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LIENS

WILMINGTON TRUST V. 17 BATTERY PLACE CONDO.

2026 NY SLIP OP 04163 (1ST DEP'T. JUN. 30, 2026)



First Mortgage Takes Priority Over Condo Common-Charge Lien

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

OUTCOME: Decided for Plaintiff-Respondent

WHAT HAPPENED: This matter involved a condominium containing four condominium units, none of which were used as an individual residential unit. Two of the units were used, at least in part, as units housing multiple residential apartments, meaning that each contained multiple residential apartments that were used for rental purposes, similar to the manner in which an apartment building operates. In fact, the two units in question collectively contained approximately 491 apartments, and thus were not being used as traditional residential condominium units comprising a single dwelling unit.

One of the unit owners obtained a first mortgage loan in 2016, approximately seven years prior to the time that the defendant condominium board filed a lien for unpaid common charges against the same unit owner. This became an issue of lien priority, with the respective parties arguing over the meaning of "non-residential" as it pertains to the New York Condominium Act.

New York law generally provides that the mortgage lien recorded before other mortgage liens has priority over the latter, although this "first to record" priority scheme does not apply with respect to a condo board's lien for unpaid common charges and assessment. Real Property Law (RPL) § 339-z provides that after government liens such as property taxes, only the lien of a first mortgage has priority over the condo board's common-charge lien, but this section of the New York Condominium Act also contains an exception to the standard rule, whereby "[t]he declaration of an exclusive non-residential condominium may provide that the lien for common charges will be superior to any mortgage liens of record."

The instant case was commenced as a mortgage foreclosure action; however, this eventually

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Court Orders New Look at Condo License Fee

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Slip-and-Fall Claim Survives Summary Judgment

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Principal & Managing Partner, Braverman Greenspun

Prof. Andrew P. Brucker
CUNY Baruch College, Zicklin School of Business

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Partner, Fox Rothschild

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Principal, Graff Dispute Resolution

Jeremy S. Hankin
Partner, Hankin & Mazel

Thomas P. Higgins
Partner, Higgins & Trippett

Richard Klein
Partner, Klein Greco & Associates

Michelle P. Quinn
Partner, Gallet Dreyer & Berkey

Stewart E. Wurtzel
Principal, Tane Waterman Wurtzel

CONTRIBUTORS:

Andrew J. Braverman
Associate, Braverman Greenspun, PC

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

David S. Fitzhenry
Moritt Hock & Hamroff LLP

Thomas P. Higgins
Partner, Higgins & Trippett

William D. McCracken
Partner, Moritt Hock & Hamroff LLP

Nicholas Alexander Reyes, Esq.
Boyd Richards Parker & Colonnelli, PL

Matthew Tobias
Partner, Belkin Burden Goldman, LLP

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CO-OP&CONDO CASE LAW TRACKER digest

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Publisher: Carol J. Ott
Editor: Barbara Manning Grimm
Creative Director: Pablo Turcios
Librarian: Alyssa Rosen
Database Content Manager: Heather Hess
Director of Operations and Sales: Leslie Strauss
Marketing Director: Peggy Mullaney

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led to a dispute between the foreclosing lender and the condominium board as to whose lien had priority. The parties did not dispute that the declaration of the condominium did, in fact, provide that the condo board's common-charge lien had priority over all mortgage liens, including the first mortgage lien of record. Rather, the litigants argued as to what the word "non-residential" means with respect to the statute.

On one hand, the condo board argued that the use of the unit in question is clearly commercial, and therefore the "non-residential" carve-out permitted by the statute applied. Comparisons were made to multiple dwelling apartment buildings, which are identified as commercial property for purposes of transfer taxes. Similarly, these units in question were also subject to commercial transfer tax rates and not the residential rates. Furthermore, the condominium board asserted that the units were assessed as commercial property, and not residential. Essentially, the board

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TAKEAWAY

This case spotlights an issue with the statutory language of the New York Condominium Act, as the statute provides no definition as to how "non-residential" should be interpreted. Clearly, the taxing authorities treat such units as commercial properties, and not residential properties. In addition, many New York condominiums were created and function with these types of units containing multiple dwelling apartments as being non-residential. While the instant case spoke solely to the issue of lien priority, the New York Condominium Act contains a few sections that speak to how "non-residential" units may be treated differently than others.

For example, RPL § 339-m allows for common expenses to be allocated differently between groups of residential units and non-residential units, providing that "[p]rofits and expenses may be specially allocated and apportioned by the board of managers in a manner different from common profits and expenses, to one or more non-residential units where so authorized by the declaration and bylaws . . . ." Many condominiums contain individual residential units, as well as a large unit consisting of multiple rental apartments. If the latter is to be considered in the same class as the former, this could affect a condominium's budget and allocation of common charges.

As another example, RPL § 339-v(1)(j) allows for condominiums with exclusively non-residential units to be amended by a vote of less than two-thirds in number and common interest. To the extent that these otherwise commercial units in question are to be recognized as being residential units, this could pose an issue for any condominiums falling within this category.

Ultimately, what one might believe to be a seemingly straightforward question as the meaning of "non-residential" may still continue to be fought in years to come. Many condominiums operate with these types of multiple apartment commercial units being recognized and treated as non-residential units, and undoing such classifications could have enormous ripple effects on both operations and governance of affected condominiums.

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made a clear showing as to how New York's taxing authorities treat the subject units as commercial property, and thus the court should also recognize these units as being non-residential units.

On the other hand, the mortgagee argued that the court should look to the plain language of the statute, which only allows exclusively "non-residential" condominiums to grant superiority to the condo board's lien over a first mortgage lien. The mortgagee asked the court to also look to the condominium's governing documents, which used the word "residential" and allowed for residential use. In addition, the plaintiff asserted that "commercial" use and "non-residential" use were not one and the same, pointing out that the units' commercial tax status was irrelevant for purposes of analyzing whether such constituted residential use.

IN COURT: The mortgagee was successful in the lower court, which held that the plain language of RPL § 339-z spoke only to "non-residential," and that a complex of multiple rental apartments fell within the definition of residential use. The condo board appealed the lower court's decision to the Appellate Division, First Department, which affirmed the lower court's ruling. In doing so, the court confirmed that the first mortgage lien had priority over the condominium board's statutory lien for unpaid common charges because the condominium was not an exclusively "non-residential" condominium and therefore could not make the first mortgagee's lien subordinate to the condo board's lien despite the language of the condominium's declaration.

COUNSEL: For Wilmington Trust: VIVIAN M. ARIAS, EVELYN HARRISON SEELER, STEFANIE ROSE WALSH, Holland & Knight; for 17 Battery Place Condo: DAVID WILLIAM TYLER, RYAN J. FOLEY, Starr Associates

ACCESS

MATTER OF 144 BARROW ST. LLC V. BD. OF MGRS. OF 130 BARROW ST. CONDO.

2026 NY SLIP OP 04033 (1ST DEP'T. JUN. 25, 2026)



Court Orders New Look at Condo License Fee

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

OUTCOME: Reversed and Remanded in Favor of Respondent

WHAT HAPPENED: The petitioner, 144 Barrow Street LLC, a building owner undertaking new construction, petitioned under Real Property Actions and Proceedings Law (RPAPL) § 881 for a license to access the adjoining property owned by the respondent, the Board of Managers of 130 Barrow Street Condominium, in order to perform work necessary for its project. The parties had previously entered into five license agreements covering the demolition and excavation phases of petitioner's project. The instant petition sought a new license covering the building's construction phase, which the respondent argued involved materially different and more extensive interference with its property, including reduced access to outdoor space for individual units and the building's shared roof deck, as well as obstruction of certain unit windows.

The Supreme Court granted the petition in part, issuing the license and setting the monthly license fee at $2,000, the same amount used in the parties' prior agreements. The Supreme Court also referred the issue of reasonable professional fees incurred by the respondent since March 2021 to a special referee. After the special referee issued a report itemizing deductions from respondent's requested attorneys' fees, the Supreme Court rejected portions of that report and reduced the attorneys' fee award to $14,195.00, citing block billing, vague billing descriptions and time not spent on the license agreements.

IN COURT: On appeal, the respondent challenged both the $2,000 monthly license fee and the reduced attorneys' fee award. The Appellate Division, First Department agreed with the respondent on both points and reversed the Supreme Court's order.

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As to the license fee, the First Department held that Supreme Court improvidently exercised its discretion by basing the fee solely on the amount set in the parties' prior agreements. Those earlier agreements concerned demolition and excavation work, while the license at issue covered the construction phase, which the court found undisputedly involved a substantially different and more significant degree of interference with respondent's property. Citing Matter of Panasia Estate Inc. v 29 W. 19 Condominium, 204 AD3d 33, 37 (1st Dept 2022), the court reiterated that a license fee is warranted where the license entails substantial interference with the use and enjoyment of the neighboring property, thereby decreasing its value during the license period. Because the record showed the nature of the interference had changed without a corresponding reassessment of the fee, the First Department remanded the matter for a new determination of the appropriate license fee based on the actual interference experienced during the relevant period.

As to attorneys' fees, the court examined CPLR 4403, which permits a court to confirm or reject a referee's report in whole or in part and to make new findings. The court found that neither the special referee's report nor the Supreme Court's order provided adequate explanation for the amounts awarded. While the special referee itemized deductions from respondent's fee request, it did not specify the basis for those deductions. The Supreme Court, in turn, did not explain why it deemed the special referee's report inadequate beyond generally citing block billing and vague entries, nor did it explain how it arrived at the reduced figure of $14,195.00. The First Department held that while the Supreme Court was not required to accept the special referee's findings, it was obligated to provide a detailed analysis and explanation for the specific entries it struck in reaching its award. The court remanded this issue as well and found petitioner's remaining arguments unavailing.

TAKEAWAY

For condominium and cooperative boards handling RPAPL § 881 access disputes and license fees, several practical points emerge. Boards should not assume a fee from an earlier phase of a neighbor's project automatically carries over to a later, more invasive phase like construction. This appellate decision reflects that courts will require the fee to reflect the interference actually occurring during that specific period. Importantly, this means that a license fee may change from one phase to the next rather than remain static throughout a project's lifecycle. Boards should also build a clear evidentiary record, through appraisals, unit-by-unit impact analysis and affidavits, showing how new construction affects the use and enjoyment of the property since that evidence is what justifies a higher license fee. Boards should further ensure their attorneys and design professionals submit clear, well-itemized invoices tied specifically to the license negotiation, since vague or block-billed entries invite cuts, as happened here to both the special referee's report and the board's ultimate award. Boards should also confirm that governing license agreements clearly spell out fee-shifting obligations for professional fees, since the board's reimbursement rights here stemmed directly from the plain language of the parties' agreement. Finally, boards should recognize that courts apply a reasonableness balancing test under RPAPL § 881, weighing the petitioner's need for access against the inconvenience to the respondent's property, and a license fee can be altered if a respondent can show real, escalating hardship.

COUNSEL: For 144 Barrow Street: ALEXANDER CLAYTON BANZHAF, ALEXA ELIZABETH DEPIERRO, Tuttle Yick; for the board: JONATHAN KOLBRENER, Braverman Greenspun

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BALCONY/TERRACE RIGHTS

STILLPOINT MEADOWS PH-62, LLC V. RESIDENTIAL BD. OF MGRS. OF THE 62 COOPER SQUARE CONDO.

2026 NY SLIP OP 03373 (1ST DEP'T. MAY 28, 2026)



Unit Owner Must Pay Terrace Flooring Costs

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

OUTCOME: Decided for Condo Defendants-Respondents

WHAT HAPPENED: A unit owner at 62 Cooper Square Condominium disputed a $32,000 charge for paver work on terraces that it acknowledged were limited common elements. The condominium's declaration and bylaws addressed responsibility for maintaining the terraces, including their flooring, placing such responsibility on the plaintiff as the unit owner having access to the terrace.

The owner contended that the work constituted a "structural or extraordinary" repair or replacement under the bylaws and, therefore, should be a common expense borne by all of the unit owners. Plaintiff also alleged that individual board members had acted improperly in imposing the charge, claiming that the assessment was in retaliation for an unrelated dispute concerning an accessible lift.

The owner sued the condominium, the residential board of managers and individual defendants, asserting, inter alia, breach of fiduciary duty and seeking a declaration that it was not responsible for the $32,000 paver charge. Supreme Court dismissed the first cause of action for breach of fiduciary duty in full, and dismissed the second cause of action for a declaratory judgment in part, finding that the board properly assessed the $32,000 paver charge, but leaving open the issue of whether the board properly assessed late fees and interest on that disputed charge.

TAKEAWAY

Responsibility for work involving limited common elements depends on the allocation of duties in the condominium's governing documents. Here, the declaration and bylaws unambiguously placed responsibility for maintaining the terrace flooring on the unit owner, and the court treated the paver work separately from the membrane-roof work when determining who should bear the expense.

The decision also underscores the pleading burden that must be met when individual board members are sued. A claim based on their participation in wrongful conduct requires a sufficiently pleaded underlying tort and factual allegations supporting the claimed misconduct. Conclusory and ambiguous allegations of retaliation will not survive dismissal, especially when independent and verifiable objective facts, such as a chronology of events, contradict the allegations.

IN COURT: The Appellate Division, First Department, unanimously affirmed.

The court held that the condominium declaration and bylaws, read together, unambiguously imposed on the owner the obligation to maintain the flooring on the terraces. Those governing documents "flatly contradicted" the allegations and legal conclusions in the amended complaint and therefore supported dismissal of the claims.

The court also rejected the owner's contention that the paver work was a structural or extraordinary repair that had to be paid for by all unit owners. The court based this finding on the fact that the roof work as a whole resulted from normal wear and tear and was not extraordinary. The court further distinguished the membrane-roof work from the removal, storage and reinstallation of the pavers. Even if the membrane work were extraordinary, the paver work was separate and more routine.

The claims against the individual defendants were also properly dismissed. Although an individual director who participates in a corporation's tort may be personally liable, the amended complaint did not adequately allege a separate tort by the condominium. The retaliation allegation was likewise insufficient because it was unsupported by facts. The board had informed the owner that it would be responsible for the paver work two years before the accessible-lift negotiations broke down, undermining the claimed causal connection between the two events.

The court also rejected the argument that the board had

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later accepted responsibility for the paver work and then reneged because of the lift dispute. That assertion rested on an ambiguous allegation unsupported by any writing. Nor did the inclusion of the paver cost in the condominium's financial statements establish that the condominium had agreed to bear the cost without seeking reimbursement.

COUNSEL: For Stillpoint Meadows et al: ALLAN H. CARLIN, Allan H. Carlin; for Residential Board of Managers of The 62 Cooper Square Condominium et al: MANU LEILA DAVIDSON, ALEXANDER JAMES DAVIS, Boyd Richards Parker & Colonnelli

BUSINESS JUDGMENT RULE

BD. OF MGRS. OF THE 5 E. 17TH ST. CONDO. V. PECK

151186/2019 (SUP. CT. N.Y. CNTY. JUN. 23, 2026) NYSCEF NO. 296



After Extensive Trial, Court Finds Unit Owner Failed to Pay Common Charges and Special Assessments

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

OUTCOME: Decided for Plaintiff Condo Board

WHAT HAPPENED: The board of managers of a Manhattan condominium determined that a new elevator had to be installed in the building and issued special assessments against all unit owners to pay for it. One unit owner disputed the necessity of the work and the propriety of the special assessment. The board also determined that the building needed a new roof, but the same unit owner decried that decision, claiming it was a private roof and a limited common element. After the unit owner failed to pay any common charges whatsoever for an extended period of time, and with arrears mounting, the board finally commenced suit against the unit owner. The unit owner asserted defenses and counterclaims, alleging that the board's accounting of purported arrears was not reliable; that the elevator and roof assessments were improper; and that the board engaged in self-dealing. Because there were disputed issues of fact, the case proceeded through discovery to trial. The case was tried before a judge over multiple days in June 2026, with numerous exhibits and witnesses, including the expert testimony of defendant's forensic accountant. The court heard at length from both sides, assessed the credibility of testimony and evidence, and issued a written decision in favor of the condominium.

TAKEAWAY

Experienced boards and practitioners know that disputes over special assessments and the propriety of authorizing repair work are all too common. The court's decision, written in concise and clear language, is a useful example of the issues and factors that will be considered at trial. The court's discussion of credibility is particularly instructive, as it shows that a condominium with organized, well-documented, and orderly records stands an excellent chance of prevailing over a nonpaying unit owner.

IN COURT: After detailing the case's prior proceedings and the evidence at trial, the court set forth its credibility determinations of the witnesses. The board's president was found to be credible, direct, detailed, internally consistent, and supported by documentation. The president's testimony about the necessity for the elevator and roof work was persuasive and supported by evidence. The condominium's property manager was also a credible witness, proffering ledgers, business records, and notices to the defendant that fully supported the condominium's case. The defendant unit owner, however, was not credible. The court found that the unit owner's demeanor, evasive answers, and multiple contradictions with the written record rendered his testimony incredible. The court gave only limited weight to the unit owner's expert witness, whose

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forensic methodology and analysis were faulty. The court ruled that the business judgment rule protected the board's decisions to engage in roof and elevator repairs, and to issue special assessments for the same. Allegations by the unit owner of self-dealing were conclusory and unsupported by evidence. Judgment was therefore directed in favor of the condominium and against the unit owner for all unpaid common charges, assessments, interest, and other amounts. Attorneys' fees were also awarded to the condominium, in an amount to be determined upon further submissions.

COUNSEL: For the board: HOWARD GRUN, STANLEY M. KAUFMAN, KAREN ELIZABETH MCARTHUR, The Grun Law Group, JEREMY BENJAMIN SHOCKETT, THOMAS GREGORY DUPONT, Anderson Kill; for Ian Peck: ETHAN ALLEN KOBRE, JACQUELINE ALICE BARTHA, Schwartz Sladkus Reich Greenberg Atlas, JACK LESTER, Jack Lester Law

FORECLOSURE

BD. OF MGRS. OF WASH. CT. CONDO. V. CARL

2026 NY SLIP OP 03918 (1ST DEP'T. JUN. 23, 2026)



Court Affirms Unconditional Obligation to Pay Common Charges

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: The plaintiff board of managers brought a foreclosure proceeding against the defendant unit owner because the unit owner had failed to remit payment of over $48,000 in common charges, assessments, and late fees due and owing under the condo's bylaws. The unit owner answered and filed counterclaims, and asserted that the unit had suffered at least four separate water leaks and floods into the unit during the period they had withheld payment.

Under the condominium's bylaws, unit owners are entitled to an abatement of common charges for the period when a casualty loss renders a unit "wholly or partially unusable." The board then successfully moved for summary judgment, and the unit owner appealed.

TAKEAWAY

Unit owners who withhold payment of common charges do so at their own peril. Even if, as there seems to be here, there are bona fide disputes as to whether the amount of common charges sought is accurate, or subject to some set-off or abatement, questions like that are answered in an order of reference after the court determines liability. In other words, by the time the unit owner has an opportunity to air their grievances, it will be in the context of a court already having determined that their unit is subject to foreclosure. Thus, it is almost never advisable for a unit owner to unilaterally withhold payment of common charges, even if they have a basis for disputing that the full amount charged is owed. This is a significant difference between ownership in a condo versus in a co-op, wherein the latter enjoys the protections of landlord-tenant laws.

IN COURT: The court unanimously affirmed summary judgment in the board's favor. First, the court found that the board had established its prima facie case for foreclosure, in that it had authority under the governing documents to collect common charges, and that the unit owner had failed to pay. The burden then shifted to the unit owner to disprove the case. The problem is that the unit owner did not fundamentally dispute that some common charges were owed, only the amounts. The court confirmed that disputes over the amount of common charges were properly addressed before a referee to determine the amount of damages to be recovered in the foreclosure.

COUNSEL: For the board: NATHAN M. FERST, Nathan M. Ferst Attorney at Law; for Bernard and Alexandra Carl: DOUGLAS CAPUDER, Capuder Fazio Giacoia

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INSURANCE

WALTON CONDO. V. LANDMARK AM. INS. CO.

NO. 1:25-CV-09454-JPO (S.D.N.Y. JUN. 30, 2026) ECF NO. 32



Condominium's Consequential Damages Claim Survives Dismissal in Insurance Coverage Dispute

SQUIB BY ANDREW J. BRAVERMAN, ASSOCIATE, BRAVERMAN GREENSPUN, PC

OUTCOME: Decided, in part, for Plaintiff

WHAT HAPPENED: The Walton Condominium commenced an action against its commercial property insurer, Landmark American Insurance Company, seeking coverage for more than $7 million in water damage allegedly caused when domestic plumbing lines became dislodged at the condominium located at 264 Water Street, New York, New York.

Landmark denied coverage on the basis that the loss resulted from frozen pipes that burst because the building's plumbing system had not been properly drained prior to a shutdown of heat. The condominium disputed that determination and alleged that it had provided Landmark with documentation establishing the building had been professionally drained before the loss occurred. In addition to seeking policy benefits, Walton asserted that Landmark's denial caused more than $3 million in consequential damages, including costs associated with mitigation efforts, alternative funding, delays in repairs, diminished property value, loss of use, and related economic harm.

Walton also sought declaratory relief and attorney fees. Landmark moved to dismiss the claims for bad faith, breach of the implied covenant of good faith and fair dealing, consequential damages, attorney fees, and declaratory judgment.

TAKEAWAY

This decision serves as a useful reminder that under New York law, consequential damages arising from an insurer's denial of coverage may survive a motion to dismiss even where the insured has not asserted a standalone bad faith claim. So long as the complaint identifies specific foreseeable damages allegedly caused by the denial and plausibly alleges that such damages were within the parties' contemplation when the policy was issued, dismissal may be inappropriate at the pleading stage.

The decision also highlights two common pleading pitfalls: a plaintiff's failure to oppose dismissal arguments may result in abandonment of a claim, and declaratory judgment claims that merely duplicate breach of contract claims are subject to dismissal.

IN COURT: Landmark filed a motion to dismiss the condominium's claims for: (i) breach of implied covenant of good faith and fair dealing; (ii) bad faith; (iii) consequential damages; (iv) attorneys' fees; and (v) declaratory relief. The court granted the motion in part and denied it in part. Specifically, the court dismissed Walton's claims for attorneys' fees and declaratory relief, but allowed Walton's breach of contract claim and demand for consequential damages to proceed. The court held that the condominium had not asserted standalone claims for bad faith or breach of the implied covenant of good faith and fair dealing, but instead sought consequential damages as part of its breach of contract claim, rendering that portion of Landmark's motion moot. The court further denied Landmark's motion to dismiss Walton's demand for consequential damages, finding that the complaint sufficiently alleged specific categories of foreseeable damages resulting from the denial of coverage and, under Bi-Economy Market v. Harleysville Insurance Co. of New York, 10 N.Y.3d 187 (N.Y. 2008), adequately pleaded damages that were potentially within the parties' contemplation at the time the policy was issued. Although the court acknowledged a split of authority regarding whether bad faith must be pleaded to sustain a claim for consequential damages, it declined to resolve that issue because Walton had sufficiently alleged that Landmark denied coverage without a reasonable

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investigation and in disregard of documentary evidence supporting the claim.

The court granted Landmark's motion, however, with respect to Walton's request for attorneys' fees, finding that the claim had been abandoned because Walton failed to address the issue in its opposition papers, and dismissed Walton's declaratory judgment claim as duplicative of its breach of contract claim because both claims sought a determination of Landmark's obligation to provide coverage for the same loss.

COUNSEL: For the Walton Condominium: TODD D. KREMIN, SCOTT EVAN AGULNICK, Agulnick Kremin; for Landmark American Insurance Company: ALEXANDER WALKER COGBILL, Zelle

PERSONAL INJURY

GUERRERO V. VAN SINDEREN PLAZA HOUS. DEV. FUND CORP.

2026 NY SLIP OP 04490 (2ND DEP'T. JUL. 22, 2026)



Slip-and-Fall Claim Survives Summary Judgment

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: In July 2020 at around 8:30 a.m., Jeefanny Guerrero slipped and fell on water in a covered pedestrian walkway at a construction project in Brooklyn which was owned, operated, and/or controlled by defendants. Guerrero filed suit to recover damages for personal injuries allegedly sustained in the slip and fall. Certain defendants moved for summary judgment dismissing the complaint as against them, arguing that they had neither created the wet condition on the walkway nor had actual or constructive notice of it, and that the water accumulation was attributable solely to intermittent rainfall. In May 2024, the Supreme Court granted the defendants' motion and cross-motion and dismissed the complaint as against those defendants. Guerrero appealed.

IN COURT: The Appellate Division reiterated that in seeking summary judgment in a slip-and-fall case, the defendants bore the burden of showing that they neither created the allegedly hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. The court determined that the defendants had failed to eliminate triable issues of fact as to whether they created the dangerous condition by using a hose in the walkway near where plaintiff fell. The court also held that the defendants had not made a prima facie showing that they lacked constructive notice of the condition, as the record revealed that they knew water accumulated in the walk-

(continued on p. 11)

TAKEAWAY

This case highlights the way different judges can view evidentiary records and interpret evidence. The Supreme Court expressly rejected the notion that defendants could be responsible for the wet conditions merely because plaintiff "saw a hose at the site," as that testimony did not show that the hose had been used or caused the conditions. By contrast, the Appellate Division found that testimony sufficient to require a trial as to whether the hose caused the conditions or not. Also, the Supreme Court determined that defendants did not have notice of the conditions because the assistant superintendent had testified that he had inspected the site no more than an hour and a half before the incident and observed rainwater on the walkway as it was raining or had just rained, and defendants had submitted climatological data that showed precipitation at the time of the accident. The Appellate Division did not view this evidence as sufficient to grant summary judgment, as defendants knew water often accumulated on the walkway, including when it rained.

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way under certain conditions, such as when it rained, and that they had workers remove and dry any puddles and dampness upon their arrival each morning. Therefore, the court reversed the order and denied summary judgment for all the moving defendants.

COUNSEL: For Jeefanny Guerrero: LISA M. COMEAU, Lisa M Comeau Attorney at Law; for Van Sinderen Plaza et al.: CHRISTOPHER THOMAS CAFARO, Hall Booth Smith; for LRC Construction, LLC: PAUL H. SLANEY, Cappelli Organization

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