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BBG UPDATE

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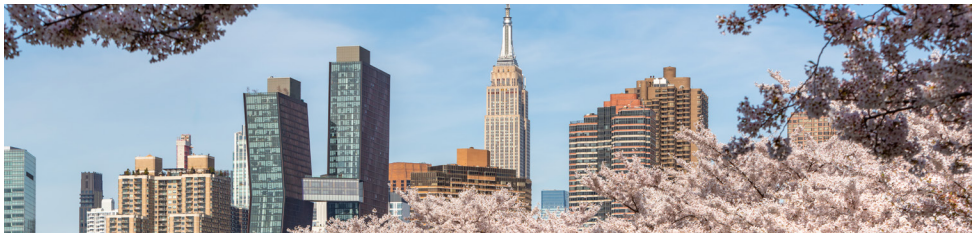

When One Door Closes, Another Opens: Opportunities to Pursue Rent Arrears After the End of a Housing Court Case

BY MARTIN MELTZER AND ANDREW T. STAFUTTI

Housing Court proceedings for nonpayment and holdover situations are delayed significantly post-Covid and by virtue of the enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA). Such delays make one wish to go back in time, to an era when summary proceedings were far from "summary", but were comparatively quicker. Currently, clerks take months to fix a return date, and each adjournment is measured in multiples of months. Often, even a straightforward nonpayment case where an owner is trial-ready on the first day, and on each and every adjourned date thereafter, can take about a year for a final disposition by trial, or even by a tenant vacatur or stipulation to obtain possession. Such delays often result in large rent arrears accumulating after a case's conclusion.

Prior to the HSTPA, an owner could demand by application or motion the payment of use and occupancy pending the prosecution of the proceeding. Failure to pay resulted in the striking of an answer or a judgment in favor of the owner. However, since the HSTPA's amendment of Real Property Actions and Proceedings Law ("RPAPL") §745.2 (commonly referred to as the rent deposit law), the ability to make, and the timing of, an application for use and occupancy is now significantly delayed, it must be in writing (costly and time consuming), and the Court can take months before it even decides the motion. Pursuant to RPAPL §745(2)(d)(i), if the motion is granted and the tenant fails to deposit money with the Court or pay by the designated due date all rent or use and occupancy which may become due subsequent to the issuance of the Court's deposit order, the Court, upon application of the owner, may order an "immediate trial" of the issues raised in the tenant's answer. However, an "immediate trial" under the statute means only that no further adjournments of the proceeding upon the tenant's sole request shall be granted, and the case shall be assigned by the administrative judge to a trial ready courtroom and such trial will commence as soon as practicable and will continue day to day until completed. In practice, however, the trial judge will schedule a pre-trial conference, and a trial date will be set, generally months later. "Immediate" now joins "summary" as an oxymoronic term.

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Owners should not give up hope, however. Collecting money owed by tenants who amassed large rent balances is possible.

If a judgment was entered in the Housing Court case, immediate action can be taken to try and seize assets in bank accounts or to garnish wages. In cases where a judgment was not entered, a separate lawsuit, often referred to as a plenary action, can be started. Eventually, judgment will be entered and this can include attorneys' fees incurred in prosecuting the summary proceeding--and the plenary action--if the lease provides for it. After a judgment is entered, enforcement measures can be taken to locate the former tenant's assets, and the judgment can be collected if sufficient assets are located, or an employer is located.

If an owner has a situation where a tenant was evicted, or vacated, and there is a large rent balance owed, BBG can counsel you on a possible pursuit of assets. BBG has been successful in obtaining and collecting judgments for clients through wage garnishments, levies on bank accounts, and forced sales of real estate. Owners should certainly explore their options prior to making the decision to write off arrears as a bad debt.

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The 5001(a) Hammer! or: How I Learned to Stop Worrying and Avoid the Statutory Interest Penalty

BY MARK N. ANTAR

Many practitioners have dealt with a situation where a purchaser and seller sign a real estate contract of sale, the purchaser tenders a deposit, and then something goes wrong and the sale does not close. Often, the contract will provide a procedure where one party can cancel the contract and claim the deposit, and, if the other party objects, the dispute can be litigated. Many contracts also limit liability in such a dispute (often the liability of the seller) to the amount of the deposit, so that the winner walks away with the full deposit and the loser licks its wounds but at least knows that's the end of it.

But what about interest on the deposit? These disputes might drag on for years (particularly during the post-COVID era), and with sky-high real estate prices and correspondingly large contract deposits, an award of statutory interest at 9% after a lengthy litigation could mean a windfall to the winner at the expense of the losing party. This article explores how statutory interest judgments on such deposits can be avoided, and parties can be protected.

Interest awards in New York are "purely a creature of statute." [1] New York's general interest statute, CPLR § 5001(a), states in pertinent part as follows:

> Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property…

The purpose of awarding statutory interest "is to make an aggrieved party whole." [2] For deposits held in escrow, statutory interest may be awarded "not to punish the breaching party, but rather to compensate the wronged party for the loss of use of their money." [3] As the Court of Appeals has confirmed, "[i]nterest is not a penalty…and is not meant to punish defendants for delaying the final resolution of the litigation." [4]

Based on this reasoning, the Appellate Division, First Department, has recognized "a small set of cases" where courts declined to award statutory prejudgment interest "where it can be established that the nonbreaching party has otherwise been made whole, including where the parties have 'contracted around' CPLR 5001(a)." [5]

[1] Manufacturer's & Traders Trust Co. v. Reliance Ins. Co., 8 N.Y.3d 583, 588 (2007).

[2] Spodek v. Park Prop. Dev. Assoc's, 96 N.Y.2d 577, 581 (2001).

[3] IHG Harlem I LLC v. 406 Manhattan LLC, 224 A.D.3d 22, 25 (1st Dep't 2024).

[4] Manufacturer's & Traders Trust Co., 8 N.Y.3d at 589

[5] IHG Harlem I LLC, 224 A.D.3d at 25. See also id., at 26 ("the Court of Appeals [has] determined that regardless of what CPLR 5001(a) requires, the freedom of parties to a civil dispute to 'chart their own course' and fashion 'how damages are to be computed without interference by the courts' is paramount"), quoting J. D'Addario & Co., Inc. v. Embassy Indus., Inc., 20 N.Y.3d 113, 119 (2012).

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One way that parties to a real estate deal can "contract around" CPLR § 5001(a) is to: (1) make the recovery of the deposit the exclusive or "sole" remedy; and also (2) allow the winning party to receive *bank interest* on the deposit to compensate it for the delayed use of the money, albeit at a much lower rate than the statutory interest rate of 9%. Parties can do this by specifying in the contract that the deposit will be held in an interest-bearing (non-IOLA) account, which will be tendered to the winner of any eventual dispute.

The First Department confirmed this point in *Ithilien Realty Corp. v. 176 Ludlow, LLC*, 139 A.D.3d 582 (1st Dept. 2016), as follows:

> The contract's terms, requiring that the down payment be placed in an interest-bearing account, so that the party entitled to the down payment would receive compensation for the deprivation of its use of the money in the form of accrued interest, were sufficiently clear to establish that interest paid at the statutory rate was not contemplated by the parties at the time the contract was formed and that the amount escrowed, including interest earned, should be the exclusive remedy to the wronged party. [6]

By confirming that recovery of the deposit will be the sole remedy and also compensating the winning party with bank interest, the parties can demonstrate "a clear manifestation of a waiver of statutory prejudgment interest," [7] and protect themselves against a potentially large interest judgment on top of the deposit.

This is particularly important in situations where the contract is terminated through no fault of the parties. For instance, the contract could make the closing conditional on approval of a condominium or cooperative board, or on financial or other commitments of third parties, which the parties seek to obtain in good faith but for one reason or another fall through. In these situations, where neither party has actually "breached" the contract, statutory interest technically should not awarded at all, because the statute is only meant to apply where there is a "breach of performance" or other "interference" with title to, or possession of, property.[8] But without clearly demonstrating their intention to waive statutory interest by contracting around it, the parties open themselves up to a claim of breach, however tenuous, and a windfall judgment of 9% statutory interest that could follow.

This could lead to a palpably unfair result where a party that has not breached the contract is nonetheless on the hook to pay an enormous sum based on factors completely outside of the party's control.

Therefore, attorneys should be safe and wise. Make sure the parties understand that the contract deposit will be held in a non-IOLA, interest account, and that the actual interest earned will be paid to the party entitled to the deposit. This can be accomplished through clear language in the "Definitions and Information" Article of the sale contract, or any other provision that defines the terms of the deposit.

Alternatively, attorneys can be aggressive and try inserting language that allows for statutory interest to their client in case they recover the deposit. But if the other side insists on parallel language for their own client, proceed with caution.

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[6] 139 A.D.3d 582, 583 (1st Dep't 2016)

[7] IHG Harlem I LLC, 224 A.D.3d at 26.

[8] CPLR § 5001(a); see Manufacturer's & Traders Trust Co., 8 N.Y.3d at 589.

What You Should Know About Construction Contract Indemnity Provisions

BY JOSEPH D. VERGA

The indemnification clause is one of the most important provisions in any construction contract. It transfers risk from one party, known as the "indemnitee," to another party, known as the "indemnitor." This risk transfer is accomplished by the indemnitor's written agreement to reimburse the indemnitee for losses incurred resulting from a claim brought by a third party against the indemnitee relating to work performed under the contract. Accordingly, indemnity provisions are some of the most highly negotiated – and litigated – provisions in construction contracts.

The higher-tiered party to the contract, whether it is the owner, developer, contractor, or subcontractor, generally wants the broadest possible indemnity clauses they can negotiate. Conversely, the lower-tiered party to the contract usually wants to avoid indemnification clauses altogether or, in the alternative, limit them as much as possible. The following is a discussion of the most important issues in drafting indemnity provisions and their importance to construction contracts, including, especially, for cooperatives, condominiums, and other residences.

Property Owners

Cooperative and condominium Boards, as well as private owners, spend millions of dollars annually to contract with general contractors and service vendors to undertake construction projects or provide maintenance services for their respective properties. Each contract presents unique interpretation issues. Careful drafting works to limit liability exposure for these Boards and owners. When Boards and owners expend large sums to improve or maintain property, especially in the residential context, such Boards and owners should be concerned with obtaining express protection or indemnification from liability and costs potentially incurred by their residents, tenants, occupants, owners, shareholders, and/or managing agents as a result of a contractor's negligent and/or intentional acts and omissions.

Savings Provision

Indemnification provisions are only as good as they are enforceable, and only as effective as they are applicable. For example, in New York, indemnification clauses are enforceable in construction contracts so long as they do not seek indemnification for the owner's – or higher tiered party's – own negligence or wrongdoing. New York construction contracts that purport to indemnify a party for an injury or property damage caused, in whole or in part, by the indemnitee's own negligence are void and unenforceable as a matter of law.

To ensure that your indemnification clause is enforceable, insert the phrase "to the fullest extent permitted by law." This term of art, and others like it, are known as "savings" language. It is read by Courts to allow for the broadest interpretation of the indemnification permitted under the contract, limited only to the extent necessary to comply with the law.

Including savings, or other limiting, language helps to ensure that your indemnity clause isn't found to be unenforceable as attempting to be broader than permitted under the law. Conversely, it also ensures that your indemnity clause is not interpreted to be less protective than what is permitted under the law.

Duty to Defend and Hold Harmless

While indemnity provisions benefit an indemnitee, they only apply to the extent an indemnitee is required to pay for a loss. Since this requirement often does not go into effect until after a claim is settled or a judgment is awarded, the indemnitee is likely to have already spent a significant amount of money in attorney's fees prior to resolution and reimbursement from the indemnitor. The enormous cost of defending against a construction project claim, whether related to personal injury, property damage, breach of contract, or other claim, should not be an expenditure that an indemnitee is forced to incur during a potentially years-long litigation process.

Attorney fees are real, immediate, and expensive. But--they might be avoided if the indemnitee can tender its defense to the indemnitor under a "duty to defend" clause. Therefore, indemnitees should include an express provision requiring the indemnitor to "*defend*, indemnify, and hold harmless" the indemnitee as part of their indemnification duties. The inclusion of the term "defend" specifically refers to indemnification for these litigation expenses. Indemnitees should also add attorneys' fees and expenses to the types of costs that the indemnity clause covers. To the extent that it can be agreed upon, indemnitees may also want to reserve the right to select their own defense counsel in the event of a claim.

In the architectural context, it should be noted that design professionals will often push back on an owner's request that the design professional "defend" the owner because design professionals' errors and omissions insurance policies generally do not cover such "defense" costs. Nevertheless, to the extent that it can be negotiated, including such a requirement can greatly benefit the owner.

Covered Claims

Indemnitees usually want the indemnity to be all inclusive and cover all types of claims, from personal injury, death, and property damage, to breach of contract-type damages. Indemnitors, on the other hand, want to limit indemnification provisions to only the types of claims that would be covered by the indemnitor's commercial general liability insurance ("CGL") policy. CGL insurance generally covers bodily injury or death of a third-party, as well as damage to the property of a third-party. As such, indemnitors clearly want to limit indemnity clauses solely to "bodily injury or death and damage or destruction to property of a third-party" which allows them to pass off any amounts they are required to pay to their insurance carrier.

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In New York, one issue that often arises is a claim governed by the New York State Labor Law ("NYLL"). The NYLL essentially makes owners and general contractors strictly liable for personal injury and death on a construction site as a result of falls from a height, regardless of who, if anyone, is at fault. Thus, an indemnity clause that merely indemnifies the indemnitee "to the extent of the indemnitor's negligence" is inadequate protection for an owner or general contractor. In this context, the indemnitee would have to prove that the accident was due to the indemnitor's negligence in order to recover against the indemnitor. The more prudent clause for any owner or contractor would be to require that it be indemnified for "all claims arising out of the work of the indemnitor, except to the extent caused by the negligence of the indemnitee."

Conclusion

Indemnity provisions should be carefully drafted and reviewed by legal counsel and risk advisors so that the risks associated with your construction project can be properly allocated. If you have any questions, or require assistance in these matters, please reach out to our construction team at Belkin Burden Goldman, LLP. We are always prepared and more than happy to guide and represent you with all of your construction needs.

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Charging Tenants for Water Usage – What is Permissible in New York

BY DIANA R. STRASBURG

A recent trend among New York City building owners is charging residential tenants for water usage. Owners will either install submeters and charge tenants for actual usage, or will utilize Ratio Utility Biling System ("RUBS"), a method of allocating utility costs to tenants based on a predetermined formula (e.g., the number of people residing in a unit).

However, in a recent case at DHCR, the agency determined that owners cannot charge rent regulated tenants for hot and cold water usage because water is a required service under Rent Stabilization Code ("RSC") § 2520.6(r).

In *Matter of Sydney Leasing, LP* (Docket No. MT-110008-RO), issued on January 6, 2025, DHCR determined that, despite the tenants having signed a lease rider wherein they agreed to pay for water usage, water usage is a required service under the RSC and the costs thereof cannot be passed on to the tenant.

This DHCR order is in line with another recent determination by DHCR in *Matter of Brisbane Leasing Limited Partnership* (Docket No. MU-110011-RO), issued on December 31, 2024, wherein the agency determined that because hot and cold water are required services to be provided by the owner, rent overcharges occurred based on the improper collection of water usage charges by the owner.

In both cases, DHCR determined that, while the RSC permits submetering for electricity and other utilities, the RSC does not permit an owner to pass along required services to a tenant, which includes hot and cold water.

The owner in *Matter of Sydney Leasing, LP* has appealed DHCR's order to the Supreme Court, Queens County, under Index No. 705530/2025.

We will continue to update clients on the status of these Court matters and any administrative developments on this topic.

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Condominium Not Required to Allow Electric Vehicle Charging at Common Element Electric Outlets

BY LLOYD F. REISMAN

Category: COMMON ELEMENTS

BABIC V. YAKUBOV INDEX NO. 519849/2022 (SUP. CT. KINGS CNTY. DEC. 5, 2024) NYSCEF NO. 96

Outcome: Decided for Condo Board

WHAT HAPPENED: In 2022, the condominium-defendant notified unit owners that a new rule had been adopted to prohibit the use of electric outlets in the common parking area for charging personal electric vehicles, and thereafter locked the outlets to prevent their use. The outlets in question were conventional 120V outlets installed in a common area, such that their usage was paid for by all unit owners. Thus, the rule was intended to prevent individuals from consuming electric charges for their personal benefit, where such costs would have to be paid by all unit owners. The unit owner-plaintiffs allegedly violated the rule and continued to use the common outlets to charge their electric motorcycle, including outlets in the basement hallway and the service entrance lobby. The plaintiffs alleged that the condominium selectively enforced the rule, effectively targeting them by locking the outlet closest to their parking space. Plaintiffs thereafter commenced this action, asserting, among other things, that the condominium violated Section 339-ll of the Condominium Act by adopting the rule and effectively prohibiting the use of the outlets for the charging of electric vehicles.

IN COURT: In a case seemingly of first impression, the Court parsed Section 339-ll of the Condominium Act, which was adopted in 2019 to encourage the installation of electric vehicle charging stations in condominiums. Section 339-ll invalidates any prohibition or unreasonable restriction on "the installation or use of an electric vehicle charging station within an owner's unit or in a designated parking space, including but not limited to, a deeded parking space, a parking space in an owner's exclusive use common element, or a parking space that is specifically designated for use by a particular owner…" The Court held that the condominium's rule did not violate Section 339-ll, inasmuch as the condominium's rule only applied to outlets installed in the common element walls of the parking area. Specifically, plaintiffs did not allege (i) any prohibition in "[a]ny … deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in the property, and any by-laws," or (ii) that any of the electric outlets subject to the condominium's rule were located "within [plaintiffs'] unit or in [plaintiffs'] designated parking space, including, but not limited to, a deeded parking space, a parking space in [plaintiffs'] exclusive use common element, or a parking space that is specifically designated for use by [plaintiffs]." In addition, the Court noted that an additional cause of action may exist for a breach of Section 339-ll when a unit owner can demonstrate that a condominium refused to allow the installation of an electric charging station in the common elements or in an exclusive use common element. In this case, however, the Court held that plaintiffs failed to allege that they had made any such request. Accordingly, the Court dismissed plaintiffs' claims based on an alleged breach of Section 339-ll. The only claim that survived defendants' motion to dismiss was plaintiffs' claim that the condominium took possession of plaintiffs' wires and cords without returning them.

TAKEAWAY: Boards, managing agents, and attorneys should note this Court's interpretation of Section 339-ll of the Condominium Act, particularly regarding a Board's authority to regulate certain outlets and its limitations. Unit owners should also be aware of their statutory obligations, which require them to seek approval and to agree to perform specific duties (e.g., to sign an agreement that will bind successor owners), including maintaining liability coverage.

Tags: Breach of contract, common elements, condominium, electrical outlet, enforcement of rule, garage, parking space, Charging Law, Condominium Act (RPL §§ 339-d-339-ll)

BBG Court Victory

After a long, arduous but ultimately-successful defense of a harassment action in Housing Court, partner Martin Meltzer and his colleague, associate Leslie Mendoza, secured a victory for BBG's client, the building owner. The Court awarded BBG's client over $53,000 in legal fees. This was not an ordinary legal fee award, however.

The case was started in 2020 by the tenant. In 2022, the Court issued an order that permitted the tenant to discontinue the case conditioned on the tenant's payment of the owner's reasonable legal fees, due to the length of time the litigation was pending.

The tenant's Legal Aid counsel realized that it was time to end the case and made a motion to discontinue. The owner responded by asking the Court to condition the discontinuance on an award to the owner of its legal fees.

(For context, the tenant had alleged in her verified petition that, among other things, the owner had engaged in a pattern of harassment against the tenant in retaliation for the tenant having filed a complaint with New York State Division of Homes and Community Renewal (DHCR), pursuant to NYC Housing Maintenance Code (HMC) §27-2005(d), as defined by §27-2004(48). In her petition, the tenant had claimed that the owner had refused to perform necessary repairs, and had also circulated her personal information to other residents of the building with the intent of causing the tenant to waive her rights and/or vacate the apartment. For good measure, she had also claimed that she had tripped over a tile in front of the building two years prior to the case's commencement. The owner maintained throughout the case that none of the tenant's allegations were true.)

Belatedly, the tenant asked the Court to end the case by discontinuance. However, instead of agreeing to let the tenant discontinue the case after the tenant had strung the case along for well over a year, the owner asked the Court to award legal fees as a condition of discontinuance to show the tenant that there would be consequences for the way she had litigated the case. The Court exercised its discretion to award the owner attorneys' fees, because the tenant had waited so long to ask permission to end the case, despite the Court's repeated invitations that she do so. A hearing to determine the legal fees was held and the Court entered judgment in favor of the owner against the tenant for over $53,000.

While this is a notably unique outcome, it is important that owners who are enmeshed in litigation with combative tenants explore all options with counsel to advocate zealously for their interests. BBG stands ready to assist owners who wish to do so.

Recent Transactions of Note

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

Leases

Partner **Daniel T. Altman** and associate **Michael A. Mulia** represented a nationally-recognized Real Estate Investment Trust on its sublease of office space in East Midtown for its New York office.

Partner **Craig L. Price** and **Mr. Mulia** represented the owner of a mixed-use Midtown building on its lease for a new bar and restaurant concept.

Mr. Mulia represented the owner of a luxury mixed-use building on a retail lease for a fast-growing, family-owned noodle shop concept.

Buy/Sell and Refinancing Transactions

Partners **Stephen M. Tretola** and **Murray Schneier** and associate **Joshua A. Sycoff** represented Hudson Meridian in connection with its $130 million recapitalization of a property in New Haven, Connecticut, with a first mortgage from a senior lender, and preferred equity financing. The deal was reported in the Commercial Observer (MF1, Mavik Capital Team Up on $130M Connecticut Multifamily Recap – Commercial Observer).

Messrs. Tretola and **Schneier** also represented a client in connection with the origination of a $3 million bridge loan to a developer in connection with the assemblage and development of an Upper Manhattan site for residential and commercial use, and a separate $36 million construction loan financing in connection with the assemblage and development of a second Upper Manhattan project for residential and commercial use.

Messrs Tretola and **Sycoff** represented an Upper West Side cooperative building in connection with a $35 million refinance of its mortgage.

Partners **Daniel T. Altman** and **Lawrence T. Shepps** represented the seller of a Bronx commercial property for $15 million.

Partner **Craig L. Price** and **Mr. Shepps** represented the ground tenant of a building on its purchase of the building in Jamaica, Queens.

Mr. Tretola and associate **Lauren K. Tobin** represented a building owner in connection with a $20 million financing transaction with Apple Bank.

Mr. Price and **Ms. Tobin** represented the purchaser of a West Village townhouse for $14 million.

Associate **Michael A. Mulia** represented the purchaser of a 13-unit West Village residential building for $12.3 million, and the seller of a 10-unit residential building in Hell's Kitchen for $14 million, and the seller of a mixed-used building in Kips Bay for $13 million.

Mr. Price and **Ms. Tobin** represented the purchaser of a Park Avenue penthouse apartment for $13 million.

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Recent Notable Matters Handled by Our Construction Team

Partner **Robert Marshall** represented:

- An owner in the negotiation of a "construction manager as constructor" agreement, and an architectural services agreement, for the gut renovation and vertical and horizontal extension of a townhouse in Manhattan.
- An owner in the negotiation of a general contractor agreement and architectural services agreement for the ground-up construction of a custom-built home in Southampton.
- Numerous owners in the negotiation of numerous general contractor agreements and engineering services agreements for building facade repair projects in Manhattan and Brooklyn.
- Multiple owners in the negotiation of general contractor agreements and engineering services agreements for garage repair projects in Manhattan.
- Owners (as licensors or licensees) in the negotiation of license agreements for access to and protection of adjoining properties during construction projects in Manhattan and Brooklyn.

BBG In The News

Founding partner **Sherwin Belkin** was quoted in a January 8 article in City & State New York on the growing acceptance of political campaign contributions from donors in the real estate industry: 'New Yorkers don't care.' Is the real estate pledge dead in NYC politics? - City & State New York. **Mr. Belkin** was also quoted in a January 28 article in The New York Times, critiquing the effect and impact of the "Good Cause Eviction" law: https://www.nytimes.com/2025/01/28/nyregion/good-cause-eviction-nyc.html.

Aaron Shmulewitz, head of the Firm's co-op/condo practice, responded to a question in The New York Times Sunday Real Estate section Q&A feature on December 28, discussing the remedies available to a condominium regarding non-payment by a sponsor: https://www.nytimes.com/2024/12/28/realestate/condominiums-sponsor-fees.html. The item was republished on February 10 in Habitatmag.com: https://www.habitatmag.com/Publication-Content/Legal-Financial/2025/January-2025/unpaid-condo-dues-sponsor-liens.
Mr. Shmulewitz was also quoted in a February 23 article in The New York Times on the unintended consequences in a case involving emotional support parrots at a Manhattan co-op: https://www.nytimes.com/2025/02/16/business/nyc-apartment-dispute-parrots.html?searchResultPosition=1.

Co-Op/Condo Corner

BY AARON SHMULEWITZ AND LLOYD F. REISMAN

*Aaron Shmulewitz and Lloyd F. Reisman head 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** , or Lloyd at 212-867-4466 ext. 387, or **lreisman@bbgllp.com***

SHAREHOLDER CAN SUE CO-OP AND DIRECTORS FOR DISCRIMINATION BASED ON DENIAL OF SERVICE DOG

Hecht v. 89th Street Owners Corp. Supreme Court, New York County

COMMENT | The Court so ruled despite the Board's concerns over the purchaser's perceived financial inadequacy. Service animals remain the third rail of the industry.

CO-OP CAN IMPOSE FINES FOR UNAUTHORIZED SHAREHOLDER ALTERATIONS

Board of Managers of The Kings Oak Terrace Cooperative Apartments, Inc. v. Khovan Appellate Division, 2nd Dept.

COMMENT | The Board's authority to impose fines was stated in the bylaws and occupancy agreement. The shareholders had also initially agreed to pay the fines, before reneging.

SPONSOR'S THIRD-PARTY CLAIM AGAINST ARCHITECT FOR CONDO CONSTRUCTION DEFECTS IS TIME-BARRED; SPONSOR CAN ALSO NOT SUE FOR COMMON-LAW INDEMNIFICATION

Board of Managers of 87-89 Leonard Street Condominium v. Leonard Street Owner, LLC Supreme Court, New York County

COMMENT | But the sponsor CAN sue for contractual indemnity under its agreement with the architect.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT FOR DAMAGES ARISING FROM DEFECTIVE PTAC UNIT

Hirsch v. Morningside Park Condominium Supreme Court, New York County

COMMENT | Also, a condo Unit Owner cannot assert breach of warranty of habitability, or get a refund of common charges.

INSURANCE COMPANY MUST DEFEND CO-OP IN WATER DAMAGE CASE

Atlantic Mutual Insurance Company v. Greater New York Mutual Insurance Company Appellate Division, 1st Dept.

COMMENT | This case began in 2006…

CONDO NOT LIABLE TO UNIT OWNER FOR WATER DRIPPING FROM NEIGHBORING BALCONY, OR SMOKE PERMEATING FROM NEIGHBORING UNIT'S FIREPLACE

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

COMMENT | The Court held that balcony and fireplace maintenance and repair obligations belong to the Unit Owners, not the condo, and that apartment dwellers must accept some smoke, odors and noise as part of City living.

CO-OP FOUND TO HAVE RELEASED SHAREHOLDERS FROM CLAIMS ARISING FROM THEIR ALTERATIONS

Lane v. 880 Fifth Avenue Corporation Supreme Court, New York County

COMMENT | BBG is counsel to this co-op, but was not involved in this litigation.

PROPERTY OWNER DOING CONSTRUCTION IS STRICTLY LIABLE FOR DAMAGE TO ADJOINING PROPERTY

Board of Managers of Schumacher Condominium v. 304 Mulberry Street Operating Company, LLC Supreme Court, New York County

PERSONAL PRIVATE ASSISTANT TO CONDO PRESIDENT CAN SUE CONDO FOR SEXUAL HARASSMENT BY HIM

Khatskevich v. Victor Supreme Court, New York County

COMMENT | The Court held that there were questions of fact as to whether the president was an agent of the condo such that his actions could be imputed to the condo. BBG represents this condo, but was not involved in this litigation.

CONDO CANNOT BE COMPELLED TO ARBITRATE DISPUTE AT BET DIN ABSENT AN AGREEMENT TO DO SO

Stefansky v. Kaufman Supreme Court, Kings County

CONDO NOT RESPONSIBLE FOR EXPLOSION OF UNIT OWNER'S DISHWASHER; PAYMENT OF COMMON CHARGES NOT EXCUSED

Board of Managers of The Alexandria Condominium v. Adelman Supreme Court, New York County

COMMENT | The Unit Owner's counterclaims were dismissed, too.

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QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT ON WHETHER GARAGE SLAB REPAIRS ARE THE OBLIGATION OF THE CONDO, OR THE GARAGE UNIT OWNER
The Board of Managers of the 900 Park Avenue Condominium v. Park Park Associates LLC Supreme Court, New York County

COMMENT | The questions were whether a concrete slab is part of the Garage Unit or a common element, and whether the damage was due to negligence.

SHAREHOLDER CANNOT SUE CO-OP AND LENDER TO STOP FORECLOSURE SALE OF APARTMENT
Topilin v. Island House Tenants Corp. Supreme Court, New York County

COMMENT | The shareholder had not paid maintenance or loan payments for several years, following the shareholder's failure to obtain insurance as required by the proprietary lease (prior to the fire that gutted his apartment).

SHAREHOLDER CANNOT SUE CO-OP, PRESIDENT OR MANAGING AGENT FOR DECISION TO NOT INSTALL SECURITY CAMERAS ON HER FLOOR, OR ALTERCATIONS WITH NEIGHBOR; CANNOT SUE NEIGHBOR FOR BREACHING THE HOUSE RULES
Lee v. Metro Management Supreme Court, Queens County

COMMENT | The Court cited the business judgment rule, and the House Rules that stated that the co-op is not liable for House Rule violations by other shareholders. Plaintiff was also held to not be a third-party beneficiary of her neighbor's proprietary lease and House Rule obligations.

SHAREHOLDERS WAIVED PROPRIETARY LEASE REQUIREMENT THAT CO-OP PROVIDE ANNUAL CERTIFIED FINANCIAL STATEMENTS, BY ACCEPTING NON-CERTIFIED STATEMENTS FOR MANY YEARS
DeFex v. Zadumin Supreme Court, Kings County

COMMENT | What about the typical non-waiver provision in the proprietary lease?

DISPUTED CO-OP ELECTION AND COMPETING BOARD MEMBERS LEADS TO APPOINTMENT OF RECEIVER FOR BUILDING
Monari v. Lu Supreme Court, New York County

CONDO BOARD MEMBERS PERSONALLY LIABLE TO UNIT OWNERS FOR ALL LEGAL FEES AND COSTS INCURRED IN PRIOR LITIGATION IN WHICH THEY DIRECTED BAD FAITH BREACH OF FIDUCIARY DUTY
Gilbert v. Winston Supreme Court, New York County

COMMENT | The latest in a series of bad decisions for this condo. The Court had previously held that the Board had acted improperly in refusing to consent to Unit Owner alterations.

CONDO BUYER CANNOT SUE SPONSOR FOR FAILURE TO INCLUDE INTEGRATED WINE COOLER IN APARTMENT
VB Soho LLC v. Broome Property Owner JV LLC Appellate Division, 1st Dept.

CONDO BOARD CAN EFFECT ELEVATOR MODERNIZATION WITHOUT UNIT OWNER CONSENT
Hazen v. Bunning Appellate Division, 1st Dept.

COMMENT | The bylaws required Unit Owner consent for discretionary additions, alterations or improvements, not mandatory repairs as here. BBG represents this condo, but was not involved in this litigation.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT ON WHETHER DEFENDANT IS A SHAREHOLDER OF HDFC
322 West 47th Street HDFC v. Loo Supreme Court, New York County

COMMENT | The proprietary lease and stock certificate were signed by one of two "dueling" presidents, and not all transfer requirements had been complied with.

CONTRACTOR ENTITLED TO $400,000 JUDGMENT AGAINST CONDO FOR EXTERIOR RESTORATION WORK
Central Construction Management, LLC v. Durham Supreme Court, New York County

COMMENT | And most of the condo's counterclaims were dismissed, too.

CO-OP CAN REQUIRE REMOVAL OF JACUZZI FROM APARTMENT
Avrahami v. 235 West 108th Street Owners Corporation Appellate Division, 1st Dept.

COMMENT | Business judgment rule—-the jacuzzi was causing leaks and damage. The shareholder was also held liable for the co-op's attorney fees.

CONDO'S SUIT AGAINST SPONSOR AND PRINCIPALS DISMISSED
The Board of Managers of The Blackfriars Condominium v. AG Ebenezer LLC Supreme Court, New York County

COMMENT | The Court cited Martin Act defenses, and held that there was no personal liability.

CONDO FORECLOSING ON LIEN IS NOT REQUIRED TO GIVE PRELIMINARY 90-DAY NOTICE TO UNIT OWNER, AS IN MORTGAGE FORECLOSURES
Board of Managers of The Lenox Court Condominium v. Kurtin Appellate Division, 1st Dept.

COMMENT | While condo lien foreclosures are generally governed procedurally by the same statute that governs mortgage foreclosures, the Court distinguished this requirement.

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FAMILY MEMBER IN OWNERSHIP AND OCCUPANCY DISPUTE WITH RELATIVES CANNOT SUE CO-OP FOR FRAUD OR UNJUST ENRICHMENT
Miller v. Miller Supreme Court, New York County

PARTY BELATEDLY SEEKING ACCESS LICENSE MUST PAY MONTHLY ACCESS FEE AND ATTORNEY FEES
In the Matter of the Application of First and River LLC v. The Board of Managers of The Horizon Condominium Supreme Court, New York County

CONDO NOT REQUIRED TO CONTINUE TO MAKE ELECTRIC CHARGING STATIONS AVAILABLE IN COMMON AREAS OF PARKING AREA
Babic v. Yakubov Supreme Court, Kings County

COMMENT | New York's "charging law" was held not to apply.

CONDO CAN BE SUED FOR SLIP-AND-FALL IN GARAGE UNIT
German v. 333 Rector Garage, LLC Appellate Division, 1st Dept.

COMMENT | Questions of fact as to whether leaking pipes were common elements.

QUESTIONS OF FACT PRECLUDE SUMMARY JUDGMENT OVER CO-OP BOARD'S DESIRE TO ALLOCATE ADDITIONAL SHARES TO APARTMENT BASED ON ROOFTOP IMPROVEMENTS
Lee v. Jay Housing Corporation Supreme Court, New York County

CO-OP'S REFUSAL TO TRANSFER DECEDENT'S APARTMENT TO HIS UNMARRIED CO-OCCUPANT IS NOT HOUSING DISCRIMINATION BASED ON MARITAL STATUS
McCabe v. 511 W. 232nd Owners Corp. Court of Appeals

COMMENT | A surprising outcome. The Court held that the Board's decision was not because of her unmarried status, but because she was not married to the decedent.

SUIT FOR HOUSING DISCRIMINATION DISMISSED BECAUSE PLAINTIFF CANNOT PROVE ANY OF THE ELEMENTS
Tanner v. Rochdale Village Inc. U.S. District Court, EDNY

CONDO UNIT OWNER TIME BARRED FROM SUING SPONSOR AND BOARD OVER WHO HAD RIGHT TO USE PARKING SPACE
Giyar v. 861 LLC Supreme Court, Kings County

SHAREHOLDER ENJOINED FROM CONTACTING DOB REGARDING PRIOR UNAUTHORIZED ALTERATIONS
60 E. 9th Street Owners Corp. v. Zihenni Appellate Division, 1st Dept.

COMMENT | Based on his prior false statements and baseless complaints. This suit began in 2008.

CONDO BOARD CAN SUE SPONSOR FOR SOME WARRANTY DEFECT CLAIMS, BUT NOT OTHER CONSTRUCTION DEFECTS
The Board of Managers of The Aston Condominium v. Building 389 LLC Appellate Division, 1st Dept.

CONDO CAN ENFORCE PER DIEM LIQUIDATED DAMAGES FOR UNIT OWNER'S FAILURE TO COMPLETE ALTERATIONS ON TIME
Barbiere v. 175 West 12th Street Condominium Appellate Division, 1st Dept.

COMMENT | The Court cited the language of the alterations agreement, and that the Unit Owners were sophisticated attorneys. An important decision.

CO-OP CAN SUE MANAGING AGENT FOR FAILURE TO STOP COMMERCIAL TENANTS FROM RECEIVING ELECTRICITY AT CO-OP'S EXPENSE, IN VIOLATION OF LEASES
Fourth Avenue Owners Corporation v. Douglas Elliman Property Management Appellate Division, 1st Dept.

CO-OP ENTITLED TO REIMBURSEMENT OF ATTORNEY FEES FROM SHAREHOLDER ONLY IF HE IS IN DEFAULT

Kasowitz Benson Torres & Friedman v. JPMorgan Chase Bank Appellate Division, 1st Dept.

COMMENT | The Court held that allowing recoupment if the shareholder was not in default would be unconscionable. A very impactful decision.

HOA BOARD MEMBER ENTITLED TO FULL ACCESS TO HOA BOOKS AND RECORDS
DiBella v. Board of Directors of Half Moon Bay Homeowners Association, Inc. Appellate Division, 2nd Dept.

COMMENT | They actually litigated this issue?

CONDO NOT LIABLE TO INJURED EMPLOYEE OF UNIT OWNER'S CONTRACTOR, DESPITE LABOR LAW
Jagdeo v. Borden House Condominium Appellate Division, 1st Dept.

COMMENT | The employee was working in an apartment, not common elements, and the condo had no control or supervision.

CO-OP APARTMENT SELLER ENTITLED TO KEEP DEPOSIT, AS WINDOWS AND HVAC UNIT WERE IN GOOD WORKING ORDER AS REQUIRED BY CONTRACT
Ostrager v. Chafetz Appellate Division, 1st Dept.

BBG Continues to Expand and Welcomes New Hires

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

SHAKIVA S. PIERRE,

Associate, Litigation: Shakiva Pierre is an Associate in the Litigation Department. With extensive expertise in The Real Property and Proceedings Law, Shakiva focuses particularly on summary eviction proceedings in Housing Courts across the City. Prior to joining private practice, she served as an Associate Court Attorney with the Housing Court, where she gained invaluable experience from behind the bench, strengthening her ability to navigate complex legal matters with precision and insight.

In addition to her legal practice, Shakiva is a dedicated leader in the legal community. Since 2020, she has served as Co-Chair of the Real Estate Law Section for the Metropolitan Black Bar Association (MBBA), a prominent association of Black legal professionals in New York City. In this leadership role, Shakiva has been instrumental in organizing key events, including the highly impactful "Elevate and Empower: Black Real Estate Development Symposium 2024," which highlighted the power of real estate development to drive economic and social empowerment within the Black community.

Ms. Pierre earned her law degree from Western Michigan University Thomas M. Cooley Law School and her B.A. in Politics from Brandeis University.

HUEY CHAN,

Associate, Litigation: Huey Chan is an Associate in the Litigation Department. He has experience representing residential and commercial landlords, property owners, and lenders in a broad range of disputes, including landlord-tenant matters, commercial litigation, and foreclosure proceedings. Mr. Chan has extensive experience drafting various pleadings and motions and has successfully argued motions before the New York State Courts.

Mr. Chan earned his law degree from Brooklyn Law School and his B.A. in Business Management with a concentration in Finance from SUNY Stony Brook University. While attending Brooklyn Law School, Mr. Chan was a member of the Moot Court Honor Society and interned for Hon. David F. Everett of the Westchester County Supreme Court.

JAMES CUTTING,

Associate, Transactional: James Cutting is an Associate in the Firm's Transactional Department and Condominium and Cooperative Law Group and represents clients in a variety of real estate matters, including residential and mixed-use property transactions. James has experience serving as general counsel to property owners and their agents, advising on corporate, real estate, leasing, compliance, and litigation matters.

Prior to joining Belkin Burden Goldman, James was employed at a boutique real estate law firm in New York City and served as an Assistant District Attorney in the Kings County District Attorney's Office.

A veteran of the U.S. Navy, James served on several overseas deployments as a Flight Engineer aboard the P-3 Orion aircraft and at home as an Aviation Survival School Instructor, earning several awards for his service, including the Navy Medicine Education and Training Instructor of the Year. He was also temporarily assigned to the Judge Advocate General Corps, where he assisted with criminal investigations.

James earned his J.D., cum laude, from Brooklyn Law School, where he also received a Certificate in Criminal Law, with Distinction. He holds a B.A. from the University of Central Florida.

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

PRESANTIA THOMPSON, Legal Secretary
STEVE EIDELMAN, Legal Assistant (Transactional Department)

Expanding Our Team and Practice Areas

We are excited to announce that five seasoned attorneys, who are leaders in their field, have joined BBG. They bring a wealth of experience that will significantly enhance our capabilities and expand our Firm into new practice areas:

David Shamshovich has joined as a Partner. He counsels developers and their consultants on all aspects of HPD's Inclusionary Housing Program, Mandatory Inclusionary Housing Program, and Affordable Independent Residences for Seniors Program. He also represents developers and investors in acquiring and selling real property, development rights, inclusionary air rights, and 421-a negotiable certificates, as well as negotiating joint venture agreements.

Jason Hershkowitz, a Partner with a niche expertise in real estate tax incentives and benefits. He represents developers in a wide variety of property tax issues, with a strong focus on real estate tax benefit applications and implementation pursuant to the 421-a, 420-c, J-51, 485x, ICAP Programs, and others.

Frank Baquero, Associate, has a primary focus on New York City's Industrial and Commercial Abatement Program and the 421-a real estate tax exemption program. He counsels clients on statutory and regulatory procedures and provides compliance advice on various New York City agency regulations.

Brenda Slochowsky, Associate, counsels developers and their consultants on all aspects of HPD's Inclusionary Housing Program, Mandatory Inclusionary Housing Program, and Affordable Independent Residences for Seniors Program.

Camila Almeida, Associate, represents developers in obtaining zoning bonuses under the Voluntary Inclusionary Housing Program and fulfilling requirements under the Mandatory Inclusionary Housing Program. She also works on various real estate transactions, including the purchase, sale, and financing of real property, development rights, and Inclusionary Air Rights.

We are confident that their contributions will significantly enhance our Firm's capabilities and provide even more value to our clients.

BBG Anniversaries

BBG would like to acknowledge and congratulate the following members of the BBG team who have been with the Firm for over five 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 – 36 Years

Sherwin Belkin, Partner – 36 Years

Daniel T. Altman, Co-Managing Partner & Co-Chair of the Transactional Group – 35 Years

Dwight Braumuller, Paralegal – 35 Years

Martin Meltzer, Partner – 33 Years

Nilda Guzman, Legal Assistant – 23 Years

Craig L. Price, Partner & Co-Chair of the Transactional Department – 21 Years

Christina M. Browne, Partner – 13 Years

Adam M. Bernstein, Partner – 5 Years

Lloyd Reisman, Partner – 5 Years

Derrick A. Hensel, Chief Operating Officer – 5 Years

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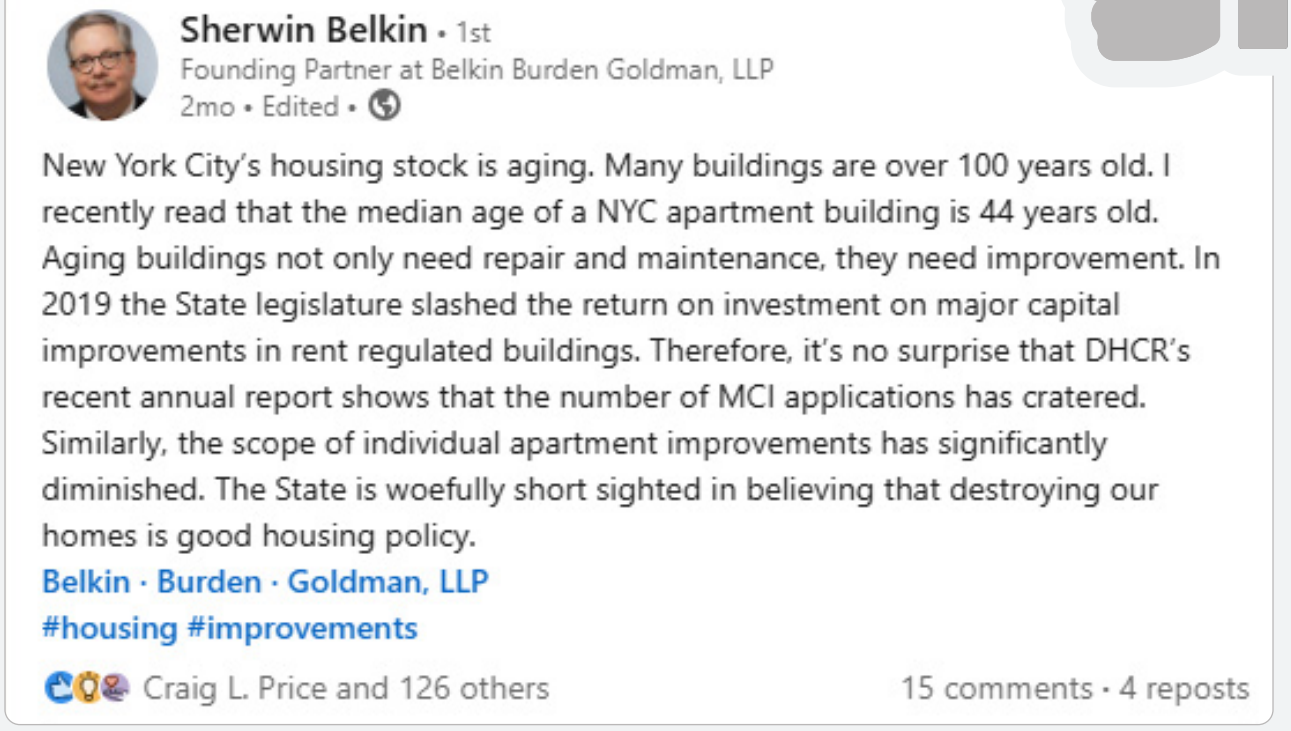

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