Belkin • Burden • Goldman, LLP
BBG UPDATE

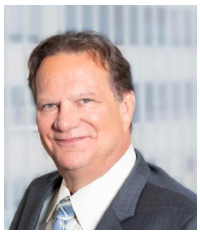
SPRING 2022 | VOL 62

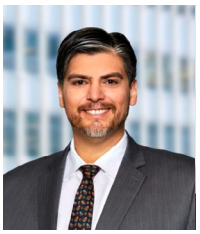
EDITORS
Robert A. Jacobs
Kara I. Rakowski
Aaron Shmulewitz

Inside This Issue

In The Zone: SoHo/NoHo Zoning Reform Becomes Reality

BY ROBERT A. JACOBS, RON MANDEL AND FRANK NORIEGA





On December 15, 2021, after decades of escalating zoning non-compliance in SoHo and NoHo, the City Council enacted radical zoning changes to finally bring the zoning in SoHo and NoHo into conformance with reality. The City Council was spurred to action by the perseverance of private initiatives such as the SoHo/NoHo Action Committee and the pandemic's effect on the local economy. However, the zoning reform is a mixed blessing for those who have grown used to years of zoning non-compliance coupled with non-enforcement by the Department of Buildings ("DOB").

SoHo is the area of Manhattan south of Houston Street that stretches down to Canal Street and lies between the Hudson River and Lafayette Street. NoHo is the area north of Houston Street that stretches northward to Astor Place, and lies between Broadway and the Bowery.

The SoHo and NoHo areas were originally zoned for manufacturing use under the City's first Zoning Resolution, enacted in 1916. At that time, the primary uses were apparel/textile manufacturing, warehousing and wholesale. This manufacturing designation was carried forward into the 1961 amendment to the Zoning Resolution under which SoHo and NoHo were zoned as M1-5A and M1-5B. These districts are "Light Manufacturing Districts" where retail and residential use were not permitted as of right. In the 1960's, the area became a haven for artists, and a Use Group 17D was introduced into the Zoning Resolution to create a

CONTINUED ON PAGE 2

CONTINUED FROM PAGE 1

type of residential use known as joint living-work quarters for artists ("JLWQA Units"). Under this designation, one occupant of the unit was required to be certified as an "artist" by the City's Department of Cultural Affairs ("DCA"); a certified artist was required to be a "manufacturer" of art such as a painter or sculptor, not a singer or actor.

This original set-up was intended to protect the artist community that had pioneered the conversion of obsolete manufacturing spaces into an artists' haven in the 1970's. For decades, groups such as the SoHo Alliance, which represented the artist community in the area, had passionately resisted any changes that would gentrify SoHo and NoHo. In addition, as rents began to rise in the late 1970's, many owners sought to evict artists who had improved their lofts for residential use. In response, the State legislature enacted Article 7-C of the Multiple Dwelling Law, known as the "Loft Law", to protect residential tenants in commercial loft buildings occupied by three or more families, regardless of artist status. However, the Loft Law created even greater disparity between the rents being paid by regulated tenants, and the rents being paid by tenants in lofts that were not subject to regulation.

In addition, retail use began to flourish in SoHo/NoHo during the 1980's. In fact, the SoHo area is currently the second-largest retail area in the City.

Meanwhile, due to mounting economic pressure from non-artist buyers desiring to live in SoHo and NoHo, artists were induced to sell their spacious lofts to such non-artists. The growing proliferation of this zoning non-compliance was aided by a laxity in enforcement and enhanced by the undisputed economic vitality brought to the area by the changing demographics.

As a result, non-artists began moving into JLWQA Units at an increasing pace by offering substantial profits to the artist former occupants. Many of the buildings in this area are co-ops, whose boards of directors began to be faced with increasing pressure from shareholders to accept non-artists. To deal with the ongoing zoning non-compliance and based upon the DOB's non-enforcement of the zoning laws, the so-called "SoHo Waiver Letter" was developed, in which non-artist purchasers agreed to indemnify the co-op against any fines and penalties resulting from the non-artist occupancy.

Zoning non-compliance in SoHo/NoHo increased over the years until it reached a critical mass of what many estimated to be over 80% non-compliance. The City has now—finally—taken radical steps to update the zoning in SoHo/NoHo while protecting the artist community by, among other things, establishing a hefty conversion fund and requiring the inclusion of low to moderate income housing. But these steps may prove more costly than many of the residents can afford.

The City Council has adopted two major pieces of legislation, collectively known as the SoHo/NoHo Neighborhood Plan (the "Plan"). The Plan consists of a Zoning Map Change[1] and a Zoning Text Change[2] to create a new Special Use District known as the **SoHo-NoHo Mixed Use District**. These changes have significantly altered how properties in the area can be used. Nearly all M1-5A and M1-5B zoning districts are being replaced with mixed-use districts, which will be zoned M1-5 coupled with a Residential Zoning District ranging from R7D to R10. This will allow properties in the area to be developed with greater floor area and to introduce more types of community facility uses and residences as of right.

The trade-off for permitting residential use as of right was the designation of the SoHo-NoHo Mixed Use District as a Mandatory Inclusionary Housing area. That means that, as a general rule, developments that introduce residential floor area will be required to provide affordable housing according to ZR 23-154, which mandates that at least 25% of the residential floor area must be affordable floor area. Qualification by prospective residents for such affordable units will be based on income limitations. There is an exception–an applicant that can demonstrate specific practical difficulties could be eligible for a special permit from the NYC Board of Standards and Appeals, which would allow the developer to contribute to a designated "affordable housing fund" instead of providing the affordable units.

In another change, conversions *to* JLWQA Units will no longer be permitted within the special district, since, now that residential use is permitted within the special district, property owners have the option to convert JLWQA Units to legal residences. However, a specified procedure must be followed. An application must be filed with the Department of City Planning to obtain a certification by the Chairperson of the City Planning Commission. The certification will require, in part, a non-refundable contribution to the SoHo-NoHo Arts Fund for each square foot of JLWQA floor area being converted to residential use.

Conversions from JLWQA Units to residences will not be subject to the Inclusionary Housing requirements of Section 23-154 (d)(1).

With regard to retention of non-residential uses, existing buildings that have at least 60,000 square feet of floor area, of which at least 20% is non-residential floor area, will be treated as "Qualifying Buildings." Zoning

[1] Resolution No. 1889 (the City Planning Commission on ULURP No. N 210422 ZMM)

[2] Resolution No. 1890 (N 210423 ZRM).

CONTINUED ON PAGE 3

CONTINUED FROM PAGE 2

lots that contain Qualifying Buildings will only allow for residential uses if certification by the Chairperson of the City Planning Commission is obtained. The certification requires that either the proposed building contain at least the amount of non-residential floor area maintained, or that the building will be converted to residences that are exclusively income-restricted housing units.

It is anticipated that a bevy of implementing regulations, bulletins and/or notices will be issued by the DOB in the near future to clarify the new zoning. However, as of this writing, they have not yet been promulgated.

BBG can assist developers, property owners and design professionals in navigating this new thicket. Please contact us with any questions regarding SoHo/NoHo zoning issues.

*This article was written by Robert A. Jacobs (212-867-4466 ext. 359, **rjacobs@bbgllp.com**), Ron Mandel (212-867-4466 ext. 424, **rmandel@bbgllp.com**), and Frank Noriega (212-867-4466 ext. 438, **fnoriega@bbgllp.com**), attorneys in BBG's Transactional Department who concentrate in zoning, land-use and related issues.*

The New Prevailing Wage Law and Co-ops and Condos

BY LLOYD F. REISMAN

For the tax year beginning July 1, 2022, many New York City co-op and condo Boards will be required to submit an affidavit certifying that the building's service employees are being paid prevailing wages, in order for the building's apartment owners to continue to qualify to receive the benefits of the co-op and condo real estate tax abatement (the "Abatement") that has been available since 1995. The deadline to file this "prevailing wage affidavit" was recently extended to April 15, 2022.

Under the new law, "building service employees" are broadly defined to include those who are regularly employed at a building for more than eight hours a week and who perform work in connection with the care or maintenance of such building. "Prevailing wages" means the rate of wages and supplemental benefits paid in the locality to the building service workers in the same trade or occupation. Union wages and benefits are, by definition, "prevailing". (But please note that the current union contract expires on April 20, 2022, so some increases to the current "prevailing" amounts should be anticipated.)

This prevailing wage affidavit must be filed for properties (1) that have 30 or more dwelling units *and* an average assessed unit value of more than $60,000; *or* (2) that have fewer than 30 dwelling units *and* an average assessed unit value of more than $100,000.

While the decision to file the affidavit may be straightforward for Boards of qualifying properties where the building's service employees are already being paid a prevailing wage (for example, a building with unionized building service employees all of whom are already receiving a prevailing wage), qualifying properties with non-unionized employees should carefully analyze the financial impact of such a decision.

For example, a building whose building service employees are *not* being paid a prevailing wage should analyze the effect on the building's budget of any increase to the employees' wages and benefits so as to make them "prevailing", and compare such impact to the aggregate amount of Abatement benefits for those apartment owners who qualify therefor (qualification requires, among other things, that a dwelling be used as a primary residence). It may well turn out that the impact on the budget (i.e., large common charge increases, payable by *all* apartment owners, ad infinitum) would greatly exceed the aggregate amount of Abatement benefits being realized by only a portion of the apartment owners (i.e., those who qualify for the Abatement), such that the building should *not* increase wages and should instead forego the (limited) benefit of the Abatement.

It also bears noting that many co-op Boards impose an assessment equal to the aggregate amount of the Abatement benefits realized by all apartment owners, such that, in effect, the co-op (rather than the individual apartment owners) winds up retaining the benefit. Accordingly, choices made by a Board could, on the one hand, potentially deprive that co-op of a revenue source. Conversely, such a decision could also eliminate a potentially contentious issue, as shareholders who had never received any benefit from the Abatement (e.g., sponsors, holders of unsold shares and other non-resident investors) would no

CONTINUED ON PAGE 4

CONTINUED FROM PAGE 3

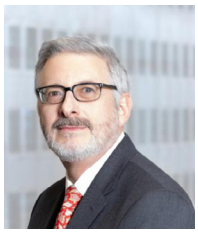
longer be required to come out of pocket to pay the assessment while receiving no Abatement benefit.

Finally, Boards should note that, once imposed, a maintenance or common charge increase to raise employees' wages and benefits to "prevailing" levels is forever—it cannot be "taken back" in future years. However, there is a chance that the Abatement *could* be eliminated by an increasingly cash-strapped City. In that case, that Board will have saddled its apartment owners with a large budget hit in perpetuity, with literally nothing to show for it.

The moral of the story is that Boards must sharpen their pencils and, with the assistance of management, tax professionals and attorneys, take a hard-eyed look at whether raising wages and benefits to "prevailing" levels one year is worth the budget impact.

Lloyd F. Reisman is a partner in BBG's Transactional Department and co-op/condo practice, and can be reached at 212-867-4466 ext. 387, ***lreisman@bbgllp.com****.*

Entitlement To Legal Fees From A Residential Tenant: Billing A Tenant For Legal Fees Is Prohibited Without A Court Order



BY MARTIN MELTZER AND BENJAMIN J. MARGOLIN

On December 21, 2021, Governor Kathy Hochul signed **Senate Bill S2014** into law, adding various new sections that explicitly prohibit an owner, lessor, or agent thereof from assessing a lessee with attorney fees, court fees, legal representation, notary public charges, or administrative fees incurred by the owner, lessor or agent in connection with management of the building, including actions and proceedings in Court, unless permitted to do so pursuant to a Court order. As a result, owners, landlords and management companies should not assess any such charges to a residential lessee's ledger unless expressly permitted by a Court order. (It should be noted that the State Legislature has passed a bill exempting co-ops from this new law, which, as of this writing, is awaiting the Governor's signature; Governor Hochul has indicated that she will sign it. Thus, co-ops *will* be able to bill for legal fees without getting a Court order.)

Under the general rule in New York, legal fees are incidents of litigation and a prevailing party may not collect legal fees from a losing party unless an award is authorized by statute, contractual agreement or Court order. Thus, generally, an owner, lessor, or agent thereof can only enforce its rights for legal fees pursuant to the terms of the lease and after a Court makes a determination of an amount of legal fees incident to Court or other proceedings.

An owner, lessor or agent thereof who seeks an award of legal fees must submit to the Court competent evidence of the lease provision that entitles the recovery of legal fees, and proof of the amount of legal fees incurred. The lease provision granting the right to seek legal fees from the lessee is particularly important. For example, some leases state that legal fees are recoverable in any litigation or proceeding; while other leases are broader and provide for the recovery of legal fees from a tenant for any legal work concerning the tenancy, such as, for example, legal notices, fees incurred in proceedings, actions at law, summary proceedings and/or administrative proceedings.

[1] The law adds section 234-a to the New York State Real Property Law, sections 26-416 and 26-512 to the New York City Administrative Code, subdivision f-1 to Section 6 of the Emergency Tenant Protection Act of 1974, and subdivision 4 to section 4 of chapter 274 of the laws of 1946 constituting the emergency housing rent control law.

[2] A prevailing party is defined as a party who receives substantial relief on the central claims advanced in the litigation. Nestor v. McDowell, 81 NY2d 410, 416 (1993).

CONTINUED ON PAGE 5

CONTINUED FROM PAGE 4

In conclusion, while an owner, landlord, lessor, or agent thereof may still recover its legal fees, costs and expenses from a residential tenant, it must wait for a Court to decide on the amount of fees or charges the owner is entitled to. Owners who have questions on record keeping, billing or collection of legal fees under this new law should consult with counsel.

*Martin Meltzer (**mmeltzer@bbgllp.com**, 212-867-4466 ext. 313) is a partner at BBG and heads the Firm's nonpayment practice. Benjamin J. Margolin (**bmargolin@bbgllp.com**, 212-867-4466 ext. 432) is an associate in the Firm's Litigation Department.*

Court of Appeals Restores Faith in the Loft Law

BY LEWIS A. LINDENBERG AND MICHAEL M. BOBICK

On February 15, 2022, the Court of Appeals (the highest Court in New York State) issued a landmark decision in *Aurora Associates LLC v. Locatelli*, holding, inter alia, that a Loft Law unit (hereinafter referred to as an interim multiple dwelling ("IMD")) subject to a Loft Law sale of rights pursuant to Multiple Dwelling Law ("MDL") § 286(12) is *permanently exempt* from all forms of rent regulation, including the rent stabilization provisions of the ETPA (absent narrow exceptions).

By way of background, the Loft Law is a mechanism by which residential occupants are permitted permanent rent protection of their individual residential units in buildings which were formerly used for manufacturing and commercial purposes and not necessarily in a zoning district permitting residential use as of right. The Loft Law governs the process whereby a building owner is required to legalize IMD units for legal residential use. Importantly, the Loft Law provides a form of rent regulation for the occupants of IMD units; and upon obtaining a final residential certificate of occupancy, the IMD units are then subject to rent stabilization. The process whereby a building, residential units and residential occupants obtain Loft Law protection ("Loft Law Coverage") is an exceptionally interesting process and – as one can imagine – highly contentious and often the subject of hard-fought litigation.

The Loft Law also provides protections to owners of IMD buildings. Under the Loft Law, an owner of an IMD building is permitted to purchase a protected occupant's rights to the IMD unit, commonly referred to as a "sale of an occupant's Article 7-C loft rights". Upon the purchase of an occupant's Article 7-C loft rights, the owner may return the IMD unit to commercial use, thereby relieving the owner of all Loft Law obligations for that unit, or continue with residential use subject to the Loft Law's legalization requirements (essentially permitting a unit to be deregulated and thereafter not subject to rent stabilization at the conclusion of the legalization process.) Thus, following the purchase of an occupant's Article 7-C loft rights, the building owner would be entitled to charge a market rate rent for that unit.

Prior to the *Aurora* decision, Courts were routinely finding that, based on the 2009 decision in *Acevedo v Piano Bldg. LLC*), if a building had six or more residential units, a unit could be subject to rent stabilization by virtue of the ETPA *independently and notwithstanding the prior Loft Law sale of rights*. In other words, that the unit remained subject to rent regulation (albeit through the ETPA, not the Loft Law) because the building was a pre-1974 building that contained six or more residential units and the unit remained residential.

Now, thanks to the *Aurora* decision, there is no longer a question as to what effect a Loft Law sale of rights has on Loft Law rent regulation and ETPA rent stabilization. Under *Aurora*, an owner is now able, completely and without question, to deregulate a unit from all forms of rent stabilization.

The effect of *Aurora* is far reaching. Based upon the Housing Stability and Tenant Protection Act of 2019, owners of rent stabilized buildings were no longer able to completely deregulate rent stabilized units. However, thanks to the *Aurora* decision, the Loft Law now provides owners of IMD units the only real mechanism to completely deregulate a unit from rent regulation/stabilization.

The *Aurora* decision is a great win for owners of IMD buildings and now provides certainty that if a Loft Law-protected occupant agrees to sell its rights to the unit, the unit is deregulated, and the owner is free to use the

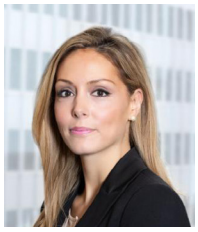
CONTINUED ON PAGE 6

CONTINUED FROM PAGE 5

unit as it sees fit – either as a commercial/manufacturing unit or as a residential apartment at free market rent.

Lewis A. Lindenberg (212-867-4466 ext. 335 ***llindenberg@bbgllp.com****) and Michael M Bobick (212-867-4466 ext. 331* ***mbobick@bbgllp.com****) are partners in BBG's Litigation Department, with Mr. Bobick's practice focusing on Loft Law issues. Please feel free to contact us with any inquiries regarding the Loft Law.*

Why You Should Never Ignore a DHCR Rent Reduction Order



BY LOGAN O'CONNOR

Rent Stabilization Code ("RSC") §2523.4 provides that rent regulated tenants may apply to the Division of Housing and Community Renewal ("DHCR") for a reduction in legal regulated rent where an owner fails to maintain required services. Upon a determination that an owner has actually failed to maintain required services, DHCR will typically issue an order reducing the legal regulated rent for all apartments involved.

A rent reduction order effectively freezes the legal regulated rent for one or more apartments, typically at the level in effect prior to the most recent rent increase. Rents for rent-controlled apartments will be reduced by a specific amount as identified in the rent reduction order.

Some common misconceptions with respect to rent reduction orders are: (i) rent reduction orders "go away" or become null and void after a certain period of time, (ii) rent reduction orders are invalidated once a building is sold, (iii) there can be no overcharge liability associated with a rent reduction order that is more than six years old, and (iv) the legal regulated rent is automatically increased once the decreased services have been restored.

Rent reduction orders are *not* nullified or reversed under any of these circumstances. If a rent reduction order is ignored and an owner continues to collect a higher legal regulated rent, this could result in significant overcharge liability, including treble damages.

The only way to restore the legal regulated rent of an apartment following issuance of a rent reduction order is to restore all services and/or cure all conditions referenced in the order, and apply to DHCR for restoration of rent and for an order restoring rent. If a rent reduction order cites several decreased services and even one of them is not cured, DHCR will not restore the legal rent.

Determining whether or not a building has any rent reduction orders against it can be complicated. A building's DHCR case record will not identify a rent reduction order as such. Rather, it will simply note that a decreased services complaint was filed and was either "granted," "denied," or "closed."

Years ago, DHCR would identify cases as "closed" regardless of whether a complaint was granted or denied. Therefore, it is important to obtain a full case record for all decreased services complaints that were "granted" *or* "closed", in order to determine the frozen regulated rent and how to restore it.

The attorneys at BBG can help owners identify decreased service and rent reduction issues and assist in the restoration of legal regulated rents.

*Logan O'Connor is a partner in BBG's Administrative Law Department and can be reached at 212-867-4466 ext. 365 (****loconnor@bbgllp.com****).*

BBG In The News

Founding partner **Sherwin Belkin** was quoted in a January 11 article on *law360.com* on the anticipated effects of the impending expiration of the moratorium on eviction proceedings in Housing Court: **Read article here.** An interview of **Mr. Belkin** discussing a proposed "good cause eviction" bill also appeared as part of a January 12 *New York Times* video opinion feature: **Watch here.** The appearance was also cited in the January 14 daily update by Community Housing Improvement Program (CHIP). **Mr. Belkin** was also interviewed in a podcast produced by *Multifamilyinvestor.com*, analyzing the proposed "good cause eviction" bill; the podcast is accessible here: **Listen here.**
Mr. Belkin also answered an inquiry regarding a tenant's rights involving excessive barking by a neighboring dog, in the "Ask Real Estate" feature in the February 27 edition of *The New York Times* Sunday Real Estate section: **Read article here.**
Mr. Belkin is scheduled to be an instructor in The Urban Real Estate Center's online Multifamily Master Class, on "The Devil is in the Details—The Risks and the Possibilities of the Property", which will be launched in May.

Litigation Department co-chair **David Skaller** was quoted in a January 20 article in *law360.com*, critiquing a new City Court directive requiring owners to file an additional motion before a default judgment may be entered against tenants: **Read article here.**

Administrative Law Department partner **Diana Strasburg** was a panelist on a March 3 CLE webinar on "DHCR Administrative Proceedings and Appeals" presented by the Rent Stabilization Association and the New York County Lawyers Association.

Litigation Department partners **Noelle Picone** and **Christina Browne** presented a CLE seminar on January 11 entitled "Navigating Landlord Tenant Disputes in a Post-Covid World", sponsored by the National Academy of Continuing legal Education.

Case Decision of Note

BBG's Litigation Department won an illegal lockout proceeding against a person who had unlawfully entered into and refused to vacate an apartment, under RPAPL §713(10). The occupant had unlawfully broken the lock to the apartment and had forcibly entered into the apartment without the owner's consent. The occupant was never provided keys by the owner, and the occupant refused to vacate. The Court granted a final judgment of possession with the issuance of an eviction warrant forthwith. The Court further permitted the owner to have the NYPD enforce the judgment; the occupant was ejected from the apartment on the next day with the assistance of the NYPD. By seeking relief pursuant to RPAPL §713(10), the owner was able to obtain relief expeditiously—the entire proceeding took less than ten days from commencing the action to obtaining possession of the apartment.
The decision, in JDM Washington Street LLC v. Harris, can be **accessed here.**

Recent Transactions of Note

Members of BBG's Transactional Department recently handled the following:

Partners **Craig L. Price** and **Michael J. Shampan**, and associate **Joshua A. Sycoff**, represented:

- the purchaser of a $56 million townhouse at 12 East 63rd Street, which was reported in the *Real Deal* on February 27, 2022: **Read article here.**
- the purchaser of an $18.8 million townhouse at 230 West 11th Street, which was reported in the *Real Deal* on January 7, 2022: **Read article here.**

Mr. Price, partner **Stephen M. Tretola**, and **Mr. Sycoff** represented the purchaser of 240-242 East 90th Street in a $14.2 million transaction.

Messrs. Price and **Tretola** represented the purchaser of 182-184 Attorney Street in a $21.25 million transaction.

Messrs. Price, **Tretola** and **Sycoff**, and partner **Deborah Goldman**, represented Shai Shamir's new firm 6R Group on the exercise of its right to purchase under a ground lease the property at 80-88 West Broadway and 70-74 Warren Street in Tribeca from Mark Jaffe for $36.1 million. Ladder Capital provided $25.2 million in financing.

Messrs. Tretola and **Sycoff** represented the purchaser of a triple-net lease restaurant property in Orlando, Florida.

Messrs. Tretola and **Sycoff** also represented the purchaser of a $19.2 million multifamily complex in Alabama.

Recent Notable Matters Handled by our Land Use/Zoning Team

Partner **Ron Mandel** and associate **Frank Noriega** recently represented clients in the following matters:

- Representation of a religious community center in obtaining a variance from the Board of Standards and Appeals to permit the development of a building that could not have otherwise been constructed.
- Sale of development rights ("air rights") by several Manhattan property owners.
- Obtaining approval from the City Planning Commission of a rezoning to allow commercial development in a residential district, for an active Queens commercial property owner.
- Advising an international hotel operator regarding land use considerations in connection with the acquisition of a Manhattan portfolio.

Co-Op | Condo Corner

BY AARON SHMULEWITZ

Aaron Shmulewitz heads the Firm's co-op/condo practice, consisting of more than 300 co-op and condo Boards throughout the City, as well as sponsors of condominium conversions, and numerous purchasers and sellers of co-op and condo apartments, buildings, residences and other properties. If you would like to discuss any of the cases in this article or other related matter, you can reach Aaron at 212-867-4466, extension 390, or (ashmulewitz@bbgllp.com).

SUIT TO RECOVER MONIES THAT WERE ADVANCED FOR CONDO PURCHASE DOWNPAYMENT DISMISSED

Jacobs v. Farkas. Supreme Court, New York County

COMMENT | Plaintiff waited eleven years to make his demand.

HDFC CO-OP CAN'T TERMINATE SHAREHOLDER PROPRIETARY LEASE FOR UNAUTHORIZED WASHER, DUE TO PROCEDURAL DEFICIENCIES

Benavides v. 322 West 47 Street Housing Development Fund Corporation Supreme Court, New York County

COMMENT | The Court admonished the parties to "behave as adults".

CONDO CAN SUE ITS OWN PRESIDENT BASED ON ILLEGAL CONSTRUCTION

Board of Managers of The Tribeca v. Smith
Supreme Court, New York County

CO-OP WINS SUMMARY JUDGMENT IN PULLMAN EVICTION OF PROBLEMATIC SHAREHOLDER—REPEATED INCIDENTS OF HARASSMENT

Rivercross Tenants Corp. v. Kovach
Supreme Court, New York County

CONDO UNIT OWNER CAN'T SUE BOARD FOR HOUSING DISCRIMINATION BASED ON HOSTILE BEHAVIOR OF BOARD AND NEIGHBORS

A.L.M. v. Board of Managers of The Vireum Schoolhouse Condominium United States Court of Appeals, 2d Circuit

COMMENT | There was no evidence that the behavior was motivated by race or other prohibited grounds, rather than simple neighborly animus.

CO-OP SELLER ENTITLED TO KEEP DOWNPAYMENT ON BUYER'S FAILURE TO CLOSE BY AGREED-UPON DEADLINE

Jennings v. Silfen Appellate Division, 1st Dept.

COVID PANDEMIC NOT A "CASUALTY" THAT WOULD ENABLE CONDO BUYER TO DEFEAT TIME OF ESSENCE CLOSING DATE

Anolik v. 66 Leo LLC Supreme Court, New York County

COMMENT | Unfortunate timing for the buyer—the TOE closing had been set for June 1, 2020.

CONDO BUYER ENTITLED TO RETURN OF DOWNPAYMENT UPON FAILURE OF MORTGAGE CONTINGENCY

Ginsz0pine LLC v. Tosikova Supreme Court, New York County

COMMENT | On reargument, the Court also awarded the buyer pre-judgment interest and attorney fees.

CONDO SPONSOR ENTITLED TO KEEP DEFAULTING BUYER'S DOWNPAYMENT

Cabgram Developer LLC v. Gramercy Square 103 LLC
Supreme Court, New York County

HDFC SHAREHOLDERS' CLAIMS AGAINST CO-OP AND DIRECTORS BASED ON MOLD, ODORS AND ELEVATED ELECTROMAGNETIC FIELD LARGELY DISMISSED

Hartman v. WVH Housing Development Fund Corporation
Supreme Court, New York County

UNIT OWNER PROCEEDING AGAINST CONDO DISMISSED, ORDERED TO ARBITRATE PER BYLAWS

Pubtilnik v. The 2834-2838 Brighton 3rd Street Condominium
Supreme Court, Kings County

COMMENT | An unusual provision in the bylaws required arbitration of all monetary disputes.

CONTINUED ON PAGE 10

CONTINUED FROM PAGE 9

CONDO UNIT OWNER CAN'T WITHHOLD COMMON CHARGES BASED ON ALLEGED APARTMENT DEFECTS

Nelson v. Board of Managers of The 32 East 1st Street Condominium
Supreme Court, New York County

CO-OP SHAREHOLDER ENTITLED TO INDEMNIFICATION FROM CONTRACTORS AGAINST INJURY CLAIMS BY CONTRACTORS' EMPLOYEE UNDER LABOR LAW

Badzio v. East 68th Street Tenants Corp.
Appellate Division, 1st Dept.

COMMENT | The agreements between the shareholder and the contractors expressly provided for indemnity against such claims. A word to the wise.

CO-OP CAN'T EVICT SHAREHOLDER UNDER PULLMAN, DUE TO PROCEDURAL INFIRMITIES

Tomfol Owners Corp. v. Hernandez Appellate Division, 1st Dept.

COMMENT | The relevant notice didn't specify the post-warning objectionable conduct. A co-op must follow its stated procedures scrupulously under Pullman.

CONDO OCCUPANT CAN BE SUED FOR DAMAGES ARISING FROM REFRIGERATOR LEAK DURING HER OCCUPANCY

Disbrow v. The Normandie Condominium
Appellate Division, 1st Dept.

CO-OP BOARD CAN REMOVE DIRECTORS FOR UNAUTHORIZED USE OF LETTERHEAD

Tolliver v. Esplanade Gardens, Inc.
Supreme Court, New York County

COMMENT | Atypically, this co-op's bylaws permitted removal by fellow Board members.

APARTMENT VISITOR CAN SUE CONDO FOR INJURY SUFFERED FROM CEILING FAN INSTALLED BY BUILDING EMPLOYEE; MANAGING AGENT NOT LIABLE

Gundlach v. Kim Supreme Court, New York County

CONDO BOARD DECISION TO NARROW UNIT'S BOAT SLIP TO COMPLY WITH POST-SANDY SAFETY REQUIREMENTS PROTECTED UNDER BUSINESS JUDGMENT RULE

Katz v. Board of Managers of Stirling Cove Condominium
Appellate Division, 2nd Dept.

SHAREHOLDER IN COND-OP CAN'T INSTALL ROOF IMPROVEMENTS

Kurland v. 161 West 16th St. Owners Corp.
Supreme Court, New York County

DISABLED UNIT OWNER CAN'T SUE CONDO OR ITS PRESIDENT FOR DISABILITY DISCRIMINATION, DUE TO PLEADING DEFICIENCIES

Higgins v. 120 Riverside Boulevard at Trump Place Condominium
United States District Court, Southern District of New York

CONDO CAN'T SUE SPONSOR'S OFFICERS FOR CONSTRUCTION DEFECTS

Board of Managers of The 651 Coney island Avenue Condominium v. Coney Island Holdings, LLC Supreme Court, Kings County

COMMENT | The Court held that the complaint didn't plead with sufficient specificity, and was barred under the statute of limitations.

CO-OP SHAREHOLDER CAN SUE NEIGHBOR FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BASED ON CONSTANT HARASSMENT

Silverman v. Park Towers Tenants Corp.
Supreme Court, New York County

POST-SETTLEMENT TRANSFERS OF CONDO UNIT NOT VOIDED

Board of Managers of The Spencer Condominium v. Hazan
Appellate Division, 1st Dept.

COMMENT | "Since that would constitute the ultimate relief sought"—in this *2012* case.

CONTINUED ON PAGE 11

CONTINUED FROM PAGE 10

CO-OP CAN'T SUE SHAREHOLDER FOR UNAUTHORIZED HARBORING OF PETS

79 West 12th Street Corp. v. Kornblum Appellate Division, 1st Dept.

COMMENT | It was unclear as to which version of the House Rules was in effect, and thus whether Board consent was even needed to harbor a pet.

COMMERCIAL UNIT OWNERS CAN SUE CONDO FOR COOLING TOWER EMITTING HARMFUL GAS

Golden Ox Realty LLC v. Board of Managers of the Colden Garden Condominium Supreme Court, Queens County

SHAREHOLDER CAN'T SUE CO-OP OR BOARD FOR STATUTORY HARASSMENT OR RETALIATORY EVICTION

Kossoff v. 910 Fifth Avenue Corp. Supreme Court, New York County

COMMENT | The statutes were held to apply only to rental tenants.

CONDO CAN EJECT NUISANT UNIT OWNER PURSUANT TO PARTIES' STIPULATION

The Board of Managers of The Evans Tower Condominium v. Rosenberg Supreme Court, New York County

COMMENT | The behavior consisted of repeated pouring of water and bleach on apartment floors and walls.

VOTES IN CO-OP ELECTION CAN'T BE SUBMITTED AFTER POLLS ARE CLOSED AND RESULTS ANNOUNCED

Roberts v. WVH Housing Corporation
Supreme Court, New York County

COMMENT | The large proxyholder had forgotten to submit her proxies until a day after the election.

CONDO BUYER CAN SUE SPONSOR BECAUSE APARTMENT DIFFERED MATERIALLY FROM FLOOR PLANS

Yu v. 138 Willoughby LLC Supreme Court, Kings County

COMMENT | Discrepancies in printed materials precluded summary judgment. Also, this was a first-time buyer who didn't speak English.

ALLEGED ORAL MODIFICATIONS OF CONDO PURCHASE AGREEMENT BARRED UNDER STATUTE OF FRAUDS

The Board of Managers of The Washington Condominium v. Silvershore Properties 97, LLC
Supreme Court, Kings County

CO-OP BOARD MEMBER CAN'T BRING DERIVATIVE ACTION AGAINST OTHER DIRECTORS OVER DECISIONS WITH WHICH HE DISAGREES

Jacobsen v. 474 3rd Owners Corp. Supreme Court, Kings County

CO-OP CAN SUE TO RESCIND PRIOR APPROVAL OF PURCHASER, BASED ON PURCHASER'S FRAUD

Trump Village Section 4, Inc. v. Vilensky
Appellate Division, 2nd Dept.

CONDO ENTITLED TO APPOINTMENT OF RECEIVER FOR COMMERCIAL UNITS NOT PAYING COMMON CHARGES

Board of Managers of Honto 88 Condominium v. Red Apple Child Development Center Appellate Division, 1st Dept.

CO-OP SHAREHOLDER NOT LIABLE FOR DAMAGE SUFFERED BY NEIGHBORS FROM BURST BUILDING PIPE

Metromotion Productions, Inc. v. Good Light Studio, Inc.
Supreme Court, New York County

PROPERTY OWNER BENEFITING FROM ACCESS LICENSE MUST PAY LICENSE FEES TO AFFECTED PROPERTY OWNERS

Panasia Estate, Inc. v. 29 West 19 Condominium
Appellate Division, 1st Dept.

Belkin • Burden • Goldman, LLP
One Grand Central Place
60 East 42nd Street 16th floor
New York, New York 10165

Belkin · Burden · Goldman, LLP
ATTORNEYS AT LAW

www.bbgllp.com

One Grand Central Place, 60 East 42nd Street, 16th floor, New York, NY 10165 | Tel: 212.867.4466 | Fax: 212.297.1859