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Inside This Issue

Death Knell for AirBnB in NYC Apartments?: Co-ops, condos and rental owners can now block transient rentals in their buildings.

BY AARON SHMULEWITZ

A new City law could spell the end of AirBnB and similar short-term rentals in apartments, eliminating a persistent problem in many co-ops, condominiums and rental buildings.

Local Law 18 of 2022 (which can be accessed **here**) becomes effective on January 9, 2023. The law makes it unlawful to offer a short-term rental of an apartment unless the apartment is formally registered with the Mayor's Office of Special Enforcement ("OSE").

Under the new law, an apartment owner or tenant who wishes to register an apartment must certify to OSE that: (i) such short-term occupancy is not prohibited by a lease or other agreement, and (ii) the apartment complies with all applicable legal requirements for short-term occupancy, including construction codes. It would be difficult, if not impossible, for a typical apartment owner or tenant to certify either of the foregoing truthfully.

In addition, there must be no uncorrected violations against the building that could endanger apartment occupants. Rent-regulated apartments are not eligible for registration, and thus cannot be lawfully offered for short-term occupancy.

Crucially, the building housing an apartment that is proposed to be registered must not be on the "Prohibited Buildings List" ("PBL"). The law requires OSE to create and maintain the PBL-—a list of buildings whose owners (including co-op and condo Boards) have notified OSE that short-term rentals are not permitted. OSE will refuse to register an apartment in a building

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that is on the PBL, and booking services like AirBnB cannot offer apartments in buildings that are on the PBL. Thus, inclusion of a building on the PBL will effectively bar short-term rentals in that building. In effect, building owners (including co-op and condo Boards) can opt out of the short-term occupancy universe by simply notifying OSE to include the building on the PBL.

OSE is required to notify a building owner of the submission of a registration application for an apartment in its building; that would give the owner the opportunity to exercise available remedies against the apartment applicant. OSE is also obligated to post periodically to publicly-available websites all information regarding registered apartments.

Apartment registrants are required to keep applicable records for seven years. Booking services like AirBnB are required to file monthly information reports with OSE.

The fines for non-compliance with any of the numerous obligations in the new law are hefty, ranging up to $5,000 per violation for apartment owners or tenants, and $1,500 per violation for booking services.

OSE is proposing a set of rules to implement the new law; the proposed rules are still in their public comment phase, with the next public hearing currently scheduled for January 11. The current version of the proposed rules can be accessed here.

Co-op and condo Boards, managing agents, and rental building owners can and should get their buildings included on the PBL as soon as the procedures therefor are finalized, so as to render their buildings ineligible for lawful short-term occupancy, thus removing a hitherto annoying problem from their already-crowded plates. Please feel free to contact BBG for guidance and advice.

__Aaron Shmulewitz__ heads the Firm's co-op/condo practice, and can be reached at __ashmulewitz@bbgllp.com__, or 212-867-4466 ext 390.

New Laws Target E-Bikes and Other Lithium-Ion Battery-Powered Devices

BY LOGAN O'CONNOR

The dangers associated with charging e-bikes and other lithium-ion battery-powered devices in apartments has become a top priority for legislators after more than 140 fires were reportedly caused by such devices in New York City in 2022. Legislators have been focused on distribution of information regarding the dangers of charging e-bikes indoors and the enactment of new laws that will prevent tenants from keeping e-bikes and other lithium-ion battery-powered mobility devices indoors.

To start, building owners are required to distribute the FDNY's 2022-2023 Fire and Emergency Preparedness Bulletin to all tenants and on-site employees by April 30, 2023. This year, the Bulletin places special emphasis on e-bike hazards.

Several bills have also been introduced to target the use, storage and charging of e-bikes and other lithium-ion battery-powered mobility devices inside apartments. Bill Intros. 656, 663, 722, 749 and 752 were all discussed during a November 14, 2022 meeting of the City Council Committee on Fire and Emergency Management.

Among other things, the bills would: (i) require the City to perform educational outreach so that the public and courier workers understand the risks of storing e-bikes indoors, (ii) require the FDNY to prepare annual reports on safety measures to mitigate fire risks associated with charging e-bikes indoors, (iii) require the Department of Consumer and Worker Protection and the FDNY to distribute to delivery and courier service workers materials providing guidance on the safe use of e-bikes, (iv) prohibit the sale of lithium-ion batteries unless they are listed and labelled by a nationally recognized testing organization, and (v) prohibit the sale of third-party, second-use lithium-ion batteries.

It is recommended that owners of multiple dwellings prohibit the use, storage and charging of e-bikes and other lithium-ion battery-powered mobility devices indoors, if possible. The best way to do this is to include a clear provision in all leases prohibiting such activity. Many leases may already have a provision which prohibits tenants from engaging in dangerous or hazardous behavior. Many co-op and condo Boards are considering adopting such prohibitions by adopting appropriate House Rules, and a number have already done so. But, in any event, and at a minimum, the FDNY's Fire and Emergency Preparedness Bulletin should be delivered to all tenants and on-site employees as soon as possible.

__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__). Ms. O'Connor is also available to review current lease provisions and building rules to determine existing protections related to lithium-ion battery hazards.

APPELLATE UPDATE

Divided Appellate Division Rejects Challenge to Deregulated Status of Apartment and Dismisses Complaint

BY MAGDA L. CRUZ

In 2000, after the death of a rent controlled tenant, the remaining occupant (who claimed to have had a "family-like" relationship with the tenant), settled a licensee holdover proceeding that the owner had brought to recover the apartment. In consultation with his counsel, the occupant chose to settle rather than litigate the succession claim, where he risked the possibility of failing to satisfy the heavy evidentiary burden of proving his entitlement to succession under the "non-traditional family member" criteria in the Rent Stabilization Code.

The settlement provided the occupant with such favorable terms as a rent stabilized lease in his name, at an agreed upon rent of $1,650/month (which was registered with DHCR as the initial legal regulated rent), together with a lower preferential rent of $650/month, plus allowable renewal increases, for the duration of his tenancy. In return, the occupant agreed not to file a Fair Market Rent Appeal ("FMRA"), which initial rent stabilized tenants generally have the right to file but no obligation to do so if they consider the initial agreed-upon lease rent to be consistent with prevailing market rents. These terms were also memorialized in a rider to the rent stabilized lease.

The settlement was so-ordered by the Housing Court, and the owner filed it and a copy of the lease with DHCR when it filed the initial apartment registration (known as the "RR-1" form).

Years later, the apartment became vacant again. The owner lawfully applied vacancy increases and the high rent vacancy threshold was reached, resulting in the deregulation of the apartment.

Then, in 2022, a new tenant challenged the deregulation. In *Liggett v. Lew Realty LLC*, the new tenant sued the owner, claiming that the apartment should still be rent stabilized because the 2000 settlement by a predecessor occupant was not valid. In a 3-2 decision, the Appellate Division, First Department rejected the tenant's claims, found no impropriety with the 2000 settlement, and dismissed the complaint. The decision made clear that the way the initial rent stabilized rent was set was permitted by the Rent Stabilization Law, and the agreement to not file a FMRA was not an impermissible waiver of a tenant right or an evasion of the rent laws. When the 2000 settlement was negotiated, the occupant was not a tenant. Moreover, there was no showing that the agreed-upon initial legal rent was excessive.

The Appellate Division majority also found no merit in the new tenant's contention that the $650 preferential rent in the 2000 settlement was the "true" agreed upon rent that should have been registered as the initial legal regulated rent, and based on which all subsequent increases should have been calculated. The majority emphasized that the Rent Stabilization Code defines a preferential rent as "the amount of rent charged and paid by the tenant that is less than the legal regulated rent for the housing accommodation." The 2000 settlement clearly distinguished the lower preferential rent from the agreed upon "legal rent that was subject to applicable guideline increases and other increases authorized by law." The Appellate Division noted that although the regulations concerning preferential rents were subsequently amended in the Housing Stability & Tenant Protection Act, that was not the law in effect in 2000 and therefore does not have any impact on the 2000 settlement.

The majority was critical of the new tenant's attempt to belatedly "step into [the former occupant's] shoes and assert rights that she claims [the occupant] had when he agreed to the 2000 stipulation." Essentially, the new tenant sought to relitigate a case that had been settled 22 years earlier in order to contest the process under which the apartment eventually became deregulated. However, while there generally is no statute of limitations for reviewing the regulatory status of an apartment, there must be a factual basis for the challenge distinct from the amount of the initial legal regulated rent, which can no longer be attacked and is binding.

The *Liggett* case touched on a number of recurring issues that burden rent regulated housing, not the least of which is the panoply of ways that tenants try to question deregulation. The *Liggett* holding puts to rest a number of those questions, in an effort to provide the certainty that is needed in residential leasing. However, the dual dissents to the opinion may further delay that certainty if the new tenant elects to appeal to the Court of Appeals.

It is impossible to predict what would occur in any such appeal, but, for now, the majority of the Appellate Division is plainly signaling that attempts to undo the deregulated status of an apartment based on circumstances occurring decades earlier will not succeed.

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**).*

Locked Out: When Restoring an Occupant to Possession is Futile

BY PAUL ALESSANDRI

When landlords are accused of illegally locking unauthorized occupants out of apartments, they can invoke the doctrine of futility in their defense--that a locked out occupant should not be restored to possession because a subsequent lawful eviction is inevitable.

In a recently decided case, BBG represented a landlord accused of illegally locking out a home care attendant. The home care attendant had resided in the apartment since March, 2018 and served as a full time caretaker for the recently deceased tenant of record. Following the death of the tenant of record, the home care attendant was locked out of the apartment and commenced an illegal lockout proceeding against the landlord seeking immediate restoration to the apartment.

The Court conducted its hearing a day after the home care attendant brought the proceeding against the landlord. At the hearing, the home care attendant argued that she obtained legal possessory rights to the apartment by: (a) continuously residing at the apartment for over four years; and (b) establishing a non-traditional familial relationship with the deceased tenant of record. The home care attendant further testified that the landlord acted illegally by locking her out of the apartment, and that the landlord should have, instead, commenced a holdover proceeding against her to recover possession of the apartment.

In opposition, we argued on behalf of the landlord that the home care attendant had failed to establish a familial relationship with the former tenant, or any other entitlement to succession of the apartment. Most notably, we utilized the legal concept of futility in urging the Court to decline to restore the home care attendant to possession. We argued that even if the home care attendant could demonstrate that the landlord illegally locked her out of the apartment, any restoration would be futile because the landlord would immediately commence a holdover proceeding against her which would inevitably lead to her eviction from the apartment.

The Court ultimately agreed with our futility argument and dismissed the home care attendant's case in its entirety, finding that she had failed to establish that she was deprived of lawful possession of the apartment and/or that she was illegally locked out. The Court noted in its decision that while the home care attendant did demonstrate a connection to the apartment and to the former tenant, any restoration would be futile as no legal possessory right to the apartment was demonstrated.

Despite this favorable outcome for our client, this decision should not necessarily be relied upon to lock out occupants. Every fact pattern is different. Landlords and managing agents should contact the attorneys at BBG, so that we can provide strategic analysis to help achieve the best and most cost-effective result.

***Paul Alessandri** is an associate in BBG's Litigation Department and can be reached at 212-867-4466 ext. 352 (**palessandri@bbgllp.com**).*

Criminal Backgrounds No Longer Check-Able?

BY AARON SHMULEWITZ

A proposed law that is pending at the New York City Council would bar any person "having the right to sell, rent or lease, or approve the sale, rental or lease of" an apartment from: (i) refusing to sell, rent, or lease, or approve the sale, rental or lease to, or otherwise denying a housing accommodation from, a person due to his/her arrest record or criminal history, or (ii) even doing a background check as to an applicant's arrest record or criminal history. Doing either would constitute housing discrimination under the proposed law.

The proposed law, known as Intro. 632 of 2022, is accessible **here**.

The proposed law is written broadly enough to include not only owners of rental apartment buildings, but also co-op and condo Boards, co-op and condo apartment owners wishing to lease out their apartments, and the buildings' management companies that process all such sale, leasing and subletting applications for such co-ops and condominiums. Real estate brokers, who normally participate in the background-check process, would also be prohibited from doing so.

While limited background checks would still be allowed on the sex offender registry, the applicant would have to be notified in writing in advance of the inquiry being made, and would have to be given at least three days' opportunity to withdraw his/her housing application before the inquiry is actually made.

The proposed law would not apply to a rental or sale in a two-family house if the homeowner or his/her family members are also in occupancy, or to any other form of housing accommodation if the owner or members of his/her family reside there.

Unlike past efforts by the City Council, this proposed law apparently has a good chance of passing—-it is co-sponsored by 31 of the 51 City Council members, as well as by four of the five Borough Presidents. The proposed law was most recently the subject of a hearing by the Council's Committee on Civil and Human Rights on December 8.

The proposed law would bar co-op Boards, and co-op and condo apartment owners--let alone owners of rental apartment buildings--from being able to exercise the common sense right to decide whether or not to lease an apartment, or to approve an apartment sale, lease or sublease, to a person with a criminal history. The proposed law would block even inquiring into a person's criminal past.

The proposed law would have a disastrous impact on an already-weakened apartment market in a City going through unprecedented challenges, and should be opposed vigorously by co-op and condo Boards, apartment owners, and rental building owners. Please contact your City Councilperson to register your opposition to the bill.

__Aaron Shmulewitz__ heads the Firm's co-op/condo practice, and can be reached at __ashmulewitz@bbgllp.com__, or 212-867-4466 ext 390.

BBG In The News

Founding partner **Sherwin Belkin** was quoted in an October 10 article in The Real Deal that reported on an appellate Court decision that held in favor of a building owner seeking to demolish a building housing a holdout tenant, in preparation for constructing a larger development. **Read article here**. **Mr. Belkin** was also quoted extensively in a November 9 article in the same publication discussing Court decisions in cases involving 421-a rent overcharge claims. **Read article here**. **Mr. Belkin** was also quoted in a December 6 article in the same publication on the anticipated impact of new rules being proposed by the City in connection with a new law regulating AirBnB-type transient rentals more heavily. **Read article here**. On February 15, **Mr. Belkin** will be presenting a follow-up Q&A session to his prior master class session at the Urban Real Estate Center on the relationship between owners and their attorneys in maximizing options and profits; the prior session can be accessed **here**.

Mr. Belkin and Litigation Department partner **Matthew S. Brett** were quoted in: an October 28 article in *The Real Deal* about the lawsuit in which BBG is representing the Hudson Valley Property Owners Association challenging Kingston's adoption of rent stabilization **(Read Article here)**, a November 10 article in *law360.com*, and a November 10 article in *The Real Deal* commenting on the suit **here**, and **here**, in a November 18 article in the same publication commenting on the Court's temporarily enjoining the 15% rent reduction component of the proposed new system (**Read article here**), in a November 22 article in *The Real Deal*, and a November 23 article in *law360.com*, reporting on the Court's continuing the injunctive relief (**Read the articles here and here**). **Mr. Brett** was also quoted in a November 21 Spectrum News report on the case (**Read article here**).

Administrative Law Department co-head **Martin Heistein** was a panelist at a December 1 seminar presented by Marcus & Millichap, speaking on recent proposed amendments by DHCR to the Rent Stabilization Code and HSTPA.

Administrative Law Department co-head **Kara I. Rakowski** testified on behalf of owners at a November 14 public hearing conducted by the State Division of Homes and Community Renewal regarding proposed new regulations governing permitted rents on combined apartments (**Read more here**).

Litigation Department partner **Magda L. Cruz**, head of the Firm's appellate practice and a member of the New York City Bar Association Committee on the State Courts of Superior Jurisdiction, served on the Judiciary subcommittee responsible for evaluating the qualifications of Justice Hector LaSalle, the Governor's nominee for the next Chief Judge of the New York State Court of Appeals, pending State Senate confirmation.

Ron Mandel, head of the Firm's land use and zoning practice, was quoted in a December 8 article in *law360.com* on Mayor Adams' plan to expedite housing construction and reducing over-regulation that stifles new housing (**Read article here**). **Mr. Mandel** and **Michael Bobick**, head of the Firm's Loft Law practice, will present a CLE webinar on January 12 on "Hot Topics in New York City Loft & Zoning Law", sponsored by Judicial Title Insurance. The link to register is **here**.

Litigation Department partner **Brian Epstein** was cited in a September 22 article in *Crains' New York* that reported on a case being handled by BBG involving a tenant using his residential apartment for restaurant purposes (**Read article here**).

Scott Loffredo, a partner in the Firm's Litigation Department, was quoted in a November 8 article in *Crain's New York* discussing a case that he is handling for a building owner seeking to oust a tenant using his apartment for AirBnB-type purposes (**Read article here**). **Mr. Loffredo** was also quoted in a December 5 New York Times article on a litigation that he is handling against owners of a restaurant to recover wrongfully-appropriated funds (**Read article here**).

Transactional Department partner **Deborah L. Goldman** was a speaker at the October 21 meeting of the New York State Bar Association Real Property Law section Executive Committee, discussing updates in commercial leasing markets.

BBG Continues to Expand and Welcomes New Hires

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

Nitisha Bishnoi, Associate, Litigation: Ms. Bishnoi worked with litigation teams of prominent law firms in New York and India where she litigated residential and commercial plenary actions, eviction proceedings, contract and construction disputes, as well as landlord-tenant disputes in the New York City Civil Courts and New York State Supreme Courts. Ms. Bishnoi completed her first law degree (B.A.LL.B) with honors from one of India's top ten law schools and practiced in India for over two years. Ms. Bishnoi obtained her LLM degree from Georgetown University Law Center and a certificate in international arbitration and dispute resolution.

Lauren Tobin, Associate, Transactional: Ms. Tobin's prior experience includes providing legal representation for purchasers, sellers, condominiums and cooperative buildings in a variety of commercial and residential real estate transactions. She received her Juris Doctor from St. Johns University School of Law and is a New York City Bar Member of the Real Property Law Committee and Financing and Development Subcommittee.

Kate Wildonger, Law Clerk, Litigation: Ms. Wildonger is joining as a Law Clerk until admission to the New York State Bar when she will be elevated to an Associate. She graduated with honors from New York Law School and previously interned at the Federal District Court for the Eastern District of Pennsylvania and spent time working for other real estate firms.

Other Professional Support Staff:

The following individuals joined as professional support staff:

Alex Quiroz, Junior Accountant
Edward Vargas, Network Analyst

Recent Transactions of Note

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

Partners **Daniel T. Altman** and **Stephen M. Tretola**, and associate **Joshua A. Sycoff**, represented affiliates of Dalan Management and Bain Capital in the $34.5 million purchase and financing of a Brooklyn property.

Messrs. Tretola and **Sycoff**, and partner **Murray Schneier**, represented a Muss Development entity in its $18 million refinance of an underlying mortgage at a Brooklyn property.

Messrs. Tretola and **Schneier** represented a borrower in connection with its $16.4 million refinance of its tenancy-in-common interest.

Partner **Craig L. Price**, and **Messrs. Schneier** and **Sycoff,** handled: an $11.5 million refinance of a Brooklyn property; the $11.2 million sale of an Upper East Side townhouse; the $9 million sale of an Upper East Side building; the $8 million sale of a Brooklyn property (with partner **Ron Mandel**); and the $16.3 million purchase of an Upper East Side townhouse (with partner **Michael Shampan**).

Partner **Lawrence T. Shepps** represented the seller of an Upper West Side building in a $26.4 million deal.

Partner **Aaron Shmulewitz** and **Mr. Sycoff** represented a Manhattan co-op in a $22 million mortgage refinancing.

Partner **Lloyd F. Reisman** represented the seller of a midtown parking garage composed of three commercial condo units in two separate condominiums, in a $9 million sale.

Partner **Deborah L. Goldman** represented the seller of a multi-family building in the East Village.

Leases

Partners **Daniel T. Altman**, **Allison Lissner** and **Deborah L. Goldman** represented:

- Danish bakery chain Ole & Steen in the negotiation of two store leases
- Shake Shack in the negotiation of two new leases in New York and New Jersey
- the former The Topps Company in the negotiation of an office sublease of approximately 15,000 square feet
- a Greenwich Village co-op in the negotiation of a lease with a gourmet supermarket
- a commercial tenant in the negotiation of an office lease in Bronxville
- a commercial tenant in the negotiation of a lease in SoHo
- a retail tenant in the negotiation of a new lease in Houston
- Acadia Realty Trust in the negotiation of store leases in Indiana and Illinois
- numerous owners and tenants in the leasing of office space, and of retail spaces to restaurants and health-care users

Recent Notable Matters Handled by our Land Use/Zoning Team

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

Represented a developer regarding assemblage issues and the negotiation of a zoning lot development agreement for properties on the Lower East Side.

Commenced Department of City Planning application process for midtown building seeking authorization for commercial uses in a residential zoning district.

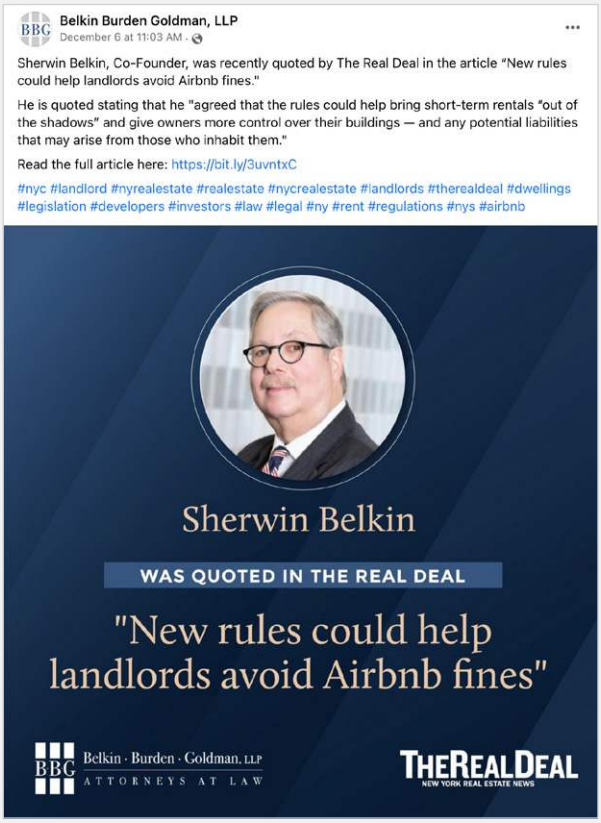
Obtained approval from Board of Standards and Appeals for an extension of term of a variance to permit the continued operation of a scrap metal yard in Brooklyn.

Counseled clients in connection with the proposed conversion of Joint Living Work Quarters for Artists (JLWQA) to residential use in SoHo.

Counseled project architect regarding Department of Buildings audit, which led to successful conclusion of investigation and building permit re-issuance.

Successfully negotiated construction license agreements with neighboring property owners to authorize several construction projects to proceed.

BBG's Popular Social Media Posts



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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***).

CONDO LIABLE TO UNIT OWNER FOR UNINHABITABILITY OF APARTMENT

Helmsley Corp. v. Parkchester South Condominium Civil Court, Bronx County

COMMENT | The Court based its holding on the Housing Maintenance Code, not the warranty of habitability (which is generally inapplicable in condominiums).

RECEIVER NOT APPOINTED FOR CONDO THAT OWES $400,000+ IN UNPAID WATER BILLS

Department of Environmental Protection v. Board of Managers of The Kaybern Court Condominium Supreme Court, New York County

COMMENT | A curious decision, especially given the allegations of fraud and conversion by the former managing agent.

CONDO ENTITLED TO DEFAULT JUDGMENT AGAINST UNIT OWNER FOR UNPAID PARKING SPACE LICENSE FEES AND LEGAL FEES

551 West 21st Street Condominium v. 540 West 21st Street Holdings, LLC Supreme Court, New York County

SHAREHOLDER CANNOT ENJOIN CO-OP FROM TERMINATING HER PROPRIETARY LEASE FOR NON-PAYMENT

Revson v. Osborne Tenants Corp. Supreme Court, New York County

COMMENT | The dispute was over how much was owed, not that a debt was owed.

CONDO UNIT OWNER ENTITLED TO ATTORNEY FEES FOR BRINGING MOTION TO COMPEL PREVIOUSLY-AGREED-UPON DISCOVERY IN LEAK DAMAGES CASE

Boltin v. Board of Managers of The 447-453 West 18th Street Condominium Supreme Court, New York County

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT IN SUIT OVER CO-OP BOARD'S POLICY TO RESTRICT PARKING SPACES TO RESIDENT SHAREHOLDERS

Baer v. 825 Ocean Corp. Supreme Court, Kings County

COMMENT | The Court indicated that, despite the absence of any applicable reference in the proprietary lease, the parties' course of conduct may have constituted an oral modification.

CO-OP CANNOT SUE SPONSOR FOR FAILURE TO TRANSFER SUPERINTENDENT'S APARTMENT

333 East 91st Street Owners Corp. v. 1765 First Avenue Associates, LLC Supreme Court, New York County

COMMENT | The Court held that the suit was barred by the statute of limitations, which expired four years before the suit was commenced.

SHAREHOLDER CAN SUE CO-OP FOR EXCESSIVE NOISE EMANATING FROM ROOFTOP FANS ABOVE HER APARTMENT

Schwartz v. 170 West End Owners Corp. Supreme Court, New York County

CONFIRMATION OF ARBITRATION AWARD BY BET DIN DENIED, DUE TO PETITIONER'S HAVING COMMENCED SIMILAR LITIGATION BEFORE FINAL ARBITRATION AWARD ISSUED

In re Stern v. Polachek Supreme Court, Kings County

COMMENT | The case involved a Byzantine pattern of serial transfers of a condo apartment.

HOLDER OF UNSOLD SHARES CAN VOTE FOR RESIDENT BOARD CANDIDATES OF ITS CHOICE

Epsilon Holdings, Ltd. V. 1717 Ave. N, Inc. Supreme Court, Kings County

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CONDO UNIT OWNER CANNOT SUE SPONSOR FOR CONSTRUCTION DEFECTS

Anderson v. AKAM Associates, Inc. Supreme Court, New York County

COMMENT | The Court held that the six-year statute of limitations began to run when the C of O was issued, and expired in 2013, before the suit was commenced.

CO-OP ENTITLED TO DEFAULT JUDGMENT AGAINST SHAREHOLDER FOR UNPAID MAINTENANCE AND LEGAL FEES

16 Park Avenue Owners Corp. v. Gillooly Supreme Court, New York County

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT TO BOTH SELLER AND BUYER OVER DISPOSITION OF DOWNPAYMENT IN FAILURE TO CLOSE DURING COVID

Pottick v. Weidmann Supreme Court, New York County

CONDO CAN CONTINUE TO SUE UNIT OWNER FOR UNPAID COMMON CHARGES

The Board of Managers of The Landings at Fresh Creek Condominium v. Latta Supreme Court, Kings County

COMMENT | The Court rejected various arguments by the Unit Owner, including that there was a separate mortgage foreclosure action pending against him.

FIRED BUILDING SUPERINTENDENT CANNOT SUE CONDO OR BOARD MEMBER FOR ERRONEOUSLY FILING POLICE REPORT ALLEGING THEFT BY HIM

Lazar v. City of New York United States District Court, Southern District of New York

COMMENT | He had apparently been given permission the day before to remove certain items from the building.

CONDO BOARD MEMBERS CANNOT SUE UNIT OWNER FOR DEFAMATION

Board of Managers of Brightwater Towers Condominium v. Vitebsky Appellate Division, 2nd Dept.

COMMENT | The Court held that the statements were protected as opinion, not statements of fact.

CONDO SELLERS CAN KEEP DOWNPAYMENT ON BUYERS' FAILURE TO CLOSE ON TIME OF ESSENCE DATE

Lee v. Hootnick Supreme Court, New York County

COMMENT | The condo's temporary denial of access to the apartment during Covid was held not to be a valid excuse for the buyers' refusal to close.

CO-OP SHAREHOLDERS MUST PAY MAINTENANCE AND ASSESSMENTS DESPITE BUILDING NOT HAVING C OF O

Grassfield v. JUPT, Inc. Appellate Division, 2nd Dept.

COMMENT | Based on a statutory exception for co-ops.

LAUNDRY VENDOR BREACHED CONTRACT TO INSTALL CODE-COMPLIANT SPRINKLER SYSTEM AND GAS DRYERS

46th Street Leaseholder LLC v. Hercules Corp. Appellate Division, 1st Dept.

COMMENT | BBG represented the victorious building owner.

PROPERTY OWNER CANNOT ENJOIN FOOD CART IN FRONT OF BUILDING

Sutton Lenox LLC v. Tinta Appellate Division, 1st Dept.

COMMENT | The Court held that there is no private right of action under the City's Administrative Code.

CO-OP LIEN FOR UNPAID LEGAL FEES INCURRED IN LITIGATION IS SUPERIOR TO ALL OTHER LIENS

In re Kasowitz Benson v. JPMorgan Chase Bank Appellate Division, 1st Dept.

COMMENT | Involving The Dakota. Based on a specific proprietary lease provision providing for that, which had been drafted by the undersigned many years ago.

CO-OP AND ITS TRANSFER AGENT NOT LIABLE TO SHAREHOLDER FOR MISCLASSIFYING TYPE OF OWNERSHIP OF STOCK AND LEASE

Young v. 101 Old Mamaroneck Road Owners Corp. Appellate Division, 2nd Dept.

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