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CASE LAW TRACKER
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ARBITRATION

MATTER OF KLEIN (HUMAN CARE SERVS. FOR FAMILIES & CHILDREN, INC.)

2026 NY SLIP OP 03717 (3RD DEP'T. JUN. 11, 2026)

Agreement to Arbitrate Before an Unnamed Rabbi



SQUIB BY MICHAEL P. GRAFF, ESQ., ARBITRATOR/MEDIATOR, GRAFF DISPUTE RESOLUTION

OUTCOME: Order Compelling Arbitration Affirmed; Preliminary Injunction Reversed

WHAT HAPPENED: The petitioners are unit owners and members of the board of managers of Venetian Villas Condominiums, a 113-unit residential condominium development in Sullivan County. The Venetian, the respondent and two neighboring condominium developments are members of the Ralhal Homeowners Association, which serves to manage their shared resources. In 2016, the predecessors in interest of the properties now owned by the Venetian, the respondent and others recorded a "Declaration of Covenants, Easements and Restrictions Affecting Ralhal Residential Development," creating a covenant running with the land providing for certain easements and rights of way between the separate properties, apportioning expense ratios related to the various shares, utility facilities and access roadways. The declaration's arbitration provision provided that disputes under the declaration "concerning [the parties'] use and enjoyment of their respective parcels . . . shall be submitted for resolution to Rabbi ____of ____, New York." [Blanks in the original.]

After acquiring its property, the respondent began operating a summer camp on it for children with special needs. This led to a dispute between the parties, with the petitioners claiming that the respondent's activities violated terms of the declaration. Ultimately, the petitioners served the respondent with a notice of intention to arbitrate and a demand for arbitration regarding these disputes, including the misuse of easements and rights of way, pro rata maintenance, costs and excessive noise. The notice advised that the matter was to be submitted for arbitration to Rabbi Dani Rap, Esq., of the Beth Din of America (BDA) and that,

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AUGUST 2026 HIGHLIGHTS

EVICTION / TERMINATION
Co-op May Evict Over Chronic Late Maintenance

FORECLOSURE
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INSURANCE
Court Finds Condo's Insurance Covers Unit Repairs

PERSONAL INJURY
An Owner's Liability for Personal Injury

PROPRIETARY LEASE
Co-op Could Sell Shares After Insurance Default

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CO-OP&CONDO CASE LAW TRACKER digest

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pursuant to CPLR § 7503(c), the respondent had 20 days to serve an application to stay such arbitration or it would be "precluded from objecting" to the validity of the declaration. The respondent did not seek to stay the arbitration within the 20-day period.

IN COURT: In the lower court in Sullivan County, the petitioners commenced a CPLR Article 75 proceeding to compel arbitration, and for a restraining order and preliminary injunction enjoining the respondent from violating the declaration, local noise ordinances, and other restrictions. The respondent opposed, arguing that the blank in the declaration's arbitration clause, which failed to name the arbitrator, rendered the provision unenforceable, and the notice inapplicable. The respondent raised other defenses, including the failure to join necessary parties in the petition. The lower court granted the petitioners' application to compel arbitration before a panel of the BDA, consisting of three rabbis, of which at least two should be attorneys, and enjoined the respondent from acting in contravention of the declaration and from violating applicable noise ordinances.

The appellate court held that the proper procedure to oppose arbitration was for the respondent, as the party served with the notice and demand for arbitration, to apply to a court for a stay of arbitration within 20 days after service, or it would be precluded from claiming that a valid agreement was not made or complied with

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TAKEAWAY

Arbitration agreements are favored by the courts. Even when they are not carefully drafted, the courts will nevertheless seek to find a way to carry out the imperfectly expressed intention of the parties to implement them.

It is on the party served with a notice of intention to arbitrate to initiate court intervention by moving to stay arbitration if there was no valid agreement to arbitrate or if the conditions for arbitration have not been met. If the party served fails to do so, it is barred from later objecting that a valid agreement to arbitrate was not made or had not been complied with and from asserting the bar of a limitation of time.

The granting of a preliminary injunction is not so favored by the courts. An applicant has the burden of convincing the court as to its probability of success on the merits, showing an injunction is needed to avoid irreparable injury, and the balance of the equities is in its favor. Typically, the applicant will be required to post an injunction bond to compensate the enjoined party for its losses if it is ultimately determined that the applicant was not entitled to the injunction.

Consider whether the applicant, even after winning an injunction, is financially capable of posting an injunction bond.

Tangentially, in reviewing title to real property, one should consider prior deeds that may contain restrictive covenants. Some may impact on the intended or permitted uses of the property or create easements and encumbrances that may not seem obvious upon physical inspection of the property or in title surveys.

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and from asserting the bar of a limitation of time. Where it is claiming that the parties never agreed to arbitrate, as distinct from where there is an arbitration agreement which is claimed to be invalid, or that the arbitration agreement is unenforceable because the conditions have not been complied with, a motion to stay is proper. Here, after the petitioners served their notice of intention to arbitrate, the respondent failed to respond to the demand or move to stay the arbitration within the prescribed 20-day period. The petitioners then commenced the Article 75 proceeding to compel arbitration. The respondent opposed, arguing that the parties had not agreed to arbitrate, thus the 20-day period to move to stay the arbitration did not apply. After the decision in the motion court compelling arbitration and granting a preliminary injunction, the respondent filed a timely notice of appeal but did not move at that time for a stay of the arbitration pending this appeal. The respondent then filed a motion in the appellate court, by order to show cause, to stay the order compelling arbitration and granting a preliminary injunction, again arguing that there was no agreement between the parties to arbitrate. The appellate court denied the motion for a stay, and the arbitration proceeded.

The appellate court held that the respondent had not waived its right to a judicial determination of arbitrability, so that issue was properly before it.

The court rejected the respondent's contention that the proceeding must be dismissed for the petitioners' failure to join two other condominium developments that were signatories to the declaration. The court first noted that this objection was not raised in the motion court. It then determined that since the case was essentially a complaint of noise pollution and trespass on the petitioners' property and the respondent failed to show that the third parties might be inequitably affected by a judgment on the claims or that joinder is required to permit complete relief to be accorded. It also appeared that the other parties to the declaration had expressed their desire not to be involved in the dispute.

The court disagreed that the declaration's arbitration provision was not enforceable, albeit having left blank the name of the rabbi to whom the disputes were to be submitted. It cannot be said that the parties never agreed to arbitrate or that no agreement to arbitrate has ever been made. The failure to name a specific arbitrator is not fatal to its enforceability. Under CPLR § 7504 the Supreme Court had specific authority to appoint an arbitrator. That section provides that where the arbitration agreement does not provide for a method of appointment of an arbitrator, the court shall appoint an arbitrator. The naming of a rabbi or Beth Din is often contentious and may be thought to be critical to the outcome of an arbitration. Nothing indicated that the BDA was not an acceptable rabbinical court to resolve the dispute. Under the circumstances, nothing was presented to the motion court to indicate that appointment of the BDA was an abuse of discretion.

As to the lower court's grant of a preliminary injunction, the appellate court was more reticent. Pursuant to CPLR § 7502, a court may entertain an application for a preliminary injunction, but only upon the ground that an arbitral award to which the applicant may be entitled may be rendered ineffectual without such provisional relief, as well as a demonstrable probability of success on the merits, danger of irreparable injury, and the balance of the equities must be in the applicant's favor. Here, the petitioners submitted unsupported and conclusory attestations by their attorney that the respondent was acting in violation of the declaration and applicable noise ordinances. Even assuming the likelihood of success on the merits, the petitioners failed to demonstrate a danger of irreparable injury such that a future arbitration award would be rendered ineffectual without provisional relief, nor did the petitioners address the balance of equities in their favor. The appellate court thus decided that the motion court abused its discretion in granting a preliminary injunction. As thus modified, the decision to compel arbitration was affirmed.

COUNSEL: For appellant: CHRISTOPHER E. BUCKEY, Cullen and Dykman, EFREM SCHWALB, Koffsky Schwalb; for respondent: ISRAEL T. APPEL, Appel Markowitz

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AUTHORITY TO SUE

KRUTOLOW V. BD. OF MGRS. OF THE RUPPERT YORKVILLE TOWERS CONDO.

2026 NY SLIP OP 31656(U) (SUP. CT. N.Y. CNTY.APR. 10, 2026)



Contract Buyer Lacked Standing to Challenge Condo Sale

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

OUTCOME: Decided for Condo Defendants

WHAT HAPPENED: Standing, or lack of it, can get your case dismissed. A contract vendee's effort to stop a condominium from exercising its right of first refusal failed because the right was contained in the bylaws and exercised by the proper party—in this case, the condominium's board of managers. Someone living in a condominium unit who was neither an owner nor authorized by the board of managers to live there was unable to stop the condominium from exercising its right of first refusal when the owner sold the unit. In this case, the owner was an institutional lender but lost that status when it became the successful bidder at a foreclosure sale.

Plaintiff Martin Krutolow lives with his wife, Carol Dolgen-Krutolow, in apartment 29F in Ruppert Yorkville Towers Condominium. In 2009, Carol—who was then known as Carol Hayden—defaulted on a mortgage. In a subsequent foreclosure action brought by her lenders, Wells Fargo Bank, N.A., and PHH Mortgage Co, a foreclosure sale was conducted on Feb. 1, 2023. By a referee's deed, the apartment was transferred to the lenders that same day.

On March 25, 2025, following a nonjudicial foreclosure sale, the lenders entered into a contract of sale with Krutolow, who was the successful bidder. This time, however, the condominium exercised its right of first refusal.

TAKEAWAY

If you want to exercise rights given to an apartment owner in the bylaws (or in a proprietary lease, in the case of a cooperative), it is always a good idea to make sure you are an apartment owner and that the rights you seek to enforce actually exist by reading the applicable sections of the governing documents. The same is true if you want to stop someone from doing something that is not authorized by, or is prohibited by, the governing documents. Read the applicable sections of the governing documents so that a coherent, legally supportable argument can be made and presented to a court. Find some cases, too!

There is nothing worse in the middle of litigation than standing before the court in a co-op or condominium case and not being able to point to language in the governing documents that supports your position. It is an embarrassment and a waste of everyone's time to bring a case that misstates facts or relies on arguments that are not supported by the governing documents, case law or applicable statutes. These days, a lawyer who tries that may be sanctioned for bringing a frivolous action.

Krutolow claimed that the lenders were not subject to the right of first refusal and commenced an action against the lenders, the board of managers of the condominium and the president of the condominium. Krutolow asked the court to: (1) declare that no right of first refusal existed under these facts; (2) enjoin the closing on the proposed sale of the apartment to the condominium pursuant to the right of first refusal; and (3) award damages resulting from the condominium's alleged tortious interference with the contract between him and the lenders.

The defendants moved before answering to dismiss Krutolow's complaint on various grounds. Krutolow cross-moved to amend the complaint to eliminate the alleged defects identified by the defendants. The defendants then cross-moved to prevent Krutolow from filing additional papers seeking to stay a pending civil court proceeding and to prevent the sale of the apartment.

IN COURT: The court consolidated the motions and cross-motions for disposition and then turned to the condominium's motion to dismiss Krutolow's complaint, "as it may be dispositive of other motions, including plaintiff's motion for injunctive relief."

The court's analysis began by stating that dismissal of the complaint was appropriate because Krutolow admitted he never owned an apartment in the condominium

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and was seeking to enforce the condominium's bylaws pursuant to his agreement with the lenders. The court cited case law characterizing Krutolow's relationship to the bylaws as that of a contract vendee and noted that "it has long been held that a contract vendee has no standing to enforce the bylaws . . . ." [Citation omitted.]

The court continued its analysis by noting that because the plaintiff never owned a unit in the condominium and his only interest stemmed from his status as a potential purchaser of the apartment, "[h]e does not have standing to seek enforcement of the bylaws . . ." and ". . . he cannot transform his unauthorized occupancy of the Unit, which is the subject of an eviction proceeding, to confer standing."

The court then added, "[f]or the sake of completeness," that the right of first refusal, which the plaintiff argued did not exist, was found in Article VI, Section 5 of the bylaws, and then quoted the section in full. It clearly gave the condominium a right of first refusal to purchase the apartment on substantially the same terms offered by the owner to a prospective purchaser. The same section of the bylaws provides that a purported sale or lease of a unit in violation of this section "[s]hall be voidable at the election of the Condominium Board . . . ."

The court rejected Krutolow's argument that the right of first refusal did not exist because the seller was an institutional lender. The court found that argument factually incorrect. The lenders' status as mortgagees ended when they purchased the apartment at the foreclosure sale on Feb. 1, 2023. They became the owners of the apartment on that date. Thus, the subsequent sale by the lenders was no longer exempt from the condominium's exercise of its right of first refusal. In other words, the lenders lost their status as institutional lenders and became owners of the apartment when they purchased it. The condominium's exercise of the right of first refusal was therefore proper and authorized by the bylaws.

Finally, the purchase and sale agreement between Krutolow and the lenders allowed the Lenders to terminate the contract of sale for any reason by returning the contract deposit and paying a $25 termination fee. Thus, Krutolow's tortious interference claim was subject to dismissal because the condominium's exercise of its right of first refusal was justified by the bylaws. A claim for tortious interference with contract also requires that termination of the contract be without justification. Here, the bylaws specifically authorized the condominium to exercise a right of first refusal. Thus, the condominium's authority and justification for exercising that right not only existed, but were properly exercised. Krutolow's claim regarding the right of first refusal was dismissed.

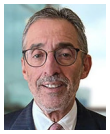
COUNSEL: For Board of Managers of The Ruppert Yorkville Towers Condominium and Joel Burris in his capacity as President of the Board of Managers of the Ruppert Yorkville Towers Condominium: THOMAS V. JUNEAU JR, HOWARD PAUL SCHECHTER, Fox Rothschild, EMIL A. SAMMAN, STEVEN RONALD KAUFMAN, Boyd Richards Parker & Colonnelli; for Wells Fargo Bank, N.A. as Trustee for the Pooling and Servicing Agreement dated as of June 1, 2004 Merrill Lynch Mortgage Investors Trust Mortgage Loan Asset-Backed Certificates, Series 2004-WMC4, and Phh Mortgage Corporation: BORIS BROWNSTEIN, Stradley Ronon Stevens & Young

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BYLAWS

HUBSHMAN V. 1010 TENANTS CORP.

2026 NY SLIP OP 03267 (1ST DEP'T. MAY 26, 2026)



Proprietary Lease Claims Survive Dismissal

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

OUTCOME: Decided, in part, for Plaintiff-Appellant

WHAT HAPPENED: The shareholder claimed the co-op had engaged in a scheme to deprive her of her rights to the roof garden under the proprietary lease, further alleging that the co-op held a meeting in 2024 to pass a lease amendment to limit the shareholder's rights and "exclusive use" of the roof garden.

IN COURT: The shareholder sued to overturn the board's and co-op's action, to enforce a settlement agreement entered into with the co-op in 2011 and to otherwise affirm her ongoing roof rights.

The court found that the shareholder did not have rights under the parties' 2011 settlement agreement to compel certain co-op work, but did find that the shareholder did allege claim under the proprietary lease for breach of agreement, and duties owed by the co-op, in, and by, among other things, holding a meeting to amend the proprietary lease and in seeking to eliminate her exclusive roof rights without her consent.

TAKEAWAY:

In the world of co-ops and shareholders, legal rights are often decided by the courts against the backdrop and within the framework of the Business Judgment Rule. This case is a reminder—if one is needed—that the legal analysis starts with WHAT the proprietary lease and governing documents of the cooperative say, including the bylaws and certificate of incorporation, and even (a historically dated) offering plan, before the Business Judgment Rule is even implicated, or deemed applicable.

A second takeaway is that some shareholders have the resources to do battle with co-ops—particularly those owning a penthouse co-op apartment on Fifth Avenue on the Upper East Side of Manhattan.

COUNSEL: For Barbara Hubshman: SLAVA HAZIN, BRUCE H. WIENER, Warshaw Burstein; for 1010 Tenants Corp. and the Board of Directors of 1010 Tenants Corp.: WILLIAM R. FRIED, DEVIN WILLIAM NESS, Herrick, Feinstein

COMMERCIAL UNIT

GJOMBALAJ V. THE BD. OF MGRS. OF ONE BEACON COURT CONDO.

2026 NY SLIP OP 31761(U) (SUP. CT. N.Y. CNTY. APR. 17, 2026)



Office Unit Owner Avoids Liability for Elevator Injury

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

OUTCOME: Decided for Defendant 731 Office One LLC

WHAT HAPPENED: The plaintiff, Ismet Gjombalaj, an elevator operator working in a building located at 731 Lexington Ave., New York, commenced a personal injury action against the Board of Managers of One Beacon Court Condominium, 731 Office One LLC, 731 Retail One LLC and Home Depot U.S.A., Inc., alleging he was struck by a pallet jack and/or materials inside a freight elevator due to the defendants' negligence.

The plaintiff testified at his deposition that while operating the freight elevator, which provided access to a Home Depot store and a restaurant, a Home Depot employee loaded a pallet jack (a wheeled hand tool used to lift and move heavy goods) carrying several refrigerators onto the elevator, and the plaintiff was struck. He stated he had only ever seen Home Depot employees use that particular pallet jack, and he was unsure

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exactly what caused the pallet jack or its load to strike him.

After discovery closed and the plaintiff filed his note of issue, defendant 731 Office One LLC moved for summary judgment, arguing it did not own, operate, manage or otherwise have any connection to the freight elevator or the pallet jack and materials involved, and therefore owed the plaintiff no duty of care. No party submitted opposition to the motion.

IN COURT: The court analyzed the motion under the standard summary judgment framework, noting that a movant must make a prima facie showing of entitlement to judgment as a matter of law by tendering admissible evidence eliminating all material issues of fact, after which the burden shifts to the opposing party to raise a triable issue. The court relied on the property manager's deposition testimony, which established that only Home Depot and a nonparty restaurant had access to the elevator at issue and that a separate nonparty company was responsible for elevator maintenance.

The court also relied on the building's declaration of condominium, which specified that the Retail Common Elements included the elevator at issue, and on an affirmation from 731 Office's authorized signatory establishing that 731 Office owned only the office units, not the retail unit, never possessed, occupied, controlled or managed any part of the retail unit or the elevator at issue, and never directed the work of any retail-unit employee. Based on this uncontroverted evidence, the court held that 731 Office established, prima facie, that it had no involvement with the elevator, the pallet jack or the employee operating it, and therefore owed no duty of care to the plaintiff, a necessary element of a negligence claim.

The court therefore granted 731 Office One LLC's motion for summary judgment, dismissing all claims and cross-claims against it while severing and continuing the remaining claims against the other defendants.

TAKEAWAY:
This decision underscores that in multi-owner condominium and commercial buildings, liability for an accident turns on which specific entity actually owned, controlled or had access to the area or equipment involved. A defendant that conclusively shows it had no possession, control or connection to the offending instrumentality can obtain summary dismissal even in a serious workplace injury case, particularly where the plaintiff offers no evidence tying that specific defendant to the incident.

COUNSEL: For Ismet Gjombalaj: CRAIG DANIEL ROSENBAUM, Rosenbaum Meier Personal Injury Lawyers; for the Board of Managers of One Beacon Court Condominium, 731 Office One LLC, 731 Retail One LLC: GREGORY JOSEPH DELL, ARI NATHAN RUBEL, Wilson Elser Moskowitz Edelman & Dicker, ANDREW DANTE HENRIQUEZ, JONATHAN RICHARD SICHTERMANN, Parsky & Galloway; for Home Depot U.S.A, Inc.: ROBERT JASON CHAPPELL, AARONSON, RAPPAPORT, Feinstein & Deutsch, ANDREW DANTE HENRIQUEZ, JONATHAN RICHARD SICHTERMANN, Parsky & Galloway

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CONSTITUTIONALITY

MATTER OF BD. OF MGRS. OF WESTAGE TOWERS EAST CONDO. V. PLANNING BD. OF THE CITY OF WHITE PLAINS

2026 NY SLIP OP 03303 (2ND DEP'T. MAY 27, 2026)



Federal Law Bars Challenge to Approved Cell Tower

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

OUTCOME: Decided for Respondent City Planning Board

WHAT HAPPENED: In May 2023, DISH Wireless, LLC submitted an application to the City of White Plains Planning Board for a special use permit to build a wireless telecommunications antenna facility on a certain rooftop in the city. As part of its application to the Planning Board, DISH submitted reports concluding that the expected radiofrequency exposure from the proposed facility fell below the limits permitted under Federal Communications Commission (FCC) rules. After holding hearings on the application, the Planning Board granted the application.

TAKEAWAY:

Challenges to government action in an Article 78 are always an uphill battle. Petitioners must show the determination was arbitrary and capricious—a high bar to meet. There was little chance of success in the condominium's challenge here as it never put forward any evidence of unsafe radiofrequency exposure levels.

The condominium's challenge relied on poking holes in the DISH report (which had been revised to omit a reference to emissions levels over 3,000% higher than the FCC's maximum permissible exposure), thereby essentially adopting the DISH report's findings. However, these arguments are not enough to render the decision arbitrary and capricious.

The condominium would have been better served to commission its own report to rely upon in its challenge (even then, the Planning Board would likely have been free to adopt whichever conclusion it saw fit, but at least there would have been a colorable argument). Without any evidence to contradict the DISH report and the City's own consultant, this challenge was all static, no reception.

IN COURT: The Board of Managers of the Westage Towers East Condominium filed an Article 78 petition seeking to overturn the Planning Board's decision to grant the special use permit. The Supreme Court denied the petition and dismissed the proceeding, and this appeal ensued. The Second Department affirmed, noting that, under the Telecommunications Act of 1996, state and local governments are barred from regulating the placement, construction or modification of wireless service facilities on the basis of radiofrequency emissions, so long as such facilities comply with the FCC's regulations regarding such emissions.

Essentially, the Telecommunications Act pre-empts state actors from regulating these facilities as long as the radiofrequency radiation is within acceptable levels as determined by the FCC. The Second Department held, as the Supreme Court had, that the report submitted by DISH demonstrated that the radiofrequency exposure was below the FCC's exposure limits and it was not arbitrary or capricious for the Planning Board to rely on this "objective factual basis."

The court also rejected the contention that the Planning Board should not have granted the application without first obtaining radiofrequency exposure calculations for the condominium's residents. The evidence submitted by DISH demonstrated that the radiofrequency exposure dissipated to safe levels at a maximum of about 40 feet from the antenna (and faster in directions not directly in front of the antenna). The condominium conceded that the closest apartment was about 120 feet away, so even the closest apartment would not be exposed to unsafe radiofrequency levels.

COUNSEL: For Board of Managers of Westage Towers East Condominium, Jeffrey I Klein as President of the Board of Managers of Westage Towers East Condominium, Judith Harari, Albert Harari: ANDREW JAMES CAMPANELLI, Campanelli & Associates, PC; for Planning Board of the City of White Plains, City of White Plains: ARTHUR G. GUTEKUNST, MICHAEL JOHN KELLY, City Of White Plains Department Of Law — City Hall; for DISH Wireless LLC: BRENDAN MARKHAM GOODHOUSE, Cuddy & Feder

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CONSTRUCTION DEFECTS

BOARD OF MGRS. OF THE 432 PARK CONDOMINIUM V. 56TH & PARK (NY) OWNER, LLC

2026 NY SLIP OP 03381 (1ST DEP'T., JUN. 2, 2026)



Condo Board Member Not Entitled to Indemnification

SQUIB BY PROF. ANDREW P. BRUCKER, CUNY BARUCH COLLEGE, ZICKLIN SCHOOL OF BUSINESS

OUTCOME: Decided for the Condo Plaintiffs

WHAT HAPPENED: The board of a midtown condominium commenced an action for construction defects against the owners/sponsor and the construction professional. They then amended the complaint to include claims against the sponsor for breach of the offering plan and the purchase agreements, and added claims against a board member, Harry Macklowe, one of the defendants, for breach of fiduciary duty.

Macklowe then filed a counterclaim for indemnification, and the plaintiffs responded with a cross-motion for summary judgment dismissing this counterclaim. The court denied the plaintiffs' attempt to have the claim for indemnification dismissed, and the plaintiffs appealed.

IN COURT: The court reversed the trial court, agreed with the plaintiffs, and declared that Macklowe was not entitled to indemnification under the terms of the condominium's governing documents. The court determined that the governing documents do not unequivocally include intraparty disputes between the condominium's board of managers and a board member for those provisions to insulate Macklowe from liability here as a matter of law.

Macklowe had pointed to sections of the offering plan and the bylaws which allowed certain self-dealing, which narrowed the scope of what may constitute self-dealing by a board member. The court noted, however, that the Court of Appeals had affirmed in the past that the intention to indemnify in the context of an intraparty dispute must be "unmistakenly clear from the language . . . . " and "unequivocally referable to claims between the parties themselves."

Finally, the court dismissed the claim by Macklowe that there was an interpretation issue. On the contrary, the court held that the indemnification provisions of the document unambiguously did not refer to intraparty claims.

TAKEAWAY:

Once again, a court will review the governing documents of a condo carefully to determine what was stated. It will not try to interpret what was meant when a clear interpretation is possible. In addition, when language is required, the lack of the precise language will doom any request for an interpretation. Most often this concept will be seen in the bylaws (and a cooperative's proprietary lease) in the sections requiring payment of legal fees. Precise language is crucial, and whether it's the indemnification provision, the legal fees provision, or even the repair provision, a careful review of the governing documents is certainly a prudent decision on the part of the board.

COUNSEL: For Board of Managers of The 432 Park Condominium, Board of Managers of The Commercial Section of The 432 Park Condominium, Board of Managers of The Residential Section of The 432 Park Condominium, on behalf of the individual unit owners: ANDREW J. URGENSON, GLEN BERNARD LENIHAN, CHRISTOPHER JAMES RADOS, Oved & Oved; for Harry Macklowe: DAVID T. FEUERSTEIN, Richard Walker Trotter, Feuerstein Kulick

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DISCRIMINATION

HILL V. 140 CLAREMONT OWNERS LTD.

NO. 1:25-CV-02025 (S.D.N.Y. JUN. 11, 2026) ECF NO. 10



Court Dismisses Discrimination Claims Filed by Serial Litigant

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: The plaintiff in this case was proceeding pro se (that is, without being represented by a lawyer) and suing a co-op located in Morningside Heights seeking relief based on a variety of Federal, state, and local discrimination statutes. The plaintiff, who is African American, allegedly lived in the co-op with her husband as shareholders. During the past 15 years, they were allegedly "denied their rights" as shareholders, "were not consulted and offered a vote on who was allowed to reside in the building," and "were involuntarily disenfranchised."

The complaint proceeded to describe multiple encounters with building management and staff regarding complaints about, among other things, a water leak in their ceiling, a defective radiator in their bedroom, a clogged drain in their sink, a non-working smoke detector, and a hole in their kitchen floor. As a result, the plaintiff alleged, they "have been forced for years to live in essentially slum apartment conditions, unlike other owners." That last phrase is an allusion to plaintiff's claims that they had been singled out by the co-op for poor treatment on the basis of their race.

TAKEAWAY:
The reminder embedded in this case is simply that in the course of serving on a board, or representing a co-op, the odds are that one will eventually encounter a serial litigant who will not be deterred by reason or a lack of merit to their claims, and in those unfortunate cases, the best possible outcome is to be before a vigilant court that will shield the co-op from having to waste time and expense getting the cases dismissed.

IN COURT: What is unusual about this case is that the defendant co-op did not appear. Instead, the court dismissed the complaint sua sponte (that is, on its own motion). It reviewed the various allegations and found that none of them sufficiently pleaded claims under the discrimination statutes, primarily because plaintiff had failed to provide facts that could plausibly support even a minimal inference of discriminatory motivation. In her long list of perceived slights and complaints, plaintiff completely failed to make any non-conclusory allegation that any defendant at any point was acting with discriminatory intent.

The court then revealed why it had acted peremptorily to dismiss the complaint. Since 2021, this plaintiff had filed, and had dismissed, several separate actions and appeals making similarly meritless allegations. Accordingly, the court warned her that "if she brings any further nonmeritorious actions in this court . . . " she may be barred from filing any future complaints without legal representation.

COUNSEL: For 140 Claremont Owners Ltd.: EMANUELA LUPU, SARETTE HASSID, Smith Buss & Jacobs

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EVICTION/TERMINATION

924 W. END AVE., INC. V. KAPLAN

2026 NY SLIP OP 50923(U) (APP. TERM 1ST DEP'T, JUN. 15, 2026)



Co-op May Evict Over Chronic Late Maintenance

SQUIB BY KRISTIN PENDERGRASS, COUNSEL, SEYFARTH SHAW LLP

OUTCOME: Decided for Co-op Petitioner

WHAT HAPPENED: Respondents Bevin Johanna Kaplan and Daniel Ross Reifer are shareholders in petitioner 924 West End Avenue, Inc., the cooperative apartment corporation that owns the building at 924 West End Avenue in Manhattan, and the proprietary lessees of apartment 115 in the building. Between July 2022 and September 2024, Kaplan and Reifer repeatedly failed to pay maintenance for their apartment. As a result, the co-op served them with three rent demands and commenced two nonpayment proceedings against them, although the co-op did not pursue those proceedings after Kaplan and Reifer paid the amounts then due.

In September 2024, the co-op served a notice of termination, effective Oct. 4, 2024, terminating Kaplan and Reifer's proprietary lease based on their chronic nonpayment of maintenance. On Oct. 22, 2024, the co-op commenced a holdover proceeding in New York City Civil Court, seeking to evict Kaplan and Reifer from the apartment. Kaplan and Reifer subsequently filed a motion to dismiss the holdover proceeding, and the co-op cross-moved for summary judgment.

IN COURT: The lower court granted Kaplan and Reifer's motion to dismiss and denied the co-op's cross-motion for summary judgment. The lower court held that the co-op's prior commencement of nonpayment proceedings should be evaluated in the context of the surrounding circumstances and that the co-op's decision not to pursue those proceedings rendered them insufficient to support termination of the proprietary lease for chronic nonpayment.

On appeal, the Appellate Term reversed the lower court's dismissal of the petition. The Appellate Term agreed with the lower court's finding that the prior commencement of nonpayment proceedings should be evaluated in the context of the surrounding circumstances but held that the fact the co-op did not pursue those proceedings was not dispositive. The Appellate Term further held that the allegations underlying the petition, including the co-op's service of three rent demands and commencement of two nonpayment proceedings in a two-year period, together with Kaplan and Reifer's pattern of paying accumulated arrears and then immediately defaulting again, showed "[a] chronic and repeated failure to pay maintenance, without excuse . . . ." The court concluded those allegations were sufficient to survive a motion to dismiss.

The Appellate Term also affirmed the lower court's denial of the co-op's cross-motion for summary judgment, holding that the motion was premature because it had been filed before issue was joined.

TAKEAWAY:

There is no set minimum number of nonpayment proceedings that a landlord must pursue against a tenant before the landlord may terminate the tenant's lease for chronic failure to pay rent. Here, the Appellate Term held that the co-op's decision not to pursue its prior nonpayment proceedings against Kaplan and Reifer did not preclude it from terminating their proprietary lease because the surrounding circumstances, including the commencement of those proceedings, showed an ongoing pattern of default. Landlords may still be able to terminate the lease of a tenant who chronically fails to pay rent, even if the landlord has not prosecuted nonpayment proceedings or the tenant has cured prior defaults. The relevant test is whether the surrounding circumstances demonstrate a prolonged pattern of chronic and unjustified failure to pay rent on the part of the tenant.

COUNSEL: For 924 West End Avenue, Inc.: ANDREW JON WAGNER, DEVIN WILLIAM NESS, Herrick Feinstein; for Bevin Johanna Kaplan and Daniel Ross Reifer: SERGEY DAVYDOV, Law Offices of Sergey Davydov; for Harlem Multifamily LLC: MICHAEL JAMES BONNEVILLE, Kriss and Feuerstein

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FORECLOSURE

140 E. 56TH ST. CONDO. V. BOSBOOM

2026 NY SLIP OP 31809(U) (SUP. CT. N.Y. CNTY. APR. 24, 2026)



Court Appoints Receiver in Condo Lien Foreclosure

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

OUTCOME: Decided for Plaintiff Condominium

WHAT HAPPENED: Dorline H. Bosboom, the owner of Unit 16D, withheld payment of her condominium unit common charges beginning in approximately 2018, alleging that the condominium had failed to maintain the building and that the board's conduct justified withholding payment or offsetting the common charges. Due to the significant arrears, the Board of Managers brought an action to foreclose a lien for unpaid common charges filed against Ms. Bosboom.

As part of the foreclosure action, the board moved for the appointment of a temporary receiver to take possession of the unit, collect any rents (or the unit's reasonable rental value if owner-occupied), and preserve the property's value during the litigation. The board submitted evidence that the unit had an estimated reasonable monthly rental value of $5,750.

TAKEAWAY:

A condominium board that establishes a substantial default in common charges has a strong basis to seek foreclosure of its common-charge lien and may have a temporary receiver appointed to collect reasonable rent. A condominium unit owner generally cannot withhold payment of common charges, even if the unit owner alleges that the condominium failed to maintain the building or breached its obligations. Those claims may be asserted separately as defenses, counterclaims or in a separate action, but they do not defeat the condominium's right to foreclose its common-charge lien or obtain the appointment of a temporary receiver.

In short, the case underscores the "pay first, litigate later" principle in condominium law: Disputes over the board's performance generally do not justify withholding common charges.

IN COURT: The court granted the condominium board's motion to appoint a temporary receiver in an action to foreclose a common-charge lien against Unit 16D. The board established that the unit owners had failed to pay common charges since 2018 and that the condominium's bylaws, together with Real Property Law § 339-aa, entitled it to the appointment of a receiver and the collection of reasonable rental value during the pendency of the foreclosure.

The defendant's allegations that the condominium failed to maintain the building and that she was entitled to offsets did not excuse her obligation to pay common charges or defeat the receiver application. Finding that the board demonstrated a reasonable monthly rental value of $5,750, the court appointed a temporary receiver to collect rents and manage the property pending resolution of the foreclosure action.

COUNSEL: For 140 East 56th Street Condominium, By Its Board of Managers: JARED E. PAIOFF, MATTHEW ULMANN, Schwartz Sladkus Reich Greenberg Atlas; for Dorline H. Bosboom a/k/a Dorline Bosboom, and Steven Decrescenzo: MARC JONAS BLOCK, Law Offices of Marc Jonas Block; for New York State Department Of Labor: CAMILLE JENNIFER HART, JACK IKAIKA SALE, The New York State Office of the Attorney General; for United States Of America Internal Revenue Service: JOHN E. GURA, United States Attorney's Office — S.D.N.Y.

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INSURANCE

BD. OF MGRS. OF THE 866 THIRD AVE. CONDO. V. CINCINNATI INS. CO.

NO. 1:25-CV-07810 (S.D.N.Y. JUN. 9, 2026) ECF NO. 14



Court Finds Condo's Insurance Covers Unit Repairs

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

OUTCOME: Decided, in Part, for Plaintiff Condominium

WHAT HAPPENED: On Dec. 23, 2024, a major water leak from a common area on the 12th floor of a Manhattan condominium at 866 Third Ave. sent water cascading through stairwells, flooding common areas and individual condominium units. The affected units included a Marriott-branded hotel, an outpatient care facility and retail space. The flooding also damaged the building's elevators, fire alarm system and other building systems.

The board of managers promptly arranged emergency repairs and submitted an insurance claim to its carrier, Cincinnati Insurance Co. The insurer's commercial property policy covered direct physical loss or damage to covered property but limited payment to the board's "insurable interest" in the damaged property.

After investigating the loss, Cincinnati paid more than $320,000 for repairs but denied coverage for repairs inside individual units, arguing that the condominium had no insurable interest in those portions of the property.

TAKEAWAY:
Condominium and co-op governing documents can play a critical role in determining the scope of insurance coverage. Here, the declaration's casualty-repair provisions established the condominium's insurable interest in repairs within individual units following a covered casualty. Boards should carefully review both their governing documents and their insurance policies before accepting a carrier's coverage determination.

IN COURT: The board sued Cincinnati in New York state court, and the insurer removed the case to federal court. The central issue was whether the condominium had an insurable interest in the damaged portions of the individual units.

The court examined the condominium's declaration and bylaws and concluded that the condominium had an insurable interest in nearly all of the disputed repairs. Citing New York Court of Appeals precedent, the court noted that an insurable interest exists whenever the insured stands to suffer financial loss from damage to the property and that courts should apply the doctrine with "great liberality," generally resolving close questions in favor of insureds.

The declaration required the condominium to repair damage caused by casualties, and another provision specifically exempted casualty-related repairs from the general rule that unit owners are responsible for maintaining their own units. Although Cincinnati argued that repairs within unit interiors fell outside the condominium's insurable interest, the court disagreed.

After the court directed the parties to confer on damages, they agreed that an additional $290,457.04 was owed. The court awarded that amount to the condominium.

COUNSEL: For Board Of Managers of The 866 Third Avenue Condominium: JOHN C. RE, Kurzman Eisenberg Corbin & Lever; for The Cincinnati Insurance Company and Cincinnati Financial Corporation: WILLIAM OWEN KREKSTEIN, Horst Krekstein & Runyon

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MOTION PRACTICE

SUNSET CONDO II, LLC V. O'NEILL

2026 NY SLIP OP 03014 (2ND DEP'T. MAY 13, 2026)



Lack of Proper Evidentiary Foundation Basis for Reversal of Summary Judgment Dismissal

SQUIB BY DREW PAKETT, PARTNER, BRAVERMAN GREENSPUN, PC

OUTCOME: Decided for Condo Plaintiffs-Appellants

WHAT HAPPENED: Half Moon Bay (HMB) is a complex of three separate residential condominiums and a marina condominium, which collectively have community facilities such as clubhouses and pools that may be utilized by the HMB owners. The community facilities are managed by HMB's homeowners' association. The plaintiffs consist of the corporate entity that is the owner of one of the units at HMB and one of the individual owners of the LLC. It should be noted that the individual plaintiff does not reside at HMB. The underlying dispute concerned the enactment of certain rules by the HOA in 2018 that imposed a residency requirement in order to be permitted to use any of the community facilities. The plaintiffs claimed, among other things, that the HOA lacked authority to impose a residency requirement and further that the actual intention of the rule was to specifically target the individual plaintiff due to a separate ongoing legal dispute involving a family member of the individual plaintiff (who did reside at HMB) and the HOA. The HOA took the position that it possessed the authority to impose rules with respect to the community facilities based on, among other things, the HOA's governing documents, and it was enacted for legitimate business purposes, such as addressing overcrowding concerns. The plaintiffs commenced a lawsuit seeking to vacate the residency requirement rule and monetary damages. Following lengthy discovery, the HOA (and the other related defendants) sought to dismiss the complaint in its entirety.

TAKEAWAY:
A factual affirmation of an attorney without personal knowledge is without evidentiary value. Although counsel may believe that it is intimately acquainted with the facts of a case and may have intimate knowledge of various relevant documents, including the governing documents of a condominium/cooperative, such familiarity is not the same as having personal knowledge of the facts. Here, had the HOA's counsel submitted the documentary evidence with the managing agent's affirmation in its moving summary judgment papers, rather than for the first time on reply, it is likely that the lower court's decision would have been upheld.

IN COURT: The lower court granted the HOA's motion for summary judgment dismissing the complaint in its entirety, finding that its enactment of a rule restricting the use of community facilities to residents of HMB was in accordance with the governing documents and was an appropriate exercise of its business judgment due to overcrowding and overloading concerns. The Second Department, however, reversed the decision based on an insufficient evidentiary record. Specifically, the Second Department determined that the submissions relied on by the HOA in demonstrating its authority to pass the rule failed to meet the business records exception to the hearsay rule, as both the governing documents and the policy concerns were based solely on the affirmation of the HOA's counsel rather than someone who possessed adequate personal knowledge. Although the HOA attempted to correct this material deficiency in its reply papers by submitting an affirmation from the HOA's managing agent, the Second Department found that the lower court erred in considering evidence submitted for the first time in reply.

COUNSEL: For Sunset Condo II LLC and Steven Plotkin: PETER J. SCHUYLER, Kitson & Schuyler; for Linda O'Neill, Eugene Kim, the Board of Directors of Half Moon Bay Homeowners Association Inc., and Heritage Management Services, LLC: JACQUELINE LISA AIELLO, Smith Buss & Jacobs, NICHOLAS PETER IANNUZZI, Bergstein Flynn Knowlton & Pollina

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PERSONAL INJURY

ZHIVOV V. KINGS BAY HOUS. CO.

2026 NY SLIP OP 02871 (2ND DEP'T. MAY 6, 2026)



An Owner's Liability for Personal Injury

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: The plaintiff is an individual who was allegedly injured while performing demolition work in an apartment building. The defendants are a residential cooperative housing corporation, which owns the apartment building, and the owner of the land underneath the apartment building. The plaintiff claims that, while performing demolition work as part of a renovation project at the apartment building, he fell from an unsecured ladder due to an uneven floor and injured himself.

IN COURT: The plaintiff sued the defendants for, among other things, negligence and violations of Labor Law §§ 200, 240(1) and 241(6). He moved for summary judgment against both defendants on liability pursuant to Labor Law § 240(1). The landowner separately moved for summary judgment to dismiss all claims against it, and the cooperative cross-moved for summary judgment for, among other things, dismissing the negligence and violation of Labor Law § 200 claims against it.

The court denied the plaintiff's motion for summary judgment against both defendants because each raised a triable issue of fact as to whether the alleged accident occurred. The court granted the landowner's motion, finding that the landowner neither contracted for the demolition work nor had authority to supervise or control it, and that the underlying land bore no nexus to the plaintiff's alleged injuries. The court denied the cooperative's cross-motion, however, because the cooperative failed to establish that it lacked constructive notice of the allegedly dangerous condition that contributed to the accident. In particular, the cooperative could not show when the apartment floor was last inspected or that the defect would not have been discovered upon a reasonable inspection.

TAKEAWAY:
Although Labor Law § 240(1) imposes absolute liability on owners for elevation-related injuries suffered by workers on their property, summary judgment will be denied where the owner raises a triable issue of fact as to whether the accident occurred at all. Further, a landowner with no contractual, supervisory, or practical nexus to the construction project—or to the condition alleged to have caused the injury—will not be held liable merely because it owns the land beneath the premises.

COUNSEL: For Artur Zhivov and Helen Moykher: TIMOTHY WILLIAM NORTON, Shulman & Hill; for Kings Bay Housing Co., Inc.: JEFFREY D FIPPINGER, Law Offices of Leon R. Kowalski & Associates, KATHRYN MARIE BEER, Mauro Lilling Naparty; for Kings Bay Section One Land LLC: BRIAN DAVID GINSBERG, BRIAN ANDREW BENDER, LISA ANNE LE COURS, Harris Beach Murtha Cullina

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PROPRIETARY LEASE

71ST STR.-LEXINGTON CORP. V. FRANKEL

2026 NY SLIP OP 03358 (1ST DEP'T MAY 29, 2026)



Co-op Could Sell Shares After Insurance Default

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

OUTCOME: Decided for Plaintiff Co-op

WHAT HAPPENED: In an important decision for co-ops, the Appellate Division upheld a lower court decision that found a co-op which terminated a proprietary lease as a result of the shareholder's failure to maintain homeowner's insurance was entitled to sell the apartment under the express terms of the lease, which authorized such a sale, and was not required to establish a security interest or proceed under the Uniform Commercial Code (UCC).

IN COURT: The court found that the failure to obtain homeowner's insurance was a material breach of the lease justifying termination. The cooperative relied on the express provisions of the lease, which granted the co-op the right to sell the shares of a shareholder whose lease had been terminated as a result of default. It also upheld the right to terminate the lease in this manner for a nonmonetary default. This is particularly important because the definition of a security agreement under the UCC, as it relates to co-ops, refers only to monetary obligations.

The shareholder, the executor of his mother's estate, had been out of possession of the apartment since 2014 as a result of prior litigation between the parties, which ended in his ejectment because he occupied the apartment without the co-op's consent. Thus, the co-op was not seeking to evict a tenant from his residence because he did not live there. Rather, the shareholder argued that because the plaintiff served the notice of default on him a few weeks after he moved for contempt in the prior action between the parties, a presumption of retaliation had arisen that the plaintiff had not rebutted, and therefore he had a defense to the validity of the default and termination notices.

The court also found that the cooperative, as the successful party in the litigation, was entitled to recover its legal fees.

TAKEAWAY:

The court made clear that a cooperative has a powerful remedy at its disposal in the event of a nonmonetary default by a shareholder that does not require the commencement of litigation. By holding that the UCC did not apply, the court eliminated some of the technical notice requirements otherwise required under the UCC and paved an easier path for obtaining a new shareholder.

COUNSEL: For 71st Street-Lexington Corporation: MATTHEW ULMANN, Schwartz Sladkus Reich Greenberg Atlas; for Eric Frankel Individually and as Executor of the Estate of Gloria Frankel: MAURICE W. HELLER, Foster Garvey PC

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SCAFFOLD

HUNDRED HORIZONS LLC V. BD. OF MGRS. OF THE VILL. GREEN W. CONDO.

2026 NY SLIP OP 31901(U) (SUP. CT. N.Y. CNTY. MAY 5, 2026)



Condo Owes No Share of License Fees

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

OUTCOME: Decided for Defendant Condo

WHAT HAPPENED: In 2018, the board of managers of the Village Green West Condominium (the defendant) entered into a written license agreement with the developer of a neighboring property for the installation of a legally mandated scaffold and sidewalk bridge. The scaffolding/bridge encumbering the defendant's property remained in place years longer than initially anticipated because of a construction delay.

The plaintiff, a commercial tenant in the condominium, alleged that it was directly and negatively impacted by the inordinate delay in construction and that the additional license fees obtained by the condominium as a result of the delay should have been shared with the plaintiff. The plaintiff alleged that the defendant had an obligation to encourage the completion of construction and acted negligently by not doing so. The plaintiff also alleged that the number of disgruntled tenants who terminated their leases early and the multiple lawsuits commenced against the condominium as a direct result of the litigation demonstrated that the plaintiff was entitled to monetary relief. The defendant filed a pre-answer motion to dismiss and alleged that the plaintiff had not stated any cognizable cause of action or basis for recovery.

IN COURT: The Supreme Court agreed with the defendant and dismissed the plaintiff's action in its entirety. In so doing, it concluded that the plaintiff failed to show that the defendant had any duty to the plaintiff to share the proceeds of its license agreement or "[t]o try and convince [its neighbor] to finish the construction . . . ." The court further opined that the negative impact of a scaffold on a commercial tenant, while perhaps inequitable, did not result in liability or damages. According to the court, "[t]he general rule is that when . . . parties have a contractual relationship, tort liability requires that a defendant 'has breached a duty of reasonable care distinct from its contractual obligations' . . . .". What's more, "[w]here a plaintiff 'is merely seeking to enforce its bargain, a tort claim will not lie.'"

TAKEAWAY:

Despite the equities in favor of an adversely impacted commercial tenant, a court will not award damages for the presence of a scaffold mandated by the law, even if said scaffold remains in place longer than anticipated. There is also no basis for recovery by an allegedly aggrieved commercial tenant against a condominium-landlord unless there is a specific agreement or statute imposing a non-contractual duty of care. A scaffold installed by a neighboring building that remains intact during a delay in construction, which results in additional license fees to the condominium, does not necessarily obligate the condominium to share any or all of the additional fees with its commercial tenant.

COUNSEL: For Hundred Horizons LLC: ASHLEY MARIE KOENEN, Goldberg Weprin Finkel Goldstein; For The Board of Managers of The Village Green West Condominium, A/K/A Village Green West Condominium Board of Managers: ANDREAS E. THEODOSIOU, IULIIA KASSAI, Boyd Richards Parker & Colonnelli

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STATUTE OF LIMITATIONS

RICHARDSON CONDO. V. CITY OF NEW YORK

2026 NY SLIP OP 31552(U) (SUP. CT. N.Y. CNTY. APR. 10, 2026)



Condo Can't Avoid FISP Penalties Through Declaratory Action

SQUIB BY PROF. ANDREW P. BRUCKER, CUNY BARUCH COLLEGE, ZICKLIN SCHOOL OF BUSINESS

OUTCOME: Decided for Defendant

WHAT HAPPENED: The plaintiff, Richardson Condo in Brooklyn, failed to submit the required Façade Inspection Safety Program (FISP), also known as Local Law 11, façade report and incurred $121,000 in penalties from the New York City Department of Buildings (DOB). However, Richardson did not challenge the penalties or file the required reports. The city also never commenced an action to enforce the civil penalties.

Instead, Richardson filed a summons and complaint seeking a declaratory judgment that the penalties should be waived and deemed uncollectible because the city failed to bring an action to collect them within the three-year statute of limitations under the CPLR. Richardson also brought an action under the Real Property Actions and Proceedings Law (RPAPL) to quiet title, asking the court to declare that the building was "free and clear of any DOB civil penalties pursuant to FISP."

The city moved to dismiss the complaint, arguing that Richardson failed to state a cause of action for declaratory relief because the FISP violations and penalties continued to accrue as long as the required reports remained unfiled. The city also argued that because it had never commenced an enforcement action, Richardson could not assert the statute of limitations as an affirmative defense. Finally, the city argued that relief under the RPAPL was unavailable because FISP violations do not create a removable cloud on title. It also contended that the court lacked jurisdiction because Richardson failed to exhaust its administrative remedies and should have proceeded through an Article 78 proceeding.

IN COURT: The court agreed with the city's arguments. Because the city had not commenced an action to collect the penalties, there was no justiciable controversy between the parties, making Richardson's statute of limitations claim premature. For the same reason, the court concluded it lacked jurisdiction over the declaratory judgment claim.

The court also held that Richardson failed to exhaust its administrative remedies, noting the general rule that a party challenging an administrative agency's actions must first exhaust available administrative remedies before seeking relief in court.

Finally, the court held that the RPAPL claim failed because a quiet title action requires an actual cloud on title. A FISP violation does not affect title, and the city had taken no action that created such a cloud.

TAKEAWAY:
The biggest lesson from this decision is that ignoring FISP requirements can become extremely expensive, and creative legal arguments are unlikely to erase accumulated penalties. FISP has strict deadlines for submitting reports and completing required façade repairs. Boards should ensure their managers closely monitor those deadlines and maintain compliance.

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