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CASE LAW TRACKER
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AUTHORITY TO SUE

HOUSTON V. DEER RUN CONDO. ASS'N.

1:25-CV-09491-LLS (S.D.N.Y. JULY 29, 2026) ECF NO. 13



Husband Must Show His Own Injury to Sue Over Denied Elevator

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

OUTCOME: Decided for Defendants

WHAT HAPPENED: The plaintiff, who was self-represented, commenced a proceeding in federal court alleging that the condominium and managing agent breached the Fair Housing Act by not permitting the installation of a home-lift elevator in a two-story townhouse where the plaintiff resided, along with his disabled wife. Among other allegations, the plaintiff claimed, without detailing any supporting facts, that he suffered "humiliation, mental anguish, and emotional and physical distress" as a result of the defendants' actions. The court preliminarily evaluated whether it had subject matter jurisdiction to even entertain the action since the plaintiff was not disabled and, admittedly, did not allege any facts suggesting that he himself suffered an actual or independent injury because of the defendants' denial of the plaintiff's request.

IN COURT: The court dismissed the action, holding that inasmuch as the plaintiff alleged "associational discrimination", he was legally required to demonstrate standing to sue. This, in turn, required a predicate showing by the plaintiff that he had "[a] n independent injury causally

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TAKEAWAY

Although a judge may wish to assist a disabled unit owner, it will not allow a family member to sue on the disabled unit owner's behalf, unless his claim is specific and he can demonstrate an independent injury. In appropriate circumstances, a court will permit amendment of the pleadings so that a plaintiff can follow the proper procedure and ultimately obtain relief.

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Court Declines to Micromanage Shareholder's Inspection of Co-op Books and Records

CONSTRUCTION DEFECTS
Old Construction Defects Cannot Support New RICO Claim

PERSONAL INJURY
Worker's Conduct Raises Factual Issue in Ladder Fall

RELEASE
Broad Release Bars Indemnification and Contribution Claims

RPAPL 881
Court Sets Middle Ground on Access Fees and Repairs

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CO-OP&CONDO CASE LAW TRACKER digest

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related to the denial of federally required services to the disabled persons with whom the non-disabled plaintiffs are associated." That showing must be concrete, particularized and traceable to a defendant's alleged wrongful conduct and redressable by the requested relief. Here, since the plaintiff failed to plead any facts whatsoever to suggest he had a specific harm related to the defendants' failure to install a home-lift elevator, the court was constrained to dismiss the action. However, since the plaintiff proceeded without the benefit of counsel, the court granted the plaintiff leave to amend the defective pleadings and to detail his claims within thirty days in support of his request for relief under the Fair Housing Act. The court's conditional dismissal was without prejudice to the plaintiff's wife asserting her own independent claims against the defendants.

COUNSEL: For Houston: LEONARD W. HOUSTON, Pro Se; Judge Louis L. Stanton

BOOKS AND RECORDS

DIMA V. 555 MCLEAN AVE APARTMENTS CORP.

50214/2026 (SUP. CT. WESTCHESTER CNTY. AUG. 5, 2026) NYSCEF NO. 80



Court Declines to Micromanage Shareholder's Inspection of Co-op Books and Records

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

OUTCOME: Decided for Co-op Respondents

WHAT HAPPENED: The petitioner is an individual shareholder of a residential cooperative housing corporation. The respondents are the residential cooperative housing corporation and its management company. The petitioner sought to inspect the cooperative's books and records. In addition to requesting access to inspect, the petitioner also asked the court to dictate how the inspection should be conducted.

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TAKEAWAY

While BCL § 624(b) permits a court to compel a cooperative to allow a shareholder to inspect its books and records, that authority does not necessarily extend to micromanaging the manner or logistics of the inspection where the cooperative has acted reasonably and provided meaningful access. Absent evidence that the cooperative acted outside the scope of its authority or in bad faith, courts are likely to defer to the cooperative's chosen process under the business judgment rule.

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IN COURT: The petitioner commenced this action by filing a petition and order to show cause seeking to exercise his rights as a shareholder to inspect the cooperative's books and records. The court granted the order to show cause and set a deadline for the inspection to take place. The petitioner thereafter filed another motion with the court seeking an order more specifically detailing how the records were to be produced for inspection and directing how the inspection was to take place.

The court denied the motion. It held that, although Business Corporation Law (BCL) § 624(b) authorized it to order an inspection of the cooperative's books and records, the business judgment rule prevented it from directing the inspection in any particular manner. Because the respondents had cooperated with the inspection and continued to provide opportunities for access, the court found no basis to intervene.

COUNSEL: For Vincent Dima: Vincent Dima; for 555 McLean Avenue Apartments Corp. et al.: Jennifer L. Stewart, Peter D. Mustalish, Smith Buss & Jacobs; Justice David J. Squirrell

CONSTRUCTION DEFECTS

DAVYDOV V. BD. OF MGRS. OF THE FORESTAL (DAVYDOV V. MIDFOREST P'SHIP)

NO. 1:24-CV-04390-EK-TAM (E.D.N.Y. JULY 20, 2026) ECF NO. 80



Old Construction Defects Cannot Support New RICO Claim

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

OUTCOME: Decided for Defendants

WHAT HAPPENED: Plaintiff Davydov owns two apartment units in the Forestal condominium in Queens. He brought this action against every party one could think of, including the building's board, individual board members, the New York City Department of Buildings, several real estate companies, insurance companies, and banks. Davydov alleged that certain construction defects dating back to the building's construction in 1974 had been concealed from unit owners, and that defendant Muss, the building's sponsor, who served as board president and resides in the building's penthouse, had hidden defects and incurred city code violations while constructing a duplex penthouse for himself. When the condo board finally undertook repairs, Davydov alleged that the board passed along "fraudulently" inflated common charges to the other owners. Davydov filed this federal action after litigating a state-court trial on similar facts, claiming that the state case "shed light" on the alleged fraudulent scheme. The federal complaint asserted a RICO claim, antitrust violations, a declaratory judgment and state-law claims. The defendants moved to dismiss all claims and sought Rule 11 sanctions.

TAKEAWAY

When unsuccessful in one forum, repackaging claims in a new forum under new theories is unlikely to succeed (and is more likely to induce sanctions). With respect to RICO claims, not often seen in the condominium context, the statute of limitations for RICO claims allowing for claims to commence four years from discovery, is not an end run around the statute of limitations for construction defect claims that may have long expired. Also, common charge bills do not constitute a continuing wrong; they are merely continuing damages from a prior wrong and are not new wrongs that restart the statute of limitations.

IN COURT: The United States District Court for the Eastern District of New York (Komitee, J.) granted the motion to dismiss in its entirety. The bulk of the claims in the complaint relate to the RICO claims. RICO allows "[a]ny person injured in his business or property by reason of a [RICO] violation . . . " to sue individuals or entities engaging in ongoing criminal activity such as fraud. The statute of limitations for civil RICO claims is four years; it runs from the date the plaintiff "discovers or reasonably should have discovered the RICO injury." The court held the RICO claims were time-barred, as Davydov had been aware of the construction defects for decades and had even commenced a state-court lawsuit in 2015 based on similar allegations, which was sufficient to put him on inquiry notice and start the four-year

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statute of limitations. The court further rejected any continuing wrong theory based on monthly inflated common charges, holding that these charges all derived from the same prior injury — the faulty construction and failure to disclose it — and were therefore not "new and independent" injuries.

The court denied the defendants' request for Rule 11 sanctions without prejudice to renewal by separate motion, as sanctions must be sought by standalone motion rather than in a motion to dismiss.

COUNSEL: For Albert Davydov: CHRIS RYKACZEWSKI, pro hac vice, Metropolitan Learning Institute; for Joshua L. Muss: JAY B SOLOMON, Belkin Burden Goldman; for Michael Kostron, Kelly Occipinti, Precision Asset Management, The Board of Managers of the Forestal, The Individual Board of Managers of the Forestal: MICHAEL JOSEPH HEMWAY, Milber Makris Plousadis & Seiden; for National Union Insurance Company of Pittsburgh: ALAN R. LYONS, SHIVANI PODDAR, Herrick, Feinstein; for Andrew Troia: WILLIAM T. MCCAFFERY, L'Abbate, Balkan, Colavita & Contini; for Greater New York Mutual Insurance Company, The Insurance Company of Greater New York: KELLY ELIZABETH PETTER, Gerber Ciano Kelly Brady; for Michael Lago: MICHAEL JOSEPH HEMWAY, Milber Makris Plousadis & Seiden; for Precision Asset Management, The Board of Managers of the Forestal, Kelly Occipinti, The Individual Board of Managers of the Forestal, Michael Kostron, Michael Lago: GIANCARLO SANTINO VECCHIARELLI, Milber Makris Plousadis Seiden; for The City of New York Department of Buildings: SETH MOTEL, New York City Law Department; for Donbgu Insurance Co., Ltd. (U.S. Branch): ADRIAN MARSHALL SZENDEL, Szendel

DEFAMATION

GREENWICH BLDG. CO. V. HOOTS

2026 NY SLIP OP 26127 (SUP. CT. KINGS CNTY. AUG. 11, 2026)



Negative Condo Reviews Protected Under New York Anti-SLAPP Law

SQUIB BY KRISTIN PENDERGRASS, COUNSEL, SEYFARTH SHAW LLP

OUTCOME: Decided for Defendant

WHAT HAPPENED: Defendant Joseph Hoots is the owner of unit 2C in the condominium located at 120 Java Street, Greenpoint, Brooklyn, which he purchased from the condominium's sponsor, 120 Java, LLC. According to Hoots, during the purchase process, the sponsor and its representative, Ray Steffen, refused to cooperate with Hoots' efforts to obtain a VA loan in connection with his purchase of the unit, forcing him to obtain a traditional mortgage with a higher interest rate. In addition, after purchasing the unit, Hoots discovered issues with the flooring and soundproofing in the unit, which the sponsor failed to address.

After unsuccessfully attempting to locate an online presence for the condominium's sponsor, Hoots left negative reviews on the Google and Houzz pages for plaintiff Greenwich Building Company, based on Greenwich's website advertising the condominium as one of Greenwich's developments and Greenwich's corporate affiliation with Steffen. Hoots' reviews relayed his negative experiences with his purchase

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TAKEAWAY

In New York, public internet reviews of apartment buildings and developers are considered matters of public interest and are protected by anti-SLAPP laws. As a result, a party claiming to be harmed by such a review cannot assert a defamation claim unless it can demonstrate not only a substantial basis for its claim, but also that the individual who posted the review was acting with actual malice.

Here, the court held that Hoots had made an effort to ascertain the identity of the entity that had sold him his condominium unit and, accordingly, had not acted with actual malice when he posted reviews incorrectly naming Greenwich as the responsible party. Landlords, sponsors, property managers and other parties involved in the sale or management of real estate should exercise caution before attempting to assert defamation claims regarding online reviews that they believe to be false. Even if statements in the reviews are untrue, such reviews cannot support a defamation claim unless there is evidence that the reviewer was acting with actual malice. A plaintiff who cannot present evidence of actual malice not only risks dismissal of their claim, but may also be required to pay the defendant's legal fees.

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of the unit and the flooring and soundproofing issues. Greenwich commenced a lawsuit against Hoots for defamation, alleging that the statements in the defendant's reviews were false because those statements concerned actions taken by the sponsor entity, not Greenwich. Hoots then moved to dismiss the complaint under New York's anti-SLAPP law.

IN COURT: Hoots' motion to dismiss was granted. The court held that New York's anti-SLAPP law applied because Hoots' online reviews concerning the condominium and its sponsor were matters of public interest. As a result, the burden of proof on Hoots' motion to dismiss shifted to Greenwich, which was required to demonstrate that there was a substantial basis in law for its defamation claim, including demonstrating that Hoots acted with actual malice.

The court determined that, while Greenwich had demonstrated the basic elements of defamation, it had not established that Hoots had acted with actual malice. Rather, the evidence showed that Hoots made a good-faith effort to leave his reviews on the Google and Houzz webpages associated with the sponsor, and his posting of the reviews on the webpages associated with Greenwich instead was an honest mistake. The court also held that, under the anti-SLAPP statute, Hoots was entitled to an award of his attorneys' fees.

COUNSEL: For Greenwich Building Company: SIMON I. MALINOWSKI, MOHAMMAD HASSAN, Peraino Malinowski; for Joseph Hoots: THOMAS BLAIR GARDNER, Skolnick Legal Group; Justice Katherine Levine

DISCRIMINATION

BIZELIA V. CLINTON TOWERS HOUS. INC.

NO. 1:20-CV-08065-JPC-OTW (S.D.N.Y. AUG. 19, 2026) ECF NO. 247



When Asking for Help Isn't Enough

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

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: The three plaintiffs share a one-bedroom apartment at Clinton Towers, a Mitchell-Lama on Manhattan's West Side. Mitchell-Lama housing is regulated and designed to offer affordable housing. Plaintiffs sued Clinton Towers and its management company alleging disability discrimination in violation of the Fair Housing Act because defendants did not make a reasonable accommodation and place plaintiffs on a waiting list for transfer to a larger apartment (or otherwise take steps to get plaintiffs a larger apartment).

Two of the plaintiffs suffer from medical conditions — one suffers from, among other things, an anxiety disorder which causes mood swings, anxiety and claustrophobia. Another plaintiff suffers from a heart condition, anxiety and hypertension.

Starting in late 2016, the plaintiffs began writing letters to the building's management company asking for a transfer to a larger apartment. At first, things seemed to move forward: The building placed them on a waiting list and twice forwarded their applications to New York City's Department of Housing Preservation and Development (HPD) for approval. HPD oversees occupancy in Clinton Towers in accordance with regulations. HPD rejected both applications — once because the tenants did not qualify for a two-bedroom,

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TAKEAWAY

There is a lot of history between the parties, which the court describes so that the ruling can be placed into its appropriate context. The decision gives us a thorough analysis of reasonable accommodation discrimination under the federal Fair Housing Act and, in particular, the court discusses the differences between a disparate treatment claim and a failure to accommodate claim.

From plaintiffs' perspective, this case is a reminder that hardship is not enough to win a legal claim. The law has specific requirements, and meeting them requires careful attention to what you ask for, how you ask for it, and whether you follow the process along the way.

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and then because they did not meet the occupancy standards for a three-bedroom. The plaintiffs wrote to HPD asking for a medical waiver (which HPD is permitted to grant) to allow them to move to a three-bedroom apartment. HPD denied that request but stated that they could move to a two-bedroom. HPD suggested they add their name to management's waiting list.

Over the years, Clinton Towers commenced an action against plaintiffs in housing court (which was settled) and the plaintiffs brought a claim before the NYS Division of Human Rights, which found no probable cause.

The relationship between the tenants and building management deteriorated. There was enormous animosity. By way of example only, the president of the management company reportedly called Bizelia "[a] man who needs a beating" and referred to the plaintiffs as "clowns."

IN COURT: The court ruled against the plaintiffs and dismissed the case. The court found two main problems with plaintiffs' arguments.

Under the Fair Housing Act, a "reasonable accommodation" is a special adjustment that a housing provider makes specifically because of a person's disability. The key word is "special." The court found that the tenants were not asking for anything unique to their disabilities — they were asking to be placed on the same waiting list available to any tenant. That is not an accommodation; it is a request for equal treatment. The court explained that "disparate [unfair] treatment" and "failure to accommodate [a disability]" are legally different things with different requirements. The tenants only brought the accommodation claim, and it was not viable.

Further, plaintiffs argued that the building should have accepted a transfer application on a form other than the official HPD form — essentially, that management should have bent the procedural rules for them. But the court reviewed every letter the tenants had written over five years, and none asked for that "accommodation." All of the letters requested a transfer to a larger apartment or placement on the waiting list. Not one asked management to waive the application procedure itself and, even if they had, there is nothing about the plaintiffs' medical conditions that makes it difficult for them to complete an HPD form. Finally, plaintiffs' arguments assume they were never placed on a waiting list—but there is no evidence that supports that assumption.

COUNSEL: For Bizelia: Rivkin Radler; for Clinton Towers Management: Michelle Piantadosi, Quinn Emanuel Urquhart & Sullivan; Justice John P. Cronan

LABOR LAW

HAVOLLI V. 2909 OCEAN AVE. OWNERS CORP.

NO. 1:26-CV-01240-BMC (E.D.N.Y. AUG. 12, 2026) ECF NO. 21



Might a Disloyal Building Superintendent Forfeit Overtime Premiums?

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

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: Beginning about 25 years ago, the plaintiff worked as a live-in superintendent for a 54-unit building. His nominal schedule was 8 a.m. to 12 p.m., then 8 p.m. to 11 p.m. In reality, he was expected to be available 24 hours per day, seven days per week. Initially, he received about $1,200 per month and lived in the building rent-free. During the last 15 years, he was kept on with the same work schedule, but his compensation was reduced to $439 per month. The co-op asserted that his compensation—which also included his rent-free apartment, utilities, a monthly stipend, two parking spaces, three storage units, workers' compensation and disability insurance coverage—had a value exceeding $3,600 per month.

A new board's review revealed that the super had a long history of double-billing and personal profiteering at the co-op's expense. He operated a private handyman business. Several thousand dollars' worth of checks were issued to his

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business to pay for work that fell within his duties. The co-op then implemented financial controls over the super's conduct.

IN COURT: The super filed suit alleging violations of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL"), claiming that, for the past six years—the period not barred by the New York statute of limitations—he was not paid minimum wage and overtime.

The co-op filed three counterclaims sounding in fraud, unjust enrichment and breach of the duty of loyalty, and sought to recoup damages. The plaintiff moved to dismiss these counterclaims.

The super argued that the court lacked subject matter jurisdiction over the state law counterclaims. The court held that if a counterclaim is compulsory, the federal court will have supplemental jurisdiction. The counterclaims need not have an independent basis for federal jurisdiction. Here, the court found that the claim and counterclaims had a "logical relationship," as they arose out of the same transactions. Therefore, it held that there is a jurisdictional basis to adjudicate the counterclaims.

The court found that the co-op's counterclaims dealt with the super's conduct in the course of performing his employment duties. They involved alleged fraudulent billing for services for which the co-op had already compensated him with a cash stipend, a rent-free apartment, etc. Therefore, the claims that he was underpaid necessarily bring before the court the facts underlying the FLSA claims. The counterclaims are compulsory, even though, by themselves, they ordinarily would be matters for a state court.

As to the elements of the counterclaims, the co-op adequately alleged that the super had a duty of loyalty to it and the co-op alleged that he breached that duty through his misconduct and unfaithfulness. It alleged that he stole money from the co-op and improperly used the co-op's assets for his personal benefit. The co-op claimed that it paid invoices rendered by the super as part of a double-billing scheme that violated his duty of loyalty. While he was compensated for work as a superintendent he also billed for that same work, thereby doubling his compensation.

TAKEAWAY

This is not the end of the case. The pleadings will be amended, and the court has yet to weigh the evidence supporting the counterclaims, such as how the stipend and rent-free apartment are to be considered in the super's compensation.

As a general rule, there are special considerations when an employee is found to have breached his duty of loyalty to his employer. An employee whose actions are disloyal to the interests of his employer may forfeit his right to compensation for services rendered by him, and if he is paid without knowledge of his disloyalty, he may be compelled to return what he has improperly received. Harry R. Defler Corp. v. Kleeman, 19 A.D.2d 396 (4th Dep't Nov. 1, 1963). "One who owes a duty of fidelity to a principal and who is faithless in the performance of his services is generally disentitled to recover his compensation, whether commissions or salary." Stefanovic v. Old Heidelberg Corp., No. 18 CV 02093-LTS-KNF (S.D.N.Y. Aug. 8, 2019) ECF No. 26; see also Sansum v. Fioratti, 128 A.D.3d 420, 421 (May 15, 2015).

However, in Stefanovic, a wage-and-hour case, the court found the employee's conduct to amount to petty pilfering, insufficient to support a faithless servant claim. It would be difficult to find a credible wage-and-hour claim ultimately dismissed by a New York court on the basis of a breach of the duty of loyalty. That is not to say that damages under the wage-and-hour laws may not be set off if egregious damages caused by a breach of the duty of loyalty are proven. It remains to be seen what this case will ultimately hold.

COUNSEL: For Havolli: JESSE C. ROSE, Rose Law Group; for 2909 Ocean Avenue: JOEY TSAI, Tsai PLLC; Justice Brian M. Cogan

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PERSONAL INJURY

GABRIEL V. TOP 8 CONSTR. CORP.

2026 NY SLIP OP 04930 (2ND DEP'T. AUG. 12, 2026)



Worker's Conduct Raises Factual Issue in Ladder Fall

SQUIB BY STEVEN S. ANDERSON, OF COUNSEL, KUCKER, MARINO, WINIARSKY & BITTENS

OUTCOME: Decided for Defendants-Respondents

WHAT HAPPENED: Mr. Gabriel was employed as an electrician/helper for Matia Electrical Corp. while working on a ladder at a construction site in Flushing on the eighth floor of the premises. The ladder fell, and he was injured. He had been in the process of running electrical cables for the installation of surveillance cameras and internet and TV connections. He had inspected the ladder, his foreman had directed him to use it, and everything appeared to be in working order. He started his work, lost his balance and fell. He brought a lawsuit for personal injuries against his employer, the construction manager, the developers of the property and Tangram House West Condominium, which was being built and worked on.

IN COURT: Mr. Gabriel moved for summary judgment on the issue of liability, claiming that, as a matter of law under Labor Law § 240, all parties were subject to "strict liability." This statute expresses a policy judgment by legislators that construction activities can be so dangerous that, if a worker is hurt, the owner of the property and the contractor are "strictly liable." A plaintiff must prove that a defendant "violated the statute," that an injury occurred and that the injury resulted from a violation of the "nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated sites." A plaintiff will not be able to carry the day where the plaintiff/worker's "intentional or negligent conduct" may be the sole proximate cause of the injuries, where "adequate safety devices are provided" as required by statute and the worker "does not use or misuses them."

All of which means that, in spite of the substantial protections the statute provides to workers on construction sites ("strict liability"), it's ultimately all about the proof. And in this case, the appellate court found that the trial court got it right and that, while the plaintiff/worker did demonstrate "prima facie entitlement" to judgment on the issue of liability by claiming that the ladder "suddenly shook . . . causing him to fall," in opposition, a "triable fact was raised" as to whether the plaintiff caused his own injury through his conduct. So the case is to go to trial on issues of fact.

TAKEAWAY

Statutes, policies, safety, etc., all matter and all guide a court, but it's always about the proof. Here, the worker/plaintiff submitted "evidence including deposition testimony" that the "ladder shook," but, in opposition, the defendants claimed that Mr. Gabriel placed the ladder in a way that was dangerous to him and that he shifted his weight, causing himself to lose his balance and the ladder to topple over. Mr. Gabriel's admission that he lost his balance was grounds to find that "credible evidence" existed and that a trial must be had.

And the takeaway for property owners—the condominium—is that boards simply have no control over these matters, and they better make sure they have good and adequate insurance.

COUNSEL: For Gabriel: STEFANO A. FILIPPAZZO, Stefano A. Filippazzo; for Top 8 Construction Corp. et al.: GERARD BENVENUTO, Castellitto Benvenuto & Kim, MATHEW ROSS, Wilson Elser Moskowitz Edelman & Dicker, LARRY CLARENCE GREEN, DAVID MARC CHAISE, O'Toole Scrivo

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PROPRIETARY LEASE

TURTZ V. CONVENTION OVERLOOK, INC.

2026 NYLJ LEXIS 1098 (2026) (CIV. CT. N.Y. CNTY. JULY 21, 2026)



Board's Sublease Restrictions Survive Motion to Dismiss

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: Plaintiff Turtz had submitted several applications for approval of subleases to the board of directors of the defendant cooperative corporation between 2019 and 2024. The board had approved some and rejected others. It also charged sublease fees in connection with the subleases, all of which the plaintiff had voluntarily paid.

In February 2025, though, the board alerted all shareholders that the proprietary lease only provided for a 15-day right of first refusal, after which the shareholder would be permitted to proceed with the requested sublease. Turtz then sued the cooperative for breach of contract and breach of warranty due to Turtz's lost rent (because the board refused to consent to the latest sublease) and collection of unauthorized sublease fees. He also sued the board members individually and the managing agent for ultra vires conduct, tortious interference, unjust enrichment and breach of fiduciary duty.

TAKEAWAY

This case will be quite interesting to review if the court ever reaches the merits. However, some lessons stand out even at this stage: First, read your governing documents. It is mind-boggling that no one had recognized previously that the Board only had a right of first refusal over leases. (Of course, it is conceivable that the Board or counsel knew it for years, but elected to remain silent as long as the shareholders went along with the procedures.) Second, if you're going to move to dismiss a lawsuit in its entirety, make sure you address the plaintiff's claims that you want to dismiss. Defense counsel simply did not seek to refute several of the plaintiff's causes of action, so they were allowed to proceed.

The cooperative made a motion to dismiss the complaint on various procedural grounds. It also argued that since the payments were made voluntarily, Turtz had waived his rights to recover them. Finally, it asserted that the defendant board members and managing agent had no liability because they had no direct legal relationship ("privity") with the plaintiff.

IN COURT: The court rejected the procedural claims and deferred a decision on virtually all of the substantive claims. It asserted that the standard of review of a motion to dismiss was not whether the plaintiff would succeed on his claims, but whether the plaintiff had stated a cause of action that was not "utterly refute[d]" by the defendant's factual allegations. It determined that the defendant had either failed to provide sufficient documentary evidence to "utterly refute" the plaintiff's claims at this point in the action, or had simply failed to address certain of the plaintiff's causes of action made against specific defendants. Thus, the court allowed the claims to proceed.

COUNSEL: N/A; Judge Betty Lugo-Martinez, Civil Court

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RELEASE

BD. OF MGRS. OF THE WATERWHEEL CONDO. V. ARDSLEY WATERWHEEL PARTNERS, LLC

2026 NY SLIP OP 04834 (2D DEP'T AUG. 5, 2026)



Broad Release Bars Indemnification and Contribution Claims

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

OUTCOME: Decided for Third-Party Defendant

WHAT HAPPENED: In 2013, developer Ardsley Waterwheel Partners, LLC, contracted with Westchester County to perform infrastructure improvements on a four-building condominium construction project, with Westchester County providing funding. Following construction, the condominium's board of managers sued the developer and its principals for damages caused by "substantial egregious construction defects" and "negligently performed work." This prompted the developer defendants to sue Westchester County, among others, for common-law indemnification and contribution.

IN COURT: The board of managers brought an action against the developer based on breach of contract, breach of the warranty of habitability, and breach of fiduciary duty. The developer denied the allegations and asserted, among other defenses, that the damages were caused by the board's conduct or by the conduct of Westchester County.

In turn, the developer brought a third-party action against Westchester County and other third parties for indemnification pursuant to the terms of the contract between them, contribution, breach of contract, and negligence. Westchester County moved to dismiss the third-party action as barred by the release contained in the Inter-Municipal/Developer Agreement. The trial court granted the motion, and its order was affirmed on appeal. Both courts found that the release entered into by the parties precluded the claims for indemnification and contribution against the county because the scope of the release was intended to resolve the controversy between them arising from the construction project.

TAKEAWAY

Releases are powerful documents. They are enforced as contracts and can end a case at the pleading stage. Indeed, a valid, broadly worded release will bar not only direct claims but also related third-party claims, such as indemnification and contribution, arising out of the same controversy. Drafters and signatories alike should review release language carefully before signing away potential indemnity and contribution rights.

COUNSEL: For the County of Westchester: JASON SCOTT WHITEHEAD, Westchester County Department of Law; for Ardsley Waterwheel Partners, LLC, et al.: BRIAN ADAM KALMAN, JACOB DYLAN GASH, London Fischer; Justice Charles D. Wood (order court)

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RPAPL 881

MATTER OF 592 MARCY HOLDINGS LLC V. BD. OF MGRS. OF THE MARCY VILLA CONDO.

2026 NY SLIP OP 51167(U) (SUP. CT. KINGS CNTY. JULY 28, 2026)



Court Sets Middle Ground on Access Fees and Repairs

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

OUTCOME: Decided for Respondent Condominium

WHAT HAPPENED: In an RPAPL § 881 proceeding brought against a neighboring condominium and the unit owners who controlled the neighboring yard and terraces where temporary protections needed to be installed, the court addressed disputes over the license fee and repairs necessitated by damage caused during the initial survey work, underpinning, and excavation.

TAKEAWAY

While in many ways this is a straightforward RPAPL § 881 dispute in which both sides took unreasonable positions and the court ordered a middle ground, what is not evident from the decision (but can be seen from a review of the court docket) is that the squabbling between the parties over what the decision means and covers continues. The lessons here appear to be very basic: don't be greedy; don't be miserly; if you break it, fix it; if you might damage something valuable, protect it. Remembering some of these elementary rules may end up saving a lot of money in legal fees, particularly where many buildings do not budget for the cost of § 881 litigation in their annual budgets.

IN COURT: The court found that the respondents' demand for an access fee of $8,000 to $12,000 per month and the petitioner's counteroffer of $1,500 per month were both unreasonable. The court ordered a license fee of $5,000 to $6,000 per month for the first year and $6,000 to $7,000 per month for the second year. The court also ordered the petitioner to inspect and correct damage to the units and common areas resulting from the preliminary work and set short timetables for completion of the repairs.

While the court found that the petitioner was responsible for professional fees arising from the dispute over the interpretation of the earlier Phase I agreement, the decision was silent as to what, if anything, would be awarded for attorney and professional fees for the current license agreement. The court also ordered the petitioner to reimburse the respondent for the monitoring expenses it would incur.

COUNSEL: For 592 Marcy Holdings LLC: ELI D. RAIDER, CHARLES DANIEL MUELLER, AUSTIN LEIGH FINCHER, Tuttle Yick LLP; YECHESKEL MENASHE, Menashe & Lapa; for the Board of Managers of the Marcy Villa Condominium: ANDREW F. TROIA, Troia & Associates; STEPHEN MICHAEL MAHON, Milber Makris Plousadis & Seiden, LLP; Justice Aaron D. Maslow

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