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CASE LAW TRACKER
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BALCONY AND TERRACE RIGHTS

SZTYBEL V. THE BD. OF MGRS. OF HERITAGE TOWER CONDO.

60680/2024 (SUP. CT. WESTCHESTER CNTY. SEPT. 28, 2026) NYSCEF NO. 151



Condo Board Prevails in Dispute Over Terrace Repairs

SQUIB BY MANU LEILA DAVIDSON, ESQ., AND SANDRA HABIB, ESQ., BOYD RICHARDS PARKER & COLONNELLI, PL

OUTCOME: Decided for Defendant Condo

WHAT HAPPENED: The plaintiff, the owner of two units in Heritage Tower Condominium, sued the condominium's board of managers and its nine individual members. The complaint alleged that the board failed to properly maintain, manage and repair the plaintiff's units, focusing on remediation work performed on the building's balconies and terraces. Specifically, the plaintiff claimed that the board failed to repair and maintain the terraces as required by the condominium's bylaws, performed defective construction work and allowed defective conditions to remain.

The claims against the individual defendants were dismissed on Oct. 16, 2024. The remaining claims against the board purported to assert causes of action for breach of contract, negligence, breach of the warranty of habitability, declaratory judgment, breach of fiduciary duty, waste, private nuisance and violation of Real Property Law § 339-cc. The parties moved for summary judgment.

IN COURT: The court dismissed the complaint as follows:

Breach of contract. The plaintiff alleged that the board breached the condominium's bylaws and the implied covenant of good faith and fair dealing by failing to repair the terraces. The board argued that the

(continued on p. 3)

TAKEAWAY

This decision underscores that condominium governing documents control responsibility for maintenance and repairs. When a board acts in good faith and within the scope of its authority, its decisions are generally protected by the business judgment rule.

NOVEMBER 2026 HIGHLIGHTS

CONSTRUCTION DEFECTS
Condo Board Wins Construction Defect Award but Loses Fiduciary Duty Claim

CONTRACT OF SALE
Even When Buying a Co-op at Auction, Board Approval Can Be a Difficult Hurdle

LIABILITY OF DIRECTORS
Retaliation Allegations Keep Direct Claims Against Board Members Alive

REASONABLE ACCOMMODATION
Accommodation Claims Survive After Co-op Terminates Injured Officer

TAX
Court Finds City's Pied-à-Terre Surcharge Notice Process Unlawful

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bylaws assign responsibility for terrace maintenance and repair to the unit owners. The court agreed, finding that the plaintiff failed to identify any contractual provision imposing that obligation on the condominium.

Negligence. The plaintiff alleged that the condominium negligently performed construction work by improperly pitching the terraces and allowing defective conditions to remain. The court held that the board established it owed no duty with respect to the terraces, sliding door or drainage. The court further held that the board's construction decisions fell within its authority and were therefore protected by the business judgment rule.

Breach of the warranty of habitability. The plaintiff asserted a statutory warranty-of-habitability claim. The court dismissed the claim, holding that Real Property Law § 235-b does not apply to condominium owners.

Declaratory judgment. The plaintiff sought a declaration directing the condominium to make repairs and replacements. The court held that the plaintiff impermissibly sought affirmative relief rather than a declaration defining the parties' rights.

Breach of fiduciary duty. The plaintiff argued that the board breached its fiduciary duties and that the business judgment rule did not apply. The condominium maintained that the board acted within its authority, in good faith and without an improper purpose. The court agreed with the board, reiterating that the business judgment rule limits judicial review to whether a board acted within the scope of its authority and in good faith. Courts will not second-guess a board's decision absent fraud, self-dealing or unconscionability.

Private nuisance. The plaintiff failed to establish that the alleged conduct was negligent, reckless or intentional, and did not allege that the conduct was abnormally dangerous.

Waste and Real Property Law § 339-cc. The court held that the causes of action for waste and violation of Real Property Law § 339-cc were inapplicable.

COUNSEL: For Sztybel: DANIEL S. FINGER, Finger & Finger; for the Board of Managers of Heritage Tower Condominium et al: ARTHUR P. XANTHOS, Milber Makris Plousadis & Seiden; Justice Alexandra D. Murphy

CONSTRUCTION DEFECTS

TRIBECA SPACE MGRS. V. TRIBECA MEWS LTD. (IN RE 25 MY RENTCO LLC)

25-01143 (BANKR. S.D.N.Y. SEPT. 25, 2026) ECF NO. 76



Condo Board Wins Construction Defect Award but Loses Fiduciary Duty Claim

SQUIB BY MICHAEL MANZI, PARTNER, SMITH GAMBRELL RUSSELL

OUTCOME: Decided, in part, for Condo Plaintiff

WHAT HAPPENED: The defendant Tribeca Mews Ltd. converted and altered five adjoining brownstones into a condominium. After the condominium unit owners took control of the board of managers, which included Brad Thurman as a designee of the sponsor, multiple problems arising from the construction

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of the condominium slowly came to light, including construction that did not comply with the terms of the offering plan or with applicable New York City building codes. In addition, after obtaining a series of temporary certificates of occupancy for the building, the sponsor allowed the temporary certificates to lapse and never obtained a permanent certificate as required under the offering plan. The plaintiff board commenced litigation against the sponsor and successor sponsor in New York Supreme Court. A settlement was attempted but failed, and then the defendant filed for Chapter 11 bankruptcy in the Southern District of New York, moving the plaintiff's claims to the bankruptcy court. The bankruptcy court held a trial on the claims and issued its decision.

IN COURT: The bankruptcy court found the sponsor defendants liable for the majority of the plaintiff's claims: failure to obtain certificates of occupancy; defective exhaust shafts from the kitchen and bathroom; failure to comply with the terms of the offering plan and building codes; noncompliant ceiling heights and accessibility accommodations; use of combustible materials; and defective construction of terraces. The court awarded the plaintiff $18,883,916.26 for the estimated costs to correct the defects, but whether the condominium will be able to collect any or all of this award remains to be seen as the bankruptcy proceeding continues.

In addition to the construction defect claims, the plaintiff also filed a claim against Brad Thurman (the sponsor designee on the board) for breach of fiduciary duty by "[b]eing aware of and failing to disclose . . . . " the defects to the board while he was serving on the board. Even though the plaintiff presented considerable evidence, including testimony of the building superintendent, that Thurman was aware of the defects but did nothing to remedy them and did not bring them to the board's attention, the court dismissed the claim for breach of fiduciary duty.

The court acknowledged that "[S]ponsor appointed board members owe heightened fiduciary duties to unit owners . . . . " (citing Bd. of Mgrs. of the Fairways at N. Hills Condo. v. Fairway at N. Hills et al., 193 A.D.2d 322, 2d Dep't 1993), but it then held that "[t]o establish the element of breach against an individual member of a condominium board, there must be an underlying tort committed by the individual member." It concluded that the "deceit and concealment" exhibited by Thurman were not actionable torts. The failure of the plaintiff to show independent tortious conduct defeated its claim against Thurman individually.

TAKEAWAY

The requirement to show that a board member committed an independent tort for a finding of breach of fiduciary duty has often been a difficult burden to meet, partly because courts have applied it inconsistently. For this court, the conduct must be egregious enough to constitute a tort (which apparently was not the case here) and must be independent of the actions of the board. For example, a board member's attempt to extort a kickback from a unit owner made without knowledge of the other board members could rise to the level of a breach of fiduciary duty. Given the work of condominium and cooperative board members to fulfill their tasks without compensation (and often without appreciation), it is not unusual to find a court reluctant to find a breach of fiduciary duty, even when the alleged acts or failures to act are troubling ones, such as deceit and concealment.

COUNSEL: For Tribeca Space Managers: KENNETH MURPHY, JEREMY HONIG, EVAN SCHIEBER, AARON ZERYKIER, Rivkin Radler; for Tribeca Mews Ltd.: THOMAS J. MCGOWAN, Meltzer, Lippe, Goldstein & Breitstone, WILLIAM J. TURKISH, Braunstein Turkish; Justice Martin Glenn

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CONTRACT OF SALE

DRUZHINSKY V. TRUMP VIL. SECTION 4, INC.

2026 NY SLIP OP 05164 (2ND DEP'T SEPT. 2, 2026)



Even When Buying a Co-op at Auction, Board Approval Can Be a Difficult Hurdle

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

OUTCOME: Decided for Appellant-Defendant

WHAT HAPPENED: The defendant co-op foreclosed upon and sought to sell 16 shares of its stock and an accessory proprietary lease at a public auction. The plaintiff was the successful bidder for the price of $180,000, tendered a down payment of $20,000, and executed a memorandum of sale, agreeing to comply with the terms of sale. Those terms provided that the purchase was subject to the co-op's approval and that "The purchaser agrees to submit an application to the [co-op board], in a form subscribed (sic) by the board, within five (5) days after the date of the auction's sale." If the failure to obtain approval for the purchase of the shares was due to the purchaser's failure to cooperate in furnishing the required information, the down payment would be forfeited.

The next day, the plaintiff submitted by email a co-op application for approval. The following day, the co-op's transfer agent sent the plaintiff an email informing him that his application was "not deemed submitted" as he omitted the final pages, which consisted of authorizations allowing the co-op to obtain consumer reports about the plaintiff, and listed "required attachments" including filed income tax returns and Forms W-2 or 1099. Over two weeks after the sale, the plaintiff sent the defendant an email stating "I am in the process of finishing my application." About two more weeks passed with no compliance. The co-op's attorney sent the plaintiff a notice of default of the terms of sale as he had not submitted his application within five days after the auction date. These facts were undisputed.

The plaintiff then commenced this action to recover damages for breach of contract. The co-op moved to dismiss the complaint, and for an award of attorneys' fees and sanctions against the plaintiff and/or his counsel. The motion court denied the defendant's motion.

The plaintiff then moved for summary judgment on the complaint, and the co-op cross-moved for summary judgment dismissing the complaint. The motion court granted the plaintiff's motion and denied the co-op's motion. A judgment was then entered in favor of the plaintiff and against the co-op for a sum of $105,000 plus interest and costs, for a total of $129,230.67. The co-op appealed.

TAKEAWAY

This appeal demonstrates the importance of due diligence in buying at an auction. Before bidding for shares of a cooperative corporation, read the building's application for approval and be prepared to comply with its requirements within the sometimes onerously short time specified. Be prepared to receive requests for supplementary information that the board may request. And read the auctioneer's terms of sale. These critical documents are often available some length of time before a scheduled auction.

As an aside, when buying at an auction, there is often an intent to make substantial renovations. The ability to make them is usually governed by the building's alteration packages. Almost nothing can be done without the approval of the building's board.

IN COURT: The Appellate Division reversed the lower court's judgment, denied the plaintiff's motion for summary judgment and granted the co-op's cross-motion for summary judgment and for reasonable attorneys' fees, as it was the prevailing party.

The reasons for the reversal were as follows:

On its cross-motion for summary judgment, the co-op demonstrated its entitlement to judgment dismissing the complaint based upon the plain meaning of the contract terms. The plaintiff defaulted on his obligation to submit a completed co-op application package within five days of the auction sale in order

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to obtain the co-op's approval for his purchase. He failed to raise a triable issue of fact as to his compliance. His submission of an incomplete application package did not satisfy his obligations under the agreed terms of sale.

The terms of sale also provided that if the successful bidder brings an action against the co-op as a result of the sale, the co-op would be entitled to recover the expenses of legal counsel. The appeals court referred the matter back to the motion court to compute the fees.

COUNSEL: For Druzhinsky: RYAN C. BANICH, Tsyngauz & Associates; for Trump Village Section 4, Inc., etc.: ANNIE F. CAUSEY, JAMES F. WOODS, James Lonergan; Justice Angela G. Iannacci

DISCRIMINATION

OREE V. PARKCHESTER CONDO. COMPLEX (RIVERS V. PARKCHESTER CONDO. COMPLEX)

NO. 1:25-CV-00363-MKV (S.D.N.Y. SEPT. 2, 2026) ECF NO. 46



Court Dismisses Disability Discrimination Suit Against Condo

SQUIB BY INGRID C. MANEVITZ, PARTNER, SEYFARTH SHAW

OUTCOME: Decided for Condo Defendants

WHAT HAPPENED: The self-represented plaintiff, Adrian Oree, a legally blind double amputee who uses a wheelchair, alleged that the condominium in which she resides, Parkchester Condominium Complex in the Bronx, failed to provide a wheelchair ramp allowing her to enter and exit the building. The plaintiff brought claims against the defendants, Parkchester Condominium Complex, PPC Residential, LLC, and Parkchester Preservation Company, LP, in federal court, alleging violations of various federal antidiscrimination laws. The defendants moved to dismiss the complaint for failure to state a claim.

IN COURT: The court dismissed the plaintiff's claims under Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 et seq. (ADA), because the ADA prohibits discrimination in access to public accommodations, but residential facilities, such as apartments, are not public accommodations under the ADA. The court also dismissed the plaintiff's claims under the Fair Housing Act, 42 U.S.C. § 3604 et seq. (FHA). To state a claim under the FHA, a plaintiff must allege that she gave the defendants an opportunity to accommodate her, but the plaintiff here did not allege facts suggesting she ever requested an accommodation.

The court dismissed the plaintiff's complaint but granted her leave to amend, both because she was self-represented and because it was conceivable she could state a valid FHA claim. Because the court granted leave to amend the complaint to allege federal claims over which the court has original jurisdiction, the court deferred ruling on whether to exercise supplemental jurisdiction over any state-law claims.

TAKEAWAY

New York City condos are required by the Fair Housing Act and the New York City Human Rights Law to provide reasonable accommodations to disabled residents. If a resident who uses a wheelchair requests a ramp, the condo board should evaluate the request and grant it unless it creates an undue hardship.

COUNSEL: For Oree: ADRIAN OREE, pro se; for Parkchester: TANYA M. BRANCH, Quintairos, Prieto, Wood & Boyer; Justice Mary Kay Vyskocil

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ERAP

SHENG V. EDEN ROCK OWNERS, INC.

153262/2025 (SUP. CT. N.Y. CNTY. SEPT. 10, 2026) NYSCEF NO. 196



Co-op's Reliance on Agency Guidance Defeats Income Discrimination Claim

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

OUTCOME: Decided for Defendant Co-op on the Discrimination Claim

WHAT HAPPENED: The plaintiff served an amended complaint with 28 causes of action against multiple parties including her cooperative, its managing agent, individual directors and the law firm that represented the cooperative. This article will focus on her unsuccessful claim for income discrimination against the cooperative and its directors.

In 2020, the cooperative started billing the plaintiff for cable fees pursuant to a bulk billing agreement with a cable company (her claim challenging the decision to execute that agreement was dismissed). In 2021, the plaintiff started having financial difficulties and applied to the Emergency Rental Assistance Program (ERAP) through the New York State Office of Temporary and Disability Assistance (OTDA) for financial assistance. Even though OTDA originally provisionally approved the plaintiff for ERAP benefits, the cooperative was advised by counsel that as a shareholder, the plaintiff was not entitled to those benefits. In response to a demand by the cooperative under its recognition agreement with her lender, the plaintiff's lender paid the arrears which had accumulated on the account and which the plaintiff failed to pay because she believed that they would be covered by ERAP. In February 2023, OTDA issued a final determination denying the plaintiff ERAP benefits on the grounds that shareholders in a cooperative were not eligible for those benefits. The plaintiff filed an Article 78 proceeding against the state challenging that determination; she was successful and the court determined that shareholders are entitled to ERAP benefits since maintenance is akin to rent.

The plaintiff alleged that after the Article 78 proceeding was determined in her favor, she was subjected to retaliatory action by the cooperative. She claimed that she received notice demanding that she carpet her floors and that the grout on the bathroom floor was defective and causing leaks into other apartments. Her claims relating to retaliation were dismissed as the court found that investigating a leak purportedly emanating from the plaintiff's apartment does not constitute mistreatment or retaliation.

IN COURT: The cooperative successfully argued that the source-of-income discrimination claims needed to be dismissed because the ERAP statute specifically authorized a landlord to refuse to participate in ERAP and the cooperative relied on OTDA's determination that a shareholder was not eligible for ERAP benefits. Further, the court's determination in the Article 78 proceeding that a shareholder was entitled to ERAP benefits arose after the alleged discriminatory conduct purportedly took place. The court found that there could be no discrimination based on a source-of-income claim when OTDA had not made a final determination that she was entitled to the income and she never proffered income to the cooperative which was refused. Further, the cooperative was entitled to rely on its attorney's and OTDA's guidance that the plaintiff would not receive a final determination approving her ERAP benefits. In analogous circumstances,

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TAKEAWAY

Although other parts of this case are continuing, the cooperative obtained dismissal of the discrimination claims, even though, in the end, the shareholder was ultimately correct on the law regarding ERAP eligibility and the advice obtained from the state agency and counsel was not upheld. But the co-op escaped any liability here because it was justified in its reliance on its counsel's advice. It shows the value of having competent, knowledgeable professionals and relying on them when complex, difficult issues arise.

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the Court of Appeals has held landlords should not be subject to statutory penalties based on good-faith reliance on administrative guidance that is later held to have been a misinterpretation of the law. The discrimination claims were therefore dismissed.

Attorney For plaintiffs: HILLGARDNER, THOMAS JOHN, Thomas J. Hillgardner, Esq. Attorneys for defendant Eden Rock Owners, Inc.: BELTRANI, MARIA I, Schwartz Sladkus Reich Greenberg Atlas LLP; DAVIDSON, MANU LEILA, Boyd Richard Parker & Colonelli, P.L., KAUFMAN, STEVEN RONALD, Boyd Richards Parker & Colonnelli, P.L.

GROUND LEASE

MATTER OF 57TH & 6TH GROUND LLC V. CARNEGIE HOUSE TENANTS CORP.

2026 NY SLIP OP 05230 (1ST DEP'T SEPT. 3, 2026)



Court Vacates $24.6 Million Ground Rent Arbitration Award Over Umpire's Partiality

SQUIB BY JENNIFER MILLER, FOUNDER AND MANAGING PARTNER, J. MILLER LAW, PC

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: Carnegie House, a 324-unit Manhattan cooperative located at 100 W. 57th St., became embroiled in a dispute with its ground landlord over the property's value for purposes of resetting the annual ground rent. Under the ground lease, rent was calculated at 8.1667% of the land's fair market value. When the parties could not agree on that value, the dispute proceeded to arbitration.

Each side appointed its own arbitrator. When the parties could not agree on a third, neutral arbitrator, known as the umpire, the American Arbitration Association (AAA) appointed one to complete the three-person panel.

Before the hearing began, however, questions arose concerning the umpire's impartiality. While serving on the panel, the umpire was offered a paid appointment as an umpire in an unrelated arbitration involving the landlord's counsel. Although he disclosed the potential appointment to the cooperative, he omitted a critical detail. He had communicated directly with the landlord's counsel about the opportunity without the cooperative's knowledge or participation. It was the landlord's counsel, not the umpire, who ultimately disclosed those communications following further inquiry by the cooperative.

The cooperative requested the umpire's recusal. Rather than stepping aside, the umpire offered to decline the other appointment if the cooperative withdrew its recusal request. The cooperative refused, and the umpire denied the recusal request, although he ultimately declined the other appointment.

Despite an earlier procedural order dispensing with prehearing briefs, the umpire permitted the landlord to move to exclude significant portions of the cooperative's expert valuation evidence, gave the cooperative just two days to respond, and then shortened the hearing schedule.

The resulting award valued the land at $301.25 million, increasing annual ground rent from approximately $4.36 million to a staggering

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TAKEAWAY

Although arbitration awards are generally afforded substantial judicial deference, even a unanimous award may be vacated where an appearance of partiality is sufficient to establish prejudice. Proof of actual bias is not required.

For cooperative and condominium boards involved in ground lease disputes or other significant matters subject to arbitration, the decision underscores the importance of scrutinizing potential arbitrator conflicts, insisting on full disclosure, and promptly raising objections to procedural irregularities. It also serves as a reminder that boards may have grounds to challenge an unfavorable arbitration award in court when the fairness of the proceedings has been compromised.

The decision does not resolve the underlying ground rent valuation dispute. Rather, it gives Carnegie House another opportunity to present its case before a new arbitration panel.

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$24.6 million. The landlord sought to confirm the award, while the cooperative moved to vacate it based on the umpire's partiality and misconduct.

IN COURT: The Supreme Court confirmed the arbitration award, but the Appellate Division, First Department, unanimously reversed.

Under Section 7511 of the Civil Practice Law and Rules (CPLR), a party seeking to vacate an arbitration award based on the partiality of a neutral arbitrator must demonstrate prejudice by clear and convincing evidence. Actual bias is not required. An appearance of bias from which a conflict of interest may be inferred can be sufficient.

The appellate court found that the umpire's undisclosed communications with the landlord's counsel, incomplete disclosure, and attempt to negotiate the withdrawal of the recusal request created an appearance of partiality that compromised the integrity of the arbitration process.

The court further found that the umpire's subsequent procedural rulings, including permitting the landlord's motion to exclude the cooperative's valuation evidence and accelerating the hearing schedule, could not be separated from the appearance of impropriety.

Importantly, the court held that even a unanimous arbitration award could not overcome the appearance of partiality and impropriety that compromised the integrity of the proceedings.

Accordingly, the First Department vacated the arbitration award and remanded the dispute for arbitration before a new panel.

COUNSEL: For 57th & 6th Ground LLC: JEFFREY L. GOLDMAN, Belkin Burden Goldman, HOWARD S. KOH, MILTON EUGENE OTTO, STEPHEN B. MEISTER, Meister Seelig & Schuster; for Carnegie House Tenants Corp.: GAYLE E. POLLACK, JEREMY D. WEINSTEIN, DAVID B. SAXE, Morrison Cohen, BRETT D. DOCKWELL, Haynes and Boone; Justice Nicholas Moyne

LABOR LAW

XIA V. 62-98 REALTY LLC

NO. 19-CV-01203-ENV-LGD (E.D.N.Y. SEPT. 30, 2026) ECF NO. 54



Disputed Control Over Workers Keeps Joint Employer Claims Alive

SQUIB BY DAVID J. BLESSINGTON, ASSOCIATE, BRAVERMAN GREENSPUN

OUTCOME: Decided for Neither Party

WHAT HAPPENED: Lijun Xia and Lijun Yang were hired by Suzhong Construction USA, Inc. (SCU) at $280 per day to perform tile work at a Queens condominium owned by 62-98 Realty LLC (62-98). After SCU's owner abandoned the site in December 2018, the plaintiffs alleged that each was owed $14,500 for 52 unpaid workdays.

The plaintiffs sued 62-98, its member-manager Jeff Qiu, and site manager Danny Kong on Feb. 28, 2019 (amended Jan. 13, 2021) under the Fair Labor Standards Act (FLSA), the New York Labor Law, federal common law (untimely wages), and New York contract law. The defendants alleged that SCU hired, paid, and controlled the workers. The plaintiffs argued that Qiu and Kong set a uniform schedule across contractors, gave direct feedback, and that Qiu promised payment.

TAKEAWAY

Delegating hiring and payroll to a contractor does not foreclose joint-employer claims against a building owner. Actual supervision and schedule control can defeat summary judgment. A moving defendant in a subcontractor case must address both the Carter formal control and Zheng functional control factors, with admissible evidence, or risk denial of summary judgment.

IN COURT: The defendants moved for summary judgment on Oct. 6, 2022, denying joint-employer status. Magistrate Judge Lee G. Dunst issued a report on Dec. 19, 2024, recommending denial. Finding the defendants' objections timely and specific, Judge Eric N. Vitaliano reviewed de novo and, on Sept. 29, 2026 (filed Sept. 30, 2026), adopted the recommendation with one modification and denied the motion.

Joint employment turns on economic reality, measured by formal control under Carter v. Dutchess Cmty. Coll., 735 F.2d 8, 12 (2d Cir. 1984) (hiring and firing power, supervision and schedules, pay,

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and records) and functional control under Zheng v. Liberty Apparel Co., Inc., 355 F.3d 61, 72 (2d Cir. 2003) (premises and equipment, whether the contractor's business shifts among clients, integral line-job work, contractor fungibility, supervision, and exclusivity). The court overruled the defendants' objection that the magistrate judge's report erroneously shifted the burden of proof to the defendants. The court explained that the report did not shift the burden of proof. The report merely identified disputed material facts concerning the defendants' functional control over the plaintiffs. The court explained that, in subcontractor cases, joint employment "hinges" on functional control, so a movant must show no genuine dispute under both formal and functional control tests.

The court found factual disputes over three of the six factors considered under Zheng's functional control test. First, 62-98's ownership of the site and furnishing of equipment raised a fact issue as to whether the defendants controlled the supplied equipment for the plaintiffs to complete the work. Second, supervision, the most important factor, was disputed. The plaintiffs supplied testimony that Qiu and Kong supervised the site, commented on performance, and mandated a universal schedule. Third, the 6:30 a.m. to 5 p.m., six-day schedule supported an inference of exclusivity, and the defendants wrongly framed the inquiry as exclusivity to SCU rather than to the putative joint employer.

The court sustained the defendants' objection to Zheng's "fungibility" factor. The plaintiffs' affidavits that Qiu kept employing painters who had worked alongside them relayed another person's out-of-court statement. Pursuant to Rule 56(c)(4) and controlling case law, such hearsay cannot create a genuine issue, and no admissible evidence showed that SCU was fungible.

That modification did not disturb the remaining disputes. The case returns to Judge Dunst for pretrial management. The defendants' joint-employer status and liability remain undecided.

COUNSEL: For Xia: JOHN TROY, AARON SCHWEITZER, TIFFANY TROY, Troy Law; Justice Lee G. Dunst

LIABILITY OF DIRECTORS

BENT V. CIRONE

2026 NY SLIP OP 05456 (1ST DEP'T SEPT. 24, 2026)



Retaliation Allegations Keep Direct Claims Against Board Members Alive

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

OUTCOME: Decided in Part for the Plaintiff

WHAT HAPPENED: Bruce Bent, his wife and their family lived in a condo unit in Manhattan for many years. In fact, he was on the condo board at one time. Bent was informed by the board that the condo would be undertaking a multimillion-dollar capital project, and he objected because the bylaws required unit owner approval of such a project.

The board eventually relented. However, according to Bent, the board and its members were upset with him and subjected him and his family to escalating service denials, unhealthy living conditions and malicious building-wide communications. In addition, Bent asked the board to inspect the condo's financial records, and the board members refused.

Bent also complained that excessive mechanical noise was emanating from the common areas, and his expert wrote a report indicating the noise was unreasonable and a violation of law. Besides this, Bent claimed that even routine maintenance work was not being done and serious roof leaks were not being repaired, resulting in mold in his unit.

Bent claimed that this mistreatment took place over a long period, and he finally brought this action. The action, brought by Bent as an assignee of the claims of his wife, who was the actual unit owner, was against not only the condominium but also included direct and derivative claims against the individual condo board members. The claims included trespass, breach of the bylaws, breach of fiduciary duty and gross negligence.

The individual board members moved to dismiss all direct and derivative claims against them, and the court granted the motion.

IN COURT: On appeal, the Appellate Division agreed that

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the derivative claims must be dismissed because Bent was not a unit owner. Bent's wife, the actual unit owner, assigned her rights to claims to her husband, and the court held that this was not enough to allow the derivative action to move forward. Only a unit owner may bring a derivative claim on behalf of the unit owners. However, the court reversed the dismissal of the direct claims. The Appellate Division held that the allegations that the individual board members all participated in, directed and controlled the alleged tortious acts against Bent, his wife and his family were sufficient to sustain the direct claims at this prediscovery stage.

As stated by the Appellate Division, "[t]o the extent the complaint includes nonconclusory allegations of an animus-driven campaign of retaliatory action that constitute tortious conduct, the direct claims are not properly dismissed at this stage . . . ." This applies regardless of whether the business judgment rule applies or whether the condominium bylaws limit board members' personal liability.

TAKEAWAY

The decision in this matter clarifies two points. First, only a unit owner can bring a derivative action because, by its very nature, that action is brought by one unit owner on behalf of all unit owners. The second issue is that if the claims in a lawsuit are dependent on the facts, a motion to dismiss will often fail because the board members' behavior, and whether their acts were retaliatory, tortious and in bad faith, is a matter for the trial court as it determines the facts.

Although the decision involves only motions, the facts, as described by the plaintiff, tell a sad story too often seen in co-ops and condos in New York City. Animosity between an owner and the board is like a virus that can poison a building, and the entire building suffers. But perhaps the worst part is that very typically there are no heroes and villains: Both sides often have good, legitimate reasons for what they do. Living in a multidwelling building is not easy, but a levelheaded and reasonable approach on both sides can prevent years of belligerency and legal fees.

COUNSEL: For Bent: JOHN G. DELLAPORTAS, Emmet, Marvin & Martin; for Cirone et al: WILLIAM J. GELLER, Braverman Greenspun; Justice Lori S. Sattler

MOTION PRACTICE

JACOBS V. ARLINGTON OWNERS INC.

2026 NY SLIP OP 05173 (2ND DEP'T SEPT. 2, 2026)



Auction Terms Defeat Buyer's Claim Over Denied Appraisal Access

SQUIB BY JEREMY S. HANKIN, PARTNER, HANKIN & MAZEL, PLLC

OUTCOME: Decided for Cross-Movant–Defendant

WHAT HAPPENED: At a public auction, the plaintiff placed a successful bid for shares of stock in the defendant's cooperative residential apartment. When the defendant co-op offered the plaintiff the opportunity to close on the sale, the plaintiff requested access to the apartment for an appraisal in order to obtain financing to close on the sale. The defendant co-op denied that request, and the defendant thereafter rejected the plaintiff's bid and refunded his deposit. The plaintiff commenced an action against the co-op alleging that the co-op breached the agreed-to Terms of Sale (TOS) by denying the plaintiff's request for access into the apartment for an appraisal in order to obtain financing for the purchase. The complaint further alleged, inter alia, that the parties agreed to certain TOS.

TAKEAWAY

A breach of contract cause of action fails as a matter of law in the absence of any showing that a specific provision of the contract was breached.

IN COURT: The plaintiff moved for summary judgment on the issue

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of liability on the cause of action alleging breach of contract. The defendant opposed the plaintiff's motion and cross-moved for summary judgment dismissing the complaint. The Supreme Court denied the plaintiff's motion and granted the defendant's cross-motion. The plaintiff appealed, and on appeal, the Appellate Division affirmed. The plain terms of the TOS put the plaintiff on notice, inter alia, that he had no right to an appraisal of the subject apartment; nor did the TOS obligate the defendant to assist the plaintiff with obtaining financing. As such, the plaintiff failed to demonstrate that the defendant breached any provision of the TOS and could not sustain a breach of contract cause of action.

COUNSEL: For Jacobs: JUSTIN WAX JACOBS, pro se; for Arlington Owners: FREDERICK C. SUNG, JENNIFER A. LEVINE, Boyd Richards Parker & Colonnelli; Justice Francesca E. Connolly

REASONABLE ACCOMMODATION

BOONE V. RIVERBAY CORP.

1:24-CV-01263-MMG (S.D.N.Y. SEPT. 30, 2026) ECF NO. 65



Accommodation Claims Survive After Co-op Terminates Injured Officer

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

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: Valencia Boone was employed as a peace officer by Riverbay Corp. (better known as Co-op City), a cooperative with more than 15,000 apartments in the Bronx. Her responsibilities included patrolling and monitoring, investigating incidents and apprehending suspects, preparing and maintaining reports, gathering evidence, responding to emergencies and the like. After an off-duty car accident left her injured, she took medical leave. Riverbay advised her that her position would be held open for up to six months. At the end of the six months, Riverbay required that she return to work or face termination, unless an extension of her leave was granted as a reasonable accommodation.

Before her leave expired, Boone submitted such a request, including a medical note from her orthopedic surgeon and a health questionnaire from her physical therapist, both of which stated that she was totally disabled from working for at least another three months. In the following weeks, a committee designated to review accommodation requests convened to review Boone's request and denied it. Her employment was terminated shortly thereafter, though a little less than two years later, she was rehired for the same role.

IN COURT: Boone filed suit against Riverbay alleging discrimination, failure to accommodate and retaliation in violation of federal, state and city human rights laws. After discovery, Riverbay moved for summary judgment dismissing all of Boone's claims. On the discrimination claims for failure to accommodate, the court noted that at the time of her termination, Boone was not capable of performing the essential functions of her job without an

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TAKEAWAY

Discrimination claims are notoriously fact-specific, and failure-to-accommodate claims all the more so. The obligation to engage in the interactive process in connection with an accommodation request is open-ended, and requests should rarely, if ever, be outright denied. Even where the individual cannot perform the essential functions of a job, the inquiry is not over. Employers must determine whether the inability is temporary and, if so, for what duration; whether there are alternative tasks or assignments that can be performed, or other methods of accommodation; and what burden the proposed accommodation may cause. Most obviously, everyone should be treated equally: accommodating some (e.g., pregnant women, as alleged here) but not others is likely to garner a discrimination claim that will survive summary judgment.

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accommodation because the job required her to apprehend suspects, respond to emergencies, lift or move up to 120 pounds and meet other physical and agility requirements.

However, because this inability was temporary (as evidenced by her rehire in the same capacity a little less than two years later), she may have been entitled to an extension of her leave or a "light duty" assignment (which had allegedly been provided to pregnant peace officers and others injured in the line of duty) as a reasonable accommodation until she could again perform all essential functions of the position. Riverbay failed to show that either accommodation would create an "undue burden" on it. It employed hundreds, if not thousands, of employees, so arguably, accommodating one employee would not significantly affect it.

The court also denied Riverbay's motion with regard to Boone's retaliation claims. She was terminated just two weeks after seeking an accommodation, and the court again found issues of fact as to whether she was improperly refused an accommodation.

COUNSEL: For Boone: POONAM SETHI, Jackson Lewis; Justice Margaret M. Garnett

TAX

O'BRIEN V. THE CITY OF NEW YORK

85217/2026 (SUP. CT. RICHMOND CNTY. SEPT. 29, 2026) NYSCEF NO. 34



Court Finds City's Pied-à-Terre Surcharge Notice Process Unlawful

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

OUTCOME: Decided for Petitioners-Plaintiffs

WHAT HAPPENED: A group of petitioners-plaintiffs filed a lawsuit in Staten Island challenging New York City's administration of the recently enacted pied-à-terre surcharge, originally captioned O'Brien v. City of New York, Index No. 85217/2026. The lawsuit was not a frontal constitutional attack on the surcharge. Rather, it was a hybrid proceeding under Article 78 and for declaratory relief, challenging the mailing of the initial determination notices as applied to the plaintiffs because the notices improperly placed the burden on the plaintiffs to prove that their properties were primary residences. The plaintiffs sought, in pertinent part, to have the Department of Finance (DOF) redo the initial determination notices, this time drawing on property tax exemptions and abatements (e.g., "senior, veteran, and STAR exemptions, and the cooperative/condominium tax abatement program"), plus state tax returns.

Although the petitioners obtained a temporary restraining order, the TRO was stayed, and the rest of the case was briefed and submitted to the court for a decision.

IN COURT: The court found for the petitioners on every issue raised in the complaint. The court first determined that the DOF improperly released nearly the entire residential tax roll of over 900,000 properties. The court then found that the DOF's process for issuing the initial determinations was unlawful and ordered all mailed notices to be canceled and redone, with the following requirements:

The DOF must first make "an individualized initial determination, utilizing any and all resources and

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TAKEAWAY

The court strongly found that the DOF's process for implementing the primary residence initial determination notices did not comply with any fair or reasonable approach. However, because the city was able to stay enforcement of the decision, and because the deadline for submitting challenges to the initial determinations has now passed, with the customary Nov. 15 statutory deadline for issuing final tax bills rapidly approaching, it is unclear whether this decision will ever be implemented or whether this case will be rendered academic by subsequent events.

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information available to DOF . . . " meaning that the DOF is supposed to go residence by residence and evaluate whether the residence is subject to the surcharge, relying on all available income tax and other information.

The notices must explain the process for challenging the DOF's final determinations.

The notices must warn the taxpayer about potential penalties for submitting documentation "negligently or in bad faith."

New York City almost immediately filed a notice of appeal, which automatically stays the decision under CPLR § 5519.

COUNSEL: For Rachel O'Brien et al.: HARNELLE CHAYENNE ST CLOUD, RANDY MICHAEL MASTRO, Dechert; for the City of New York et al.: ROCHELLE HINDA COHEN, EDAN COURTENAY BURKETT, New York City Law Department; Justice Wayne M. Ozzi

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