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BBG UPDATE

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EDITORS
Robert A. Jacobs
Kara I. Rakowski
Aaron Shmulewitz

THE "GCE" EDITION

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Attorney Advertising: Prior results do not guarantee a similar outcome.

Good Cause Eviction

BY DANIEL P. PHILLIPS

On April 20, 2024, the Real Property Law ("RPL") was amended to add Article 6-A, known as the Good Cause Eviction Law ("GCE"). Generally, the GCE subjects free-market apartments to rent regulation by preventing the removal of tenants unless a landlord is able to establish "good cause" and caps rent increases unless a landlord can establish that the increase is not "unreasonable".

The GCE represents a huge change in factors affecting ownership and operation of property.

Below is a summary of the GCE:

RPL § 214 – Covered Housing Accommodations

GCE applies to all housing accommodations, except:

1. Premises owned by small landlords;

- RPL § 211(3)(a) defines a small landlord as landlords of no more than 10 units in New York or any other state that adopts GCE. However, if a landlord is a natural person, that person is a small landlord if they own or are a beneficiary, directly or indirectly, in whole or in part, of no more than 10 units in New York or any other state that adopts GCE. If a landlord is an entity, then that landlord is a small landlord if each natural person with direct or indirect ownership interest in the entity, or in an affiliated entity, owns no more than 10 units in New York or any other state that adopts GCE. If an entity cannot provide the names of all natural persons with direct or indirect ownership interest, such entity will not qualify as a small landlord. A landlord who seeks to invoke the small landlord exemption must provide to the tenant in connection with any eviction proceeding the name of each natural person who owns or is or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, ownership interests in the entity or any affiliated entities, the number of units owned jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence.

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2. Owner occupied housing accommodations with no more than 10 units.

3. Units in a housing accommodation which are sublet and the sublessal seeks in good faith to recover possession for their own personal use.

4. Units in a housing accommodation that are occupied solely incident to employment and such employment is being or has been lawfully terminated.

5. Units in a housing accommodation that are otherwise subject to regulation of rents or evictions pursuant to local, state, or federal law.

6. Units in a housing accommodation where such unit must be affordable to tenants at specific income levels pursuant to statute, regulation, declaration, or regulatory agreement with local, state, or federal government.

7. Units in a housing accommodation owned as a condominium or cooperative or subject to an offering plan submitted to the Attorney General.

8. Units in a housing accommodation for which a temporary or permanent certificate of occupancy was issued on or after January 1, 2009, for a period of 30 years following issuance of such certificate.

9. Units in a housing accommodation that qualify as seasonal use dwelling units.

10. Units in housing accommodations in hospitals, licensed continuing care retirement communities, assisted living facilities, licensed adult care facilities, senior residential communities, and not-for-profit independent retirement communities.

11. Manufactured homes on or in a manufactured home park.

12. Hotel rooms or other transient uses covered by the definition of a class B multiple dwelling.

13. Educational dormitories.

14. Religious facilities or institutions.

15. Units on or within a housing accommodation where the monthly rent is greater than 245% of the Fair Market Rent as published by HUD for the county in which the unit is located.

RPL § 215 – Necessity for Good Cause

If a housing accommodation does not fall within any of the enumerated exceptions, then the housing accommodation is subject to GCE and the landlord is prohibited from evicting the tenant, unless the landlord can establish an enumerated ground as stated in RPL § 216.

RPL § 216 – Grounds for Removal of Tenants

No landlord shall remove a tenant from any housing accommodation covered by GCE, notwithstanding that the tenant has no written lease or that the lease has expired, unless the landlord has established one of the following grounds for removal or eviction:

1. The tenant has failed to pay rent due and owing, and the rent due and owing, or any part thereof, did not result from a rent increase which is "unreasonable".

    - In determining whether all or part of the rent due and owing is the result of an "unreasonable" rent increase, it shall be a rebuttable presumption that the rent is unreasonable if said rent has been increased in any calendar year after the effective date of the GCE by an amount greater than the "Local Rent Standard" (a rent increase equal to the 5% + CPI, or 10%, whichever is lower).

    - No rent increase less than or equal to the Local Rent Standard shall be deemed unreasonable.

    - Whether or not the rent is unreasonable, the court shall consider all relevant facts, including but not limited to:

        - Costs for fuel and other utilities, insurance, and maintenance, but in all cases, the court shall consider the landlord's property tax expenses and any recent increases .

        - Good faith to raise rent upon renewal of the lease to reflect completed "significant repairs" to the housing accommodation, or to any other part of the building or real property in which the housing accommodation is located, provided that the landlord can establish that the repairs constituted "significant repairs" and that such repairs did not result from the landlord's failure to properly maintain the building or housing accommodation. Does not include costs as discussed in RPL § 216(d).

        - "Significantly repair" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or abatement of hazardous materials, including lead-based paint, mold, or asbestos in accordance with applicable federal, state, and local laws, and provided further that cosmetic improvements alone, including painting, decorating, and minor repairs, do not qualify as significant repairs.

2. Breach of a substantial obligation of tenancy or breaching rules and regulations governing the premises after tenant has failed to cure after a written ten day notice to cure.

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3. The tenant is committing or permitting a nuisance.

4. Occupancy of the unit is in violation of, or causes a violation of, law and the landlord is subject to civil or criminal penalties, and a government agency has issued a vacate order and the violation cannot be cured unless the tenant vacates and the landlord did not create the condition by neglect, deliberate action or failure to act.

5. The tenant is using or permitting the housing accommodation, building, or property the building is located on to be used for illegal purposes.

6. Failure to provide access for necessary repairs or improvements required by law or to show the housing accommodation to prospective purchasers, mortgagees, or other persons having a legitimate interest therein.

7. The landlord seeks in good faith to recover possession for the landlord's personal use as a principal residence, or for the personal use of the landlord's enumerated family members as a principal residence, by clear and convincing evidence unless the tenant is 65 years or older or disabled.

8. The landlord seeks in good faith to recover possession to demolish the housing accommodation, by clear and convincing evidence.

9. The landlord seeks in good faith to recover possession to remove the housing accommodation from the housing market, by clear and convincing evidence.

10. The tenant fails to agree to reasonable changes to a lease at renewal, including rent increases that are not unreasonable if the landlord provides written notice of the changes at least 30 days, but no more than 90 days, prior to the expiration of the lease.

RPL § 231-c – GCE Notice

The GCE also amended the RPL to add section 231-c, which requires a landlord to append to or incorporate into any initial lease, renewal lease, notice required pursuant to RPL § 226-c or Real Property Actions and Proceedings Law ("RPAPL") § 711, or petition pursuant to RPAPL § 741, the GCE Notice. The GCE notice is comprised of four sections:

1. Whether or not the unit is subject to the GCE;

2. If the unit is exempt from the GCE, the enumerated basis for exemption;

3. If the unit is subject to the GCE, notification if the rent is being increased at a reasonable or unreasonable increase and the justification to increase the rent above the reasonable threshold; and

4. If the unit is subject to the GCE, notification to the tenant of the enumerated "good cause" to not renew the lease.

The GCE took immediate effect on April 20, 2024 and applies to all actions and proceedings commenced on or after the effective date; however the GCE notice requirement and pleading requirements do not take effect until 120 days after the effective date. The GCE expires on June 15, 2034.

The GCE creates numerous new requirements—and pitfalls—for owners, who should consult with counsel to discuss.

__Daniel P. Phillips__ is a partner in the Firm's Litigation Department, and can be reached at 212-867-4466 ext. 496 (__dphillips@bbgllp.com__).

The Next Generation of NYC Tax Incentives

Governor and Legislature Agree on a Package of Initiatives to Incentivize Real Estate Development

BY ZACHARY NATHANSON

The New York State Legislature, after many failed attempts, succeeded in passing a budget that attempts to address the New York City housing crisis. The budget includes (i) an extension of the Affordable New York ("421-a") completion deadline for vested projects; (ii) the creation of a new tax incentive to replace the now-expired 421-a, and (iii) the creation of a tax incentive for developers to convert vacant commercial space to residential units.

Extension for Completion of Many 421-a Projects

The budget extends the 421-a completion date to June 15, 2031 for new construction or eligible conversions that commenced on or before June 15, 2022. The 421-a exemption is not available for projects that opted into 421-a Affordability Option C or Option G. HPD has not yet made available the letter of intent, or any additional information regarding the option to extend.

Affordable Neighborhoods for New Yorkers (485-x)

Real Property Tax Law ("RPTL") Section 485-x, the "Affordable Neighborhoods for New Yorkers" tax incentive program (hereinafter referred to as "485-x"), replaces 421-a as a tax incentive for new construction or eligible conversion projects with six or more dwelling units. 485-x projects must commence between June 15, 2022 and June 15, 2038.

Similarities with 421-a:

- Common entrances and areas must be shared by affordable and market-rate units;
- Must be used as a primary residence;
- Restrictions against concurrent exemptions or abatements;
- Benefits are reduced pro rata for ineligible space over 12% of the aggregate square footage;
- The replacement ratio requirement;
- Calculations of an acceptable unit mix remain the same as 421-a;
- Rental units receiving 485-x cannot be converted to a condominium or cooperative;
- Transient use is not permitted; all lease terms must be for one or two years; and
- The prior assessed value and assessments for local improvements are not included as part of the exempted real property taxes.

Differences from 421-a:

- Rent stabilization applies indefinitely to affordable housing units (or restricted units, as applicable); market-rate units are explicitly not subject to rent stabilization;
- Applicants must use "all reasonable efforts" to spend at least 25% of applicable contract costs on Minority/Women Owned Business Enterprises;
- Construction wage requirements are more substantial, and increase at 2.5% per year, but apply only for Affordability Option A projects;
- Projects must provide prevailing wages to building service employees unless the project has under 30 units, or includes a majority of units affordable at or below 90% Area Median Income ("AMI"); and
- Filing fees now vary depending on the affordability option and size of projects, ranging from $3,000 to $5,000 per dwelling unit.

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The overall structure of the 485-x program differs from 421-a as affordability requirements and the real property tax exemption are based upon size and location of an applicant's project. The new options available to potential applicants are as follows:

OPTION A:
(Available to large or very large rental projects, as follows)

Very Large Rental Projects:
(For projects with more than 150 units)

These requirements are only applicable to very large rental projects in Manhattan south of 96th Street, or in certain areas of Queens and Brooklyn. These projects must provide at least 25% affordable units at an average 60% AMI, but not exceeding 100% AMI, in three (3) income bands or less.

These projects enjoy three- or five-year construction period exemptions from real property taxes. Thereafter, the property would receive a 40-year exemption.

Depending on location, construction wage requirements may be (i) the lesser of $63.00/hour or 60% of the prevailing wage, or alternatively, (ii) the lesser of $72.45/hour or 65% of the prevailing wage, depending on the location of the project.

Large Rental Projects:
(For projects with more than 100 units)

Rental projects of 100 or more units are required to provide at least 25% of units as affordable at an average 80% AMI, but not exceeding 100% AMI, in three or fewer income bands.

These projects receive up to a three-year construction period exemption from real property taxes.

Thereafter, the property will receive a 35- year exemption from real property taxes.

Construction wage requirements for these projects are at $40.00, increasing at 2.5% per year.

OPTION B:
(Available to projects between 6 and 99 units)

Option B projects must be 20% affordable, averaging 80% AMI, but not exceeding 100% AMI, in no more than three income bands. These projects receive up to a three-year construction period exemption. Thereafter, the property will receive a 35-year exemption. The 35-year construction benefit includes 25 years with a full exemption and ten years thereafter at the percentage of affordable units.

OPTION C:
(Available for projects between 6 and 11 units)

Option C is not available in Manhattan. It provides a full exemption for up to three years during the construction period, and a 10-year 100% exemption thereafter. There are no affordability requirements, but Option C requires a majority of all units to be subject to rent stabilization.

OPTION D:
(Available for homeownership projects only)

Option D projects cannot be located in Manhattan or have assessed values over $89.00 per square foot. The homeownership 485-x benefits include up to three years of a 100% exemption during the construction period, and a 20-year exemption from real estate taxes – this includes a 100% exemption for the first 14 years, and a 25% exemption for the final six years.

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Creating Affordable Housing Out of the Glut of Office Vacancies: Affordable Housing from Commercial Conversions (467-m)

The proposed RPTL section 467-m, referred to as Affordable Housing from Commercial Conversions ("AHCC" or "467-m"), was created to address the dearth of housing available in New York City amidst a glut of vacant office space following the COVID-19 pandemic. The program provides up to a 90% exemption from real property taxes for eligible conversions of commercial buildings (not including hotels) to an eligible residential building.

AHCC largely mirrors 485-x in its structure, including, but not limited to:

- Common entrances and areas be shared between affordable and market-rate units;
- No existing concurrent exemptions or abatements on the property;
- Market rate units are not subject to rent stabilization;
- Benefits will be reduced pro rata for ineligible space over 12% of the aggregate square footage;
- Dwelling units must be used as primary residences;
- Calculations of an acceptable unit mix;
- Rental units cannot be converted to a condominiums or cooperatives; and
- Transient use is not permitted; all lease terms must be for one or two years.

AHCC requires eligible conversions to create at least 25% affordable housing units. Of these units, 5% must be affordable at 40% AMI. AHCC conversions must be affordable at an average 80% AMI in up to three total income bands, none of which exceed 100% AMI. All eligible projects will receive a 100% exemption from real property taxes for up to three years. Thereafter, the benefit term will depend on the construction start date and location. A property will only be eligible if the applicant certifies that all taxes, water charges, and sewer rents are paid.

The commencement date is measured as the date on which an alteration permit that requires a new certificate of occupancy ("CO") is issued. The completion date is determined as the date on which DOB issues the first CO covering all residential areas.

Those AHCC projects located in the Manhattan Prime Development Area – defined as any tax lot located entirely south of 96th Street in Manhattan ("MPDA") – are given a 90% real property tax exemption after the completion date, and phase out in the final five (5) years of the benefit. Those projects outside of the MPDA are given a 65% real property tax exemption after completion of construction, phasing out in the final five years of the benefit.

The application for AHCC benefits must be filed no earlier than the completion date, and not later than the first anniversary of the completion date. The AHCC application requires a filing fee of $3,000 per dwelling unit. HPD has created a website setting forth AHCC requirements, but has not yet begun accepting applications. However, an HPD interest form is available here.

Conclusion

These new programs once again prove the adage: in a true compromise, everybody loses. While the extended 421-a, 485-x, and AHCC do create some significant tax exemptions for developers and owners, the programs also create barriers by way of permanent rent stabilized units, deeper affordability requirements, and more significant construction wage requirements. The attorneys at Belkin Burden Goldman can help you navigate these new, complex tax incentive programs.

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

From Beyond the Grave

New York Enacts Significant Change to Real Property Law Permitting The Making of a Deed That Becomes Effective on the Grantor's Death

BY ROBERT A. JACOBS

In one of the most significant changes to the New York Real Property Law in decades, the New York State legislature has enacted a new section to the Real Property Law effective July 19, 2024 permitting a person to deed real property with the transfer taking effect upon that person's death.

The legislation, codified as Real Property Law section 424, and known as the Transfer on Death Statute ("TOD Statute"), is designed to: (i) facilitate the transfer of real property upon the death of an individual owner, (ii) streamline or avoid probate proceedings; and (iii) relieve executors and administrators of the cumbersome and often problematic task of controlling and operating real property pending probate and distribution of estate assets.

The TOD Statute provides a mechanism whereby an individual owner of real property (designated as the "Transferor" in the statute) can make a deed (the "TOD Deed") transferring real property, with the TOD Deed becoming effective upon the Transferor's death. The TOD Deed must be in recordable form, with a legal description of the property and signed before a notary and two witnesses. Notably, unlike a conventional deed, the TOD Deed must be witnessed by two persons, which is also required in the execution of a last will and testament. The TOD Deed is then recorded in the land records and becomes effective upon the death of the grantor subject to certain conditions set forth in the TOD Statute.

The TOD Deed is subject to numerous requirements and conditions as summarized below:

- Survival Required: The party named as the grantee in the TOD Deed (designated as the "Transferee" or Beneficiary" in the statute), if a natural person, must survive the Transferor. If the Transferee does not survive the Transferor, the deed lapses and the real property becomes part of the Transferor's estate.
- Revocation: the TOD Deed is subject to revocation by the following acts:
  - A subsequent TOD Deed that revokes a prior TOD Deed, or part thereof, expressly or by inconsistent language.
  - The recording of a "revocation" form as promulgated by the TOD Statute.
  - An inter vivos deed (deed made during the lifetime of the Transferor) that expressly revokes the TOD Deed, or part thereof.
- No Limitation on Future Right to Transfer: The TOD Deed does not affect the right of the owner, while alive, to transfer or otherwise encumber the real property by a mortgage or other form of lien.
- No Legal or Beneficial Interest Created: The TOD Deed does not create a legal or beneficial interest in favor of the designated Transferee.
- Not Subject to Claims Against Transferee: The subject property is not subject to claims or process of a creditor of the designated Transferee.
- No Effect on Eligibility for Public Benefits: The TOD Deed does not affect the eligibility of the Transferor or Transferee to receive any form of public assistance or benefits.
- Death of One Transferee Where Multiple Transferees: If there be more than one Transferee, the subject property is transferred in equal and undivided shares with no right of survivorship; provided, however, that, if one of the Transferees dies, the remaining Transferee or Transferees take(s) the interest of the deceased Transferee in equal shares.
- Conveyance Subject to All Encumbrances: The Transferee takes the deeded property subject to all encumbrances, assignments, contracts, mortgages, liens and other interest to which the property is subject prior to the Transferor's death.
- Effect of Joint Ownership: If the Transferor is a joint owner (owns with another person with rights of survivorship) and is survived by one or more other joint owners, the subject property shall belong to the surviving joint owner or owners with right of survivorship.
- Cessation of marital relationship: Divorce, annulment or dissolution of marriage shall have the same effect on a Transferee of the TOD Deed as outlined in Section 5-1.4 of the Estates Powers and Trusts Law ("EPTL"), which voids a testamentary transfer (transfer made in a will) to a divorced spouse or where the marriage has been annulled or dissolved.
- Renunciation: A Transferee may renounce (refuse to accept) the TOD Deed in whole or in part in the same manner as a beneficiary may renounce a bequest under a will.
- Statute of Limitations: A proceeding to enforce any liability attaching to or created under the TOD Deed must be commenced within eighteen (18) months of the Transferor's death.

In addition to providing the "revocation" form, the TOD Statute provides specific forms to be used to prepare a TOD deed. It is strongly recommended that the forms promulgated by the TOD Statute be strictly followed in creating deeds or other instruments covered by the TOD Statute. An unusual and helpful feature of the TOD Statute is the question and answer section near its end that attempts to answer anticipated questions about the new law.

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The TOD Statute can be used as an effective estate-planning tool by avoiding probate and the need for executors or administrators to control and operate the decedent's real property post mortem. Until now, trusts were required to accomplish similar goals. Notably, while well intentioned, the TOD Statute has many issues that will need to be resolved by judicial decisions or future amendments. How title insurance companies will provide title insurance is not addressed in the TOD Statute. The effect of the transfer on a spouse's right to elect one-third of a deceased spouse's estate ("right of election") under EPTL Section 4-1.1 is also not addressed. Furthermore, the TOD Statute does not provide for alternate beneficiaries in the event of the death of a Transferee. Moreover, the TOD Statute does not provide contingencies where one of the Transferees is a minor, unlike wills where bequests to minors are placed in testamentary trusts (trusts created under a will). How these and other related issues will be resolved is not presently known since the law has yet to take effect and will need to be addressed by the courts and/or legislature after the TOD Statute comes into effect.

*Robert A. Jacobs is a partner in the Firm's Transactional Department, and can be reached at 212-867-4466 ext. 359 (**rjacobs@bbgllp.com**).*

Celebrating Robert Holland: A Tribute to 35 Years of Success and Dedication

With mixed emotions, we announce the retirement of our esteemed colleague and Partner, Robert Holland, who concluded an impressive 35-year career with the Firm on May 9, 2024. Throughout his tenure, which began as a Legal Assistant and culminated in his rise to Partner, he has been a pivotal and invaluable member of our team. As one of the most versatile attorneys in our firm's history, Mr. Holland's profound expertise has left an indelible mark.

As he begins the next chapter of his life, we express our heartfelt thanks for his many years of commitment, significant contributions, and dedicated service. We wish him all the best in his well-deserved retirement!

Robert T. Holland joined the firm in 1991 and became a Partner in 2000.

Mr. Holland handled many aspects of Cooperative and Condominium law and also practiced in the Firm's Litigation Department. He had extensive experience litigating actions to foreclose mortgages, condominium liens for unpaid common charges, and mechanics' liens, and all types of summary proceedings in Landlord-Tenant court.

He also had extensive experience litigating cases in the Civil and Supreme Courts on behalf of Cooperative and Condominium Boards, enforcing Board rights and remedies.

Mr. Holland counseled Cooperative and Condominium boards on corporate governance issues, elections, special meetings and annual meetings, vendor contract review, apartment renovations and combinations, and amendments to By-Laws and Declarations.

Recap of Our Successful Good Cause Eviction Seminars

We are happy to share the success of our recent in-person seminars focused on the Good Cause Eviction law and other critical real estate legislative updates. Our initial two sessions on May 8 reached full capacity within just a few hours of reservations being opened, demonstrating the keen interest and need for information among our clients. Due to this overwhelming response, we hosted two additional sessions on May 13 for those who were unable to secure a spot previously.

The in-person seminars provided an invaluable opportunity for property owners and real estate investors to stay informed about the latest legislative changes included in New York's 2025 Fiscal Year budget. Our expert panel, featuring Jeffrey L. Goldman, Kara Rakowski, Martin J. Heistein, Ron Mandel, Daniel P. Phillips and Anthony Morreale, delivered an in-depth analysis of the newly enacted provisions with substantial implications for property owners in New York City and State.

Key Topics Covered:

- Good Cause Eviction Law;
- Individual Apartment Improvements (IAI's);
- 485-X Tax Incentive Program (485-x);
- Affordable Housing from Commercial Conversions (467-m); and
- Extension for Vested 421-a (16) Projects.

Engaging and Informative Sessions

Our high-profile attendees had the unique opportunity to engage directly with our knowledgeable attorneys, ask pertinent questions, and receive personalized insights relevant to their specific needs. We are grateful for the enthusiastic participation and positive feedback from our clients. If there are other topics you are interested in hearing about, please do not hesitate to contact us.

Media Mention

We are also proud to share that our efforts were recognized by The Real Deal in their feature, The Daily Dirt. They noted, "When law firm Belkin Burden Goldman scheduled a seminar to tell clients about all the real estate laws that passed in New York last month, it filled up within hours, prompting the firm to schedule two more. The topics were good cause eviction, individual apartment improvements, the 485-x tax incentive, commercial conversions, and the extension of 421-a's construction deadline. Meanwhile, some investment sales brokers say their phones haven't stopped ringing since the news about 485-x and 421-a broke." Read the full article here.

Owner Defeats Rent-Controlled Tenant's "Excusable Absence" Defense Premised on COVID-19 Pandemic

BY DAVID M. SKALLER AND DANIEL P. PHILLIPS

As Elaine Benes of "Seinfeld" discovered, if you are going to play hooky from work, you should not be seen wearing a Baltimore Orioles' hat in the owner's box at Yankee Stadium. Similarly, a rent-regulated tenant who alleges excusable absence from her apartment because of the COVID-19 pandemic in defense to a non-primary residence holdover proceeding should not be seen traveling extensively while primarily residing in a house she owns elsewhere.

While the COVID-19 pandemic has been over for quite some time, the effects of it are still unfolding. One of those effects in the landlord/tenant arena is litigation of non-primary residence holdover proceedings for rent regulated tenants who left New York City during the pandemic. While all tenants in New York City during the pandemic were faced with the decision of staying or leaving based on numerous factors, rent-regulated tenants' decisions included an additional factor to consider, i.e., the requirement to maintain their apartments as their primary residence.

In order to prove that a rent regulated tenant failed to maintain their apartment as their primary residence, an owner must establish that the tenant did not maintain an ongoing, substantial, physical nexus with the apartment for actual living purposes. The purpose of the non-primary residence restriction is twofold – to alleviate the shortage of rent regulated housing in New York City by removing residents who reside elsewhere and misuse rent regulated apartments as pied-a-terres; and to return underutilized apartments to the marketplace for tenants who need them. Simply stated, a rent-regulated tenant should not be afforded rent regulatory protections based on something less than the need for a place to call home.

However, pursuant to 9 N.Y.C.R.R. § 2204.6(d)(i)-(vi), a tenant's absence may be held excusable based on a temporary relocation, because the tenant: (i) is engaged in active military duty; (ii) is enrolled as a full time student; (iii) is not in residence pursuant to a court order not involving any term of the lease or based on grounds specified in the Real Property Actions and Proceedings Law; (iv) is engaged in employment requiring temporary relocation; (v) is hospitalized for medical treatment; or (vi) has other reasonable grounds.

In a decision of first impression, in which BBG represented the victorious owner, the Court in *215 W 88 LLC v. Sitney*, 81 Misc 3d 1250(A) (Civ. Ct., NY County 2024), scrutinized and rejected a rent controlled tenant's alleged excusable absence from her rent controlled apartment because of the COVID-19 pandemic despite her being 75 years old with a more than 50-year tenancy. Interestingly, while the Court stated that the COVID-19 pandemic would indeed constitute a reasonable excuse for a senior citizen to be absent based on a need to isolate to a more sparsely-populated accommodation, the Court rejected the tenant's allegation of an excusable absence on these grounds because, among other things, she: (1) travelled extensively during the COVID-19 pandemic; (2) exposed herself by attending functions with large numbers of other people, but failed to return to her apartment; (3) admitted at her deposition and at trial that she failed to return to the apartment because she had a choice of where she wanted to be and chose not to live in the apartment because the amenities of New York City were closed; (4) was prevented from moving back to her apartment because of her family's occupancy therein; and (5) primarily resided at another address she owned and used said address on pertinent documents, such as her tax returns, bank statements, and car registration.

Establishing a tenant's non-primary residence is fact-specific, and the Court's holding in *Sitney* clearly established that the COVID-19 pandemic did not give rent regulated tenants absolute immunity from their obligation to maintain their apartments as their primary residences.

David M. Skaller *(dskaller@bbgllp.com) co-heads the Firm's Litigation Department, and can be reached at 212-867-4466 ext. 316.* ***Daniel P. Phillips*** *(dphillips@bbgllp.com) is a partner in the Litigation Department and can be reached at 212-867-4466 ext. 496. Messrs.* ***Skaller*** *and* ***Phillips*** *handled this successful case.*

Challenge to Decades-Old Deregulation of Former Rent-Controlled Apartment Is Upheld by Court of Appeals

BY MAGDA L. CRUZ AND ARIS E. L. DUTKA

In the BBG Winter 2023 Update, we discussed a divided ruling by the Appellate Division, First Department in the case of Liggett v. Lew Realty LLC – a market tenant's challenge to the regulatory status of an apartment that had been deregulated via high rent vacancy deregulation decades earlier. On May 15, the Court of Appeals heard oral argument on the tenant's appeal. Lively questioning by numerous justices highlighted the many ways that past deregulations can potentially unravel. On June 20 the Court issued a unanimous decision showing us how.

To provide some background on the seemingly unremarkable case, in 2000, following the the death of the rent-controlled tenant, the building owner ("Owner") commenced a licensee proceeding against a remaining occupant ("Occupant"), who, in turn, asserted a "non-traditional family member" succession defense. Rather than litigate, the parties reached a settlement (both sides represented by counsel).

Under the settlement, Occupant received a rent stabilized lease at an agreed-upon rent of $1,650/month (which was registered with DHCR as the initial legal regulated rent), with a lower preferential rent of $650/month, plus allowable renewal increases, for the duration of his tenancy. In return, Occupant agreed not to file a Fair Market Rent Appeal ("FMRA"). The settlement was so-ordered by the Housing Court, and Owner filed it and a copy of the lease with DHCR when it filed the initial apartment registration (known as the "RR-1" form).

One year later, in 2001, Occupant vacated the apartment. Adding the normal vacancy allowance and individual apartment improvement increases to the prior legal regulated rent (i.e., $1,650), resulted in the apartment's rent for the incoming tenant exceeding the then $2,000 threshold for high rent vacancy deregulation. Owner entered into a market lease with the incoming tenant and disclosed the deregulation in the appropriate registration at DHCR.

More than twenty years later, in 2022, a new tenant – the Plaintiff, Liggett – sued Owner, claiming that the apartment should still be rent-stabilized, and that the 2000 settlement with Occupant was invalid. The Appellate Division rejected these claims, found no impropriety with the 2000 settlement, and dismissed the complaint. The Plaintiff appealed.

At oral argument on the Plaintiff's appeal, the Court of Appeals concentrated much of its questioning on the 2000 settlement. It pressed Plaintiff regarding her argument that the settlement figures of $650 and $1,650 could not legally co-exist, even if there had been no FMRA waiver. Plaintiff insisted that the $650 with applicable increases actually paid should have been the initial legal regulated rent, because the purpose of the $1,650 figure was allegedly to circumvent rent regulation and illegally waive rights under the Rent Stabilization Law by making it possible to deregulate the apartment as soon as the Occupant vacated. Plaintiff added that under recent legislative enactments concerning establishing a cause of action for rent regulation fraud, Owner's actions when entering into the 2000 settlement may satisfy the new fraud standards. The justices, however, seemed generally skeptical of the fraud assertion.

The Court of Appeals, nonetheless, continued its questioning of the 2000 settlement when it turned to Owner, this time focusing on the FMRA waiver. Some of the justices pointed out that while Occupant may have been personally incentivized not to file a FMRA because of the preferential rent discount made available to him as part of the settlement, all other subsequent tenants paid the price for the agreement between Occupant and Owner. Owner responded that there was a bona fide dispute in the licensee proceeding where both sides faced significant risk in the outcome: if Owner had won, Occupant faced eviction from the apartment; if Occupant had won, Owner faced the prospect of having another long-term rent-controlled tenant paying minimal rents. There was also no evidence that the agreed-upon legal regulated rent was not a fair rent consistent with local market conditions at the time. In short, Owner argued that the FMRA waiver was a fair and reasonable term under the circumstances, reached in open court in a transparent manner, and with counsel on both sides.

Owner's argument seemed to resonate with some of the justices, who next questioned Plaintiff regarding her delay in vacating of a more than twenty-year old settlement. Plaintiff argued that the passage of time was of no relevance because there was no statute of limitations precluding inquiry into the deregulation of an apartment. Owner, on the other hand, argued in favor of the finality of settlements, and that Plaintiff was, in essence, actually asserting a rent overcharge claim which is now legally time-barred.

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In Liggett, the Court of Appeals addressed numerous issues impacting pending and future litigation. For example, were the facts here analogous to Kent v. Bedford Apts. Co. as Owner advocated? In Kent, the Appellate Division held that a roommate of a deceased tenant of record could enter into a stipulation waiving rights under the Rent Stabilization Law because the roommate was not a rent-stabilized tenant when entering into the stipulation. Or does Jazilek v. Abart Holdings LLC control, as Plaintiff argues? In Jazilek, the Court of Appeals set aside a stipulation as void against public policy when it fixed rent at a sum exceeding the legal limit even though the plaintiff was not a tenant of record at the time of execution.

The Court of Appeals further suggested during argument that determining the legal rent amount in this scenario may pose questions not resolved in In the Matter of Regina Metro. Co., LLC v. DHCR. Some of the justices noted that in Regina, the first rent after an incorrect but non-fraudulent deregulation was at issue. Here, the issue was the initial legal regulated rent following an apartment's exit from rent control and the effect on subsequent rents. Accordingly, the Court of Appeals continued to grapple with how to calculate appropriately the legal rent when assessing the legality of past deregulations.

On June 20, the Court of Appeals reversed the Appellate Division, First Department's decision. It held that Kent is not good law, and that even an occupant cannot waive the protections of rent stabilization. Although the Court left open the possibility that the Owner could still establish deregulation on remand, such as by establishing the fair rent of the apartment when it entered rent stabilization in 2000 and applying subsequent allowable increases, the key takeaway is that regulatory status is always subject to challenge, even after decades have passed. Liggett will inevitably have a significant impact on the rent regulation landscape going forward.

__Magda L. Cruz__ (mcruz@bbgllp.com) is a partner in the Firm's Litigation Department specializing in appeals, and can be reached at 212-867-4466 ext.326. __Aris E. L. Dutka__ (adutka@bbgllp.com) is a Litigation associate who also works on appeals, and can be reached at 212-867-4466 ext. 412.

The Requirement of "Commercial Reasonableness" in Foreclosing On Co-op Shares

BY MARK N. ANTAR

Ownership of a co-op apartment, consisting of shares of stock and a proprietary lease, is considered personal property as opposed to real estate. This well-known quirk of New York law means a co-op apartment can be foreclosed upon without a case filed in court. The co-op corporation customarily holds a secured lien against the shareholder-proprietary lessee's shares, which is generally created through the corporation's by-laws and without the need to file a UCC-1 statement pursuant to Article 2 of the New York Uniform Commercial Code ("UCC"). When a shareholder-lessee defaults under his/her proprietary lease by, for instance, failing to pay maintenance charges, and fails to cure the default, the co-op corporation can foreclose upon the shares and lease in a non-judicial sale pursuant to Article 9 of the UCC. This article briefly explores how Article 9 governs such foreclosures.

The cornerstone of Article 9 is the broad requirement of "commercial reasonableness," a phrase that is reiterated throughout the Article. Indeed, Section 9-610(b) explicitly states that "[e]very aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable."

So what does "commercially reasonable" mean? The statute and case law provide guidance.

First comes the notice. A co-op corporation that wants to foreclose upon shares allocated to a unit must first send "a reasonable authenticated notification of disposition" to specified interested persons (§ 9-611(b)), which is often a single notice entitled "Notification of Disposition of Collateral" (hereinafter referred to as the "Disposition Notice"). In order to be considered commercially reasonable, the Disposition Notice must satisfy a slew of statutory criteria covering the manner in which it is sent, its timeliness, and its content.

For instance, the Disposition Notice must be sent not only to the debtor-proprietary lessee, but also to any "secondary obligor" (e.g., sureties), and any other secured creditor that holds a lien on the collateral perfected by the filing of a proper financing statement. The statute even imposes a burden on the co-op to search for any competing secured parties who filed proper financing statements covering the apartment and indexed under the proprietary lessee's name as of a particular date. A co-op's failure to identify and notify all secured creditors and other interested parties of the pending foreclosure could render the co-op liable to those creditors and interested parties.

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Another section of Article 9, § 9-613, provides specific information that should be included in a Disposition Notice. For example, in addition to describing the apartment, the proprietary lessee's default and the details of the anticipated sale, the Disposition Notice should state that the proprietary lessee is entitled to an accounting of the unpaid indebtedness and the charge, if any, for the accounting. Failure to include this information or any other specified item may invalidate the Disposition Notice, or at least create an issue of fact as to whether the disposition is commercially reasonable, which a defaulting proprietary lessee can use to block or delay a sale.

(The rules are stiffer for banks and other lenders seeking to foreclose on a security interest in co-op shares, including a minimum 90-day notice period and the inclusion of an extended disclosure statement in the Disposition Notice; however, these extra requirements do not apply to co-op corporations to which a proprietary lessee owes a debt, so will not be discussed here.)

Aside from the Disposition Notice, the broad requirement that "every aspect" of the sale must be commercially reasonable means that the co-op corporation, as the secured party, must act in good faith and to the parties' mutual best advantage. The New York Court of Appeals has refrained from adopting an explicit test to assess commercial reasonableness, noting that lack of particularization invites consideration of accepted business practices as a guide to what is most likely to protect both debtor and creditor. Nevertheless, a few guideposts for measuring commercial reasonableness emerge from case law.

First, courts consider the optimization of the resale price. A foreclosure sale scheduled for a time, place and manner that restricts potential purchasers and leads to a sale price at a fraction of the collateral's value is likely not in the debtor's interest and is therefore potentially unreasonable. However, courts have been careful to stress that more evidence is required than a mere sale price, and the fact that a better price could have been obtained at a different setting or in a different method is not itself sufficient to establish that the sale was commercially unreasonable.

Second, courts consider the "procedures employed" by the co-op. Whether a sale is commercially reasonable is, like other questions about reasonableness, a fact-intensive inquiry. Courts have recognized that no magic set of procedures will immunize a sale from scrutiny. Even where a co-op technically complies with Article 9 requirements, the specific procedures employed could taint the sale as commercially unreasonable.

For instance, Section 9-612(b) states that a Disposition Notice sent at least 10 days before a sale is sent "within a reasonable time before the disposition." In one case, a secured party served a 15-day notice, but it was during the height of the COVID-19 pandemic while New York was in a state of complete lockdown and when 15 days may not have been sufficient notice to contest the sale. The court denied the secured party's motion to dismiss the plaintiff's claim challenging the sale, finding that although compliance with the 10-day rule "may render the timeliness of the sale reasonable…that does not render the sale itself commercially reasonable."

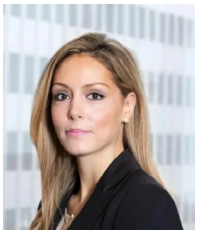
Courts have also recognized that there is a need for closer scrutiny where the possibilities for self-dealing are substantial. For instance, the Appellate Division found a triable issue of fact regarding commercial reasonableness where the purchaser at a foreclosure sale had offices at the same address, and in care of the same attorney, as the secured party, combined with the fact that the sale price was less than 35% of the co-op unit's original purchase price.

Finally, section 9-625 expressly authorizes courts to restrain pending foreclosure sales where the secured party has not complied with the statute.

In sum, co-op corporations have a potent weapon in foreclosure sales, but co-ops seeking to foreclose on a defaulting proprietary lessee's shares must follow scrupulously the express requirements set forth in Article 9, while also using common sense to avoid potential claims that any aspect of the disposition is not commercially reasonable.

Mark Antar *is an associate in the Firm's Litigation Department concentrating in commercial litigation and bankruptcy and creditors rights, and can be reached at 212-867-4466 ext. 340 (**mantar@bbgllp.com**).*

An Opportunity to Increase Rents and Recoup Capital Costs – Budget Bill Amends IAI Rent Increase Rules



BY LOGAN O'CONNOR

The Budget Bill S8306/A8806 (the "Bill"), enacted on April 20, 2024, amended the rules regarding permitted rent increases based on individual apartment improvements ("IAI's") under the Emergency Tenant Protection Act and Housing Stability and Tenant Protection Act ("HSTPA").

First and foremost, the Bill made IAI rent increases permanent again, reversing the HSTPA's rule which had made IAI rent increases temporary.

Second, the Bill created two IAI tiers. The two-tier system takes effect on October 17, 2024.

First Tier

The first tier increased the IAI cap established by the HSTPA from $15,000 to $30,000 over a 15-year period. This means that owners may perform IAI's in an apartment and recoup up to $30,000 over 15 years.

Under this tier, the collectible percentage remains to be as established under the HSTPA. Owners may take a monthly rent increase equal to 1/168th of the IAI expenditure for buildings of 35 units or fewer, or 1/180th of the IAI expenditure for buildings with more than 35 units.

Second Tier

Under the second tier, the IAI cap is $50,000 for IAI's performed during a vacancy if either: (i) the previous tenant was in occupancy of the unit for at least 25 years, or (ii) the apartment was timely registered as vacant with the Division of Housing and Community Renewal ("DHCR") in 2022, 2023 and 2024.

In addition to the foregoing requirements, IAI costs under the second tier are only recoverable if the owner first receives a certification from the DHCR stating that the unit satisfies eligibility requirements. The owner must demonstrate that the IAI was necessary due to a substandard condition or because an item's useful life had expired. And, following the IAI, the owner must submit evidence to the DHCR that the IAI was completed, and must pay a fee equal to 1% of the claimed IAI costs.

Under this tier, the permissible monthly rent increase is 1/140th of the IAI expenditure in buildings of 35 units or fewer, or 1/156th of the IAI expenditure in buildings with more than 35 units.

As a result of the Bill, the DHCR is required to promulgate new rules and operational bulletins reflecting the updated law. As of the date of this writing, DHCR had not yet issued them.

The attorneys at BBG are available to assist with all of your questions regarding IAI's and regulated rent increases.

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

BBG Proudly Supports Community Initiatives

BBG Co-Sponsor of Inspiring Girl Gang Event

Belkin • Burden • Goldman, LLP was a proud co-sponsor of the recent Girl Gang event held on May 14. The evening was a resounding success, filled with networking and knowledge-sharing among women in the real estate industry.

Girl Gang is an organization dedicated to fostering connections, empowerment, and professional growth specifically for women in the real estate and construction industries.

By co-sponsoring this event, BBG demonstrated its support and commitment to advancing women in the real estate sector. We believe that such initiatives are crucial for creating a more inclusive and supportive professional community.

We are grateful for the opportunity to contribute to the success of this event and extend our sincere thanks to everyone who attended.

BBG is proud to announce that we have once again been recognized as a top-tier real estate law firm by Chambers and Partners for 2024. We are honored to receive this prestigious ranking, which is a testament to our expertise and dedication in this field.

Chambers and Partners, a globally recognized directory that has ranked BBG as a top firm for Real Estate Litigation, has also acknowledged our esteemed practitioner, Sherwin Belkin, for his outstanding contributions to the field.

We extend our heartfelt thanks to our valued clients and the entire BBG team for their unwavering support.

Continuing our Competitive Streak!

BBG is pleased to announce that we once again participated in the JPMorgan Chase & Co. Corporate Challenge! With the support and encouragement of their co-workers, our team successfully completed a 3.5-mile race around Central Park on May 31, joining thousands of other competitors representing companies from across NYC. This event served as a true test of endurance and teamwork, and we are proud to say that each team member exceeded expectations.

The proceeds from this race are generously donated to the Central Park Conservancy, supporting their mission to restore, manage, and enhance Central Park. We are thrilled to have had the opportunity to contribute to this worthy cause, and we eagerly anticipate future opportunities to illustrate how our Firm goes the extra mile, in and out of the courtroom!

A special shoutout to Brian Bendy, Partner in our Litigation Department, who was the first of our BBG team to cross the finish line with a time of 27 Minutes and 28 seconds! Congratulations to Brian on his athletic achievement!

BBG Continues to Expand and Welcomes New Hires

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

JESSI MADURO,

Associate, Administrative Law: Ms. Maduro has joined BBG as an associate in the Administrative Law Department, with a focus on administrative proceedings, anti-harassment measures, and due diligence. She has extensive experience handling matters for property owners at the Division of Housing and Community Renewal (DHCR) and the New York City Department of Housing Preservation and Development (HPD). Ms. Maduro is skilled in applications for rent restoration, modification of services, major capital improvements, TPU audits, and certificates of no harassment. She also excels in compliance and harassment proceedings before DHCR's Enforcement Unit and managing complex due diligence projects. Ms. Maduro graduated from Boston University in 2016 and St. John's University School of Law in 2019, and was admitted to the New York Bar in 2020.

JOSE SALADIN,

Associate, Litigation: Mr. Saladin brings over 18 years of litigation experience to the Firm's Litigation Department. He has represented cooperative and condominium boards in various landlord-tenant disputes, commercial tenant issues, contract disputes, foreclosure proceedings, discrimination claims, and actions to abate violations of governing documents. Mr. Saladin has extensive experience litigating in state trial and appellate courts, federal bankruptcy courts, and before administrative agencies like the New York City Department of Housing Preservation and Development and the Department of Buildings. Beyond litigation, he advises boards on corporate governance, including interpreting and enforcing By-Laws, proprietary leases, and rules, and devising practical solutions to community issues. Mr. Saladin holds a B.A. from John Jay College of Criminal Justice and a J.D. from Brooklyn Law School. He is admitted to the New York State Bar and the United States Bankruptcy Court for the Eastern District of New York.

MICHAEL A. MULIA,

Associate, Transactional: Mr. Mulia has joined as an associate in the firm's Transactional Department, bringing his extensive experience in handling commercial real estate transactions and leasing. He handles the purchase and sale of apartment buildings, multifamily properties, and office buildings nationwide, and has extensive experience with office, retail, shopping center, and industrial leases. Mr. Mulia also assists high net worth clients with residential transactions, including condominiums, cooperatives, single-family homes, and townhouses. Throughout his career, he has represented institutional real estate investment companies, private universities, a "Big Four" accounting firm, and one of New York City's largest charter school developers. Michael frequently conducts educational presentations for New York real estate agents. He earned his J.D. from St. John's University School of Law in 2016 and his B.A. from Wagner College in 2012. Admitted to practice in New York and New Jersey in 2017, Michael has been recognized as a New York Metro Super Lawyers Rising Star in Real Estate Law and as one of the New York Real Estate Journal's Ones to Watch.

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New Hires - Professional Support Staff
The following individuals joined as professional support staff:

JUSTIN ALMANZAR, Junior Staff Accountant

The firm operates a Summer Associate program, through which we recruit law students seeking valuable hands-on experience. Summer Associates have the opportunity to work closely with our experienced real estate attorneys and engage actively in the firm's day-to-day operations. We are pleased to announce the selection of the following talented individuals for the summer of 2024:

JULIANNE BUFF

Julianne is currently enrolled as a rising 3L at St. John's University School of Law where she serves as the Editor-in-Chief of the American Bankruptcy Institute Law Review. She wrote her note on the topic of landlord claims in commercial tenant bankruptcy proceedings. Prior to law school, Julianne served as a Paralegal at Friedman Vartolo LLP, and she has since utilized internships to broaden her knowledge of real estate through employment at a REIT, Ladder Capital Corp, and at Federman Steifman LLP. She is excited to continue her educational and professional journey with BBG.

JENNA TAMMARO

Jenna is currently enrolled as a rising 3L student at Brooklyn Law School. Jenna previously worked part-time as a Legal Intern at Gallet Dreyer & Berkey, LLP and served as President of the Brooklyn Law School Real Estate Society. She currently serves as a Notes Editor for the Brooklyn Law Review, and her note will be published in an upcoming volume of that journal. She is a member of the Brooklyn Law School Moot Court Honor Society--Trial Division. She approaches this opportunity with enthusiasm, seeking to broaden her understanding of real estate law while leveraging her valuable experience.

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

Roxanne Lynch-Scott, Paralegal – 33 Years

Kara I. Rakowski, Partner & Co-Chair of Administrative Dept. – 32 Years

Robert Jacobs, Partner – 29 Years

Brian Haberly, Partner – 22 Years

Lewis Lindenberg, Partner – 21 Years

Douglas Davis, Office Services Clerk – 20 Years

Suzana Baci, Controller – 20 Years

Aaron Shmulewitz, Partner – 19 Years

Rosa Lombardo, Legal Assistant – 19 Years

Noelle Picone, Partner – 19 Years

Diana Nisman, Partner – 17 Years

Gabriel Perez, Office Services Clerk – 15 Years

Vivian Tong, Senior Accountant – 15 Years

Michael Shampan, Partner – 11 Years

Lawrence Shepps, Partner – 10 Years

Scott Loffredo, Partner – 10 Years

Stephen Tretola, Partner – 9 Years

Brian Bendy, Partner – 8 Years

Jekin Patel, Senior Accountant – 7 Years

Benjamin Margolin, Associate – 7 Years

Robert S. Marshall, Jr., Partner – 6 Years

Michael Bobick, Partner – 5 Years

Joshua A. Sycoff, Associate – 5 Years

Recent Transactions of Note

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

Leases

Partners **Murray Schneier**, **Stephen M. Tretola** and **Lloyd Reisman** represented Maimonides Medical Center in connection with a 30-year lease of an entire building pursuant to a leasehold condominium regime in the Fort Hamilton section of Brooklyn.

Partner **Allison R. Lissner** and associate **Lauren K. Tobin** negotiated a 10-year lease for a popular bubble tea franchise store in Chinatown.

Ms. Lissner also handled the following leasing transactions:

-represented the owner on a ground lease for a utility-scale battery energy storage system (BESS) facility in Brooklyn;

-represented the tenant on a "human arcade" entertainment facility at The American Dream Mall in Rutherford, New Jersey;

-represented a REIT/owner on a lease to a national eye-care store in Wilmington, Delaware;

-represented a Midtown East co-op on a garage lease;

-represented the owner on a lease to a popular Mexican fast-food operator on the Upper East Side; and

-represented the owner on a Midtown East lease to a national dental practice.

Buy/Sell and Refinance Transactions

Partners **Daniel T. Altman** and **Stephen M. Tretola** and associate **Joshua A. Sycoff** represented a seller in connection with the $42 million sale of an Upper West Side mixed-use building.

Partners **Craig L. Price** and **Lawrence T. Shepps** represented Universal Communications Network in connection with the $31 million purchase and financing (from Bank of Chicago) of a 12-story Chelsea office building. The transaction was reported in Crain's New York Business.

Messrs. Price and **Schneier**, and associate **Lauren K. Tobin**, represented the purchaser of a mixed-use building in Gramercy Park for $5.3 million.

Mr. Reisman and **Ms. Tobin** represented the seller on the sale of three condominium units in a new development in SoHo in a $12 million transaction.

Mr. Price and partner **Michael J. Shampan** represented the seller of a $15 million condominium unit, the purchaser of a $9 million Upper East Side townhouse, and the seller of a $6.8 million Upper West Side townhouse.

Messrs. Price and **Sycoff** represented the Seller of a $6.5 million Brooklyn Heights townhouse.

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Recent Notable Matters Handled by Our Land Use/Zoning Team

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

- Successfully prosecuted a Board of Standards and Appeals application to authorize a restaurant in a residential district, a use not permitted as of right.
- Prepared and filed an application with the Department of City Planning seeking authorization to permit a bank use, which is not permitted as of right along Broadway in Manhattan.
- Acted as special counsel to a developer in connection with zoning due diligence and zoning counsel's opinion in connection with financing.
- Counseled developer regarding the transfer of development rights and construction license agreement, to facilitate proposed mixed-use multi-family development in Gowanus, Brooklyn.
- Effectively negotiated construction license indemnity and protection agreements on behalf of constructing and neighboring parties.
- Obtained favorable determination from the Department of Buildings to authorize improvements for hotel use in Long Island City, Queens.
- Prepared and filed a successful application with the Department of City Planning for modification of a Privately Owned Public Space (POPS) in Manhattan.
- Acted as zoning counsel to several zoning and development-related litigation matters.

BBG In The News

Founding partner **Sherwin Belkin** was quoted in an April 15 article in The City, criticizing the "good cause eviction" component of the proposed housing deal bill. **Mr. Belkin** was also quoted in the Japanese-language publication Nikkei America on April 19, discussing the negative impact that rent regulation has had on City apartment values. **Mr. Belkin** was also quoted in an April 20 article in City Limits, commenting on the "good cause eviction" component of the housing deal bill, and in an April 26 article in The Real Deal critiquing its likely impact on construction and development. **Mr. Belkin** was also quoted in a May 1 article in The Real Deal, commenting on a new challenge at the Supreme Court to the constitutionality of the HSTPA, and was cited in the May 9 e-newsletter edition of The Daily Dirt, decrying the number of signs required to be posted by owners of multiple dwellings. **Mr. Belkin** was also quoted in a May 22 article in law360.com on new challenges at the Supreme Court by owners to various provisions of the HSTPA, and in a June 5 article in The Real Deal, criticizing a proposed bill that would impose caps on rents payable by ground lease co-ops.

Mr. Belkin was a panelist at a May 22 seminar presented by REBNY entitled "Good Cause Eviction: New Legislation Impacting New York's Rental Market".

Mr. Belkin and fellow founding partner (and co-head of the Firm's Litigation Department) **Jeffrey L. Goldman** presented a webinar on Good Cause Eviction on June 27, sponsored by AKAM Living Services.

Mr. Belkin was ranked by Chambers + Partners for real estate litigation in 2024.

Martin Heistein, co-head of the Firm's Administrative Law Department, was a panelist at a May 15 seminar sponsored by Marcus & Millichap on the budget bill/good cause eviction legislation.

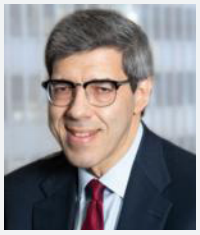
David M. Skaller, co-head of the Firm's Litigation Department, was quoted in the March 26 "Realty Law Digest" feature in The New York Law Journal, discussing the Firm's successful representation of an owner in a case of apparent first impression, defeating a tenant's "Covid" defense in a non-primary residence proceeding. **Mr. Skaller** and partner **Daniel P. Phillips** handled the case. The Court decision can be accessed at: https://www.nycourts.gov/reporter/3dseries/2024/2024_50208.htm.

Magda L. Cruz, head of the Firm's appellate practice, moderated a May 16 panel discussion at the New York City Bar Association entitled "Technology Innovations and the Law: The Future of Legal Practice in the Age of AI", in which the panelists were Appellate Division Justices Saliann Scarpulla and Deborah A. Dowling.

Jay Solomon, a partner in the Firm's Litigation Department, was quoted in an April 5 article in The Real Deal on issues presented by an owner's late filing of a bankruptcy petition.

Zoning and land use attorney **Frank Noriega** and the Firm were cited in a June 4 article in Crain's New York Business as representing the commercial unit owner in filing for City consent for bank use of a vacant commercial space in the iconic Belnord apartment building on the Upper West Side.

Law clerk/incoming associate **Zachary C. Rozycki**, a Real Estate Fellow at St. John's University School of Law, won the school's 2024 Mattone Institute writing competition for his paper, entitled "Rent Stabilization: Does New York's Current Rent Regulation Benefit Anyone?".



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****.*

SHAREHOLDERS' SUIT CHALLENGING CO-OP'S NEW SUBLET POLICIES IS TIME-BARRED

Fricke v. Beauchamp Gardens Owners Corp. Appellate Division, 2d Dept.

COMMENT | The Court held that the suit should have been brought within four months, since it was effectively an Article 78 challenge.

HDFC SHAREHOLDERS' CLAIMS AGAINST BOARD AND MANAGEMENT DISMISSED

Medley v. 540 West 146th Street HDFC Supreme Court, New York County

COMMENT | The complaint alleged mismanagement and refusal to step down after an election.

CONDO NOT ENTITLED TO APPOINTMENT OF RECEIVER IN ACTION FOR UNPAID COMMON CHARGES

206 East 124th Street Condominium v. Brooklyn Neighborhood Developers, LLC Supreme Court, New York County

COMMENT | The bylaws provided for a receiver only in a lien foreclosure action.

CONDO UNIT OWNER MUST PAY FOR TENANT TO RELOCATE TO HOTEL TO ENABLE UNIT OWNER TO PERFORM MOLD REMEDIATION

PV Realty, LLC v. Shapiro Supreme Court, New York County

CO-OP PREVAILS IN PULLMAN EVICTION

71 Washington Place Owners, Inc. v. Resnicow Supreme Court, New York County

ANOTHER CO-OP PREVAILS IN PULLMAN EVICTION

99 Randall Avenue Owners Corp. v. Strong Appellate Term, 2d Dept.

CO-OP NOT LIABLE TO VISITOR SHOT IN LOBBY VESTIBULE

Abdulfattaah v. Riverbay Corp. Appellate Division, 1st Dept.

COMMENT | The shooting was held to be an unforeseeable intervening act, with no history of prior similar incidents.

CONDO UNIT OWNER CAN SUE FOR BOARD'S BAD FAITH NON-RESPONSIVENESS TO ALTERATIONS APPLICATION

Meisenberg v. Sky House Condominium Supreme Court, New York County

SHAREHOLDER CAN SUE CO-OP FOR NO LONGER PERMITTING HIM TO SUBLET, AND FOR CONTRACTORS' UNAUTHORIZED ENTRY INTO APARTMENT

Orlitsky v. 33 Greenwich Owners Corp. Supreme Court, New York County

COMMENT | The Court seemed to try very hard to allow some claims to survive, while dismissing others.

PER CITY LAW, PROPERTY OWNER DOING EXTERIOR WORK CAN MAINTAIN SIDEWALK SHED 20 FEET IN FRONT OF NEIGHBORING BUILDING

157 W 18 Owner, LLC v. The Board of Managers of The Slate Condominiums Supreme Court, New York County

COMMENT | What's the question?

COMMERCIAL CONDO UNIT OWNER DENIED ORDER TO SHOW CAUSE TO COMPEL UPSTAIRS NEIGHBOR TO MAKE REPAIRS TO STOP LEAKS

The Brooklyn Tabernacle v. Thor 180 Livingston LLC Supreme Court, Kings County

COMMENT | The plaintiff failed to prove its entitlement to the relief; the relief was also the ultimate relief sought in the suit.

COMMERCIAL CO-OP SHAREHOLDER CAN SUE DIRECTORS OVER UNAUTHORIZED IMPOSITION OF COURTYARD FEE

Rokof Associates v. Village Place Corp. Appellate Division, 1st Dept.

COMMENT | The fee was apparently barred by the parties' prior agreement; also, the fee was apparently twice the amount that was imposed on other shareholders.

CONDO AWARDED LEGAL FEES AND CLEANUP COSTS IN HOARDING CASE

Board of Managers of The 48-54 West 138th Street Condominium v. Burdock Supreme Court, New York County

COMMENT | But the Condo was not entitled to an injunction against future hoarding.

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BUILDING OWNER ENTITLED TO REIMBURSEMENT OF CERTAIN COSTS, BUT NOT OTHERS, FROM NEIGHBORING BUILDING UNDER ACCESS LICENSE
Board of Managers of The River Lofts Condominium v. IRG 67 LLC Supreme Court, New York County

COMMENT | Access license negotiations have become a world onto themselves and the bane of many practitioners' existence. Careful drafting is a must.

COMMERCIAL CONDO UNIT OWNER NOT LIABLE FOR TRIP AND FALL ON SIDEWALK
Montes v. 490 Lower Unit LP Supreme Court, Bronx County

COMMENT | Per the Declaration and bylaws, the Condo was responsible for that area.

CONDO BUYER'S SUIT FOR BREACH OF CONTRACT AGAINST SPONSOR OVER NON-INCLUSION OF WINE COOLER DISMISSED
VB Soho LLC v. Broome Property Owner JV LLC Supreme Court, New York County

COMMENT | At least five years of litigation over this wine cooler; the apartment was sold at $3.6 million.

SELLER CAN SUE CO-OP FOR CONDITIONING SALE APPROVAL ON REMOVAL OF UNAUTHORIZED ALTERATIONS
Christie v. Breezy Point Cooperative Inc. Supreme Court, Queens County

COMMENT | This is a troubling decision, since such removal requirement is a not-uncommon condition for Board consent.

CONDO BOARD MEMBERS ARE NOT INDIVIDUALLY LIABLE TO UNIT OWNER FOR FAILURE TO ADDRESS LEAK COMPLAINTS
Szymczyk v. Board of Managers of 363 16th Street Condominium Supreme Court, Kings County

CO-OP ENTITLED TO ACCESS SHAREHOLDER'S APARTMENT TO REPAIR LEAKING PIPE BEHIND WALL
390 Riverside Owners Corp. v. Stout Supreme Court, New York County

COMMENT | The co-op was also awarded its legal fees.

MITCHELL-LAMA CO-OP CAN DECLINE CONSENT TO SALE IF PRICE IS TOO LOW
Kabba v. Island House Tenants Corp., Supreme Court, New York County

CO-OP, OFFICERS AND MANAGING AGENT CAN ALL BE SUED FOR INCOME-SOURCE-BASED HOUSING DISCRIMINATION
Fair Housing Justice Center, Inc. v. Beach Haven Apartments Associates LLC Supreme Court, Kings County

COMMENT | The rejected applicants' income source was wholly rent-subsidies received from the City.

CO-OP APARTMENT'S ROOF TERRACE MERELY AN AMENITY; LOSS OF USE DUE TO BUILDING-WIDE REPAIRS NOT A BREACH OF THE WARRANTY OF HABITABILITY; SHAREHOLDER NOT ENTITLED TO A MAINTENANCE ABATEMENT
Alford v. 72nd Tenants Corporation Supreme Court, New York County

COMMENT | The Court held that the Board acted properly in making necessary repairs, and the 33-month duration of the project was reasonable under the circumstances, including Covid-based delays. BBG is general counsel to this cooperative, but was not involved in this litigation.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT TO EITHER SPONSOR OR CO-OP ON SPONSOR'S EFFORT TO FORCE REPURCHASE OF PROFESSIONAL APARTMENTS
Cord Meyer Development Company v. The Forest Hills Owners Corp. Supreme Court, Queens County

CO-OP CANNOT PRELIMINARILY ENJOIN NEIGHBORING BUILDING'S NOISY HVAC UNIT
545 Tenants Corp. v. Board of Managers of 555 West End Avenue Condominium Supreme Court, New York County

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

ACCESS LICENSE FOR FISP GRANTED, DESPITE DEATH OF PROPERTY OWNER'S PRINCIPAL
Board of Managers of Ariel East Condominium v. Broadway Metro Associates, L.P. Supreme Court, New York County

COMMENT | The Court, apparently on its own, appointed the entity's attorney as temporary administrator.

CONDO UNIT OWNER CAN SUE BOARD FOR FAILURE TO ACT IN RESPONSE TO NOISE COMPLAINTS
Bacharach v. Board of Managers of The Brooks-Van Horn Condominium Appellate Division, 1st Dept.

COMMENT | The delay was over two years. Boards must address complaints promptly.

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CONDO BREACHED ITS BYLAW OBLIGATIONS TO REPAIR EXTERIOR LEAK
580 Llorrac Street Corp. v. The Board of Managers of 580 Carroll Condominium Supreme Court, Kings County

COMMENT | No good reason was given for the delay in making the necessary repairs.

CO-OP DIRECTORS CAN BE REMOVED FOR DISSEMINATING PRIVATE INFORMATION ABOUT A SHAREHOLDER
Thomas v. Esplanade Gardens, Inc. Supreme Court, New York County

COMMENT | The co-op followed its stated removal procedures, so the decision was protected under the business judgment rule.

CONDO CANNOT SUE SPONSOR PRINCIPAL FOR CONSTRUCTION DEFECTS BASED ON PRINCIPAL'S MERE SIGNING OF OFFERING PLAN CERTIFICATION
Board of Managers of The Brighton Tower II Condominium v. Brighton Builder, LLC Appellate Division, 2d Dept.

COMMENT | Piercing the corporate veil unavailable due to its standards not being satisfied.

CONDO UNIT OWNER NOT ENTITLED TO ENJOIN TERMINATION OF HALLWAY LEASE, SINCE NO RIGHT OF RENEWAL STATED IN LEASE
Victor v. Board of Managers of Manhattan Place Condominium Supreme Court, New York County

COMMENT | BBG represented this successful Condominium.

CONDO HAS NO AUTHORITY TO REQUIRE WINDOW REPLACEMENT IN APARTMENTS, SINCE WINDOWS CLASSIFIED AS PART OF UNITS, NOT COMMON ELEMENTS
Mangold v. Board of Managers of Meadow Court Condominium Supreme Court, New York County

COMMENT | The Court invalidated a bylaw that was adopted to try to shoehorn such authority. The Court also invalidated the agreement between the Board and the window contractor.

CO-OP LIABLE FOR LABOR LAW CLAIMS BY INJURED EMPLOYEE OF SHAREHOLDER'S CONTRACTOR, EVEN THOUGH CO-OP HAD NO CONTROL OVER THE PRIVATE WORK
Guaman-Santiago v. 57 East 72nd Corporation Appellate Division, 2d Dept.

COMMENT | The shareholder was held not liable in indemnity to the co-op under the parties' alterations agreement, since the agreement's blanket indemnity clause was held impermissibly overbroad.

CONDO'S ELIMINATION OF DOORMEN ENTITLED RENT STABILIZED TENANTS TO RENT REDUCTION
900 Eight Avenue Condo v. New York State Division of Housing and Community Renewal Appellate Division, 1st Dept.

COMMENT | A not-uncommon situation in buildings that still house non-purchasing tenants.

ASSESSMENT TO COMMERCIAL CONDO UNIT OWNER TO BE CALCULATED AS PER METHOD REFLECTED IN CONDO'S DECLARATION AND BYLAWS
Board of Managers of The 100 West 93 Condominium v. 660 Columbus Retail Owner Appellate Division, 1st Dept.

NEW YORK CITY LOCAL LAW 97 HELD CONSTITUTIONAL
Glen Oaks Village Owners, Inc. v. City of New York Appellate Division, 1st Dept.

COMMENT | Next stop, the Court of Appeals.

CO-OP AND APARTMENT SELLERS NOT LIABLE TO BUYERS FOR FAILING TO DISCLOSE DISCOVERY OF ACM ELSEWHERE IN BUILDING
Suber v. Churchill Owners Corp. Appellate Division, 1st Dept.

CONDO UNIT OWNER CANNOT WITHHOLD COMMON CHARGES DUE TO BOARD'S ALLEGED FAILURE TO MAKE REPAIRS
Board of Managers of Villas on the Lake Condominium v. Policicchio Appellate Division, 2d Dept.

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

Belkin · Burden · Goldman, LLP
ATTORNEYS AT LAW

www.bbgllp.com

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

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