

ALTERATIONS

TOWNSEND V. 77 BLEECKER ST. CORP.

[2025 NY SLIP OP 34240\(U\) \(SUP. CT. N.Y. CNTY. OCT. 31, 2025\)](#)

Shareholder Liable for Terrace Enclosure Leaks

SQUIB BY LLOYD F. REISMAN, PARTNER, BELKIN BURDEN GOLDMAN

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: The plaintiffs, shareholders of Apartments 1005 and 1105 purchased in 2007–2008, alleged that beginning in 2018 their duplex experienced significant water infiltration during rainstorms. They claimed the leaks traveled from the 11th floor terrace/atrium area into lower floors, causing damage to walls, ceilings, and floors, and resulting in mold. The plaintiffs further alleged that in 2019 the cooperative’s contractors accidentally broke a glass panel in the atrium and installed a temporary cardboard covering that failed during an October 2020 storm, causing additional water intrusion. After the plaintiffs withheld maintenance payments to compel repairs, they asserted the cooperative and managing agent retaliated through notices of default and threats of nonjudicial foreclosure. Their complaint asserted breach of the proprietary lease, breach of the implied warranty of habitability, and sought injunctions compelling repairs and prohibiting enforcement actions.

IN COURT: In response to the plaintiffs’ allegations, the defendant denied nearly all material allegations, other than acknowledging isolated incidents, such as a broken glass panel, and asserted a counterclaim for the unpaid maintenance. The cooperative maintained the building’s roof, facade, and common element waterproofing were sound and that the atrium structure, not the building envelope, was the exclusive source of the leaks.

The defendant emphasized that the atrium was a shareholder-installed alteration, predating the plaintiffs’ ownership, and that the plaintiffs had not performed routine maintenance for more than a decade despite the proprietary lease placing responsibility for the maintenance of alterations and the apartment interior on the shareholder. In addition, to the extent the cooperative took any steps to seek to recover the substantial arrears, those steps were proper

(Takeaway on p. 4)

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CO-OP & CONDO
CASE LAW TRACKER

digest

CO-OP & CONDO CASE LAW TRACKER DIGEST

includes cases and squib commentary written by the Tracker’s Advisory Panel and contributors, who are New York’s leading co-op/condo practitioners. This issue covers court decisions from November 2025. For additional cases, visit <https://coopcondocaselawtracker.com>.

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and authorized under the cooperative's governing documents.

To support this position, the cooperative engaged an architectural expert who conducted targeted water-testing, which showed that the atrium suffered from a failed waterproof envelope, deteriorated sealants, and design flaws, while separate floodtesting confirmed the building roof and flashing did not contribute to water infiltration. The plaintiffs' expert, by contrast, conducted no testing and offered only limited visual observations and methodological critiques, which the court found insufficient to raise a triable issue of fact.

The court also relied on the proprietary lease, which requires shareholders to maintain their apartment interiors and prohibits terrace structures without prior written approval. Importantly, the lease allows the cooperative to remove terrace structures at the shareholder's expense for building maintenance, leading the court to conclude that the cooperative could not reasonably be expected to assume responsibility for routine maintenance of such shareholder-erected structures.

Finding no evidence that the cooperative caused or contributed to the leaks—and finding the plaintiffs' claims speculative and unsupported—the court granted

summary judgment dismissing the complaint in full and awarded the cooperative reasonable attorneys' fees and costs under the proprietary lease.

TAKEAWAY:

In disputes involving leaks, terrace structures, or shareholder-installed alterations, this case underscores a simple but critical lesson for all parties in a cooperative: Responsibility follows the proprietary lease, the alteration agreement, and the maintenance history, and not the loudest narrative. Shareholders must understand that when they have exclusive structures such as atriums, courts are likely going to treat these as their responsibility to maintain. Routine upkeep, clear documentation of conditions, and early engagement of qualified experts are essential not only to preserving the value of the apartment but also to sustaining any future legal claims. Withholding maintenance to force action is a high-risk move that can undermine a shareholder's position and trigger contractual default remedies. Ultimately, well-kept records and timely repairs are far more persuasive than shifting theories or delayed reporting.

For cooperatives and managing agents, the case reinforces the value of methodical documentation, prompt responsiveness, and strict adherence to lease provisions. Boards that consistently enforce alteration rules, maintain the building envelope, and communicate transparently with shareholders place themselves in the strongest defensive posture. Managing agents should preserve all written communications, carefully document access requests, and ensure that temporary fixes are followed by permanent solutions on a timely basis. When a dispute does arise, objective evidence (especially expert involvement) will help control the outcome. A board that demonstrates diligence, good faith, and reliance on competent professional analysis will be well-positioned to defeat claims rooted in speculation, delay, or deteriorated shareholder-controlled structures.

BOOKS AND RECORDS

RINCON V. ALLEN

[2025 NY SLIP OP 52014\(U\) \(SUP. CT. N.Y. CNTY. NOV. 6, 2025\)](#)

New Board Denied, Books Still Open

SQUIB BY MICHAEL P. GRAFF, ATTORNEY/MEDIATOR, GRAFF DISPUTE RESOLUTION

OUTCOME: Decided for Plaintiff, Defendant.

WHAT HAPPENED: The plaintiffs say they are shareholders of a housing development fund. The defendants include members of

the co-op's board and the building's managing agent, Urban Management and Development.

The plaintiffs called a special

meeting of shareholders to vote out the existing board and elect a new one. They claimed enough

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shareholders showed up to form a quorum and that a majority voted for the new board. After the meeting, the plaintiffs asked the defendants to turn over the co-op's books, records and control of day-to-day operations. The defendants refused, arguing that the vote did not count because the meeting did not meet the requirements of the bylaws.

The plaintiffs then brought this lawsuit, asking the court to order the defendants to turn over the co-op's records and recognize the new board. The defendants asked the court to dismiss the case. The plaintiffs also asked for additional, short-term relief, including the appointment of a temporary receiver, orders blocking apartment sales or leases, a pause on ongoing nonpayment cases, and court intervention to stop what they claimed was illegal construction work in the building.

IN COURT: The court decided four motions. At the center of the case was the plaintiffs' effort to seat a new board, define their rights as shareholders, challenge the existing board's authority and obtain access to the co-op's books and records.

The plaintiffs first asked for a preliminary injunction. They wanted immediate access to all corporate accounts, removal of the existing board, installation of the new board and turnover of all corporate documents. The court denied that request. Granting this relief at the outset would have given the plaintiffs everything they were seeking in the lawsuit. A preliminary injunction is meant to preserve the status quo, not to decide the case in advance, absent extraordinary

circumstances.

The defendants argued that no valid new board was elected. They claimed that at least one person who voted at the special meeting was not a shareholder and was not entitled to vote. They also argued that many attendees were behind on payments to the co-op and therefore could not vote or form a valid quorum. Under the bylaws, only shareholders in "good standing" may vote, although delinquent shareholders may still be counted toward a quorum.

The court found that one attendee could be counted toward a quorum but was not eligible to vote. Even so, the court concluded that the votes in favor of the new board did not constitute a majority of the qualified voters. Another attendee claimed to represent the estate of a deceased shareholder but had no documents showing she was a legally appointed fiduciary. As a result, the court ruled that the election of the new board was invalid and granted the defendants' motion to dismiss the plaintiffs' first cause of action.

The plaintiffs' second claim sought inspection of the co-op's books and records. The defendants argued that the demand was overly broad, covered too much time and was made in bad faith under New York common law and Business Corporation Law § 624. They claimed the plaintiffs were seeking the records only to remove the board and block nonpayment proceedings.

The court rejected that argument. New York law allows shareholders to inspect corporate books and records if the request is made in good faith and

for a proper purpose. That right includes access to shareholder lists, minutes of shareholder meetings and annual financial statements. A court may limit inspection to records that are relevant and necessary to the stated purpose.

Here, the plaintiffs said they wanted the records to understand why the building incurred debts and fines, sold units it did not own, improperly charged for lead paint abatements, mishandled elections and generally mismanaged the building. The court found those reasons to be proper. It also held that seeking records to effect a change in board composition is not bad faith. The defendants' motion to dismiss this claim was denied.

The plaintiffs also asked the court to stay several nonpayment proceedings brought against them in civil court. They argued that the defendants lacked authority to bring those cases and said they were escrowing their payments until the records were turned over. Because the court found that no valid new board had been elected, it denied that request.

The plaintiffs further sought appointment of a temporary receiver and orders blocking apartment sales, leases and renovations. To obtain that relief, the plaintiffs had to show a clear risk that the property would be lost, damaged or destroyed. The court found no such showing. It denied the request for a temporary receiver and declined to block sales or leases, noting again that no new board had been validly elected to take over those functions.

One narrow request was

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granted by consent of both sides. The court enjoined a newly admitted shareholder from renovating her apartment after the work resulted in building violations.

Finally, the plaintiffs challenged a notice to cure issued to owners of an allegedly illegally rented apartment with an unresolved leak. They argued that the board lacked authority to issue the notice and acted in bad faith. The court agreed that the board had no authority under the lease because it was not the lessor. The notice to cure was therefore invalid, and no injunction was required.

TAKEAWAY:

Bylaws govern shareholder's qualifications to vote and must be precisely followed. Where a representative of a deceased shareholder might be counted for a quorum, it lacked the authority to vote unless it possessed letters granting it legal authority. Similarly, the provision requiring that the owners not to be in arrears at the time will be enforced.

Corporate shareholders have a statutory and common law right to inspect and copy business records, at reasonable times, at the office of the corporation, as long as this right is exercised in good faith. While this includes minutes of shareholder meetings, it is less clear that this right is applicable to board meeting minutes. Often, board minutes contain information that may be personal and confidential, such as employment issues, and issues involving objectionable conduct of particular shareholders. Also, attorneys for prospective purchasers, in their exercise of due diligence, often request and are granted the right to inspect board minutes. Contents not material to the proper concerns of the requesting shareholder may be redacted.

BYLAWS

BD. OF MGRS. OF 1 GREAT JONES ALLEY CONDO. V. DOWNTOWN RE HOLDINGS LLC

[2025 NY SLIP OP 34546\(U\) \(SUP. CT. N.Y. CNTY. NOV. 26, 2025\)](#)

Unit Owner Pays Twice: Assessment and Fees

SQUIB BY THOMAS P. HIGGINS, PARTNER, HIGGINS & TRIPPETT

OUTCOME: Decided for Plaintiff Condo

WHAT HAPPENED: A Manhattan condominium engaged in litigation over alleged construction defects with the sponsor, which also owned a commercial unit. The condo had to spend about a million dollars in fees and costs in the lawsuit, and so the board of managers levied a special assessment against all unit owners to cover the expenses. The construction defects lawsuit was settled, but the commercial unit owner refused to pay the special assessment. The condo sued the unit owner, seeking an order declaring that the special assessment against the unit owner was proper; a judgment against the unit owner for breach of contract (namely, the bylaws of the

condominium) for failure to pay the special assessment; and an award of attorneys' fees. The condo moved for summary judgment, and the unit owner opposed.

IN COURT: The condo's motion for summary judgment was granted. Although the unit owner claimed that it was impermissible for the condo to assess the unit owner for attorneys' fees incurred in the construction defects litigation against the same unit owner, there are no cases or statutes supporting the argument. To the contrary, at least one appellate court found that such a special assessment was proper. Moreover, as long as all unit owners are assessed evenly

in accord with their respective percentage of ownership interests, the board acted properly. If the unit owner's approach were taken and the board tried to exempt the unit owner from the special assessment, that itself would have been improper and contrary to the bylaws. As for attorneys' fees, the bylaws provide that the condo can be awarded fees against any unit owner who fails to pay charges or assessments. That is what occurred here when the unit owner refused to pay the special assessment, so the condo is entitled to an award of attorneys' fees against the unit owner in an amount to be determined by the court.

(Takeaway on p. 7)

TAKEAWAY:

This decision upholds a bedrock principle of condominium law: A unit owner is responsible for its share of the expenses of the condominium. This is true even if, as here, the expenses were incurred in litigation against the same unit owner. The defendant-unit owner not only loses and must pay the special assessment for the expenses, but it also gets to pay the condo's attorneys' fees.

COMMON ELEMENTS**SOYBEAN PARKING LLC V. BD. OF MGRS. OF THE AMHERST CONDO.**

[2025 NY SLIP OP 34327\(U\) \(SUP. CT. N.Y. CNTY. NOV. 13, 2025\)](#)

Facade Work = Common Expense, Court Rules

SQUIB BY MANU LEILA DAVIDSON, ESQ., AND IULIJA KASSAI, ESQ., BOYD RICHARDS PARKER & COLONNELLI, P.L.

OUTCOME: Decided, in part, for Defendant

WHAT HAPPENED: Soybean Parking LLC owns a garage unit in a mixed-use condominium with a residential unit and a commercial unit. The condo board manages the property according to its declaration and bylaws, which define unit boundaries, common elements, and how expenses are shared.

The dispute arose over special assessments for facade inspections and repairs required under New York City Local Law 11 (LL11). From 2017 to 2020, Soybean Parking paid multiple LL11 assessments without objection. Starting in 2020, it challenged new assessments, arguing it should not pay for work benefiting only the upper residential unit. Soybean Parking claimed it should only pay for repairs near the garage level.

The plaintiff sued for breach of contract, unjust enrichment, accounting, and declaratory relief. It argued that the facade above the garage was not a common element. The board moved to dismiss, pointing to the condo's governing documents and the voluntary payment doctrine.

IN COURT: The court mostly sided with the board. It found that the

declaration clearly defines the facade as a common element.

The declaration states that common elements include parts of the building that "service, benefit, or enclose more than one Unit or Unit Owner," and those "necessary for, or convenient to, the existence, maintenance, management, operation, or safety of the Property." The court said the facade meets both definitions.

First, the facade encloses multiple units, from the ground floor to the 20th floor, forming the exterior for all units. Second, the facade benefits the building as a whole. LL11 requires inspection and repair of the entire exterior for safety. The declaration does not allow dividing the facade by floor or unit type to assign costs differently.

The court rejected Soybean Parking's idea that costs should depend on which unit benefits. LL11 applies to the entire facade, and the declaration explicitly treats exterior walls as common elements. Because of this, the board was allowed to levy assessments on all owners according to their proportional shares.

The court also said that any attempt to recover previously paid assessments failed under the voluntary payment doctrine. Soybean Parking had paid for years without protest, despite being a sophisticated commercial entity.

Some limited claims related to accounting and legal fees from an improper lien were allowed to proceed, but the main challenge to the facade assessments was dismissed.

TAKEAWAY:

This case shows that condo disputes over assessments hinge on the declaration's language. When the declaration treats a building component as a common element—covering multiple units and benefiting the building—courts will not allow owners to divide it for selective cost-shifting. Facade work required by law is clearly a common expense. Unit owners must pay their share unless the declaration explicitly says otherwise.

EVICTION

333 E. 53 TENANTS CORP. V. YANG

[2025 NY SLIP OP 51851\(U\) \(APP. TERM 1ST DEP'T, NOV 24, 2025\)](#)

Noise Happens; Proof Matters

SQUIB BY STEVEN S. ANDERSON, SHAREHOLDER, BECKER NEW YORK, PC

OUTCOME: Decided for Plaintiff Co-Op

WHAT HAPPENED: The petitioner cooperative brought a nonpayment proceeding seeking back maintenance owed. The respondent/shareholder/tenant threw in everything but the kitchen sink: The apartment was uninhabitable, noise was oppressive and unreasonable, the cooperative engaged in “harassment”, was “retaliatory”, and so on. A full trial was had with testimony by the tenant (an immigration attorney representing herself pro se), a representative of landlord-co-op, and an acoustics expert as to alleged excessive noise—claimed to arise from a grate outside the shareholder’s apartment and from building pipes.

IN COURT: The court did grant a 10 percent rent abatement because of

a delay in making necessary repairs by cooperative-landlord. However, the court rejected the noise and other related defenses, finding—not surprisingly—that the noises complained of “are part of living in New York City.”

“Mere annoyance in and of itself is not sufficient” to state a legal

claim, according to the finding. “Excessive” noise in violation of city acoustics code is one thing; minor noise a part of living in the big city is another. Only the former meets the legal bar. The court likewise found no harassment or other actionable conduct by the cooperative-landlord.

TAKEAWAY:

It’s always about the proof, or lack thereof. A tenant (shareholder) alleging a defense to non-payment of maintenance must prove his/her case. Self-serving testimony—in the face of expert testimony—does not cut the mustard. Indeed, the appellate court refused to disturb the trial court’s findings—rejecting the tenant/shareholder’s noise complaints and crediting the opinion of the cooperative’s expert, otherwise dismissing all self-serving claims of harassment, retaliatory eviction and otherwise. Noise, was not so excessive as to “deprive the tenant/shareholder of the essential functions of a residence.” Again, it’s always about the proof.

FORECLOSURE

TIN ROOF OWNERS, LLC V. BD. OF MGRS. OF THE NEPTUNE CONDO.

[504715/2023 \(SUP. CT. KINGS CNTY. NOV. 10, 2025\) NYSCEF NO. 70](#)

ROFR Doesn’t Apply to Tax Lien Foreclosure

SQUIB BY WILLIAM D. MCCracken, PARTNER, MORITT HOCK & HAMROFF LLP

OUTCOME: Decided for Plaintiff

WHAT HAPPENED: This case addresses the circumstances in which a board of managers may exercise a right of first refusal in foreclosure proceedings. Here, the plaintiff acquired title to a storage

unit and parking spot at auction following foreclosure of certain tax liens on the units, but the condo board refused to recognize the sale or grant access to the units, because the plaintiff had purport-

edly failed to recognize the board’s right of first refusal (ROFR) over the units. The plaintiff then sued and moved by order to show cause to grant access to the units.

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IN COURT: The court granted the motion, thereby rejecting the board’s argument that it had a ROFR over the foreclosed units. The condo’s bylaws provided that, among other things, (a) any unit owner who receives a “bona fide offer for the sale of [a] unit” is required to submit to the board’s ROFR, but also that (b) the ROFR does not apply in certain situations, including a transfer to a member of the unit owner’s immediate family, or to “the acquisition or sale of any Unit . . . by a mortgagee herein authorized who shall acquire title to such Unit by foreclosure. . . .”

Because this was tax lien foreclosure, not a foreclosure by a lender, the plaintiff here was not a “mortgagee.” Therefore, according to the board, the exception to the ROFR requirements did not apply, and the plaintiff had not properly acquired title to the units.

The court found, however, that the ROFR never accrued in the first place, because a foreclosure is not an “offer,” in the sense of a “conscious and voluntary choice by the Unit Owner to make the property available for sale.” Thus, the court found that the board’s focusing on the plaintiff not being

a “mortgagee” was “miss[ing] the point” that a foreclosure, by its nature, does not involve a bona

fide offer to sell. If the ROFR is never triggered, then any potential exception to the ROFR is irrelevant.

TAKEAWAY:

Perhaps what is most interesting about this decision is that there seems to have been little precedential guidance available to the court. Despite ROFRs being ubiquitous features of condo bylaws, the board’s counsel had characterized the issue as a “case of first impression,” and the court only cited three decisions in support of its holding, none of which were from courts in Kings County or from courts in New York City and/or the First or Second Departments.

Two possible reasons suggest themselves. First, even if it is available, the right of first refusal is rarely exercised. This may be for many reasons, but probably the most important reason is that boards rarely have the cash available to purchase a unit at relatively short notice. Moreover, if a board does have the financial resources available, it could simply bid for the unit at auction and avoid the issue completely. It is not clear why the board did not do so in this case.

Second, on the “mortgagee” exception, it is likely that the language of this particular provision is outside the norm. In my experience, the exception to the ROFR will usually apply to the foreclosure not just of a mortgage but to “any other lien,” or to a purchase by a mortgagee “or any other bidder.” As a completely anecdotal and unscientific exercise, I reviewed 20 condo bylaws from my own files at random, and only three of the 20 had the same or similar “mortgagee” limitation found in the bylaws at issue in this case. Given these two factors—not to mention that almost all such disputes get settled without litigation anyway—it might be less surprising that a case like this has rarely presented itself.

As for the decision itself, while the end result is reasonable and defensible, it does arguably make the standard “foreclosure” exception to the ROFR redundant, which is something that courts generally try to avoid in construing contract language.

INJUNCTION

GREENWICH HOLDING W. 23, LLC V. 315 W. 23RD ST. OWNERS CORP.

[654470/2025 \(SUP. CT. N.Y. CNTY. NOV. 12, 2025\) NYSCEF NO. 60](#)

Court to Tenant: You Can’t Yellowstone a Dead Lease

SQUIB BY STEWART E. WURTZEL, PRINCIPAL, TANE WATERMAN WURTZEL

OUTCOME: Decided for Co-op Defendants

WHAT HAPPENED: For decades, Greenwich Holding W. 23, LLC, the tenant in a large commercial space in a cooperative building

at 315 West 23rd Street, held a long-term lease that explicitly gave it the right to convert that space into residential apartments near

the end of the lease term. That right became exercisable in April 2020, and the tenant gave the

(continued on p. 10)

cooperative board advance written notice in 2019, along with approved plans from the city, that it intended to do exactly that. The cooperative raised questions with the city regarding an air and light issue in the plans. Notwithstanding that the parties entered into several lease extensions and tenant continued occupancy as a month-to-month tenant for a period after the lease extensions ended, the cooperative claimed that the required conversion work was not completed in the time required (including agreed upon remediation work) and thereafter terminated the month-to-month tenancy. The tenant went to court seeking a Yellowstone injunction and a preliminary injunction preventing termination of the lease and for an order requiring the cooperative to issue shares and leases to the tenant.

IN COURT: The court denied all of the relief requested by the tenant. The judge ruled that the tenant

was not entitled to a Yellowstone injunction—a type of court order that preserves a tenant’s right to cure an alleged default under a commercial lease while the tenant challenges the default—because the tenant no longer had a valid lease, which had expired in March 2023. The existence of a lease is one of the required factors for issuance of a Yellowstone. The court also refused to issue a mandatory injunction that would have forced the

co-op and its board to immediately issue shares and proprietary leases, finding that this would effectively give the tenant the final outcome it is seeking in the case without a trial. The judge also denied the request for a preliminary injunction holding that the tenant failed to show irreparable harm, since any losses it claims could be addressed through a claim for money damages. As a result, the court denied the motion in its entirety.

TAKEAWAY:

The lack of an existing lease made the issuance of a Yellowstone injunction inappropriate. The court was unlikely to grant a mandatory injunction compelling issuance of shares because the usual function of a preliminary injunction is to preserve the status quo and issuance of shares would not do that. It was also the ultimate remedy the plaintiff was seeking. Further, the court found that the tenant has an adequate remedy at law which is to recover monetary damages if the cooperative breached the lease. The damages alleged by the tenant are substantial—millions of dollars in construction costs and lost revenue for the sale of the converted units. This lawsuit is far from over (the current decision has been appealed) but round one went to the cooperative.

LIEN

BD. OF MGRS. OF TRIBECA TOWNHOMES V. 16 WARREN ST. PH, LLC

[2025 NY SLIP OP 34413\(U\) \(SUP. CT. N.Y. CNTY. NOV. 14, 2025\)](#)

Complaints No Defense to Paying Condo Charges

SQUIB BY ANDREW P. BRUCKER, PARTNER, FOX ROTHSCHILD LLP

OUTCOME: Decided for Plaintiff Condo

WHAT HAPPENED: Tribeca Towers, a condominium in Manhattan, brought an action against a unit owner to foreclose a lien for unpaid charges. The unit owner answered with affirmative defenses and a counterclaim. The condominium moved for summary judgment and for the appointment of a referee to

compute the amounts owed to the condominium.

The unit owner claimed that the condominium must prove its authority to collect common charges and to add late fees and other costs of collection. In addition, the unit owner claimed that the amount calculated was not correct, and was vaguely pleaded.

IN COURT:

The court explained that to win summary judgment, the party seeking foreclosure must first make a basic legal showing using proper evidence. Here, the condominium submitted an affidavit from its president. The affidavit explained his authority

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and how the amounts owed were calculated. The court found this affidavit reliable. Because the condominium met its initial burden, it was entitled to summary judgment on the foreclosure claim.

The court also reviewed the unit owner's affirmative defenses. It found that they were vague and unsupported by facts. Legal conclusions without factual support are not enough. As a result, the court rejected all of those defenses.

The unit owner argued that the lien was invalid because it did not list specific due dates for the charges. The court disagreed. The law does not require a lien to itemize and date each individual

charge. The court also explained that disputes over the exact amount owed are not a defense to summary judgment. Those issues will be handled later by the referee.

Finally, the unit owner claimed

there were defects in the unit and in the common areas. The court held that such complaints do not excuse a failure to pay common charges. The counterclaim based on those allegations was separated from the foreclosure action.

TAKEAWAY:

As is often the case in legal disputes, the process followed is essential to prevailing in any action. Here, the condominiums counsel submitted the proper proof in order to successfully move for summary judgment in this lien foreclosure. But perhaps the most important lesson to be learned by this decision is that the defaulting unit owner should not believe that complaints about the way the condominium operates, or complaints about actions of the board, will sway the court. These will not be an excuse for withholding payment of common charges.

OWNERSHIP

CONCEPT 914 LLC V. ALPINE ACRES CONDO.

[2025 NY SLIP OP 34115\(U\) \(SUP. CT. SULLIVAN CNTY. OCT. 23, 2025\)](#)

“Wild Deed” Fails: Condo Holds Title After 14-Year Fight

SQUIB BY SCOTT J. PASHMAN, MEMBER, COZEN O'CONNOR

OUTCOME: Decided for Defendant Condo

WHAT HAPPENED: The defendant is the Alpine Acres Condominium located in Fallsburg, Sullivan County, New York. In 2011 the condominium sponsor, Alpine Holding LLC, conveyed Unit F-14 to BMG Southern Equities LLC. After taking ownership, BMG failed to pay the condominium common charges. In response, the condominium filed a lien of common charges against Unit F-14. When BMG's arrears remained unpaid, the condominium commenced a lien foreclosure action. The condominium named the sponsor as a defendant in the foreclosure action as a potentially interested party. The condominium obtained

a judgment of foreclosure and sale in 2016. A foreclosure sale was held, and the condominium was the winning bidder and became the owner of Unit F-14.

Meanwhile, ever since it had conveyed Unit F-14 to BMG in 2011, the sponsor and related parties had engaged in a complicated series of conveyances, foreclosures, and litigation aimed at taking back title to Unit F-14. As relevant here, in 2016 Alpine Holding LLC executed a quitclaim deed purporting to transfer Unit F-14 to Concept 914 LLC, a company formed by the principals behind BMG and certain family members of the sponsor, for

nominal consideration of \$1.00.

IN COURT: In 2021, Concept 914 LLC sued the condominium to quiet title to Unit F-14. The plaintiff sought a declaratory judgment that the 2011 conveyance to BMG was fraudulently made and thus null and void, and that the quitclaim deed Concept 914 LLC received in 2016 was superior. After proceedings and delays in court, the condominium moved for summary judgment.

Just before the plaintiff was due to oppose the summary judgment motion, the sponsor, Alpine Holding LLC, sought to intervene in the

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action and to stay proceedings in the interim. The condominium opposed. The court denied the sponsor's application in an order refusing to sign the sponsor's proposed order to show cause. The court said that it, as well as the sponsor, were bound by the result of prior litigation, including a 2019 order by the appellate division that had set forth the ownership history of the unit at issue and upheld a prior court's determination that the condominium is the current owner of the unit. The court also said that the sponsor had been

named in the condominium's 2013 foreclosure action and had failed there to raise any argument

regarding a purportedly fraudulent transfer of the unit to BMG, and that now was too late.

TAKEAWAY:

The condominium rightly argued that, at the time the sponsor purported to transfer title to Unit F-14 to Concept 914 LLC—five years after it had already transferred title to BMG—that the sponsor had no property interest left to convey and that the plaintiff's deed was a so-called "wild deed." Despite the apparent lack of merit to the claims made by Concept 914 LLC and the sponsor, they have successfully managed to tie the condominium and the subject unit up in multiple court proceedings for over a decade. And, the proceedings are not yet concluded. The court is now expected to rule on the condominium's motion for summary judgment, and one side or the other will likely appeal that decision.

STATUTE OF LIMITATIONS

STALLER V. BD. OF MGRS. OF 163 CHARLES ST. CONDOS.

[2025 NY SLIP OP 34241\(U\) \(SUP. CT. N.Y. CNTY. NOV. 5, 2025\)](#)

Leak Known, Suit Late, Claims Dismissed

SQUIB BY HELENE W. HARTIG, ESQ., FOUNDER AND PRINCIPAL OF HARTIG LAW

OUTCOME: Decided for Condo Defendants and Third-Party Defendant

WHAT HAPPENED: The plaintiff owned two adjacent properties in Greenwich Village: a townhouse at 161 Charles St., where he lived, and a rear rental house. In 2004, the defendants purchased the neighboring townhouse at 163 Charles St., demolished it and constructed an eight-story condominium building.

After construction, the plaintiff's townhouse and the new condominium shared an exposed party wall. A certificate of occupancy was issued in 2009.

Several years later, the plaintiff noticed a leak coming from the shared party wall. He claimed he made verbal complaints to the condominium's agents about a "smell of wet plaster" and possible mold and was told the

problem would be addressed.

In 2018, the plaintiff retained an expert, who issued a written report identifying cracking and bulging stucco and deteriorated sealant on the exterior of the party wall. The plaintiff started this action in 2019.

In 2021, the defendants retained their own expert, who concluded that the water damage in the plaintiff's home was caused by chronic water infiltration through deteriorated stucco along the party wall. In 2023, the defendants commenced a third-party action against the construction company that performed the work, asserting claims for indemnification, contribution and failure to procure insurance.

At his deposition, the plaintiff

admitted that he had been aware of the leak since around 2014. The defendants and the third-party defendant then moved for summary judgment, arguing that the action was time-barred.

IN COURT: The court agreed with the defendants and dismissed the action in its entirety, finding that the claims were barred by the three-year statute of limitations.

The plaintiff acknowledged that he became aware of the leak as early as 2014 but did not file suit until 2019, well after the limitations period had expired. That delay required dismissal.

The court rejected the plaintiff's reliance on the continuous wrong doctrine. The alleged

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damages stemmed from a single, discrete act: defective construction of the condominium's exterior. That work was completed in 2007, or at the latest when the certificate of occupancy was issued in 2009—nearly 10 years before the action was begun.

The court also held that the defendants' later acknowledgment that their construction work caused the leaks did not revive the expired claims. Any alleged statutory duty to maintain the party wall, or the defendants' refusal to grant access for

inspections, did not excuse the plaintiff's failure to start the action within the statutory period.

Summary judgment was granted in favor of the defendants and the third-party defendant.

TAKEAWAY:

A plaintiff must be vigilant in commencing a lawsuit against a neighboring building owner or risks a summary judgment dismissal based on procedural grounds, including the Statute of Limitations. Dismissal can be directed at any stage of a proceeding and is not precluded by an admission of wrongdoing by the defendants. An oral report to a condominium's superintendent or managing agent of "the smell of wet plaster" and possible mold is also not sufficient to trigger liability when a lawsuit was not commenced within the applicable statutory time periods. The passage of time will similarly prevent a plaintiff, despite proof of culpability by a defendant, from legal redress for faulty construction that was discovered (or could have been discovered) earlier.

VIOLATIONS

VERKHOVSKY V. CLINTON HILL APTS. OWNERS CORP.

[2025 NY SLIP OP 51872\(U\) \(SUP. CT. KINGS CNTY. NOV. 25, 2025\)](#)

Fire Injury Claim Falls on Access Issue

SQUIB BY STEWART E. WURTZEL, PRINCIPAL, TANE WATERMAN WURTZEL

OUTCOME: Decided for Defendant Co-op

WHAT HAPPENED: The plaintiff was a subtenant who was burned in a fire in his cooperative apartment. The issue in this case was who was responsible for supplying and maintaining the smoke detector in the apartment—the tenant, the shareholder who owned the apartment, the cooperative, or the managing agent. When the plaintiff rented the apartment in 2016, he never signed any paperwork regarding the apartment, did not fill out any forms for the building, never spoke to anyone from building management (probably because it was an unauthorized sublet) and there was no lease. However, the shareholder who owned the apartment "would enter the Apartment each month to collect the rent from plaintiff's freezer."

A smoke detector was originally installed in the apartment shortly after the shareholder purchased the apartment in 1985. When the plaintiff moved into the apartment in 2016 and, again a few months later at the time of the fire, there was no smoke detector in the apartment. The plaintiff purportedly asked the shareholder to install a smoke detector and allegedly the shareholder told the plaintiff she would do so but never did.

The court noted that the cooperative was required to provide and install a smoke detector according to law. However, once it installed the smoke detector, its duty to replace any devices which are either stolen, removed, missing or rendered inoperable during the occupancy of the dwelling are

more limited and it is generally the occupant's duty to maintain the smoke detector. Because the shareholder only owned a single unit, she was not considered to be an owner under the New York City Administrative Code responsible for the smoke detector installation. In 2013, the administrative code was amended to require owners to replace previously installed smoke detectors upon expiration of their useful life. Smoke detectors installed before 2014 whose useful life was not known did not need to be replaced until 2021, in this case, after the fire occurred.

After initially holding that neither the cooperative nor the shareholder were required by law to replace the smoke detector, the

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court found that a landlord may be liable for failing to repair a dangerous condition of which it has notice if the landlord assumes a duty to make repairs and reserves the right to enter the apartment in order to make such repairs. Here, while the court granted the cooperative's and management's motion for summary judgment and dismissed the case against them, it denied the shareholder's motion for summary judgment because it found a question of fact existed as to whether the shareholder

surrendered control of the premises since she retained access to go into the apartment each month

to get the rent from the freezer and she assured the plaintiff she would replace the smoke detector.

TAKEAWAY:

While the cooperative and management escaped any liability in this case, and it is generally the tenant/occupant's responsibility to maintain the smoke detector once installed, the law does impose the obligation on an owner to replace the smoke detector once the useful life has passed. Typically, a smoke detector has a useful life of about 10 years, less if it's a combined carbon monoxide unit. Buildings and management should keep track of those detectors they install and replace them when the time comes. The failure to replace the smoke detector at the end of the useful life could be the basis for liability should there be a fire.