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An End to Anonymity in LLC Ownership?

BY LAUREN K. TOBIN AND JOSHUA A. SYCOFF

In 2021, Congress enacted the Corporate Transparency Act ("CTA") as part of new anti-money laundering legislation set forth in the National Defense Authorization Act. Commencing on January 1, 2024, there will exist a *requirement* for most existing and newly formed limited liability companies (LLC's), trusts, corporations and other entities formed through a filing with state Secretaries of State to disclose via a Beneficial Ownership Information Report ("BOI Report") to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") the identities of *all* beneficial owners. For entities formed on or after January 1, 2024, reports will need to be filed within 30 days of the entity's formation; entities existing prior to January 1, 2024 must file their reports before January 1, 2025.

Under the CTA, a "Beneficial Owner" is defined as an individual who, directly or indirectly, either exercises substantial control over the reporting company or owns or controls at least 25% of its ownership interests. The BOI Report must include, among other informational items, beneficial owner names, dates of birth, residential or business addresses and an identifying number from certain accepted forms of identification such as a driver's license.

The CTA was enacted to prevent the use of shell companies for illegal activities, including tax fraud, financing of terrorism, money laundering and other illicit activities. Significantly, all information obtained pursuant to the CTA will be stored by FinCEN in a *private* secure database, and will be available only to: (1) federal agencies engaged in national security, intelligence and law enforcement, (2) state law enforcement agencies with a court order, (3) the Treasury Department, (4) financial institutions with the company's consent, (5) government regulators of financial institutions, and (6) certain foreign authorities requesting information through a U.S. agency.

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Unfortunately, such beneficial ownership information ***will not remain private*** for New York LLC's if the currently-pending New York LLC Transparency Act (the "New York Act") is signed by Governor Hochul. Sponsored by State Senator Hoylman-Sigal and Assemblywoman Emily Gallagher, the primary aim of the New York Act (set forth in bill A03484A) is to make ***public*** the identities of beneficial owners of LLC's doing business in New York State. The New York Act was passed by the State Legislature in June, 2023 and is awaiting signature by the Governor.

The New York Act mirrors the reporting requirements of the CTA but goes further by requiring that New York's Secretary of State maintain a database in which the names and addresses of beneficial owners of LLC's doing business in New York *will become available to the public*. Under the New York Act, New York's Secretary of State would be required to promulgate regulations permitting any beneficial owner with a "significant privacy interest" to apply for a waiver in order to prevent some or all of their information from going public. However, since the specified purpose of the New York Act is to make information relating to the beneficial ownership of LLC's accessible to the public, it is unlikely that a "significant privacy interest" will be an easy standard to satisfy.

Unlike the CTA which carries steep civil and even criminal penalties for noncompliance, failure to comply with the New York Act will result in an indication of past due filing (and, thus, a lack of good standing) with the Secretary of State. Filing will need to be made within a period of 30 days after the filing deadline, and if the filing is not made within two years of such due date, the Secretary of State will be permitted to send a 60-day notice to file the beneficial ownership disclosure report. If the entity fails to do so, it would be recorded as delinquent in the records of the Secretary of State; a $250 civil penalty would be imposed--and filing would be required to remove the delinquency and restore the entity's good standing.

If signed into law by the Governor, the New York Act would significantly impact the New York real estate community by preventing property owners from remaining anonymous through LLC ownership. Since, unlike the CTA, the act only applies to LLC's, enactment may trigger a surge in transfers from LLC's to other entities or ownership vehicles in an effort by property owners to hold onto their privacy.

BBG is following this matter closely, and will be prepared to assist our clients in dealing with the ramifications of the New York Act should it become law.

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Grounded

BY MURRAY SCHNEIER

A ground lease is a sophisticated way to develop property that its owner is not willing to sell now—the owner retains ownership of the land, while the tenant has the right to construct (or occupy) a building on the land. The parties need to make sure the final product is an instrument that creates the intended result; failing to do so can lead to a fatal financial outcome.

It may seem obvious, but a ground lease should allow the tenant to obtain financing. However, many ground leases are not constructed in a manner that enables institutional lenders to extend a loan to the ground tenant. Leasehold financing plays a huge role in the development or redevelopment of properties in New York and nationally. There are many issues for both an owner and tenant to consider in creating a financeable ground lease that doesn't leave the other party with the short end of the stick.

When parties agree to a ground lease structure, the property is essentially divided into two distinct real property estates. The owner has the interest in the rental income for the term of the lease and a hopefully marketable reversionary fee interest in the entire project (including the building(s) developed by the tenant during the term), while the tenant has the current leasehold estate of the property, free to develop the property as it sees fit based on the market conditions and subject to the construction requirements of the ground lease. These interests can be separately mortgaged, sold and assigned if the ground lease is constructed properly.

Assuming that both the owner's and the tenant's interests are mortgaged, each lender should have its security only encompass the interest then held by its borrower--the owner's lender should encumber only the fee interest, while the tenant's lender should encumber only the leasehold estate. Upon a foreclosure by either lender, the estate of the other party should not be affected. In order to ensure this result, the owner's fee mortgage has to be subordinated to the interest of the leasehold mortgage so that the tenant's lender has first priority and is not wiped out in the event of the foreclosure of the owner's estate. Otherwise, the leasehold lender will be unlikely to be willing to enter into a loan if it is at risk of potentially losing its collateral upon a mortgage foreclosure of the underlying land.

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Once the priority of mortgaged positions has been resolved, there are several important issues needed to make the ground lease a financeable instrument. A leasehold lender will want a condition that no cancellation, surrender or modification of the ground lease will be effective against the leasehold lender unless consented to in writing by such lender. The lender will want notice from the owner of all tenant defaults and an opportunity to cure those defaults for an additional period of time beyond that granted to tenant under the ground lease. Further, the ground lease should provide that no default notice given by the owner to tenant shall be deemed to have been validly given unless also given to the leasehold lender. An important point to be negotiated by the parties will involve including a sufficient additional cure period for those non-monetary defaults that will require the leasehold lender to obtain possession of the property in order to cure. In addition, a leasehold lender will want the obligation to cure only those defaults that are able to be cured by the lender, and not those defaults, such as the tenant filing for bankruptcy, that are not curable by the lender.

If a ground lease is terminated despite the leasehold lender's right to cure defaults, the lender will insist upon the acknowledgement by the owner that it will agree to enter into a new lease with the lender or its designee for the remainder of the leasehold term, effective as of the date of termination, at the amount of rent and additional rent, and on the other terms, covenants and conditions (excluding requirements which are not applicable or which have been already been fulfilled) of the original ground lease. The priority of the new ground lease should be the same as the prior ground lease and the tenant under the new ground lease should have the same right, title and interest in and to the land and the tenant improvements as the tenant had under the prior ground lease.

There is a plethora of other issues to consider in negotiating a profitable ground lease for both sides, but those will have to be addressed in a future article.

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BUYING AND SELLING AIR

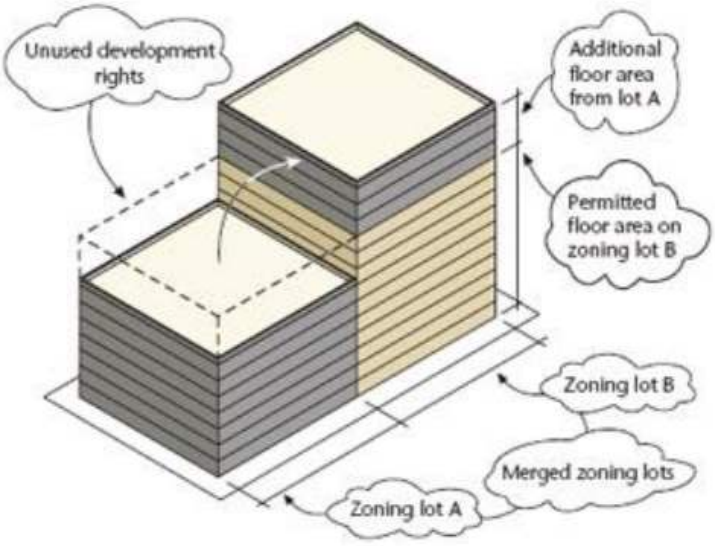
Zoning Lot Mergers & Transferable Development Rights

BY RON MANDEL AND FRANK NORIEGA

Under New York City law, property owners can transfer their unused or excess development rights to adjacent lots. Transferable development rights--colloquially, "air rights" (or "TDR's")--have become a significant tool in the development realm as a way for both sellers and purchasers to capitalize on real estate and play an important role in the transformation of the City's skyline.

The concept of TDR's as a salable commodity came about after the overhaul of the City's Zoning Resolution in 1961, which established density limits for every zoning lot. The restrictions are defined, in part, by the ratio of floor area to lot size. The ratio, known as floor area ratio (FAR), determines a building's permissible zoning bulk and varies by zoning district, as well as by location within the block and along a street. TDR's may permit a taller building, a larger building lot coverage, and/or greater residential unit count than would otherwise be permissible under zoning regulations.

Briefly, the process involves merging adjacent zoning lots into a single zoning lot, which would then allow for the distribution of the TDR's on the newly-created enlarged single zoning lot; in this way, the new development can use the undeveloped potential of the adjacent property.



Courtesy of NYC Department of City Planning

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The process of transferring development rights involves several key components and considerations, which include:

1. **Zoning Analysis:** The analysis includes a study of the amount of available TDR's, as well as confirmation of zoning and code requirements for all structures on the proposed enlarged zoning lot. Unless the selling property is a designated City landmark, these transactions are typically restricted to properties that share at least 10 linear feet of lot line. In certain situations, landmarks or properties located within particular Special Districts may transfer their TDR's to neighbors within a certain geographic area.

2. **Negotiating a Purchase and Sale Agreement:** Once the available development rights are determined, the parties negotiate the terms of the transaction, including the purchase price. The purchase price may be determined by the square footage of the floor area transferred or a flat fee for all excess development rights, which should be memorialized, among other considerations, in an agreement.

3. **Zoning Lot Development Agreement:** The parties should also negotiate a Zoning Lot Development Agreement ("ZLDA") detailing the specific rights and obligations of the parties to the proposed merged zoning lot. The ZLDA directs the understanding of the parties, including the amount of excess development rights to be transferred, the lots involved, and future development conditions and rights (including in the event of an upzoning or downzoning).

4. **Zoning Lot Merger/Department of Buildings:** The zoning lot merger is effectuated upon the execution and recording of zoning exhibits with the City Register's Office. The required zoning exhibits include a certification from a New York State licensed title company, which confirms the property interest rights in each affected tax lot, and may include additional agreements with lenders, if any, agreeing to the zoning lot merger. It is important to note that the merger of the zoning lots does not affect the metes and bounds of the affected tax lots—a single merged zoning lot may encompass multiple tax lots.

5. **Construction in accordance with ZLDA:** Any future development must abide by the terms of the ZLDA and the zoning exhibits. In addition, all application documents submitted to the Department of Buildings must refer to the merged zoning lot and include all existing and proposed conditions.

The coneyeance of transferable development rights offers an opportunity to unlock additional value in property and provides significant financial benefit for both the seller and purchaser. Complex legal analysis, negotiation and proper procedures must be adhered to in order to ensure a smooth transfer and development.

To learn more about the development potential of your property, contact Frank Noriega and Ron Mandel of our Zoning and Land Use Group. With in-depth knowledge of the City's zoning laws and regulations, BBG can provide property owners, developers and design professionals with the necessary advice and counsel.

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The New J-51 Does Little to Incentivize Affordable Housing Development

BY ZACHARY NATHANSON

On January 31, 2023, Governor Kathy Hochul took some steps in an attempt to fill the affordable housing void in New York City. The Governor's proposals included the extension of the Affordable Housing New York program ("421-a(16)"), the introduction of a brand new tax incentive program for commercial conversions in New York City, and replacing the J-51 affordable housing program with a narrowly-tailored successor. Only the J-51 proposal passed both houses of the New York State Legislature.

Under the proposal, new Real Property Tax Law section 489, dubbed the Affordable Housing Rehabilitation Program ("AHRP"), would replace the J-51 program, which lapsed on June 29, 2022. The legislature passed AHRP with the hope that it would help "preserv[e] habitability in affordable housing" and encourage renovations and alterations in existing residential buildings.

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Eligibility

AHRP benefits are available for existing residential rental buildings with a total assessed value in excess of $1,000 in the fiscal year immediately preceding the commencement date ("Rental Projects"), as well as existing condominiums or cooperative buildings that have an average total assessed value of $45,000 per dwelling unit ("Homeownership Projects"). The benefit is also available for existing homeownership buildings that are owned and operated by either a mutual company or a mutual redevelopment company – as defined in Private Housing Finance Law Section 12 ("Regulated Homeownership Projects").

Eligible residential alterations or renovation work must be completed between June 30, 2022 and June 30, 2026. AHRP projects must be completed within 30 months from the commencement date, and the AHRP project cannot result in any increased cubic space.

AHRP benefits are not available under the following circumstances: (1) properties that operate in whole, or in part, as a hotel; (2) construction of a new building; (3) properties receiving a concurrent real property tax exemption or abatement; (4) there are outstanding real property taxes, water charges, sewer charges, or payments in lieu of taxes ("Outstanding Payments") due on the last date of the tax year prior to receipt of benefits; or (5) if Outstanding Payments remain due for at least one year during the term of the AHRP benefits.

Affordability Requirements

Much like the Governor's underwhelming proposal in January, AHRP also requires that at least 50% of the units in the existing rental building be affordable at a reduced average median income ("AMI").

Rental units are considered "affordable" for the purposes of AHRP if they are restricted to those with an "extremely low-income" AMI. Limited-profit housing companies or recipients of substantial government assistance would not have these same affordability requirements.

Affordable units must be leased for a one-year or two-year term only, with a notice informing the affordable tenant of rights pursuant to AHRP in at least 12-point typeface.

Market-rate units and affordable units in Rental Projects are subject to rent regulation as of the filing of the application through the first vacancy after the expiration of the restriction period. This does not apply in circumstances where the unit would otherwise be subject to rent regulation. Additionally, provided that the owner is not a recipient of substantial government assistance, the owner must waive any MCI increases and file a declaration as such with DHCR.

The Benefit

Pending the City Council's review, the AHRP would provide an annual abatement of real property taxes for the building, calculated as 8⅓% of the total reasonable certified costs of construction ("Construction Costs"), and the total AHRP abatement would total 70% or less of the Construction Costs. The annual abatement of building taxes in any given year (defined as any consecutive 12-month period) cannot exceed the real property taxes payable in that year.

The abatement of real property taxes for the building would be effective for a maximum of twenty (20) years. The restriction period – the period affected by AHRP requirements – lasts for fifteen (15) years, or for additional time if there is non-compliance, as defined herein.

The benefits are applied differently for Homeownership Projects, Regulated Homeownership Projects, and rental buildings owned by a limited-profit housing or redevelopment company.

AHRP benefits are not allowed for any Construction Cost which benefits a non-residential portion of a building, and those costs are apportioned so that benefits are provided only to residential space.

The Application

The Application for AHRP is to be submitted to HPD on or before the later of (1) four months from the effective date of the local law, to be determined; or (2) four months from the completion date.

The Application itself includes: (1) a non-refundable filing fee of $1,000 and $75 for each unit in excess of six dwelling units; (2) evidence of eligibility for benefits; (3) a Certified Reasonable Cost Schedule; (4) responses to any HPD checklists, as elaborated herein; and (5) an Affidavit of No Harassment. If the application is approved, a Certificate of Eligibility and Reasonable Cost will be issued, the event that starts the restriction period and the AHRP abatement benefit.

HPD may issue only three (3) or fewer checklists per Application, and failure to respond to a checklist within 30 days results in a denial of the Application, and no other Applications for the same project may be submitted.

Non-Compliance Penalties

AHRP includes unique penalties for non-compliance, including, in part, the extension of the restriction period, an increase in the number of affordable units, termination or revocation of benefits, and/or a monetary penalty equal to the product of $1,000 for each instance of non-compliance and the number of dwelling units in the building.

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Conclusion

If the Governor signs this legislation, and it is authorized by the City Council, AHRP would represent the only legislation which would incentivize affordable housing development. However, even with this goal in mind, the proposed abatement would benefit only a very narrow segment of owners. The original J-51 program struggled to garner traction because of its restrictions and limited benefit – but this legislation goes further to cut the benefit and increase the burden on owners. Overall, the program provides little for owners, and accomplishes even less than its erstwhile predecessor did.

AHRP will do little to change the affordable housing crisis in New York. The State legislature has repeatedly missed out on opportunities for an improved Affordable Housing New York ("421-a") program, an office-to-residential affordable housing conversion program, or any other meaningful steps to increase the accessibility of housing for those who really need it.

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First Department Rules Once Again That Fraud in the Rent Regulatory Context Requires More Than Just a Jump in Rent or Registration Failures

BY MAGDA L. CRUZ

In a tenant class action seeking rent overcharge damages based on improper deregulation of apartments in four buildings while J-51 tax benefits were being received, the Appellate Division, First Department has reaffirmed its prior holdings concerning the extent of evidence needed to establish a cause of action for fraud as a matter of law.

In S.M. Thomas, et al. v. 560-566 Hudson LLC, issued on September 14, 2023, the Appellate Division reversed the lower court decision that had declined to dismiss the tenants' fraud claims. The Appellate Division held that the tenants' fraud claims were legally insufficient because the deregulation that had occurred at the buildings was based on a misinterpretation of law rather than willfulness, and that the tenants had failed to submit evidence to establish the necessary elements of fraud, such as reliance.

Of note in the decision is the fact that the deregulation at these buildings had occurred both before and after the seminal 2009 holding in Roberts v. Tishman Speyer Props., L.P, which ruled deregulation to be impermissible while a building was receiving J-51 tax benefits. This aspect of the decision implicitly disavowed the notion that only pre-Roberts deregulations are presumptively non-fraudulent. The Appellate Division in S.M Thomas made clear that tenants bore the heavy evidentiary burden of establishing the elements of fraud regardless of when the deregulation occurred. (One justice wrote a concurring opinion to say that he disagreed with the majority on this point and did not think it was necessary to opine on the "substantive law" where the tenants' motion failed on a threshold evidentiary matter.)

On another point of law, the Appellate Division was unanimous, reaffirming that the punitive default formula set forth in the Rent Stabilization Code for calculating the legal rent of an apartment is generally reserved for instances where "the base rent is the product of a fraudulent scheme to deregulate the apartment" and not merely where actions taken in connection with a mistaken deregulation may have caused an improper rent to have been charged on the relevant base date. Because the tenants failed to establish that any fraudulent scheme to deregulate had occurred at these buildings, the default formula could not be applied.

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The Appellate Division stated, once again, that "[a]n increase in rent combined with registration failures, without more, is insufficient on a motion for summary judgment to establish a fraudulent scheme to deregulate an apartment as a matter of law." This is a ruling it had made in an earlier rent overcharge class action, Tribbs v. 326-338 E. 100th LLC, where the Appellate Division had noted that the absence of any tenant affidavit recounting facts to support their claim was fatal to their summary judgment motion. Here, too, the tenants failed to submit any affidavit "concerning reliance and damages, or clearly set[ting] out evidence of leasing history" – a failing that all the justices agreed was dispositive. Instead, the tenants submitted only documentary evidence in the form of rent rolls showing deregulated apartments, and free market leases and renewal leases.

Although the Court found that some of the leases disclaimed receipt of J-51 benefits, apparently improperly, the Court concluded that "[t]his evidence, which does not demonstrate fraud as a matter of law [citing footnote 7 in Regina Metro. Co., LLC v. NYS Div. Hous. Comm. Ren.] is insufficient on a motion for summary judgment to establish a fraudulent scheme to deregulate apartments in the buildings."

With this strong decision in S.M. Thomas, the First Department continues its line of precedents rejecting tenant fraud claims in rent overcharge class actions.

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Avoiding Gaps in Additional Insurance Coverage in Construction License Agreements

BY ROBERT A. JACOBS

The use of construction license agreements continues to proliferate in the construction industry. For those unfamiliar with such agreements, they are entered into between adjacent property owners where one of the properties is undergoing construction activities and the adjacent (impacted) property is required to be protected under City law. Such protection could involve, among other things: sidewalk shed installation, roof protection, netting, overhead protection to terraces and setbacks, and may also include support of excavation where demolition is taking place. The purpose of a license agreement is to govern the rights of the parties and provide oversight in connection with the construction and protection process, as well as an indemnity in favor of the owner of the impacted property. The agreement also serves as a vehicle for the provision of additional insurance to the owner of the impacted property, since in many instances a written agreement is required to trigger additional insurance coverage.

As an initial caveat: Certificates of insurance are for informational purposes only and do not confer any rights or legally bind the insurance company. They have referential value only in providing, among other things, the limits of insurance and identity of the additional insureds As a result, to confirm additional insurance coverage, the underlying policy or policies must be reviewed. Additionally, and equally as important, contrary to popular belief, additional insurance coverage provides liability protection only and does not cover direct loss to property caused by the construction, which should be covered in the indemnity provisions of the license agreement. Specifically, additional insurance coverage protects the covered party from third party claims for bodily injury or property loss resulting from the construction. Thus, if a contractor drops a hammer to the sidewalk in front of the impacted property, the additional insurance coverage will cover the owner of that property if it is sued by a pedestrian injured by the falling object.

In determining the extent of additional insurance coverage, one must look at the coverage granted to the underlying insured since additional insurance coverage cannot be greater than the coverage provided to the insured.

Notably, liability policies have certain exclusions that will limit or exclude such coverage. The most common exclusion is called an "action-over exclusion". This type of exclusion denies third party claims by an employee of the insured against the insured or additional insured. It is generally contained in the exclusion section of the policy under the heading "Employer's Liability Exclusion". An example of an action-over exclusion is provided in below Section e. of a sample liability policy:

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **(1)** above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

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Based on this exclusion, if a contractor is providing the liability insurance and its worker is injured while on the impacted owner's roof, the additional insurance coverage will not cover the impacted owner if sued by the contractor's employee. As for the party required to provide the additional insurance (the "insured"), such Labor Law claims are generally covered by workers compensation. However, for the impacted property owner allegedly covered by the additional insurance, such coverage will not be provided if there is an action-over exclusion, despite what may be stated in the certificate of insurance.

Notably, the above exclusion provides in the final section that it does not apply to liability assumed by the "insured" under an "insured contract", which is a defined term in every policy. In the policy in question, an "insured contract" is defined to include the following:

> That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

As a result, in order to qualify as an "insured contract", the party providing the additional insurance must agree in writing to indemnify the additional insured with respect to tort claims by a third party for "bodily injury" or "property damage" resulting from the construction project. This is generally accomplished by having the contractor sign the license agreement as a co-indemnitor with the property owner performing the construction and as the provider of additional insurance to the owner of the impacted property.

The additional insurance coverage should still protect the named additional insured against third-party claims by persons not employed by the contractor; however, since employee injuries are common in the construction industries, an action-over exclusion leaves a substantial gap in coverage.

There are methods an insurance company might employ to override or circumvent this exception by special endorsements, including:

- ***Amended Employer's/Contractor's Liability endorsement***, which is an endorsement that excludes claims due to "bodily injury" of an employee of the insured in conducting operations, services and/or duties related to the conduct of the insured's business plus an exclusion for Employer's New York Labor Law Liability for bodily injury arising out of any suit, claim and/or demand for which an insured is or may be liable under the New York State Labor Law, including but not limited to §§ 200, 240, 241 and 241-a.
- ***Work height exclusions***, which exclude coverage for bodily injury arising directly or indirectly out of the subcontractor's work performed above a specified height.
- ***Scope of work exclusions***, which bar coverage for bodily injury resulting from specified types of work. Notably, it is not unusual for subcontractor policies to have exclusions related to some of the scope of work they are hired to perform.
- ***Sunset clauses***, which set a predetermined cut-off date for the policy to cease responding to claims. In the context of an action-over claim, the policy may shorten the time period for coverage of the worker's bodily injury claim to a period shorter than the statute of limitations.

Based on the above, a review of the underlying liability policies by someone familiar with insurance law and the inclusion of a properly drafted indemnity provision in the license agreement are imperative to ensure that the coverage contemplated by the license agreement is being provided to the additional insured.

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Uptick in TPU Audits – Be Prepared

BY LOGAN J. O'CONNOR

It has recently become apparent that the New York City Tenant Protection Unit ("TPU") is taking a more aggressive approach in its investigations, and that owners must be prepared.

The TPU is a department within the Division of Housing and Community Renewal ("DHCR"), created to enforce the Rent Stabilization Law and Code, among other things. The TPU is tasked with conducting audits, reviews and investigations in order to ensure that owners are complying with law and reporting requirements.

Recently, we have seen a significant increase in TPU audits. It appears that the TPU is examining DHCR registration reports for the past six years, in detail, to locate random jumps in recorded rents. TPU seems to be cracking down specifically on individual apartment improvements ("IAI's"), deregulations during J-51 tax abatement periods, and rent overcharges.

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If the TPU commences an official audit, the TPU will demand that owners explain the basis for a rent increase and/or exemption filing in a DHCR registration statement. In response, owners must be prepared to provide: (i) copies of the relevant vacancy lease(s), (ii) copies of all rent stabilized renewal leases during the relevant time period, (iii) the calculation resulting in the rent increase, (iv) a copy of the contract for the IAI's performed (if any), (v) a copy of the invoice(s) and receipts marked "paid in full" for any IAI's performed, (v) front and back copies of cancelled checks for payment of the IAI invoices, and (vi) a contractor's affidavit, describing the IAI's performed, attesting that they were completed, identifying the total cost, and attesting to payment in full. The cancelled checks should reflect the correct contractor and/or supplier and the unit number. Also helpful are "before" and "after" photographs.

Furthermore, it is important to be mindful of the "allowable" IAI costs, as identified in DHCR's Operational Bulletin 2016-1. The TPU will only recognize qualifying IAI costs of improvements, new equipment or new services. Many items constituting ordinary repairs or maintenance upon turnover, such as painting, may not be allowed (depending upon the circumstances).

If an owner is unable to comply fully with a TPU audit, the TPU may commence an overcharge proceeding before the DHCR. And a finding of overcharge under these circumstances could result in treble damages.

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Acceptance of ERAP Funds and the Creation of a Lease

BY ANDREW T. STAFUTTI

On June 1, 2021, the New York State Office of Temporary and Disability Assistance ("OTDA") began accepting applications for the Emergency Rent Assistance Program ("ERAP"), an economic relief program developed to help eligible households residing in their primary residences to request assistance for rental and utility arrears accumulated during the COVID-19 pandemic. Approved applicants are able to receive benefits equal to: up to twelve months of rental arrears payments for rents that accrued on or after March 13, 2020; up to three months of rental assistance for future rent if the household meets certain income qualifications; and up to twelve months of electric or gas utility arrears payments for arrears that accrued on or after March 13, 2020. (The statutory reference is L. 2021, c. 56, Part BB, Subpart A, § 9(2)(d)(iv), as amended by L. 2021, c. 417, Part A, § 5.)

In consideration for accepting monies from ERAP, landlords are bound by certain requirements. According to the statute, "acceptance of payment for rent or rental arrears from this program…shall constitute agreement by the recipient landlord or property owner: (i) that the arrears covered by this payment are satisfied and will not be used as the basis for a non-payment eviction; (ii) to waive any late fees due on any rental arrears paid pursuant to this program; (iii) not to increase the monthly rent due for the dwelling unit such that it shall not be greater than the amount that was due at the time of application to the program…; (iv) not to evict for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance payment is received", with certain exceptions depending on the number of units in the building and the landlord's intention to occupy the unit for personal use.

Recently, the fourth section has been the subject of conflicting decisions issued by judges in New York County Landlord & Tenant Court. The question is whether acceptance of ERAP monies precludes a landlord from commencing a no-lease holdover proceeding.

In 100 Realty Equities LLC v. Yifei Tian, 2023 N.Y. Slip Op. 50411(U) (involving a holdover proceeding premised on the allegation that there was no lease in effect), Judge Jack Stoller held that the acceptance of ERAP monies "creates the kind of an agreement that is essentially a lease, whether for the purposes of giving rise to liability for nonpayment of rent, or to negate the proposition that a tenant is really just a holdover." In this proceeding, the respondent's tenancy was terminated as of June 30, 2022 and the proceeding was commenced on July 8, 2022. The landlord had received ERAP monies on December 30, 2021.

The Court reasoned that the pendency of a lease bars the type of no-lease holdover that the landlord commenced against respondent in this case. The Court's holding focused on the word "agreement" in the statute, namely that the Legislature did not simply say that "a landlord's acceptance of ERAP benefits would stay a landlord from evicting an ERAP applicant for one year without using the word 'agreement'". The Court held that the Legislature's "choice to provide that a landlord's acceptance of an ERAP benefit constitutes an 'agreement' not to evict a tenant or increase a tenant's rent." Furthermore, the Court stated that since statutes that use the word "agreement" in a landlord/tenant context use it to mean "the kind of binding lease that gives rise to a landlord's cause of action against a tenant for nonpayment of rent (RPAPL § 711(2)), or a tenancy for a term longer than month to month (RPL § 232-c))", the word "agreement" must have the same meaning here.

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However, in 417 East Realty LLC v. Rahul Kejriwal et al., 192 N.Y.S.3d 908, Judge Karen May Bacdayan came to the opposite conclusion. In this proceeding, commenced in December 2022, the respondents' lease had expired and respondents were served with a Notice of Non-Renewal in September 2022. In April 2022, the landlord had accepted ERAP monies on the respondents' behalf. Respondents contended that the landlord was "foreclosed from 'seeking to evict' respondents by service of a notice of nonrenewal of lease during the 12-month period commencing with the acceptance of ERAP funds."

Judge Bacdayan held that the "agreement" the landlord entered into when it accepted ERAP monies was with OTDA, not with the respondent, and that the respondent is simply a third-party beneficiary. The Court found that "as a third-party beneficiary, the approved applicant [respondent] benefits from the ability to enforce the terms of the landlord's agreement with OTDA by raising as a defense that their rent was prematurely increased, or by seeking a stay of the execution of a warrant in a summary proceeding for up to 12 months from the landlord's first acceptance of the ERAP funds. This Court finds that respondent did not enjoy a statutorily created lease between himself and his landlord for one year, nor can it be inferred that this was the parties' intent."

Judge Bacdayan's analysis focused on the explicit meaning of the word "evict", which Black's Law Dictionary defines as "to expel (a person, esp. a tenant), from real property, usually by legal process" and "to recover (property or title) from a person by legal process." Judge Bacdayan held that the Legislature intended the plain meaning of the word "evict" to mean just that—an actual eviction, not the serving of predicate notices to a holdover proceeding, holding to a strict reading of the plain language of the statute.

Most recently, in August 2023, Kings County Housing Court Judge Tashanna Golden, in 1614 Midwood Holdings LLC v. Tiliaeva , 2023 N.Y. Slip Op. 23249, cited to Tian in her decision in a non-payment proceeding that was commenced after the lease had expired. Judge Golden held that the acceptance of ERAP monies by a landlord after the lease expired created a new 12-month tenancy. Her decision borrows from both Tian and 417 East in reasoning that not only does the plain language of the statute "support[s] a reading that an agreement has been entered into upon a landlord accepting the ERAP funds", but that the respondent is an active participant in the ERAP application process as was noted in the 417 East decision, and therefore both landlord and respondent's participation in the ERAP application "showed their intention to reinstate the landlord-tenant relationship".

With these conflicting rulings (two coming from the same County), we will likely have to wait until appellate Courts consider this question and issue definitive rulings on whether the acceptance of ERAP monies creates a new 12-month tenancy that would bar landlords from commencing holdover proceedings for reason of an expired lease.

*Andrew T. Stafutti is an associate in the Firm's Litigation Department, and can be reached at 212-867-4466 ext. 349, **astafutti@bbgllp.com.***

New Flood History Disclosure Law Impacts Co-Ops, Condo Owners, and Rental Buildings

BY AARON SHMULEWITZ

New York State Real Property Law §231-B went into effect on June 21, 2023 and requires "every residential lease" to provide notice to the tenant of whether "any or all of the leased premises": (i) is located in a FEMA-designated floodplain, (ii) is located in a FEMA-designated 100-year floodplain, (iii) is located in a FEMA-designated 500-year floodplain, and (iv) suffered any prior flood damage due to a natural flood event (including, specifically, "heavy rainfall") that the lessor knows or reasonably should know has occurred, and the nature of any such damage. "Every residential lease" is also required to notify tenants—-with prescribed language--that flood insurance is available through FEMA.

"Every residential lease" would include apartment leases in rental buildings, as well as co-op proprietary leases, house leases, and, apparently, leases of condo apartments by their individual unit owners.

While obviously well-meaning, the new law will make management of co-ops and rental buildings more difficult, as owners and managing agents will now be required to ensure that every tenant receives such a notice when his/her lease (or renewal lease) commences. While the statute requires that the disclosure be in every "lease", it would seem that the prescribed notice on a separate piece of paper would apparently comply (and would save co-ops from having to go through the time, effort and expense of amending their proprietary leases through a super-majority vote of shareholders).

The statute does not provide for any penalty for non-compliance.

*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 Continues to Expand and Welcomes New Hires

The Firm has recently added the following attorneys and professional support staff in 2023:

New Hires - Professional Support Staff

The following individuals joined as professional support staff:

SAMUEL FORREST
Junior Staff Accountant

BENSON JEAN
Junior Staff Accountant

BBG Anniversaries

BBG would like to acknowledge and congratulate the following members of the BBG team who have been with the Firm for over 5 years and whose work anniversary dates fall in the months of July - September. As we reflect on these significant milestones, we express our sincere appreciation for their support, hard work, and unwavering commitment.

David Skaller, Partner & Co-Chair of Litigation Dept. – 34 Years

Martin Heistein, Partner & Co-Chair of Administrative Dept. – 31 Years

Melvin Esser, Paralegal – 27 Years

Paul Kazanecki, Legal Assistant – 23 Years

Charleuan McDonald, Legal Secretary – 23 Years

Jaime Orellana-Borjas, Office Services Clerk – 19 Years

Timothy Sanabria, Office Services Clerk – 19 Years

Levonia White, Legal Assistant – 19 Years

Allison Lissner, Partner – 10 Years

Javon Lawrence, Jr., Office Services Clerk – 8 Years

Logan O'Connor, Partner – 5 Years

Awards & Accolades

We extend our heartfelt congratulations to the following attorneys for being recognized as **The Best Lawyers in America® for 2024 in Real Estate Law**, by Best Lawyers, the oldest and most respected peer-review publication company in the legal profession:

We are also thrilled to announce that our attorneys have once again been included on the **2023 New York Metro Super Lawyers and Rising Stars** list, and we are proud to say that the list of talented individuals from BBG receiving this award is longer than ever before!

A special congratulations to Daniel T. Altman, BBG Co-Managing Partner & Co-Chair of the Transactional Group, for being included on this list for 10 years!

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We are delighted to announce that Kara I. Rakowski, Partner and Co-Chair of the Administrative Department, has been recognized as a **2023 Woman in Commercial Real Estate Spotlight** for her outstanding professional and civic achievements.

Ms. Rakowski has been a valued member of our firm since 1991, bringing with her extensive experience in representing property owners in rent regulation matters. She provides expert advice on the development of rent-regulated properties, obtaining Certificates of Non-Harassment, navigating Single Room Occupancy/Hotel Stabilization regulations, NYC Loft Law, and human rights issues. Furthermore, Ms. Rakowski adeptly represents property sellers, buyers, and lenders in matters concerning rent regulatory due diligence and affordable housing considerations.

Please join us in extending our heartfelt congratulations to Ms. Rakowski for this well-deserved recognition!

Popular Social Media Posts

Sherwin Belkin • 1st
Founding Partner at Belkin Burden Goldman, LLP

I had an interesting conversation yesterday with a friend from England. She had read an article in the NY Times about New York's rent stabilization law and was puzzled by it. She knew little about these laws. The questions I was asked are quite revealing as to the absurdity of these laws. I was asked:
"Why are the landlords obligated to take below market rents?"
"Isn't there some income qualification so that only those tenants in need obtain below market housing?
"The tenant doesn't own the apartment. How is it possible that the apartment can get transferred from one tenant generation to the next?"
"Doesn't this push tenants to stay in apartments that they've outgrown?"
"Why isn't this a governmental issue, instead of a private property owner's obligation?"
Yes, I've paraphrased the questions a bit, but this was the sum and substance of our conversation. What was fascinating was how overt my friend, with no background in these laws, found the lack of logic and rationality to rent stabilization. If only the politicians could see things as clearly.
@belkinburdengoldmanllp #housing #rentregulation

136 42 comments · 4 reposts

Belkin · Burden · Goldman, LLP
4,292 followers

🌎🏢 Navigating Local Law 97: BBG Assembles Team to Assist Clients with Compliance and Financing Solutions🏢🌎

📅 Deadline Alert: As the first potential deadline of January 1, 2024 looms for buildings (including co-ops and condos) to comply with the city's Climate Mobilization Act, BBG has assembled a team to assist property owners' efforts to comply with the emissions reduction law, reduce the risk of penalties and navigate financing options/solutions for eligible green retrofits.

👥 Meet the BBG Local Law 97 Team:
-Daniel Altman: Leasing and Financing
-Jeffrey L. Goldman & Adam Bernstein: Litigation Risks
-Martin Heistein: Administrative Agency Filings & Leases
-Ron Mandel: Development and Zoning
-Michael Bobick: Loft Law
-Lloyd Reisman: Cooperative, Condo Representation and Contracts

📞 For more information about these rules or if you require assistance, click the following link: https://bit.ly/3KIDYz8.

#NYCBuildings #compliance #ll97 #localaw97 #realestate #nyc #legal

34 6 reposts

Sherwin Belkin • 3rd+
Founding Partner at Belkin Burden Goldman, LLP

NYC just enacted Local Law 107 that can impose fines on owners who "knowingly" rent to illegal cannabis or smoke shops.
"Knowingly" can be a nebulous term. To try to establish a defense BEFORE you rent, consider contacting BBG for a lease rider that places the onus on the tenant to represent legal use and indemnify the owner for all penalties and costs incurred if the tenant violates its promise not to engage in the illegal activity.
@belkinburdengoldman #locallaw107 #lease #cannabis

77 6 comments · 4 reposts

FOLLOW US

Recent Transactions of Note

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

Leases

Partner **Allison R. Lissner** represented a national REIT in connection with a retail lease to a national dollar store chain in Fairlane Green, Michigan.

Partner **Allison R. Lissner** represented a national REIT in connection with a lease to an international sneaker/athletics store in Elmwood Park, New Jersey.

Partner **Allison R. Lissner** represented a publicly-traded restaurant group in connection with a lease in Jackson Heights.

Partner **Allison R. Lissner** represented the owner of a newly-constructed multi-purpose building in connection with a lease to a hospital group for medical offices in Midtown.

Partners **Daniel T. Altman** and **Deborah L. Goldman** represented the building owner in connection with a hospital lease in Brooklyn.

Partners **Daniel T. Altman** and **Deborah L. Goldman** represented the owner in connection with a lease for a café in Midtown.

Partner **Deborah L. Goldman** represented the owner in connection with a lease for a liquor store in Gramercy Park.

Partners **Deborah L. Goldman** and **Allison Lissner** represented the tenant in connection with a lease for a new restaurant concept in Midtown South.

Partner **Deborah L. Goldman** represented the owner in connection with a lease for a retail store and showroom in Gramercy Park.

Partner **Deborah L. Goldman** represented the owner in connection with the negotiation and consummation of an assignment, modification and extension of a lease for a hyperbaric oxygen therapy facility in Midtown.

Buy/Sell and Refinancing Transactions

Partners **Stephen M. Tretola** and **Deborah L. Goldman** and associate **Joshua A. Sycoff** represented a group of entities selling several properties in New York on a 1031 exchange, with the sale funds to purchase a triple net property being utilized as a cannabis dispensary in Florida.

Partner **Murray Schneier** acted as local counsel on behalf of a lender for a $40 million mixed use property in Brooklyn.

Partners **Craig L. Price** and **Lawrence T. Shepps** and associate **Lauren K. Tobin** handled the $10 million purchase of a mixed use property in lower Manhattan by Targo Capital Partners. **Mr. Price** and **Ms. Tobin** also handled the $9 million purchase and financing of another lower Manhattan building by the same purchaser.

Partner **Stephen M. Tretola** and associate **Joshua A. Sycoff** represented the purchaser of a $14.5 million Brooklyn building.

Partner **Stephen M. Tretola** and associate **Joshua A. Sycoff** handled the mortgage refinancing of several multifamily properties in Pennsylvania.

Partners **Craig L. Price** and **Lloyd Reisman** and associate **Lauren K. Tobin** represented four individual sellers in connection with the simultaneous sale of each of their cooperative apartments to a single purchaser for the aggregate sum of $8.9 million.

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Partners **Craig L. Price** and **Michael J. Shampan** and associate **Joshua A. Sycoff** represented the purchaser of a $10.5 million West Village townhouse and the purchaser of an $8 million Upper West Side townhouse.

Partners **Lloyd Reisman** and **Michael J. Shampan** represented the seller of a $10.5 million Upper East Side condominium unit.

Partner **Michael J. Shampan** represented the purchaser of a $9.5 Upper East Side condominium unit.

Recent Notable Matters Handled by Our Land Use/Zoning Team

Partner **Ron Mandel** and Associate **Frank Noriega**:

Counseled a developer regarding zoning and Code issues involving the conversion of existing hotels in Queens, Manhattan and Brooklyn.

Provided zoning and land use due diligence for the conversion of a Manhattan townhouse to a religious facility.

Represented a client on the sale of development rights (air rights) and related transactional issues.

Successfully obtained a determination from the Department of Buildings to authorize the conversion of a building from manufacturing use to an eating/drinking establishment along a commercial thoroughfare in Queens.

Counseled a client in connection with a zoning map amendment (rezoning) application to permit residential multifamily development in Manhattan.

Served as land use counsel and prepared zoning opinion letters for financings related to properties in Queens, Brooklyn and Manhattan.

Represented a property owner in the preparation and processing of an application to the Department of City Planning to permit use as a bank of a landmarked building in Manhattan.

Successfully negotiated zoning and maintenance agreements with the Department of City Planning and the Department of Parks and Recreation related to waterfront access along the East River.

Appeared before the Board of Standards and Appeals for a special permit to authorize commercial use.

BBG in the News

Founding partner **Sherwin Belkin** was quoted in columns in The Real Deal on June 29, 30, and July 6, criticizing proposed State legislation that would hamper the ability of owners to continue to deregulate substantially- rehabilitated buildings

Mr. Belkin was also quoted in an August 18 article in the same publication, and in a reprise in The Daily Dirt feature of the same publication on August 21, advising owners how to prepare for the potential impact of the impending legislation

Mr. Belkin was also quoted in a September 5 article in the same publication, discussing how the HSTPA has adversely impacted owners of rental buildings and in a September 17 article in the same publication on developers' buyouts of tenants

Mr. Belkin will also be a participant at the Greenpearl New York Multifamily Summit on October 12, participating in the Rent Stabilized Private Round Table

Administrative Law Department co-head **Kara Rakowski** was the featured presenter in a July 19 webinar on New York Multifamily Quarterly Policy Update, sponsored by Marcus & Millichap.

Ms. Rakowski was also a featured speaker at the August 23 New York Affordable Housing Conference, sponsored by Bisnow, speaking on the topic of "Good Cause Eviction and the Future of New York Housing Dynamics"
The event was reported on in an August 30 article in Bisnow.com

Administrative Law Department co-head **Martin Heistein** was a featured presenter at the Property Management, Construction and Real Estate ("PCON") conference on August 8, speaking on the topics of "Staying Ahead in NYC Property Management" and "A Deep Dive into L&T Law and its Implications".

Transaction Department partner **Deborah L. Goldman** will be a featured speaker at the ICSC Law Conference on October 27, on the topic of ground leases. In addition, **Ms. Goldman** has been named an adjunct professor at St. John's University School of Law, to teach "Commercial Real Estate Leasing" in the spring, 2024 semester. Also, an article co-authored by **Ms. Goldman**, "Reviewing a Lease Agreement--Traps for the Tenant," will be republished by PLI in its course handbook for its annual Commercial Real Estate Institute program in the autumn, 2023.

The Firm's appellate representation of the property owners who are challenging the declaration of a housing emergency by the city of Kingston was cited in an August 8 article in Hudson Valley One

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 ext. 390, or **ashmulewitz@bbgllp.com**.*

CONDO UNIT OWNER CAN SUE SPONSOR AND PRINCIPAL FOR EXCESSIVE NOISE EMANATING FROM ELEVATOR MACHINE ROOM

Oceanhouse NYC, LLC v. 140 West Street (NY), LLC Supreme Court, New York County

COMMENT | The offering plan contained specific representations about decibel levels.

SHAREHOLDER IN GROUND LEASE CO-OP CANNOT SUE BOARD FOR PURSUING NEGOTIATIONS FOR PURCHASE OF UNDERLYING LAND

Madan v. 57th & 6th Ground LLC Supreme Court, New York County

COMMENT | The Board's decision was protected under the business judgment rule.

CO-OP SHAREHOLDER CAN'T ENJOIN NEW ROOF DEAL WITH PENTHOUSE SHAREHOLDER

Schmidt v. The Board of Directors of Duane Owners, Inc. Supreme Court, New York County

PURCHASE APPLICANT REJECTED BY HDFC CO-OP CAN SUE FOR HOUSING DISCRIMINATION

Xia v. 65 West 87th Street HDFC United States District Court, Southern District of New York

COMMENT | Questions of fact regarding Board members' intentions precluded summary judgment.

CONDO UNIT OWNER MUST INDEMNIFY CONDO UNDER ALTERATIONS AGREEMENT, EVEN THOUGH NOT SIGNED BY CONDO

Colindres v. Mohajer Supreme Court, Kings County

CONDO UNIT OWNER CAN MOVE FOR APPOINTMENT OF RECEIVER FOR APPARENTLY-MISMANAGED CONDO

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

COMMENT | The alleged mismanagement included unpaid bills, uncollected common charges, and no elections for 18 years.

MISPOSITIONED DEMISING WALL BETWEEN TWO COMMERCIAL CONDO UNITS MAY REMAIN IN PLACE

DLK, LLC v. Kireland-B LLC Supreme Court, New York County

COMMENT | Involving a 4-foot encroachment, the Court found that an easement existed, protected by the parties' deeds and condo documents.

CONDO UNIT OWNERS CANNOT ENJOIN CONDO FROM REPLACING BALCONY RAILINGS

Bricker v. The Board of Managers of The Vaux Condominium Supreme Court, New York County

COMMENT | The Court ruled that there was no likelihood of success since such repairs were the Board's obligation under the bylaws. How the repairs were to be done was a decision protected under the business judgment rule.

CONDO ORDERED TO HOLD NEW ELECTION WITH ELIGIBLE CANDIDATES, AND VOTING PURSUANT TO BYLAWS

Jablecki v. Board of Managers of Harborview Condominium Supreme Court, New York County

COMMENT | Past sloppy practices were found to have ensured continuing sponsor control.

SUMMARY JUDGMENT DENIED ON CO-OP RESIDENT'S HP ACTION TO FORCE REPAIRS

Lozito v. Celtic Park Management Civil Court, Queens County

COMMENT | Questions of fact existed regarding whose responsibility the repairs were.

HIGHLY LITIGIOUS CO-OP SHAREHOLDER CANNOT SUE CO-OP AND BOARD MEMBERS FOR LEGAL FEES—-BUT IS LIABLE TO PAY THEIRS

Jarmuth v. Nunnerley Supreme Court, New York County

COMMENT | She had filed multiple lawsuits over several years, all dismissed or otherwise disposed of.

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OBJECTION BY NEW SHAREHOLDER TO PRE-EXISTING HALLWAY DECORATION BY ONE SHAREHOLDER REQUIRES REMOVAL OF DECORATION

Neuwelt v. 33072 Owners Corp. Supreme Court, New York County

COMMENT | Per the House Rules. Previously, all shareholders on the floor had agreed on the decorating scheme.

CO-OP SHAREHOLDER CAN BE SUED BY NEIGHBOR FOR DAMAGE ALLEGEDLY DONE DURING ALTERATIONS

Jones v. Riverside Builders Inc. Supreme Court, New York County

CONDO ENTITLED TO SUMMARY JUDGMENT AGAINST DELINQUENT UNIT OWNER

Board of Managers of 444 East 57th Street Condominium v. Maccioni Supreme Court, New York County

TERMINATED SUPERINTENDENT CANNOT BE EVICTED

COD, LLC v. Ljuljdjuraj Civil Court, New York County, Landlord/Tenant Part

COMMENT | Although involving a rental building, an instructive holding for Boards. The super's apartment lease was held to be ambiguous as to continued right of possession after termination.

CONDO CAN SUE SPONSOR AND PRINCIPALS FOR SOME TYPES OF CONSTRUCTION DEFECTS, BUT NOT OTHERS

Board of Managers of The 165 E. 62nd Street Condominium v. Churchill E 62nd LLC Supreme Court, New York County

COMMENT | Depending on whether or not they were the subject of affirmative representations made in the offering plan.

CONDO BOARD'S DELAY IN OBJECTING TO UNIT OWNER'S ALTERATIONS CONSTITUTED CONSENT UNDER THE BYLAWS; BOARD ACTED IN BAD FAITH THROUGHOUT

Parc 56, LLC v. Board of Managers of The Parc Vendome Condominium Appellate Division, 1st Dept.

CONDO MUST REPAIR PENTHOUSE TERRACES, PER BYLAWS

Dhindsa v. The Board of Managers of The Walton Condominium Supreme Court, New York County

COMMENT | Separate and apart from any claims that the condo might have against the sponsor for these, and other, construction defects.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT TO EITHER PARTY IN DISPUTE OVER SUCCESSION RIGHTS TO FORMER MITCHELL-LAMA (BUT NOW MARKET-RATE) CO-OP APARTMENT

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

COMMENT | The last Mitchell-Lama shareholder had died before the co-op's privatization had been completed.

A VIOLATION OF RECORD IS PRIMA FACIE PROOF OF CO-OP'S BREACH OF WARRANTY OF HABITABILITY

Fiondella v. 345 West 70th Tenants Corp. Appellate Division, 1st Dept.

CONDO UNIT OWNER NOT HELD IN CONTEMPT FOR VIOLATING STIPULATION OF SETTLEMENT

The Board of Managers of The Charleston Condominium v. Oppenheim Supreme Court, New York County

COMMENT | Her apartment could not be confirmed as the source of the recidivist offensive marijuana odors that were at issue.

CONDO PURCHASER'S REFUSAL TO CLOSE DUE TO ALLEGEDLY LOW CEILING HEIGHT BREACHED THE PURCHASE AGREEMENT, ENTITLING SPONSOR TO KEEP DEPOSIT

Allen v. 130 William Street Associates LLC Supreme Court, New York County

COMMENT | Small variations in ceiling height were disclosed in the offering plan.

CO-OP SHAREHOLDER CAN SUE PROBLEMATIC NEIGHBOR FOR NUISANCE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Mrishaj v. Moore Supreme Court, New York County

COMMENT | Yelling profanities at children, banging on ceiling.

CO-OP LIABLE TO INJURED EMPLOYEE UNDER ONE PROVISION OF LABOR LAW, BUT NOT UNDER ANOTHER

Panfilow v. 66 East 83rd Street Owners Corp. Appellate Division, 2nd Dept.

COMMENT | Strict liability under the first provision, but no control under the second. Full disclosure—BBG is general counsel to this co-op but was not involved in this case.

GADFLY UNIT OWNER'S SUIT AGAINST CONDO AND BOARD MEMBERS LARGELY DISMISSED

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

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LOFT CO-OP ENTITLED TO UNPAID MAINTENANCE AND LEGALIZATION COSTS FROM SHAREHOLDERS, AND ATTORNEY FEES

Grassfield v. Jupt, Inc. Supreme Court, Kings County

CONDO NOT LIABLE FOR DAMAGES ARISING FROM UNIT OWNER'S RUPTURED WASHER HOSE

Great Northern Insurance Company v. Nelson Supreme Court, New York County

COMMENT | In this 2013 case, the condo and its agents were found to have had no knowledge of the condition; the bylaws make the Unit Owner responsible for apartment appliances.

CONDO CAN SUE SPONSOR AND PRINCIPALS FOR LOW-BALLING ESTIMATED BUDGET AND COMMON CHARGES UNTIL ALL UNITS WERE SOLD

Board of Managers of 570 Broome Condominium v. Soho Broome Condos LLC Supreme Court, New York County

SUIT AGAINST CONDO DISMISSED FOR IMPROPER SERVICE OF PROCESS

Makhnevich v. The Board of Managers of 2900 Ocean Condominium Appellate Division, 2nd Dept.

COMMENT | Service on an officer is required under the General Associations Law. Crucial for practitioners to keep in mind.

TRIAL REQUIRED TO DETERMINE VALIDITY OF COMPETING STOCK CERTIFICATES FOR CO-OP APARTMENT

Jacoby v. Board of Directors 85 8th Avenue Tenants Corp. Supreme Court, New York County

COMMENT | Allegations of forgery and fraud, going back to the 1989 issuance of the stock certificates.

CO-OP MUST REMOVE IVY FROM PARTY WALL, AND MUST REPAIR DAMAGE

Filicia Anstalt Vaduz v. 11 East 73rd Street Corporation Supreme Court, New York County

COMMENT | Full disclosure—BBG is general counsel to this co-op, but was not involved in the litigation.

SUIT DISMISSED OVER CO-OP SUPERINTENDENT'S DISCARDING OF SHAREHOLDERS' STORAGE BIN CONTENTS

Sklar v. 650 Park Avenue Corporation Appellate Division, 1st Dept.

CO-OP EMPLOYEES CANNOT SUE SHAREHOLDER FOR DEFAMATION

North Shore Towers Apartments Inc. v. Kozminsky Appellate Division, 2nd Dept.

COMMENT | The statements were held to enjoy a qualified privilege, since they merely reported on filings in a prior litigation.

CO-OP SHAREHOLDERS CAN SUE DIRECTORS FOR TAKING BRIBES FROM VENDORS AND CONTRACTORS

Torres v. Lindsay Park Board of Directors Appellate Division, 2nd Dept.

COMMENT | The shareholders satisfied the requirement to show that demand on the Directors would have been futile.

CONDO ENTITLED TO SUMMARY JUDGMENT IN SUIT AGAINST UNIT OWNER FOR UNPAID COMMON CHARGES

Lincoln Avenue Condominium v. Demirovic Supreme Court, Richmond County

SHAREHOLDER OF PROFESSIONAL APARTMENT CAN SUE CO-OP FOR ITS UNILATERAL AMENDMENT OF BUILDING C OF O TO RESTRICT HER APARTMENT TO RESIDENTIAL USE ONLY

Buchman v. 117 East 72nd Street Corp. Supreme Court, New York County

COMMENT | The apartment had been used as a professional office for decades. The shareholder can also seek attorney fees if she prevails. Full disclosure—-BBG is general counsel to this co-op, but was not involved in the litigation.

CO-OP SHAREHOLDER NOT ENTITLED TO YELLOWSTONE INJUNCTION TO STOP CO-OP FROM TERMINATING PROPRIETARY LEASE

Webster v. Forest Green Apartment Corporation Appellate Division, 2nd Dept.

CO-OP SHAREHOLDER NOT ENTITLED TO MAINTENANCE ABATEMENT OR DAMAGES FOR WASHING MACHINE NOISE FROM UPSTAIRS APARTMENT

363 East 76th Street Corporation v. London Civil Court, New York County, Landlord/Tenant Part

COMMENT | The Court held that such sounds are part of normal city living. BBG represented the successful co-op.

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