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BBG UPDATE

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EDITORS
Robert A. Jacobs
Kara I. Rakowski
Aaron Shmulewitz

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Cold Comfort: Ice Cream Store Lease Guarantor Not Shielded From Liability Under NYC'S Guaranty Law

BY JAY B. SOLOMON & ISRAEL A. KATZ

When the Covid-19 pandemic ravaged New York City in March, 2020, then-Governor Cuomo issued a series of Executive Orders aimed at curbing the spread of the disease by restricting, or mandating closure of, certain enumerated non-essential businesses. Because of the restrictions, temporary suspensions of retail operations and loss of consumer sales, many stores, restaurants, bars and gyms experienced significant downturns in business and loss of revenue.

New York City's Guaranty Law

In response to the pandemic and in an effort to minimize the personal exposure of guarantors of these commercial leases, the New York City Council enacted Administrative Code §22-1005, better known as the "Guaranty Law," designed to permanently exempt personal guarantors of commercial leases for specified businesses from liability for tenant rent arrears and other monetary obligations if two conditions are satisfied. First, the payment default or other event causing the guarantor to become liable must have occurred during the period starting March 7, 2020 and ending June 30, 2021. Second, the commercial tenant must fall within one of the following enumerated categories: (a) the tenant was required to cease serving patrons food or beverages for on-premises consumption or to cease operation under Executive Order 202.3, which enumerated and provided restrictions for restaurants, bars, video lottery gaming facilities, gyms, fitness centers and movie theaters; (b) the tenant was a non-essential retail establishment subject to in-person limitations under guidance issued by the New York State

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Department of Economic Development pursuant to Executive Order 202.6; or (c) the tenant was required to close to members of the public under Executive Order 202.7, applicable to barbershops, hair salons, tattoo or piercing parlors and related personal care services, including nail technicians, cosmetologists and estheticians, and electrolysis and laser hair removal services.

Limitations to the Guaranty Law Protections

A recent case brought by BBG on behalf of its client, Margules Properties ownership entity Tompkins Square Partners, LLC, against a former retail tenant, Big Gay Ice Cream ("Big Gay"), and its individual lease guarantor for breach of the lease and guaranty relating to Big Gay's tenancy at its original East Village location at 125 East 7th Street, demonstrates important limitations to the Guaranty Law's protections. The lease guarantor had claimed that he was protected from liability for the tenant's rent obligations because Big Gay qualified as a restaurant protected under the Guaranty Law.

BBG successfully argued that Big Gay was not a restaurant under the Guaranty Law, because it lacked seating for customers within the premises. Years before, Big Gay had removed tables and chairs in the small retail location in order to accommodate more customers, and therefore did not have in-premises consumption of food or drinks during the period in which it had defaulted in paying rent. Without on-premises consumption, Big Gay did not technically qualify for protection under the Guaranty Law as a restaurant as it was never subjected to Executive Order 202.3's restrictions requiring it to cease on-premises consumption. BBG further argued that because Big Gay served food, it was considered under the law to be an essential business, not subject to any in-person workplace reductions pursuant to Executive Order 202.6.

New York County Supreme Court Justice Suzanne Adams agreed with BBG's argument and held that the Guaranty Law was inapplicable to the Big Gay lease and guaranty, and granted summary judgment to Tompkins Square Partners and against Big Gay and its individual guarantor. The Court awarded judgment to Tompkins Square Partners for all back rent owed plus an assessment of attorneys' fees to be determined at a separate hearing. Justice Adams reasoned that "defendants have provided no factual support for their contention that tenant's business had indoor dining, in-person seating, or on-premises consumption at the leased premises."

While the constitutionality of the Guaranty Law is currently being challenged by a coalition of New York City landlords in a pending Federal Court lawsuit [Melendez v. City of New York, Case No. 20-4238 (S.D.N.Y. 2020)] as violating the Contract Clause of the U.S. Constitution, the Guaranty Law for now remains legal and enforceable in New York City. However, as the above case demonstrates, the Guaranty Law is not a blanket shield for commercial lease guarantors, and each case must be carefully scrutinized and analyzed to determine if the particular lease and guaranty fall within the law's explicit parameters.

__Jay B. Solomon__ is a partner, and __Israel A. Katz__ is an associate, in the Firm's Litigation Department, concentrating in complex commercial litigation matters. __Jay__ can be reached at 212-867-4466 ext.497 (__jsolomon@bbgllp.com__), and __Israel__ can be reached at 212-867-4466 ext.824 (__ikatz@bbgllp.com__).

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2022 SUPER LAWYERS SELECTEES

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Associate

Daniel P. Phillips
Associate

Scott F. Loffredo
Partner

Michael J. Shampan
Partner

Benjamin J. Margolin
Associate

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ATTORNEYS AT LAW

In The Zone, Part II: SoHo/NoHo Rezoning Update: New Protection for Existing Tenants

BY ROBERT A. JACOBS, RON MANDEL AND FRANK NORIEGA

Earlier this year, we published a newsletter article discussing the recent radical changes in the SoHo/NoHo rezoning. See article **here**.

The rezoning changed many manufacturing zoning districts (which do not allow for residential uses) to mixed-use districts (which do). Under the prior zoning, most living spaces were only for joint living-work quarters for artists ("JLWQA Units"). JLWQA Units are unique in that an occupant of the unit must be certified as an "artist" by the City's Department of Cultural Affairs ("DCA"). Over the past few decades, these JLWQA Units have been increasingly occupied by and/or sold to non-artists. This practice was technically illegal but not enforced by the Department of Buildings ("DOB"), even though such use could subject owners to violations and substantial penalties.

The SoHo/NoHo rezoning now provides for a mechanism to authorize the conversion of these JLWQA Units to standard residences, which can be occupied by anyone, regardless of whether or not they are a certified artist.

In addition, the New York City Council passed an amendment to the City's Administrative Code that would have significantly increased the penalties for violative use of a JLWQA Unit to $15,000 for the first offense and $25,000 for each subsequent offense, plus a separate monthly penalty for each month that the violation is not corrected (Int. No. 2443-A). This law never went into effect because it was vetoed by Mayor Adams. His office issued a statement saying it "will take a little more time to make sure we are right-sizing any fines associated with this process and clarifying the associated enforcement mechanisms going forward." Read Mayor Adams statement **here**.

To protect long-term residents, the New York State legislature adopted a new law to protect existing tenants of JLWQA Units from such violations. On July 21, 2022, Governor Hochul signed into law **Bill A9675A**. The law modifies Article 7-B of the New York State Multiple Dwelling Law (the "MDL"), which is the law that authorizes JLWQA's in New York City (or for any other city with a population in excess of one million). The law changed the definition of "artist" in § 276 of the MDL, by adding the following language:

> For joint living-work quarters for artists limited to artists' occupancy by local zoning resolution, **any permanent occupant whose residence therein began on or before December 15, two thousand twenty-one** shall be deemed to meet such occupancy requirements under the same rights as an artist so certified in accordance with applicable law. (emphasis added)

The amendment to the MDL protects any permanent occupant that has lived in a JLWQA Unit since at least December 15, 2021 (the date of the adoption of the SoHo/NoHo rezoning). Any of these permanent occupants are now treated as "artists" whether or not they were previously certified as artists by DCA. It should be noted that it must be the unit's occupant that has been living in the unit since December 15, 2021. The law does not certify that the unit's owner is deemed an artist, merely the long-term occupant. Additionally, this law does not protect future owners or tenants of JLWQA Units. Future tenants need to either be certified as artists by DCA, or the JLWQA Unit must go through the application process of being converted to a residential apartment.

BBG is glad to assist property owners, developers and design professionals in the process created by the SoHo/NoHo rezoning to alter a building to convert JLWQA's into residential apartments.

*Robert A. Jacobs (212-867-4466 ext. 359 **rjacobs@bbgllp.com**) and **Ron Mandel** (212-867-4466 ext. 424 **rmandel@bbgllp.com**) are partners, and **Frank Noriega** (212-867-4466 ext. 438 **fnoriega@bbgllp.com**) is an associate, in the Firm's zoning/land use group.*

APPELLATE UPDATE

Co-op Shareholders with Recurring Leaks Can't Withhold Maintenance

BY MAGDA L. CRUZ

While cooperative boards are generally responsible for ensuring the habitability of their apartments, when disputes arise over housing conditions, the affected shareholder may not be permitted to withhold monthly maintenance payments.

In *Andreas v. 186 Tenants Corp.*, 2022 NY Slip Op 04883 (8/9/22), the tenant/shareholders sued the cooperative for negligence, breach of the proprietary lease, and damages stemming from recurring leaks in their apartment. The tenant/shareholders alleged that the co-op had breached the statutory warranty of habitability, and began to withhold their maintenance payments. The Appellate Division, First Department ruled that the tenant/shareholders were not entitled to withhold maintenance and upheld the lower court's order awarding summary judgment to the co-op on its counterclaim for maintenance arrears.

The Appellate Division's reasoning is significant and could apply broadly to limit the all-too-common use of rent withholding by litigants disputing housing conditions.

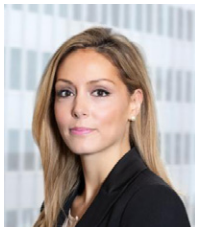
The Appellate Division first looked to the rights and obligations of the parties under the proprietary lease. The Court found that the lease contained a clause that generally "precludes setoff, diminution, or abatement of rent for property damage" except in the case of "damages by fire or otherwise." The Appellate Division found that recurring leaks did not fall under the exception because such condition was not a "sudden and singular incident, like fire, which has the immediate impact of rendering an apartment untenantable." The Appellate Division analogized the text to leases that employ the term "casualty," which the Court stated "also clearly evidences a sudden damage-causing event like a fire." Since a recurring water intrusion is not equivalent to that kind of damage, the Appellate Division "perceive[d] no reason why the analogous phrases 'by fire or otherwise' and 'by fire or other casualty' should have different meanings within a clause in a proprietary lease [in order to] permit [ ] abatement of maintenance or rent."

The Appellate Division next determined that the statutory warranty of habitability could not be invoked by the tenant/shareholders because they did not live in the apartment full-time. Acknowledging that "the warranty of habitability cannot be waived by the proprietary lease" (citing Real Property Law §235-b[2]), the Appellate Division, nonetheless, held that the tenant/shareholders "are not entitled to withhold maintenance on the ground that 186 Tenants Corp. breached the warranty" because of their sparse physical occupancy in the apartment, amounting to "only for a few days per year."

The Appellate Division's opinion addressed, in detail, how narrow the circumstances are when maintenance or rent may be withheld, even where there may be conditions in an apartment that require repair. Lower courts, including the Housing Court, should adhere to such appellate directives.

***Magda L. Cruz** is a partner in the Firm's Litigation Department, specializing in appeals, and can be reached at 212-867-4466 ext. 326 (**mcruz@bbgllp.com**).*

Last Rights: Could This Be Your Final Chance at a First Rent for Newly Created Units?



BY LOGAN O'CONNOR

On August 31, 2022, the New York State Division of Housing and Community Renewal ("DHCR") announced proposed amendments to the Rent Stabilization Code ("RSC"), Tenant Protection Regulations, and New York City Rent Control Regulations. Among the proposed amendments is an adjustment to the formula for calculating the legal regulated rent for apartments that have been reconfigured.

In short, it appears that the proposed amendment would limit the legal regulated rent of a newly created unit or units to a percentage increase or decrease based upon the change in square footage and the current legal regulated rent for the apartment or apartments. As such, the idea of a "first market rate rent" after reconfiguration would be abolished.

In light of that, is there anything that owners can do to increase legal rents now, before the proposed rules are adopted? Well, the proposed amendments are currently under consideration and are now open for public comment. There are several hearings scheduled for November 15, 2022, to further discuss the proposed amendments. It is still unclear if the rules would be applied prospectively or retroactively, as many, but not all, of the proposed rules align with the Housing Stability and Tenant Protection Act of 2019 ("HSTPA").

It is possible, though not guaranteed, that owners may be able to take one last opportunity to obtain a market rate first rent under the current rules if they (i) complete the work and obtain DOB sign-off, (ii) sign a lease for the new unit at the monthly market rate rent that is charged and paid, and (iii) have that lease commence, all before the code amendments become effective. It is possible that even fewer affirmative steps might suffice to create the new unit before the proposed code changes become effective. Of course, there is no guaranty that such a plan will comply with DHCR's final ruling, as we are still unsure if or how the proposed rules could be applied retroactively. But, just in case, there follows below a reminder of the current policy, which is subject to retroactive change.

Pursuant to RSC §2520.11(r) as it is currently stated, where an owner has substantially altered the perimeter walls of an apartment so much so that the old apartment essentially ceases to exist, then a first rent may be charged for the "newly created unit." The apartment will remain rent stabilized but the rent may be significantly increased and should accurately reflect the value added by creation of the new unit. Any legal rent increases thereafter will be based upon the newly established higher first rent.

The theory behind this "first rent" mechanism is that where the old unit no longer exists, the previous apartment's rent history becomes meaningless and a new rent must be established for the newly created unit.

Please note that the newly created unit must be a significant change in the outer perimeter, such as a two-bedroom apartment being split into two one-bedrooms or studios, or two smaller apartments being consolidated to form one large apartment. Courts have clarified that minor "enlargement" of an existing apartment without extensive rehabilitation or reconfiguration will not be sufficient to justify a first rent.

For more information about the proposed reconfiguration and other amendments, please contact your attorneys at BBG.

*This article was written by **Logan O'Connor**, a partner in BBG's Administrative Law Department. **Ms. O'Connor** can be reached at 212-867-4466 ext. 365 (**LOConnor@bbgllp.com**).*

Notices for Elevator Outages

BY ZACHARY NATHANSON

Elevators provide an essential service for tenants of residential apartment buildings. Upgrades and repairs can upend the lives of these tenants. The Rules of the City of New York (the "Rules") create civil penalties when a building's only elevator is out of service. The Rules label this a *"condition dangerous to human life and safety"* (1 RCNY 11-02(a)(1)).

However, despite this grave sentiment, there is no requirement that the Department of Buildings ("DOB") impose penalties for such a situation, and owners may seek a waiver from any DOB penalties (See Picaro v Pelham 1130 LLC, 2016 US Dist LEXIS 46580). The Rules provide that, when there is "work in progress for the replacement or installation of a new elevator, or a major renovation requiring the elevator be deactivated during the work," a waiver of penalties may be granted (1 RCNY 103-2(k)(2)(iii)). To be granted, such a waiver application must also include the projected date of completion. Id.

Given elevators' essential function, the New York City Administrative Code (the "Code") has provided building owners with a set of guidelines to provide specific advanced notice to tenants when elevator outages are to occur.

Such outage notices, in all circumstances, must identify the type of work to be performed and the expected start and end dates. These outage notices must be made in at least English and Spanish.

For elevator alteration work, owners are required to provide notice at least 10 business days prior to the start of the work. This notice does not apply to emergency repair, minor alterations or ordinary repairs. (Code §28-304.10.1).

When elevators servicing the building are expected to be under repair for two or more hours, notice must be posted at least 24 hours prior to the start of that work (Code §28-304.10.2). For elevator outages of less than two hours, or as the result of emergency work, notice is not required to be posted. (Code §28-304.10.2).

These rules apply to residential buildings and transient housing, including hotels, but not to those residential buildings that contain two or fewer dwelling units.

The Code does not address accessibility during such outages, and does not impose any requirement on the DOB for failure to ensure this access. See *Picaro v. Pelham*. However, this may soon change, depending on actions to be taken by the New York City Council.

The City Council has proposed a bill to provide reasonable accommodations during outages longer than 24 hours when necessary for disabled tenants. The proposed bill would amend the Code to provide that an owner must provide a reasonable alternative method of transportation between floors or a reasonable accommodation to such disabled tenants. This provision would not include elevators that serve only one dwelling unit that is owner-occupied, or an elevator outage that results from a power outage. It would also require owners to develop a plan detailing the alternative transportation methods, which plan would have to be made available in advance to the DOB, the City Department of Housing Preservation & Development, and tenants of the building. (See proposed bill **here**.)

Though there has not been any recent progress n this proposed bill, the possibility remains that notice requirements may change to accommodate disabled tenants in the near future.

The attorneys at BBG stand ready to assist building owners with regard to all legal issues involving elevator outages.

Zachary Nathanson *is an associate in the Firm's Administrative Law Department and can be reached at 212-867-4466 ext. 253, or at* ***znathanson@bbgllp.com****.*

BBG In The News

Founding partner **Sherwin Belkin** was quoted extensively in an August 23 article in The Real Deal, decrying pending legislation that would severely restrict owners' ability to do background checks on prospective tenants: **Read Article here. Mr. Belkin** was also quoted in an August 29 article in The Real Deal on the cost of tenant buyouts in the context of new development projects: **Read Article here. Mr. Belkin** was also quoted in the following articles criticizing proposed new State regulations that would eliminate owners' ability to set rents on combined rent-stabilized apartments: in *The Real Deal* on September 2: **Read Article here**; in Bisnow.com on September 6: **Read Article here**; in law360.com on September 6: **Read Article here**; and in *The Real Deal* on September 8: **Read Article here.**

Litigation Department co-head **David M. Skaller** was quoted in a July 6 article in law360.com on a new Court directive intended to make default judgments in eviction cases easier to obtain: **Read article here .**

Litigation Department partner **Martin Meltzer**, head of the Firm's non-payment practice, was quoted in a July 27 article in *The Real Deal*, discussing the huge backlogs now affecting the City's Housing Courts: **Read Article here.**

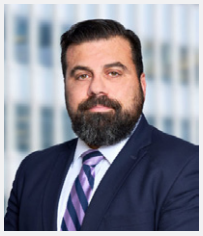
Aaron Shmulewitz, head of the Firm's co-op/condo practice, was quoted in brickunderground.com on July 25, and in habitatmag.com on August 2, on pied-a-terres in co-ops: **Read Article here** and **here.**

Magda Cruz, Litigation Department partner and head of the Firm's appeals practice, was featured in *Crain's New York Business* Notable Hispanic Leaders feature on September 19: **Read Article here. Ms. Cruz** was also invited to serve on the City Bar Association Judiciary Subcommittee, which is presently evaluating the judicial nominees for State Supreme Court who will be on the ballot in the upcoming general election.

Litigation Department associate **Benjamin Margolin** was quoted in a July 26 law360.com article on the "unpausing" of eviction proceedings pending the outcome of tenant ERAP (Emergency Rental Assistance Program) applications: **Read Article here.**

BBG Continues to Expand and Welcomes New Hires

The Firm has recently added the following attorneys and professional support staff in 2022:



Jeremy Poland, Associate,
He has been practicing for twenty years, spending the last ten focusing on real estate litigation and advising property owners on a wide array of issues.

Mr. Poland practices in the firm's Litigation Department where he regularly appears in the Civil and Supreme Court, handling complex landlord-tenant disputes. Jeremy has also represented landlords in appeals and various administrative matters before the New York State Division of Housing and Community Renewal, New York State Division of Human Rights, New York City Department of Housing Preservation and Development, and various other local agencies.

Jeremy has also represented buyers and sellers in residential and commercial real estate transactions, advised and represented individuals and companies on the formation and governance of corporations, limited liability companies and partnerships, and represented individuals and companies in commercial transactions and litigation.

Other Professional Support Staff:
The following individuals joined as professional support staff:

Ligno Sanchez, Paralegal
Oma Mahadeo, Jr. Accountant
Betty Eapen, Director of HR and Administration
Niashia Keitt, Secretary
Dellorice Mckie, Jr. Accountant

Recent Transactions of Note

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

Partners **Craig L. Price** and **Lawrence T. Shepps** represented the purchaser of a West End Avenue apartment building in a $50 million transaction. Administrative Law Department Partners **Martin Heistein** and **Logan O'Connor** and associate **Anthony Morrreale** handled the administrative review and due diligence analysis.

Messrs. Price and **Shepps** also represented the purchaser of a package of six Manhattan apartment buildings in a portfolio acquisition valued at $44 million, which included an assumption of a $15 million CMBS loan.

Messrs. Price and **Shepps**, and partner **Stephen M. Tretola** and associate **Joshua A. Sycoff**, represented affiliates of Targo Capital Partners on a $14 million purchase and acquisition financing of a Bleecker Street building, and a $16 million purchase and acquisition financing of an East Village building.

Messrs. Price and **Sycoff**, and partner **Michael J. Shampan**, as well as Litigation Department partner **Scott Loffredo**, represented the purchaser in its $20 million bulk purchase and financing of 20 co-op apartments—comprising all apartments in the co-op.

Department co-head **Daniel T. Altman**, and **Messrs. Tretola** and **Sycoff**, represented the purchaser on the purchase and acquisition financing of a Second Avenue building.

Messrs. Price and **Sycoff**, and partner **Murray Schneier**, represented an owner on its refinancing of property in East Haven, Connecticut.

Messrs. Price and **Sycoff** represented a tenant in connection with a condo lease at a monthly rent in excess of $45,000, another tenant in connection with a townhouse lease at a monthly rent of $45,000, and an owner in connection with a condo lease at a monthly rent of $39,500.

Mr. Shampan represented the purchaser of an $18 million property in Bridgehampton.

Recent Notable Matters Handled by our Land Use/Zoning Team

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

Obtained approval from Commissioner of Department of Buildings to authorize legalization of multiple dwelling building, thus avoiding appeal application process with Board of Standards and Appeals.

Obtained Letter of No Objection for a large mixed-use warehouse in Long Island City to permit occupancy by a national tenant without need to amend certificate of occupancy.

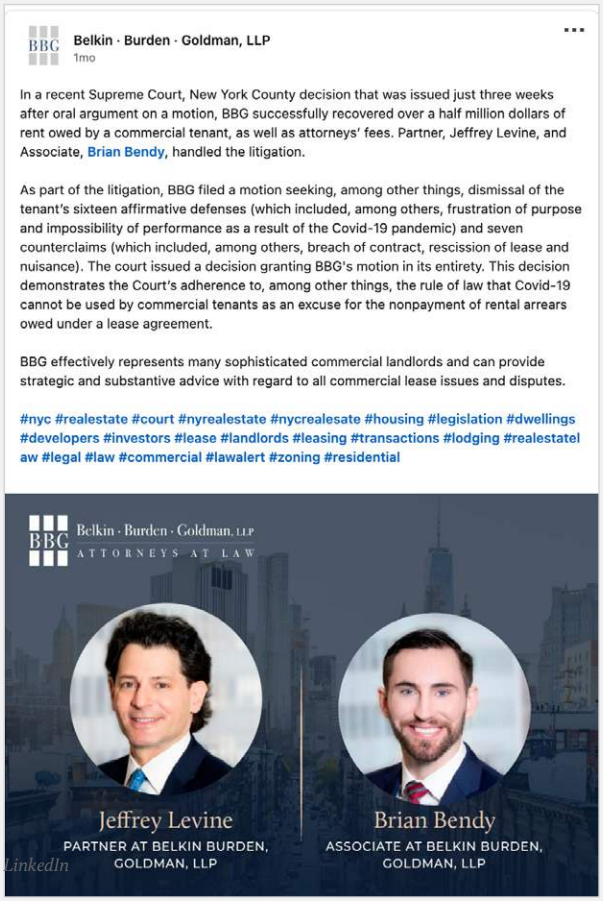
Represented developer in the negotiation of sale of inclusionary housing certificates (affordable housing floor area bonus) on Upper West Side.

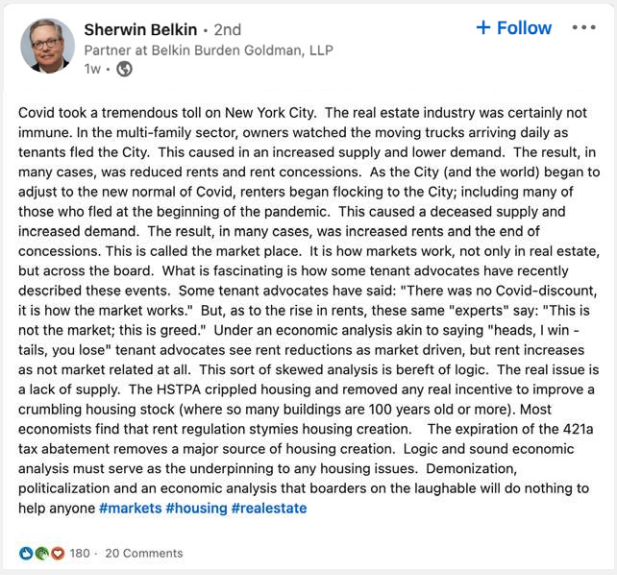
Counseled developer in connection with application to Department of City Planning for waterfront public access area related to residential tower in Astoria.

Represented client on variance application at Board of Standards and Appeals to permit scrap metal yard use of a Brooklyn property.

Successfully negotiated numerous access license agreements authorizing the installation of construction protections and construction access over neighboring properties.

BBG's Popular Social Media Posts





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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).

CONDO CAN SUE CON ED FOR DAMAGE TO WATER PIPES

295 Greenwich Court Condominium v. Consolidated Edison Company of New York, Inc. Supreme Court, New York County

COMMENT | Questions of fact as to causation barred summary judgment to Con Ed.

CO-OP SHAREHOLDERS CAN SUE CO-OP, MANAGING AGENT, AND DIRECTORS FOR HARASSMENT BY NEIGHBORS

Levy v. 103-25 68th Avenue Owners, Inc. Supreme Court, Queens County

SHAREHOLDER CAN SUE CO-OP FOR WRONGFUL DISPOSAL OF PERSONAL PROPERTY

Sklar v. 650 Park Avenue Corporation Supreme Court, New York County

CO-OP CAN TERMINATE LONG-TERM MANAGEMENT AGREEMENT, DESPITE AUTO-RENEWAL CLAUSE

Abstract Management, LLC v. 1701 Albemarle Owners Corp. Supreme Court, Kings County

COMMENT | State law requires that notice of auto-renew must be given prior to auto-renew date, or auto-renew fails.

CONTRACTOR LIABLE TO CONDO'S ENGINEER ON INDEMNITY

Board of Managers of The St. Tropez Condominium v. JMA Consultants Inc. Supreme Court, New York County

CO-OP DISCRIMINATED AGAINST DISABLED SHAREHOLDERS BY REFUSING TO MAKE REASONABLE ACCOMODATION FOR THEM TO HAVE EMOTIONAL SUPPORT DOG

Mutual Apts. Inc. v. New York City Commission on Human Rights Appellate Division, 2nd Dept.

COMMENT | But the Court reduced the total damages and fines award from $125,000 to $65,000.

BETH DIN ARBITRATION AWARD TO CONDO UNIT OWNERS CONFIRMED

In re Kohn v. Waverly Homes Development LLC Appellate Division, 3rd Dept.

REJECTED PURCHASER CAN SUE HDFC CO-OP FOR RACIAL DISCRIMINATION

Gibson v. Castillo Supreme Court, New York County

CONDO SPONSOR LIABLE TO BOARD FOR FAILURE TO OBTAIN PERMANENT C OF O FOR 18 YEARS, AND FOR CONSTRUCTION DEFECTS

Board of Managers of The Gateway Condominium v. Gateway II, LLC. Supreme Court, New York County

CONDO ENTITLED TO JUDGMENT AGAINST UNIT OWNER FOR COMMON CHARGE ARREARS

Board of Managers of St. James Tower Condominium v. Kahiri Supreme Court, New York County

COMMENT | But the award of legal fees was cut by 2/3.

SHAREHOLDER CANNOT ENJOIN CO-OP TO ABATE ASBESTOS IN APARTMENT

Real World Holdings LLC v. 393 West Broadway Corporation Appellate Division, 1st Dept.

COMMENT | Because abatement was the ultimate relief sought, and there was no risk of imminent harm if left unabated.

COMMERCIAL CONDO'S LIEN FOR UNPAID COMMON CHARGES SUPERIOR IN PRIORITY TO MORTGAGE LIEN

Wilmington Trust, N.A. v. Elmwood NYT Owner, LLC Supreme Court, New York County

COMMENT | Lien priority was different than normal, due to a bylaw provision and a provision in State law for exclusively-commercial condos.

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CONDO CAN SUE SPONSOR FOR ITS REGRADING OF COBBLESTONES ADJACENT TO BUILDING

EMFT, LLC v. NYC Department of Transportation
Appellate Division, 1st Dept.

COMMENT | The condo claimed that the regrading violated a 200-year old easement.

ACCESS LICENSE GRANTED; INTERESTS OF ADJOINING CONDO UNIT OWNER CONSIDERED

The Board of Managers of The Artisan Lofts Condominium v. The Board of Managers of The 137 Reade Street Condominium Supreme Court, New York County

UNPAID CONDO CONTRACTOR CANNOT SUE INDIVIDUAL BOARD MEMBERS

York Restoration Corp. v. The Board of Managers of The Hayden on the Hudson Condominium Supreme Court, Queens County

UNIT OWNER COUNTERCLAIMS AGAINST CONDO FOR ALTERATIONS AUTHORIZATION DISMISSED

The Board of Managers of The Alfred Condominium v. Miller
Supreme Court, New York County

CONDO UNIT OWNERS NOT ENTITLED TO MANDATORY PRELIMINARY INJUNCTION TO COMPEL BOARD TO ELIMINATE RAT INFESTATION

Brumberg v. The Board of Managers of The Cast Iron House Condominium Supreme Court, New York County

COMMENT | The Court held that this was the ultimate relief sought, and there was insufficient evidence of a currently-ongoing problem.

ACCESS LICENSE NOT GRANTED; PETITIONER FAILS TO PROVE ITS NECESSITY

Phoenix Owners Corp. v. Mindel Residential Properties L.P.
Supreme Court, New York County

PARAMOUR NOT ENTITLED TO CONSTRUCTIVE TRUST OVER DECEASED LOVER'S CO-OP APARTMENT

Hyland v. Henley Supreme Court, New York County

COMMENT | Get it in writing, paramours.

UNIT OWNER NOT ENTITLED TO PRELIMINARY INJUNCTION TO COMPEL CONDO TO MAKE REPAIRS TO UNIT

Menkes v. Board of Managers of 561 5th Street Condominium
Supreme Court, Kings County

COMMENT | Because it was the ultimate relief sought in the lawsuit.

NOTICE OF PENDENCY CANCELLED IN SUIT OVER FAILED SALE OF CONDO

Ingram v. Malcolm Supreme Court, New York County

COMMENT | The suit only involved disposition of the contract deposit, and didn't involve a dispute over title to the unit.

CONDO UNIT OWNER NOT ENTITLED TO PRELIMINARY INJUNCTION TO STOP CIGARETTE AND MARIJUANA SMOKE ODORS COMING FROM NEIGHBORING APARTMENT

Makarovich v. Board of Managers of Ocean Grande Condominium
Supreme Court, Queens County

COMMENT | The Court held that there was insufficient evidence of an immediately egregious condition.

CO-OP SHAREHOLDER CANNOT WITHHOLD MAINTENANCE DUE TO APARTMENT LEAKS

Andreas v. 186 Tenants Corp. Appellate Division, 1st Dept.

FORMER LOVER OF CONDO UNIT OWNER CAN SUE HIM FOR MISAPPROPRIATION OF FUNDS THAT HE PROMISED HER ON SALE OF APARTMENT

Coulter v. Sorensen Supreme Court, New York County

COMMENT | In an outcome different from a similar case above, egregious facts made the difference.

CONDO NOT LIABLE UNDER LABOR LAW FOR INJURY TO SUBCONTRACTOR'S EMPLOYEE

Guevara-Ayala v. Trump Palace/Parc LLC Appellate Division, 1st Dept.

COMMENT | Refreshingly, the Court held that the injury occurred on an instrumentality supplied by the contractor or the sub, and that the condo exercised no control or supervision.

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CONDO NOT ENTITLED TO ATTORNEY FEES IN SUIT AGAINST UNIT OWNER FOR AIRBNB-TYPE USE

The Board of Managers of The 207-209 East 120th Street Condominium v. Dougan Supreme Court, New York County

COMMENT | Because the bylaws didn't provide for attorney fees.

DELINQUENT CONDO UNIT OWNER CANNOT STAY FORECLOSURE SALE UNTIL CONCLUSION OF SEPARATE ACTION AGAINST CONDO'S ATTORNEYS

Board of Managers of The Ruppert Yorkville Towers Condominium v. Prasad Supreme Court, New York County

COMMENT | He hadn't paid common charges for 15 years!

FORMER CONDO UNIT OWNER CAN BE SUED FOR NEGLIGENT INSTALLATION OF APARTMENT WATER FILTER 11 YEARS BEFORE LEAK OCCURRED

AIG Property Casualty Company v. Yoshida Supreme Court, New York County

COMMERCIAL CONDO UNIT OWNER AND STORE TENANT NOT LIABLE UNDER LABOR LAW FOR INJURY TO CONDO CONTRACTOR'S EMPLOYEE

Lewis v. Lester's of N.Y., Inc. Appellate Division, 2nd Dept.

COMMENT | The injury occurred while he was working on a condo common element.

CO-OP OBLIGATED TO REPAIR DAMAGE IN APARTMENT CAUSED BY FIRE IN ANOTHER APARTMENT

Williams v. Hotel Des Artistes, Inc. Supreme Court, New York County

COMMENT | Regardless of whether the co-op can recover from the shareholder in whose apartment the fire began.

CONDO UNIT OWNER CAN BRING HP PROCEEDING AGAINST CONDO EVEN THOUGH NO LANDLORD/TENANT RELATIONSHIP EXISTS

Burden v. Glenridge Mews Condominium. Civil Court, Queens County

CONDO BOARD PROPERLY IMPOSED EMAIL AUTHENTICATION PROCEDURES FOR PROXIES TO BE SUBMITTED IN ANNUAL MEETING, UNDER COVID EMERGENCY STATUTE; NON-COMPLIANT PROXIES WERE PROPERLY NOT COUNTED

The Lifesavers Building Homeowners Group v. Board of Managers of The Landmark Condominium Supreme Court, Westchester County

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT IN SUIT OVER CONDO UNIT OWNER'S ALLEGED ILLEGAL RESIDENTIAL USE OF CELLAR PORTION OF APARTMENT

13 Harrison Street Condominium v. Bleich
Appellate Division, 1st Dept.

CO-OP SHAREHOLDER A HOLDER OF UNSOLD SHARES

RFLP, LLC v. 255 West 98th Street Owners Corp.
Appellate Division, 1st Dept.

UNIT OWNER CAN SUE CONDO FOR SMOKE PERMEATING INTO UNIT FROM ANOTHER APARTMENT'S FIREPLACE

Etkin v. Sherwood Residential Management LLC
Supreme Court, New York County

CO-OP SHAREHOLDER INELIGIBLE FOR ERAP BENEFITS TO PAY MAINTENANCE

Smith v. Patrick Supreme Court, New York County

CONDO CORRECTLY ASSESSED COMMERCIAL UNIT OWNER TO FUND REPAIRS TO RESIDENTIAL PORTION OF BUILDING

Baxter Street Condominium v. LPS Baxter Holding Company, LLC
Appellate Division, 1st Dept.

COMMENT | The bylaws provided for assessments to all Unit Owners, and did not have the common carve-out for commercial owners and residential purposes.

CO-OP SHAREHOLDER CAN SUE NEIGHBOR FOR INTENTIONAL PATTERN OF HARASSING BEHAVIOR

Silverman v. Park Towers Tenants Corp. Appellate Division, 1st Dept.

COMMENT | The alleged harassment consisted of making false complaints to the co-op, hacking his instagram account, and public altercations in common areas.

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CO-OP CANNOT SUE CONTRACTOR FOR DEFECTIVE REPAIR WORK

Tanglewood Terrace at Smithtown Corp. v. Up Rite Construction
Appellate Division, 2nd Dept.

COMMENT | The Court held that the problems arose from the initial design and construction of the building.

ACCESS LICENSE GRANTED; COURT IMPOSED LICENSE FEES PREVIOUSLY TENTATIVELY AGREED TO BY PARTIES

150 East 73rd Street Corporation v. 145-149 East 72nd Street LLC
Supreme Court, New York County

COMMENT | An increasingly contentious issue involving neighboring buildings.

COMMERCIAL CONDO SELLER AND BUYER CAN BOTH SUE CONDO BOARD FOR IMPROPERLY SEEKING TO EXERCISE RIGHT OF FIRST REFUSAL

Prieto v. 3520 LLC Supreme Court, New York County

HDFC CO-OP BOARD MEMBERS DEFEAT SUCCESSORS IN REMOVAL BATTLE

Wyche v. Haywood-Diazction Appellate Division, 2nd Dept.

CONDO UNIT OWNER CAN ENFORCE ALTERATIONS AGREEMENT ISSUED BY BOARD

Parc 56 LLC v. Board of Managers of The Parc Vendome Condominium Supreme Court, New York County

NYC PET LAW BARS CO-OP FROM ENFORCING HOUSE RULE PROHIBITING DOGS; BOARD-IMPOSED FINES VACATED

Zekhtser v. Harway Terrace, Inc. Supreme Court, Kings County

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT OVER WHETHER CO-OP SHAREHOLDER CAN REPLACE ROOFTOP AIR CONDITIONER UNIT

Stolzman v. 210 Riverside Tenants, Inc. Supreme Court, New York County

CONDO CANNOT COMPEL GARAGE UNIT OWNER TO ARBITRATE DISPUTE; BOARD ENJOINED FROM USING GARAGE TO ACCESS OTHER AREAS OF BUILDING

One Plaza LLC v. Board of Managers of Park Circle Condominium
Supreme Court, Kings County

PROBLEMATIC UNIT OWNER BANNED FROM CONDO FITNESS CENTER

Board of Managers of Rio The Condominium v. Hirsh
Supreme Court, New York County

COMMENT | A litany of objectionable conduct, including defecating in the pool and shower.

SHAREHOLDER CAN SUE CO-OP AND NEIGHBOR FOR EXCESSIVE NOISE AND STRUCTURAL DAMAGE CAUSED BY NEIGHBOR'S CHILDREN

O'Hara v. The Board of Directors of The Park Avenue and Seventy-Seventh Street Corporation Appellate Division, 1st Dept.

COMMENT | A co-op must act responsively when faced with such complaints. BBG represented the victorious shareholder.

CONDO CAN PROCEED WITH SUIT AGAINST UNIT OWNER FOR UNPAID COMMON CHARGES

Board of Managers of The Cobblestone Lofts Condominium v. McMahon Supreme Court, New York County

COMMENT | Full disclosure--BBG is general counsel to this condo, but was not involved in this litigation.

BUSINESS JUDGMENT RULE PROTECTS CO-OP'S DECISION TO REJECT EXISTING SHAREHOLDER AS PURCHASER OF SECOND APARTMENT AND TO ADD HIS SON AS A CO-SHAREHOLDER

Fitterman v. Seward Park Housing Corporation
Supreme Court, New York County

COMMENT | The Court held that he had failed to prove discrimination or other improper motives to defeat the business judgment rule.

COURT VOIDS HDFC CO-OP'S LEASE TO AFFILIATE OF BOARD MEMBER

67-69 St. Nicholas Avenue HDFC v. Green
Appellate Division, 1st Dept.

COMMENT | A sweetheart lease was executed while she was a director, inexplicably and blissfully ignorant of the optics and the law.

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CONDO CANNOT ENFORCE LATE COMPLETION LIQUIDATED DAMAGES CLAUSE IN ALTERATIONS AGREEMENT, WHICH DID NOT INCLUDE A STATED END DATE FOR THE WORK

Brodie v. Board of Managers of The Aldyn Supreme Court, New York County

COMMENT | Construed against the drafter.

CO-OP'S FAILURE TO PRODUCE PROPRIETARY LEASE DOOMS NON-PAYMENT PROCEEDING AGAINST SHAREHOLDER

6 West 20th St. Tenants Corp. v. Dezertzov Appellate Term, 1st Dept.

QUESTIONS OF FACT REGARDING SCOPE OF ENGINEER'S DUTIES BARS SUMMARY JUDGMENT DISMISSING COMPLAINT

176 West 87th Street Owners Corp. v. Guerico Supreme Court, New York County

CO-OP CAN REGULATE LOCATION AND USE OF WASTE PIPE IN CONTEXT OF APARTMENT ALTERATIONS

Chan v. 907 Corporation Appellate Division, 1st Dept.

COMMENT | The decision was prompted by fear of leaks from pre-existing old plumbing. BBG represented the victorious co-op.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT OVER WHETHER REPAIRS TO SIDEWALK VAULT ARE OBLIGATION OF CONDO, OR COMMERCIAL UNIT OWNER

Lucky Cashew Associates, L.P. v. Board of Managers of The 125 East 4th Street Condominium Supreme Court, New York County

CO-OP'S REFUSAL TO ALLOW SHAREHOLDER TO INSTALL HVAC WAS UNREASONABLE; CO-OP ORDERED TO ALLOW IT NOW

Lemberg Foundation, Inc. v. Shuttleworth Artists Ltd. Supreme Court, New York County

COMMENT | The co-op was also ordered to pay the shareholder's monetary damages and attorney fees.

CO-OP SHAREHOLDER CANNOT STOP PULLMAN EVICTION FOR OBJECTIONABLE CONDUCT

Haimovici v. Castle Village Owners Corp. Supreme Court, New York County

COMMENT | A documented, long history of objectionable conduct.

CONDO CANNOT STOP NYC REZONING THAT WOULD ALLOW BLOOD CENTER TO CONSTRUCT NEW BUILDING

301 East 66th Street Condominium v. The City of New York Supreme Court, New York County

SHAREHOLDER CANNOT STOP CO-OP FROM USING HIS TERRACE AS STAGING AREA FOR EXTERIOR REPAIR WORK

Plessner v. 200 E. 74 Owners Corp. Supreme Court, New York County

COMMENT | The Court held that the co-op's decision-making was protected by the business judgment rule. BBG represented the victorious co-op.

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