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BBG UPDATE

SPRING 2024 | VOL 70

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Inside this Issue

Piercing the Corporate Veil and Voiding Fraudulent Conveyances in Commercial Lease Litigation and Judgment Enforcement

BY ISRAEL A. KATZ AND BRIAN BENDY

Obtaining a money judgment against a commercial tenant is only half the battle. Often, enforcing a judgment against an entity can prove to be elusive, especially if the entity engages in tactics to shield its assets or evade its obligations and when no personal guaranty is delivered at lease execution. Of course, the entity structure is intended to provide a degree of legal protection, shielding personal assets from business liabilities.

However, these protections are not absolute. Creditors or judgment holders may explore alternate avenues to enforce monetary obligations, including piercing the corporate veil to hold the individual members of limited liability companies or shareholders of corporations responsible for the entities' debts, and even unwinding conveyances made in violation of the New York Uniform Fraudulent Conveyance Act ("UVTA"), governing transfers occurring on or after April 4, 2020. Piercing the corporate veil and unwinding transfers made in violation of the UVTA become potentially potent weapons in the arsenal of judgment creditor property owners and landlords in collecting debts from commercial tenants.

I. Piercing the Corporate Veil: The Basics

Piercing the corporate veil is a judicial doctrine that allows courts to look beyond the corporate form and hold individuals or parent entities accountable for the debtor entity's liabilities under certain circumstances. While the specifics vary depending on the context, there are common scenarios where piercing the corporate veil may be warranted:

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1. ***Alter Ego Doctrine:*** When individuals use the corporate structure to perpetrate fraud, evade legal obligations, or treat the company as their alter ego rather than as a truly separate entity, courts may pierce the corporate veil to hold them personally liable.

2. ***Undercapitalization:*** If a company is inadequately capitalized at its inception or fails to maintain sufficient capitalization to meet its obligations, courts may deem it appropriate to hold shareholders or members liable for the company's debts to ensure fairness to creditors.

3. ***Failure to Follow Corporate Formalities:*** Companies are required to adhere to certain formalities, such as holding regular meetings, maintaining corporate records, and observing proper corporate governance practices. Failure to comply with these formalities may provide grounds for piercing the corporate veil.

4. ***Commingling of Assets:*** When there is a lack of clear separation between the company's assets and those of its owners or shareholders (such as using corporate funds for personal expenses), courts may find justification for piercing the corporate veil.

II. Case Law Examples

A review of recent case law reveals that, while piercing the corporate veil and holding individual members or shareholders of the entity liable for entity debts remains the exception to the general rule of limited liability, courts will not hesitate to pierce the veil in proper circumstances, specifically when the corporate structure is deemed to be a mere facade used to perpetrate a wrong in order to circumvent legal obligations.

For example, in *Ventresca Realty Corp. v. Houlihan*, 41 A.D.3d 707 (2d. Dept. 2007), the Appellate Division reversed the lower court's decision in part, and granted summary judgment in favor of the plaintiff-landlord on the issue of liability against the principals of a tenant entity personally liable for unpaid rent.

The court determined that the corporation was merely a "dummy" or "shell" entity created to sign the lease. It had no assets, conducted no business, and was controlled entirely by the individual defendants. The defendants abused the corporate form to advance their personal interests, leading to the breach of the lease and causing harm to the landlord. Having met the elements to pierce the corporate veil, the court held the individual defendants personally liable.

Similarly, in the recent case of *245 E.19 Realty LLC v. 245 E. 19th Street Parking LLC*, Case No. 2023-04598 (1st Dept., Jan. 30, 2024), the Appellate Division, First Department upheld claims against a parent entity relating to unpaid rent by its subsidiary garage tenant entity, finding that the landlord's complaint adequately pleaded that the parent dominated the tenant entity, disregarded corporate formalities, intermingled funds by using a centralized cash management system and transferring all of its revenue to itself each day using cash sweeps. These daily sweeps by the parent along with the decision by the parent to intentionally not use the swept revenue to pay rent on the tenant's behalf, were held to plead sufficiently the corporate veil-piercing claims against the parent.

III. Voidable Conveyances: Another Option In Addition to Veil Piercing

Frequently arising in tandem with veil piercing, a landlord creditor may also be able to recover unpaid rent arrears by setting aside or avoiding conveyances made by commercial tenant entities to individual members, shareholders or others. New York's fraudulent conveyance statutes, formerly known as the New York Uniform Fraudulent Conveyance Act, and now known as the UVTA[1] , detail instances where conveyances may be set aside or avoided. These instances include if the judgment debtor transferred assets to other parties with the intent to hinder collection or without exchanging fair consideration for the conveyance.

Specifically, DCL §273 provides two types of transactions that may be avoided by present or future creditors. These are:

- Transfers done with "the actual intent[2] to hinder, delay or defraud" the judgment creditor; or

- Transfers done without the judgment debtor "receiving a reasonably equivalent value in exchange for the transfer or obligation" where (i) the judgment debtor "was engaged or was about to engage in a business or a transaction for which the remaining assets of the [judgment] debtor were unreasonably small in relation to the business or transaction; or (ii) the judgment debtor "intended to incur, or believed or reasonably should have believed that the [judgment] debtor would incur, debts beyond the [judgment] debtor's ability to pay as they became due."

[1] Codified in Article 10 of the New York State Debtor and Creditor Law ("DCL").

[2] §273(b) of the DCL provides a non-exhaustive list of factors that courts may consider in determining whether a transfer was made with intent to hinder, delay or defraud, including whether a transaction involved insiders, whether the debtor retained control after the transfer, whether it was concealed, whether before the transfer the debtor had been sued or threatened to be sued, whether the transfer was of substantially all the debtor's assets, and whether the transfer was proximate in time to the debtor becoming insolvent.

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In addition, under DCL §274, there are two additional bases on which a transaction may avoided, applicable only to present creditors. These are:

- If the transfer was made without receiving reasonable equivalent value in exchange and the debtor was insolvent at that time, or the debtor became insolvent as a result of the transfer or obligation. Notably, the present creditor need not show undercapitalization or knowing incurrence of unpayable debts, as required by DCL §273; and
- Similar to the Bankruptcy Code, transfers made to certain "insiders" (such as officer, directors, shareholder or members of an entity) for the payment of an antecedent debt or debt incurred prior to the transfer are voidable if at the time of the transfer the debtor was insolvent and the insider had reasonable cause to believe that the debtor was insolvent.

Under the right circumstances, veil piercing and seeking to set aside or avoid conveyances may provide landlords with powerful collection tools to hold individuals or parent entities responsible for tenant entity rent arrears. When strategizing how to approach pre- or post- judgment collection against these commercial tenant entities, these debt collection and enforcement options may be avenues worth exploring.

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A Buyer of Real Property Loses Specific Performance Claim

BY MAGDA L. CRUZ

The Appellate Division, Second Department recently addressed what is necessary to prove entitlement to specific performance of a contract of sale of real property when a condition of the sale is not satisfied. The interesting twist in this case is that the condition was initially sought by the buyer, but the buyer then elected to waive it and close without it. Nonetheless, the appellate court held that the seller was entitled to enforce that condition, and, if it could not be satisfied, the contract could be rescinded.

In ***D&J Realty Partners, LLC v. Booth,*** the parties entered into a contract of sale concerning a vacant parcel of land in the Village of Westhampton Beach. This parcel had previously been the subject of an application by the former owner, the seller's father, to subdivide the parcel into two lots. One of the lots was devised to the seller by his father, who devised the other lot to the seller as a life estate, with the remainder interest in the property divided equally between other family members.

The seller agreed to sell the entire parcel to the buyer, subject to the buyer obtaining an as-of-right building permit to build a single-family residence on the property. The permit condition was set forth in a rider to the contract.

The buyer made diligent efforts to obtain the building permit but ultimately could not because a "covenant of conditions" had never been filed to complete the process of subdividing the vacant parcel into two lots. The buyer and seller tried to have the required covenant filed in order to complete the subdivision, but neither one succeeded in doing so.

The buyer then decided that it would forego its construction plans and informed the seller that it was electing to proceed with the purchase "as is" and requested that a closing date be set. The seller rejected the closing date and advised that he was cancelling the contract.

The buyer sued for specific performance of the contract, and the seller cross-claimed for rescission of the contract. The lower court granted summary judgment to the buyer, but on appeal, the Appellate Division reversed.

The Appellate Division stated that, while generally "the party for whose benefit a condition is inserted in an agreement may waive the condition and accept performance as is", here, the Appellate Division found that the building permit condition benefitted both parties. Specifically, the Appellate Division reasoned that since the building permit could only be obtained if the subdivision of the property was completed, this also benefitted the seller because the seller retained an interest in both lots being included in the subdivision. Thus, "where the relevant circumstances reveal that the condition has been inserted for the benefit of both parties to the agreement, either party may validly cancel the contract upon failure of the condition, and the condition may be waived only by the mutual assent of both parties."

Contracts for the sale of real property often contain conditional provisions. This case provides important guidance on ensuring that the beneficiary of the condition is clearly defined.

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The 'Totality of the Circumstances' Surrounding the New Statutory Definition of a Fraudulent Deregulation Scheme

BY ANTHONY MORREALE

In the landmark case of *Regina Metropolitan Co. v NY State Div. of Hous. & Community Renewal*, the Court of Appeals reviewed whether the sweeping changes to rent overcharge claims brought on by the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") could be applied retroactively to claims which accrued prior to its passage.

In holding that they could not be, the Court necessarily clarified many aspects of the law prior to the HSTPA. Among those clarifications was its explanation of the "fraud exception" as a "limited common-law exception to [an] otherwise categorical evidentiary bar," which allowed a court to review rental history beyond the four-year lookback period "only in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate." Under pre-HSTPA law, where no fraudulent scheme to deregulate is demonstrated, an overcharge claim is governed by a strict four-year statute of limitations and lookback period which together comprise a "categorical temporal limitation on reviewable records." An overcharge is calculated by starting with the rent charged four years prior to the claim, adding legal increases applicable during the lookback period, and computing the difference between that rent and the rent actually charged. Where a fraudulent scheme to deregulate a rent-stabilized apartment is shown, an exception to the general rule applies, and the overcharge claim is governed by DHCR's punitive default formula.

Significantly, in the decision's seventh footnote, the *Regina* Court clarified further that in order to prove a fraudulent scheme to deregulate a rent-stabilized apartment – like all causes of action sounding in fraud – a proponent needed to demonstrate the essential common law elements of fraud: a misrepresentation of a material fact, falsity, scienter, reliance, and injury.

Since *Regina*, the appellate courts in both the First and Second Departments have dismissed time-barred overcharge claims where these prima facie fraud elements were not sufficiently established. And in the lower courts, including the Housing Court, judges have denied discovery and disposed of rent overcharge claims where a tenant failed to satisfy the CPLR's enhanced pleading standard for fraud.

In April, 2023, the Appellate Division, First Department held that where a fraudulent deregulation scheme is evident from registration statements filed with DHCR, the necessary reliance element could never be shown as a matter of law.

However, in the final days of its session last summer, the State legislature passed a bill (A6216B/ S2980C) with the expressed goal of undoing *Regina* by offering – for the first time ever – a statutory definition for the pre-HSTPA fraud exception. The legislature's proposed definition of "fraud" was so broad as to render self-evident its intent to turn what the Court of Appeals explained was a "limited common-law exception" into one that entirely swallowed the lookback rule.

Essentially, the bill purported to transform any misstep or mistake that an owner may make within the rent regulatory thicket into a "fraud" sufficient to question the reliability of the legal rent on the four-year base date. In doing so, the bill redefined an owner's fraud to include any "breach of any duty, arising under statutory, administrative or common law . . . *whether or not the owner's conduct would be considered fraud under the common law*." (emphasis added)

By attempting to redefine the fraud exception retroactively, the legislature's bill raised serious questions of its constitutionality. Although Governor Hochul signed the bill into law just before the end of the year, in doing so, she required that the legislature pass certain amendments to its language in order to "avoid unintended consequences and address technical legal concerns."

Those negotiated chapter amendments (A8506/S8011) were introduced in the Senate and Assembly in early 2024 and were signed into law by the governor on March 1.

Essentially, the chapter amendments replace the broad language of the original bill with a "totality of the circumstances test" requiring courts and DHCR to make a "determination as to whether [an] owner knowingly engaged in [a] fraudulent scheme" by considering "all of the relevant facts and all applicable statutory and regulatory law and controlling authorities, provided that there need not be a finding that all of the elements of common law fraud . . . were satisfied." Additionally, the statute provides that, in order for the exception to apply, the intent of the "fraudulent scheme" had to have been to result in deregulation of the unit.

The new language is certainly preferable to that which it replaced, but the sections minimizing the need to establish fraud's common law elements have been maintained. And although the legislature's stated intent in enacting the statute was to "define clearly the scope of the fraud exception," it has chosen some of the vaguest language one could imagine in attempting to do so.

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Moreover, because the bill purports to define not what the law is today, but what the law was prior to the enactment of the HSTPA in 2019, it raises clear substantive due process and separation of powers issues which will necessitate legal challenges. As the *Regina* Court held, overcharge claims that accrued prior to the HSTPA must be determined by pre-HSTPA law, not pre-HSTPA law as may be amended from time to time. It is the province of the Courts to tell us what pre-HSTPA law was and meant.

As the Court of Appeals put it in *Regina*, "it is the distinct role of the courts to interpret the laws to give effect to legislative intent while safeguarding the constitutional rights of impacted individuals."

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$500 Monthly Fine per Unit Enacted for Missing DHCR Registrations

BY LOGAN O'CONNOR

On December 23, 2023, Governor Hochul signed into law a bill (S2980C) which establishes a $500 fine per unit for each month that an owner fails to register the unit with the Division of Housing and Community Renewal ("DHCR"). Chapter amendments to the Bill were signed on March 1, 2024, resulting in Chapter 95 of the Laws of 2024.

Under the new law, DHCR will provide owners with a notice of the delinquency by email and hard copy mail to the address listed on the owner's most recent DHCR registration statement. In the event that the delinquency is not cured, the owner will be subject to the monthly fine of $500 per unregistered unit, imposed by an order. The order shall be deemed a final determination against the owner for purposes of judicial review.

It is still unclear when DHCR will begin enforcing this penalty and how far back it will examine records to assess the penalty. One indication of DHCR's plan is the general announcement issued by DHCR on March 6, 2024 that additional information regarding the fine will be available on DHCR's website in the future. The announcement also encourages owners to review missing registrations for prior years. Presumably, DHCR is gearing up to send out delinquency notices for this round of DHCR registrations, which opens April 1, 2024 and closes July 31, 2024.

It is important to note that owners will be liable for this penalty for missing registrations even if they did not own the building during the years that the registrations are missing. As such, it is necessary for all owners and managing agents to ensure that all rent stabilized units have been registered with DHCR every year since 1984.

Furthermore, where a rent stabilized apartment was deregulated prior to enactment of the Housing Stability and Tenant Protection Act on June 14, 2019, there must be a registration of permanent exemption filed with DHCR. It is not sufficient to simply stop registering the unit. Where a unit has been registered as rent stabilized, it will remain in DHCR's system as rent stabilized until a registration of permanent exemption is filed with DHCR. Moreover, a registration of temporary exemption must also be submitted each year where such registration is applicable.

Because significant penalties will be imposed for missing registrations, we strongly urge owners and managing agents to review their building rent registration histories to determine if missing registrations need to be back-filed. BBG can assist owners and agents with obtaining registration histories, determining which registrations are missing and filing the appropriate registrations with the DHCR.

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

Recent Transactions of Note

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

Buy/Sell and Refinance Transactions

Partners **Craig L. Price** and **Lawrence T. Shepps** and associate **Joshua A. Sycoff** represented Targo Capital Partners in connection with its $57 million acquisition (including $45 million assumption of a CMBS loan), for a six-building, 112-unit rental portfolio in Manhattan's East Village, from Kushner Companies. The transaction was the largest multifamily deal of 2023 in New York City.

Messrs. Price, **Shepps** and **Sycoff**, and partner **Murray Schneier**, represented AYA Acquisitions in connection with its $31 million acquisition of 120-125 Riverside Drive. The deal included acquisition and construction financing provided by First Horizon Bank, as well as preferred equity financing.

Partner **Stephen M. Tretola**, and **Messrs. Schneier** and **Sycoff**, represented the owner of a Queens property on its $12.5 million refinancing.

Messrs. Price and **Schneier**, and associate **Lauren Tobin**, represented the purchaser of a $12 million data center in Livingston, New Jersey.

Leasing Transactions

Partners **Daniel T. Altman** and **Michael J. Shampan** represented an owner in the negotiation of a commercial lease for Hungry Ghost Coffee in Brooklyn.

Messrs. Altman and **Shampan** also represented an East 57th Street office tenant in the negotiation of a full floor sublease to a real estate services company.

Partners **Murray Schneier** and **Allison R. Lissner** represented a new fast-casual restaurant group in the negotiation of a retail lease in the East Village, as well as a lease for its corporate office/fabricating facility.

Ms. Lissner also:

-Represented a national REIT in connection with the negotiation of a lease with a first-class supermarket chain in Absecon, New Jersey;

-Negotiated a high-end restaurant lease with a well-known chef on behalf of a building owner in the West Village; and

-Represented the owner in a long-term extension of a medical office lease in Newburyport, Massachusetts.

Construction Transactions

Partner **Robert S. Marshall Jr.** represented an owner in the negotiation of a design-build agreement for a hotel-residential tower renovation project in Manhattan.

Recent Notable Matters Handled by Our Land Use/Zoning Team

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

- Obtained a favorable Zoning Resolution Determination from the Department of Buildings authorizing construction of large-scale development in Queens.
- Successfully achieved an Opinion of Dedication from the New York City Law Department and the Bronx Borough President's Office to allow for development under General City Law and use of street for utility connections to private development.
- Guided clients with community and governmental relations issues involving land use review applications in Manhattan, Queens and Brooklyn.
- Supported architects with design and zoning issues concerning multifamily construction projects.
- Assisted property owner with Department of Transportation revocable consent to authorize proposed construction on City sidewalk.
- Represented developer on Department of City Planning application to authorize commercial use in Manhattan otherwise not permitted as of right.
- Represented co-op in connection with conversion of existing Joint Living Work Quarters for Artists to residential use under the new Soho/Noho regulations.
- Provided developer client and lending client with zoning due diligence and opinion letters related to proposed construction projects.

BBG In The News

Founding partner **Sherwin Belkin** was quoted in a January 3 article in City Limits on a bill signed by Governor Hochul intended to combat illegal rent hikes, and in a January 5 article in The Real Deal discussing amendments made to that bill. **Mr. Belkin** was also quoted in a January 30 article in The Real Deal discussing tenant buyout strategies, and in a February 14 article in The City discussing how huge numbers of rent-stabilized apartments being kept off the market is an unintended consequence of the HSTPA. **Mr. Belkin** was also quoted commenting on the Supreme Court's decision to not accept two cases challenging the constitutionality of the HSTPA, in February 20 articles in City Limits and law360.com, and a February 26 article in law360.com . **Mr. Belkin** was also quoted in a February article in Crain's New York Business, and in a February 26 article in Our Town, discussing the real-world impact on the ownership of Stuyvesant Town of the Supreme Court's decision to not accept the cases. **Mr. Belkin** was also quoted in a February 28 article in The City, expressing concerns about unintended consequences that may flow from a pending "Good Cause Eviction" bill:. **Mr. Belkin** was also quoted in a March 4 article in The Real Deal, commenting on a method for property owners to remove buildings from rent stabilization, and in a March 13 article in City Limits, decrying a proposed provision of the contemplated "Good Cause Eviction" bill.

Martin Heistein, co-head of the Firm's Administrative Department, and partner **Anthony Morreale**, were featured speakers at a January 30 seminar sponsored jointly by the Rent Stabilization Association and the New York County Lawyers Association on updates to New York's rent regulatory scheme following the recent adoption by the DHCR of amendments to the Rent Stabilization Code, and the enactment of various Chapter Amendments by the New York State Senate; the program can be viewed here.

Mr. Heistein was also a moderator at the March 21 New York Multi-Family Development and Investment seminar hosted by Bisnow, moderating the topic entitled "What's Next for NY Multi-Family: Affordability, Rent Growth, 421a and Developers' Incentives."

Kara I. Rakowski, co-head of the Firm's Administrative Department, presented a February 27 webinar sponsored by REBNY entitled "Rent Regulated Apartments in NYC", discussing an overview of rent regulation and recent changes in legislation.

Aaron Shmulewitz, head of the Firm's co-op/condo practice, responded to a reader inquiry in The Cooperator's January edition, regarding Board strategies with regard to inadequately-priced apartment purchases.

Magda L. Cruz, head of the Firm's appellate practice, was cited in The Real Deal's "The Daily Dirt" feature on January 18 in connection with the Appellate Division appeal seeking to stop Kingston from adopting rent stabilization.

Partner **Lloyd Reisman** of the Firm's co-op/condo practice was quoted in an article in the February edition of Habitat, discussing Boards revising their governing documents in accordance with changes in the law and industry practice

Administrative Department partners **Samuel R. Marchese** and **Logan J. O'Connor** presented a February 13 CLE seminar on "New Amendments to Rent Regulation", sponsored by Judicial Title. The seminar can be viewed here.

The transaction in which the Firm represented the purchaser of a six-building rental portfolio in the East Village for $57.5 million from the Kushner Companies (the largest multifamily transaction in Manhattan in 2023, as reported elsewhere in this newsletter) was cited in articles in The Real Deal, Bisnow, and Crain's New York Business, The Real Deal, and EV Grieve.

The transaction in which the Firm represented the purchaser of a two-building package on the Upper West Side (as reported elsewhere in this newsletter) was cited in articles in Crain's New York Business, and The Real Deal.

A groundbreaking decision in a case in which Litigation Department partners **David Skaller** and **Daniel P. Phillips** represented an owner who successfully recovered possession of a rent-regulated apartment due to the tenant's non-primary residence there—defeating the tenant's "Covid-based absence" defense—was cited in "The Daily Dirt" feature of The Real Deal on February 29. The Court's full decision can be accessed here.

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Daniel Phillips, a real estate litigation Partner, was on Fox News to offer insights into the growing issue of squatting in American housing, attributing it primarily to unlawful possession of premises through abandonment or fraud. Mr. Phillips delineates two main squatting scenarios: individuals exploiting foreclosed properties and those fraudulently entering lease agreements with false identities. He highlights the professional nature of some squatters who protract legal proceedings to remain on properties and the challenges landlords face in rectifying fraudulent leases.

Mr. Phillips points out the significant costs and time involved in evicting squatters, which can vary by state but often involves extensive legal processes. He identifies an uptick in squatting due to increased foreclosures, leading to more abandoned properties, and ties it to broader economic issues and housing shortages. Mr. Phillips calls for legislative action to streamline the eviction process and curb the squatting trend, which he links to a rise in criminal activities in squatted properties.

Emphasizing the importance of vigilance, Mr. Phillips recommends property owners use electronic surveillance or regular checks to prevent squatting. He also suggests thorough background checks on potential tenants to avoid fraud. In cases of squatting, Mr. Phillips advises involving the police as a first step, although he acknowledges that law enforcement often views squatting as a civil matter. He warns against "self-help" eviction methods due to their high risk and stresses the importance of legal eviction proceedings to ensure property security and prevent further damage.

Mr. Phillips expresses concern that without significant changes, the problem of squatting will likely worsen, posing severe challenges for property owners, including legal complications, property damage, and associated criminal activities.

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****.*

UNIT OWNER IN CITY-SUBSIDIZED CONDO CANNOT SUE CITY FOR NEIGHBOR'S FAILURE TO COMPLY WITH PRIMARY RESIDENCE REQUIREMENTS

Graziano v. Hardie Supreme Court, Queens County

CONDO NOT OBLIGATED TO INSTALL WINDOW GUARDS IN LEASED UNIT, BUT COULD BE LIABLE FOR FAILURE TO NOTIFY TENANT OF HIS RIGHTS

Kwan v. Yap Appellate Division, 2nd Dept.

COMMENT | The tenant's child had fallen out of the window, to her death.

CONDO BOARD MEMBERS ACTED IN BAD FAITH ON UNIT OWNER'S LEASING AND ALTERATIONS APPLICATIONS, SO ARE NOT ENTITLED TO INDEMNIFICATION FROM CONDO

Gilbert v. Winston Supreme Court, New York County

COMMENT | This was at least the third Court decision where these Board members were excoriated by the Court.

SPONSOR CAN SUE CONDO BOARD OVER SPONSOR'S CLAIMS TO CONTINUED OWNERSHIP AND CONTROL OF UNSOLD PARKING SPACES

Saratoga Urban Living, LLC v. The Board of Managers of 30 Whistler Court Condominium Supreme Court, Saratoga County

COMMENT | Questions of fact as to status, parties' intent and course of conduct over 15 years precluded summary judgment.

CONDO'S ELEVATOR MODERNIZATION PROJECT WAS A REPAIR, NOT SUBJECT TO THE BYLAWS SPENDING CAP FOR ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Hazen v. Bunning Supreme Court, New York County

COMMENT | This is a frequently-raised issue. Full disclosure--BBG is general counsel to the Condominium, but took no part in this litigation.

FORMER MANAGING AGENT ORDERED TO PAY $48,000 IN LEGAL FEES FOR FAILING TO TURN OVER BOOKS AND RECORDS TO FORMERLY-MANAGED BOARDS

The Board of Managers of The Lux Condominium v. Core Management NY, LLC Supreme Court, New York County

COMMENT | This also occurs more than it should. Recalcitrance-prone management companies should take note of the outcome.

CO-OP BOARD DECISION TO DECLINE CONSENT TO PROPOSED PURCHASER UPHELD UNDER BUSINESS JUDGMENT RULE

Matter of Schulte v. 1125 Park Avenue Corporation Appellate Division, 1st Dept.

CONDO NOT ENTITLED TO PRELIMINARY INJUNCTION AGAINST UNIT OWNER WHO ENCLOSED TERRACE WITHOUT BOARD CONSENT

Board of Managers of The Crown Condos v. Meir Bernstein, LLC Supreme Court, Kings County

COMMENT | Because the injunction would be the ultimate relief sought, and the Board was not likely to prevail on the merits.

CO-OP AWARDED $51,000 IN MAINTENANCE ARREARS PLUS LEGAL FEES FROM DELINQUENT SHAREHOLDER

36 West 35th Apartment Corp. v. Oliveira Supreme Court, New York County

COMMENT | The Court dismissed the pro se shareholder's (fairly typical) excuses for not paying.

PROPERTY OWNER MAKING EXTERIOR REPAIRS MUST PAY ADJOINING PROPERTY OWNER $20,000/MONTH LICENSE FEE, PLUS LEGAL FEES

50 West Street Condominium v. JDM Washington Street LLC Supreme Court, New York County

COMMENT | But the property owner escaped being held in contempt.

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CONDO BOARD MEMBER CANNOT BE SUED BY UNIT OWNER FOR PERSONAL INJURIES SUFFERED FROM FALLING TILES IN COMMON HALLWAY

Gornostaev v. Sunnyside Luxury Condominium Inc. Supreme Court, Queens County

COMMENT | The Court held that the Board member had nothing to do with maintenance of the Condominium's property.

DISGRUNTLED SHAREHOLDERS CAN SUE CO-OP MANAGING AGENT FOR BREACH OF FIDUCIARY DUTY

Harari v. Jamesman Realty Corp. Supreme Court, New York County

COMMENT | Curiously, the shareholders seem to have not sued the co-op.

CO-OP BOARD'S REJECTION OF TWO CONSECUTIVE PURCHASERS UPHELD UNDER BUSINESS JUDGMENT RULE

Michaelson v. 20 Sutton Place South, Inc. Supreme Court, New York County

CO-OP ENJOINS COMMERCIAL TENANT FROM OPERATING ILLEGAL MASSAGE PARLOR

315 West 55th Owners Corp. v. Rainbow Spa 23 Inc. Supreme Court, New York County

COMMENT | The Court also held the tenant in civil contempt for violating a prior Court order. Query—-why wasn't the injunction held to be the ultimate relief sought, and thus denied?

SPONSOR CANNOT ELECT MAJORITY OF BOARD

Matter of Mazumdar v. Board of Managers of Strivers Gardens Condominium Appellate Division, 1st Dept.

COMMENT | The Court held that the sponsor could appoint one designee and vote for regular residential candidates of its choice.

CO-OP CANNOT ENJOIN REMOVAL OF DIRECTORS

Church Street Apartment Corp. v. Liebert Supreme Court, New York County

COMMENT | The Court held that the co-op had no likelihood of success on the merits, since the defendants controlled a majority of the shares.

SHAREHOLDER CAN SUE CO-OP, BUT NOT INDIVIDUAL DIRECTORS, FOR VARIOUS CLAIMS INVOLVING ALTERATIONS TO APARTMENT

Real World Holdings LLC v. 393 West Broadway Corporation Supreme Court, New York County

COMMENT | This litigation is now in its ninth year.

CO-OP SHAREHOLDER VACATES DEFAULT JUDGMENT IN SUIT FOR MAINTENANCE ARREARS

Rockwood Owners Corp. v. Rainess Supreme Court, New York County

COMMENT | The shareholder had cancer and had been abroad.

CO-OP CAN BE SUED FOR NEGLIGENCE BY SHAREHOLDER DAMAGED BY ANOTHER SHAREHOLDER'S ALTERATIONS

Fuisz v. 6 East 72nd Street Corporation Appellate Division, 1st Dept.

COMMENT | Full disclosure: BBG is counsel to this co-op, but was not involved in this litigation (which is now 12 years old).

CO-OP SHAREHOLDERS TIME-BARRED TO SUE CO-OP'S CONTRACTORS FOR INEFFECTIVE REPAIRS

Gordon v. 476 Broadway Realty Corp. Supreme Court, New York County

COMMENT | The shareholders were also ordered to pay the co-op $727,000 in legal fees. This case is also now 12 years old.

CONDO PURCHASER CANNOT SUE SPONSOR'S PRINCIPAL MERELY BECAUSE SHE SIGNED OFFERING PLAN CERTIFICATION

Stein v. 594 Marcy Villa LLC Supreme Court, Kings County

SHAREHOLDERS NOT ENTITLED TO SUMMARY JUDGMENT ON CLAIMS REGARDING CO-OP'S FAILURE TO STOP EXTERIOR LEAKS

Paz v. 52-74th Housing Corp. Supreme Court, New York County

COMMENT | Questions of fact existed as to causation, shareholders' contributory negligence, and extent to which shareholders actually resided in apartment, precluding summary judgment.

FORMER DIRECTOR OF HDFC CO-OP BREACHED FIDUCIARY DUTY TO CO-OP BY SUBLEASING COMMERCIAL SPACE FOR PRIVATE PROFIT

67-69 St. Nicholas Avenue HDFC v. Green Supreme Court, New York County

COMMENT | The director and her husband were ordered to pay $260,000 to the HDFC.

CONDO CANNOT SUE SPONSOR TO ENFORCE AIR RIGHTS RESALE PAYMENT OBLIGATION

The Board of Managers of 229 East 2nd Street Condominium v. 229 2nd Street LLC Supreme Court, New York County

COMMENT | The parties' contract had no time deadline by which the sponsor had to resell the air rights and pay.

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CO-OP CAN CONSIDER SALE PRICE IN DECIDING WHETHER OR NOT TO APPROVE SALE, BASED ON RELEVANT COMPS
Stromberg v. East River Housing Corp. Supreme Court, New York County

COMMENT | Here, questions of fact existed as to whether the Board had set an arbitrary floor price, instead of using comps, so the co-op was denied summary judgment. The co-op was also denied attorney fees.

CONDO ENTITLED TO REFEREE'S AWARD FOR UNPAID COMMON CHARGES DESPITE NO REFEREE'S HEARING
Board of Managers of The Nolita Place Condominium v. Texas Entertainment LLC Appellate Division, 1st Dept.

CO-OP NOT ENTITLED TO PRELIMINARY INJUNCTION COMPELLING GARAGE TENANT TO VACATE DURING PERIOD OF REPAIRS
East 54th Operating LLC v. Brevard Owners, Inc. Appellate Division, 1st Dept.

COMMENT | Because the injunction was the ultimate relief sought. Full disclosure—-BBG is counsel to this co-op, but was not involved in the litigation.

EVICTED SHAREHOLDER'S SUIT AGAINST CO-OP, MANAGING AGENT AND LAW FIRM THAT EVICTED HIM DISMISSED
Lautman v. 2800 Coyle St. Owners Corp. Appellate Division, 2nd Dept.

SUIT BY FORMER SHAREHOLDER AGAINST CO-OP AND MANAGING AGENT FOR DISCRIMINATORY TREATMENT WHILE A SHAREHOLDER, DISMISSED
Levy v. 103-25 68th Avenue Owners, Inc. Appellate Division, 2nd Dept.

COMMENT | The curious discrimination claims were based on the plaintiffs having children.

CO-OP LIABLE FOR LEAD POISONING CLAIM BY ILLEGAL SUBTENANT'S CHILD, AND CO-OP CANNOT BE INDEMNIFIED BY SHAREHOLDER
E.S. v. Windsor Owners Corp. Appellate Division, 2nd Dept.

COMMENT | The Court held that the co-op had constructive knowledge of the child, so cannot plead ignorance, and the co-op cannot be indemnified against its own negligence.

GUARANTOR LIABLE TO CO-OP FOR UNPAID MAINTENANCE OWED BY TRUST SHAREHOLDER
Churchill Owners Corp. v. Kent Appellate Division, 1st Dept.

COMMENT | The Court ruled that the administration of the trust was not necessary for liability to attach, per the parties' conditional consent agreement.

CONDO BOARD CAN SUE SPONSOR REPS ON THE BOARD FOR BREACH OF FIDUCIARY DUTY
Board of Managers of The 443 Greenwich Street Condominium v. SGN 443 Greenwich Street Owner LLC Appellate Division, 1st Dept.

COMMENT | The allegations that the sponsor reps made their decisions to benefit the sponsor instead of the condo cannot be dismissed at this stage.

PARTY SEEKING ACCESS UNDER RPAPL §881 ORDERED TO PAY ATTORNEY FEES
Panasia Estate Inc. v. 29 West 19 Condominium Appellate Division, 1st Dept.

REFEREE REPORT REJECTED IN CONDO LIEN FORECLOSURE ACTION
Board of Managers of The Poseidon Condominium v. Costantino Property Management, LLC Appellate Division, 2nd Dept.

COMMENT | Rejection was because no hearing was held before report issued, in violation of CPLR. (But see case decision with contrary ruling, above.)

CONDO BOARD MEMBERS CAN BE SUED OVER METHOD OF CALCULATION OF COMMON CHARGES UNDER BYLAWS
72 Poplar Townhouse, LLC v. Board of Managers of The 72 Poplar Street Condominium Appellate Division, 2nd Dept.

COMMENT | Dueling sets of bylaws existed and, of course, were in conflict on key provisions like this—-a not uncommon situation. BBG represented the Board members.

CO-OP DENIED ATTORNEY FEES IN SUIT FOR UNPAID MAINTENANCE BECAUSE IT WAS NOT NECESSARILY THE PREVAILING PARTY
49 East Owners Corp. v. 825 Broadway Realty, LLC Appellate Division, 1st Dept.

COMMENT | The Court held that the shareholder has viable counterclaims for breach of the proprietary lease due to odor complaints, and could prevail on them at trial.

SHAREHOLDERS CAN SUE CO-OP AND DIRECTORS FOR RETALIATORY COMMENCEMENT OF EVICTION PROCEEDING FOLLOWING THEIR COMPLAINTS ABOUT WATER QUALITY
Gentile v. 2400 Johnson Avenue Owners, Inc. Appellate Division, 1st Dept.

CO-OP LIABLE FOR DAMAGE TO PARTY WALL CAUSED BY CO-OP'S IVY
Vaduz v. 11 East 73rd Street Corporation Appellate Division, 1st Dept.

COMMENT | Full disclosure: BBG is counsel to this co-op, but took no part in this litigation.

BBG Continues to Expand and Welcomes New Hires

The Firm has recently added the following attorneys and professional support staff in 2024:

MICHAEL NESHEIWAT,

Associate, Litigation: Mr. Nesheiwat has joined BBG as an Associate in the Litigation Group, specializing in complex real estate litigation, particularly in residential and commercial landlord-tenant disputes, and general business litigation, including contract claims. Mr. Nesheiwat earned his B.A. from Vassar College, receiving the Vassar Scholarship for his academic excellence. He then pursued a J.D. at Brooklyn Law School, graduating in 2020. While attending law school, Michael distinguished himself through numerous honors and awards, including The Order of Barristers, the Smiley & Smiley LLP Award for Excellence in Trial Skills, and a position as Notes Editor for the Brooklyn Journal of International Law. To add to his list of accomplishments, he was recently recognized as a "Best Lawyers: Ones to Watch® in America for Litigation - Real Estate in 2024." He is he is also fluent in English, Arabic, and Spanish. During his career in Real Estate Law, he has successfully handled various cases, including sophisticated eviction proceedings, plenary actions, non-payment and holdover proceedings, business disputes, contract claims, and HP proceedings.

ALEX B. PIA,

Associate, Litigation: Alex Pia is an Associate in the Litigation Group, focusing on real estate, construction, and complex landlord-tenant disputes. Mr. Pia also has experience in appellate litigation, contributing to arguments before the appellate divisions and Court of Appeals. He earned his JD from Brooklyn Law School in 2019, where he was the Assistant Managing Editor of the Brooklyn Law Review. Prior to that, he obtained a BBA from Hofstra University's Frank G. Zarb School of Business. He is a member of the New York City Bar Association and serves on its Construction Law Committee. Mr. Pia has been recognized as a "New York Metro Super Lawyers Rising Star" in Business Litigation from 2022 to 2023.

New Hires - Professional Support Staff

The following individuals joined as professional support staff:

DAISY OLIVAN, Junior Staff Accountant
NICHOLAI GRANADOS, Paralegal

Recent Promotion:

BBG is proud to announce the promotion of **Alissa Prairie**, who was previously the Payroll & Benefits Specialist in the Firm's Administration department and is the HR/Office Manager effective January 1, 2024.

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 January - March. As we reflect on these significant milestones, we express our sincere appreciation for their support, hard work, and unwavering commitment.

Jeffrey L. Goldman, Co-Managing Partner & Co-Chair of the Litigation Group – 35 Years

Sherwin Belkin, Partner – 35 Years

Daniel T. Altman, Co-Managing Partner & Co-Chair of the Transactional Group – 34 Years

Dwight Braumuller, Paralegal – 34 Years

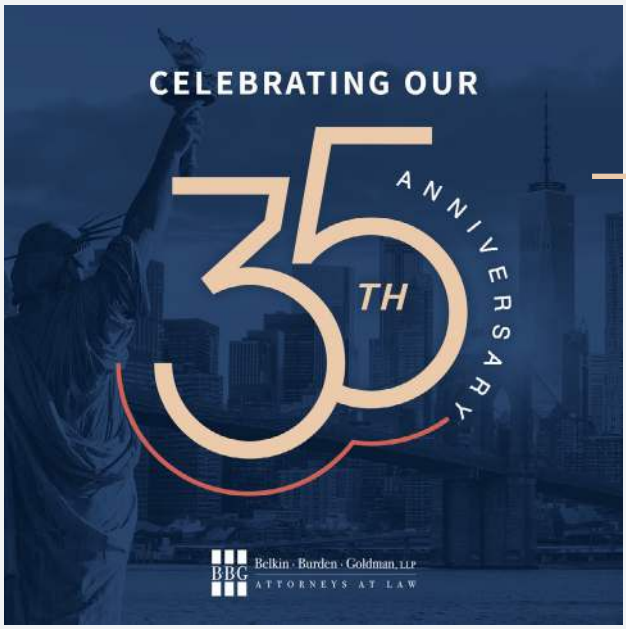
Martin Meltzer, Partner – 32 Years

Nilda Guzman, Legal Assistant – 22 Years

Craig L. Price, Partner & Co-Chair of the Transactional Department – 20 Years

Christina M. Browne, Partner – 12 Years

Kanika Derrick, Accountant – 5 Years



35 Years of Dedicated Service to the Real Estate Industry

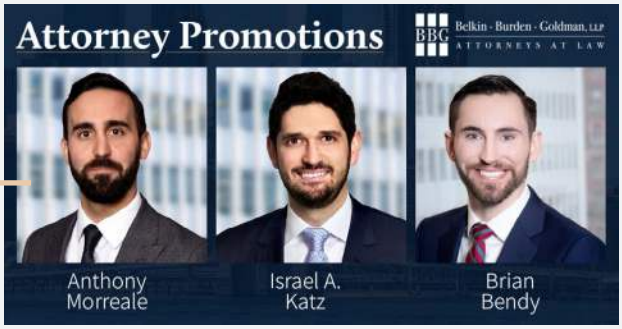
BBG: 35 YEARS OF DEDICATED SERVICE TO THE REAL ESTATE INDUSTRY

We are honored and grateful to celebrate a monumental milestone – 35 years of dedicated service to the real estate industry!

Reflecting on our considerable achievements, we recognize that this period signifies more than just the passage of time—it represents the unwavering dedication, hard work, and commitment of every member of our firm, both past and present.

On behalf of our entire firm, we extend our deepest gratitude and sincere thanks to all of our attorneys, professional support staff, clients, and other business partners who have played a critical role in helping us reach this significant anniversary milestone. With the utmost appreciation, thank you!

Crain's New York Business: People on the Move



Recently promoted Partners, **Brian Bendy**, **Israel Katz**, and **Anthony Morreale**, were announced in Crain's New York Business, **People on the Move**.

Brian Bendy and **Israel A. Katz** were promoted to Partners in their Litigation Department. This recognition is a result of their exceptional contributions to the business and its clients, as well as their notable decisions and overall achievements. Additionally, **Anthony Morreale** has been elevated to Partner in the Administrative Department as a result of his exceptional contributions and client-focused work ethic.

These Partner promotions signify the individuals' accomplishments, but also BBG's commitment to reward excellence and maintain its position as a leading real estate law firm.

Popular Social Media Posts

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

City Limits has an article today about the NYS legislature's one house bills. There is some talk about raising the $15k cap on IAI increases for rent stabilized apartments. I'm quoted as stating that tweaking the cap without significantly increasing the rate of return is akin to giving "ice in the winter."
The HSTPA was too extreme. Unless the pendulum begins to swing back in a meaningful way, including incentivizing housing supply creation, NY's dire housing crisis will continue.
@belkinburdengoldman LLP

✦ Takeaways ✦ What is the HSTPA? ✦ What are the one house bil ›

Derrick A. Hensel and 48 others 4 comments • 2 reposts

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