PERSONAL INJURY

TORRES V. LENS CRAFTERS, INC.,

2026 NY SLIP OP 02383 (1ST DEP'T. APR. 21, 2026)

Condo May Face Liability for Neighboring Sidewalk Defect

SQUIB BY INGRID C. MANEVITZ, PARTNER, SEYFARTH SHAW

OUTCOME: Decided, in part, for Plaintiff and Defendant

WHAT HAPPENED: When 388 Broadway was converted to a condominium in 2002, the defendant board of managers of 388 West Broadway Condominium, or the prior owner of the property, the building's sponsor, replaced the sidewalk in front of its building. To address a height difference between 388 West's sidewalk and the sidewalk of its neighbor, the defendant 390 West Broadway, Inc., a ramp was created that encroached onto 390 West's property.

In 2016, the plaintiff, Miguel Torres, tripped on a crack in the ramp located on the sidewalk abutting 390 West's property. The plaintiff sued both 390 West and 388 West for negligence. After discovery, 388 West moved for summary judgment, arguing that it owed no duty of care to the plaintiff because he did not fall on the sidewalk abutting 388 West's property.

The Supreme Court denied summary judgment based on Administrative Code of the City of New York § 7-210, which imposes a duty on property owners to maintain any sidewalk abutting their property, and Sangaray v. West Riv. Assoc., LLC, 26 NY3d 793 (2016), which held that a property owner can be liable for a fall on a neighbor's sidewalk if the property owner's failure to maintain its own sidewalk was the proximate cause of the accident.

IN COURT: The Appellate Division, First Department, affirmed the denial of summary judgment and held: "While 388 West submitted evidence establishing that plaintiff fell on a portion of the ramp located on its neighbor's property, it failed to offer evidence that eliminated the possibility that it did not comply with its duties to maintain the sidewalk abutting its property in a reasonably safe condition and that 388 West was a proximate cause of plaintiff's injuries by leaving a tripping hazard between the sidewalk abutting 388 West's property and the sidewalk abutting the neighboring property . . . ."

TAKEAWAY:
Property owners can be liable even if an accident occurs on a neighbor's sidewalk and not their own. Under Sangaray, as applied by the First Department, the question is whether the property owner maintained the sidewalk abutting its property in a reasonably safe condition and, if not, whether that failure caused the tripping defect on the neighboring sidewalk.

PERSONAL INJURY

PICKETT V. AMBIANCE WINE LLC

2026 NY SLIP OP 31575(U) (SUP. CT. N.Y. CNTY. APR. 9, 2026)

Condo Escapes Liability for Restaurant Window Accident

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

OUTCOME: Decided for Condominium Defendants

WHAT HAPPENED: The plaintiff was injured after walking through an open window, mistakenly believing it was the entrance to a restaurant located in a commercial unit of a condominium building.

The property was owned by the commercial unit owner and leased to a restaurant. The condominium was named as a defendant in the personal injury action.

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The condominium moved for summary judgment dismissing the claims against it, arguing that the window was part of the commercial unit's limited common elements and that the condominium neither owned, occupied nor controlled the area where the accident occurred.

The condominium's bylaws assigned responsibility for maintaining the window to the commercial unit owner. The managing agent and a board member both testified that they provided no services to the commercial unit owner and exercised no control over the restaurant's architectural design.

IN COURT: The court dismissed the claims against the condominium.

The court found that the condominium neither owned, occupied nor controlled the window area and had no responsibility for maintaining it. The governing documents made clear that maintenance obligations rested with the commercial unit owner.

The court reached a different conclusion with respect to the restaurant's motion to dismiss. The restaurant argued that the open window was obviously not an entrance and therefore constituted an open and obvious condition that was not inherently dangerous.

The court held that factual issues remained regarding whether a reasonable person could have mistaken the open window for an entrance and whether the condition was open and obvious under the circumstances. Accordingly, the claims against the restaurant survived dismissal.

TAKEAWAY:

Condominium boards generally are not liable for accidents occurring within commercial units where the governing documents place responsibility for maintenance and control on the unit owner.

This case illustrates the importance of clearly defining maintenance and operational responsibilities in condominium governing documents. Because the condominium neither controlled nor maintained the commercial space, it avoided liability for an accident that occurred entirely within that area.

Boards should be cautious about assuming responsibilities beyond those imposed by the governing documents. Exercising control over areas that belong to a commercial unit owner may create duties and potential liability that otherwise would not exist.

PROPRIETARY LEASE

COLADONATO V. 111 W. 16TH ST. OWNERS, INC.

2026 NY SLIP OP 31759(U) (SUP. CT. N.Y. CNTY. APR. 14, 2026)

Proprietary Lease Shields Co-op from Subtenant's Injury Claim

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

OUTCOME: Decided for Co-op Co-defendants

WHAT HAPPENED: This case arises from a personal injury claim involving a longstanding occupant of a cooperative apartment who sought to hold the cooperative corporation and its managing agent liable for injuries sustained inside the apartment.

The plaintiff alleged that he was injured on March 28, 2022, when a radiator valve in his bedroom failed, causing hot steam to escape and resulting in burns. In the initial pleading, the plaintiff asserted broadly that the cooperative corporation and its managing agent owned, operated, controlled and maintained the premises and were negligent in permitting a dangerous condition to exist. The complaint alleged negligence in conventional terms, without addressing how responsibility for apartment conditions was allocated under the governing documents.

The plaintiff described prior radiator issues, including complaints of banging and leakage years earlier and a more significant leak approximately one to one-and-a-half years before the incident, which the superintendent repaired. The plaintiff also described a longstanding practice of manually adjusting the radiator valve to regulate heat, turning it off during the day and on at night, and claimed that this practice

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was known to building staff and never prohibited. The superintendent, for his part, testified that while tenants could turn radiator knobs, they were not supposed to do so as a routine matter.

Critically, discovery established that the plaintiff was not the tenant-shareholder, but rather a long-term occupant renting from a sponsor who held the shares and proprietary lease. The apartment was owned by a nonparty sponsor entity, which held the shares allocated to the apartment and was the lessee under the proprietary lease with the cooperative. The plaintiff had lived in the apartment for approximately 20 years as an occupant renting from the sponsor. His occupancy, therefore, derived from a rental arrangement with the sponsor and not from any direct contractual relationship with the cooperative corporation.

IN COURT: The defendants denied the allegations and asserted defenses including comparative fault, assumption of risk and lack of capacity. Although the answer did not fully articulate the dispositive theory that would later prevail, the defendants' litigation strategy consistently pointed toward an allocation-of-responsibility defense, focusing discovery on the origin of the alleged condition, issues of notice and the contractual framework governing the apartment.

The case came to a head on the defendants' motion for summary judgment. The central argument advanced by the cooperative and managing agent was that they owed no duty to the plaintiff with respect to the alleged defect because responsibility for the interior of the apartment, including heating fixtures such as radiators and valves, was contractually assigned to the shareholder-lessee under the proprietary lease. Specifically, Paragraph 18(a), which assigns sole responsibility for interior fixtures to the shareholder, and Paragraph 19, which permits the cooperative to perform work at an occupant's request without assuming liability.

The court granted the defendants' motion for summary judgment, concluding that the dispositive issue was not notice or even the precise mechanics of the radiator failure, but whether the defendants owed a duty with respect to the condition at issue. Applying settled First Department precedent, the court held that where a proprietary lease places responsibility for apartment interiors and fixtures on the shareholder, a cooperative corporation and its managing agent are not liable for defects arising from those interior conditions.

The court found no triable issue of fact that the allegedly defective radiator, valve and related components were located entirely within the apartment and therefore fell squarely within the shareholder's exclusive maintenance obligations under the lease.

Equally important, the court rejected the argument that the cooperative assumed liability through its superintendent's prior repairs. Relying on the lease language, the court held that work performed in response to occupant requests did not shift responsibility or create a duty where none otherwise existed.

The action was therefore dismissed in its entirety as against the cooperative and managing agent. The decision underscores that even where a condition may be dangerous, liability will not attach absent a duty flowing from the governing documents.

TAKEAWAY:

The decision turns on a critical distinction in cooperative housing law: the difference between a tenant-shareholder and a subtenant. The proprietary lease defines rights and obligations between the cooperative and the shareholder-lessee. A subtenant, even a long-term occupant, has no contractual privity with the cooperative and therefore cannot rely on the proprietary lease to impose duties on the building.

Instead, the subtenant's rights with respect to apartment conditions arise primarily from the sublease or rental arrangement with the shareholder. In this case, that distinction proved determinative. The plaintiff's injury, even if caused by a defective condition, did not give rise to liability on the part of the cooperative because the defect was within the apartment and contractually allocated to the shareholder, not the building.

For cooperative boards and managing agents, the decision offers a clear and practical takeaway. Well-drafted proprietary leases that clearly assign responsibility for interior apartment conditions can be outcome-determinative in litigation. Those protections are not undone by routine maintenance responses from building staff, provided the governing documents preserve the cooperative's ability to act without assuming liability.

The case confirms that well-drafted proprietary leases are often dispositive in apartment-condition claims. The allocation of responsibility in the governing documents remains the central lens through which courts will analyze these claims.

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TERMINATION

530 MANHATTAN AVE. HOUS. DEV. FUND CORP. V. SITU

2026 NY SLIP OP 50615(U) (APP. TERM 1ST DEP'T, APR. 30, 2026)

Lack of Default Notice Sinks HDFC's Effort to Terminate Proprietary Lease for Nonprimary Residence

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

OUTCOME: Decided for Defendant

WHAT HAPPENED: A Housing Development Fund Corporation (or HDFC) is a type of co-op where shareholders-tenants are required to occupy and use their apartments as their primary residences. A Manhattan HDFC believed that a shareholder was not using his apartment as his primary residence, so they served a ninety-day notice of termination. A holdover proceeding followed, and after issue was joined, the co-op moved to strike all the defenses asserted by the shareholder-tenant. The shareholder cross-moved to dismiss, claiming that the ninety-day notice of termination was insufficient. The shareholder argued that the co-op failed to first serve him with a notice of default and opportunity to cure in accordance with the proprietary lease. The co-op responded that the failure to utilize an apartment as a primary residence was a non-curable breach, so no prior default notice was required. The trial court disagreed with the co-op and dismissed the proceeding based on the absence of a default notice. The co-op appealed.

IN COURT: The appellate court affirmed the dismissal of the holdover proceeding. The court found that the proprietary lease provided the co-op with the right to invoke a conditional limitation of the lease based on nonprimary residence, but the limitation and subsequent termination of the lease required two steps. The first was a thirty-day notice of default, and the second was a five-day notice of termination. Because the co-op skipped those two steps, and instead simply provided ninety days' notice of termination, the conditional limitation was not triggered, and the proprietary lease was not terminated. Holdover dismissed.

TAKEAWAY:

The co-op believed the shareholder-tenant's failure to utilize his apartment as his primary residence was a default that has been described as "non-curable" by some courts, in circumstances that are, arguably, analogous to the case at hand. Yet the proprietary lease clearly called for a two-step process for termination, starting with a default notice. The co-op had a quandary: If it sent a default notice and gave the shareholder-tenant an opportunity to cure, then the shareholder might do so, or claim he did so, slowing down or defeating eviction. So the co-op boldly cut to the chase, purporting to terminate the lease without a default notice. But fortune does not always favor the bold, particularly in residential evictions. The courts at the trial and appellate level both found fault with the path chosen by the co-op. In seeking to terminate a leasehold, particularly a proprietary lease of significant value, a co-op is perhaps better served by strictly adhering to the terms set forth in the lease.

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