

CLIENT ADVISORY

APRIL 2001

NEW FIRM NAME

This is our first newsletter since we've changed our name to Ganfer & Shore, LLP. While we have maintained our focus as one of New York's premiere firms in the field of Cooperative and Condominium Law, we have also continued to grow and expand, and improve our ability to service our clients' needs.

We are proud to introduce our newest partner, **Stuart L. Melnick**, a litigator of outstanding reputation. Stuart has worked for some of the City's largest law firms, and adds his considerable skill and expertise to our dynamic litigation group. Stuart is a recipient of the American College of Trial Lawyers Medal for Excellence in Advocacy, and is a member of the bar of New Jersey and Connecticut, as well as New York.

In addition to Stuart, we are also welcoming three new associates: **Thomas V. Juneau, Jr.**, **Patricia A. Cavallaro** and **Justin R. Bonanno**. We are delighted to welcome these three remarkable individuals to our firm. Tom is an experienced litigator and a former Journal editor at Brooklyn Law School. Trish and Justin are both talented associates, with interesting and varied experiences. Justin has handled litigations and foreclosures. Trish was a member of the Brooklyn Law Review and has written on topics concerning Cooperative housing law. We are confident that you will find working with all of our new attorneys to be a very pleasant and rewarding experience.

As always, we invite our clients and friends to let us know how we can keep improving our services to you. It is our belief and commitment that our clients deserve the best representation possible, and we intend to do everything within our power to deliver on that commitment.

SHAREHOLDER SUIT DISMISSED

Barbara Jacobs, a shareholder in a Manhattan Cooperative, did not like the way her Cooperative handled matters and sued it for breach of the warranty of quiet enjoyment, harassment, intentional infliction of emotional distress and fraud and sought punitive damages against the Cooperative. In a decision entitled Jacobs v. 200 East 36th Owners Corp. (NYLJ 3/22/01) which has good language for Cooperatives, the Appellate Division affirmed the dismissal of Ms. Jacobs' claims. Ms. Jacobs had claimed that the passage of a rule requiring residents to come to the lobby to pick up food deliveries, rather than allowing them to be placed on the floor of the elevator and having the elevator sent to the resident's floor, constituted

harassment. The Appellate Division held that “the record is devoid of evidence that such action was not in furtherance of legitimate concerns for safety and cleanliness”. A cause of action asserted for intentional infliction of emotional distress, based on the Cooperative’s failure to unscrew a light bulb in the plaintiff’s apartment for four days, did not, according to the Appellate Division, allege conduct “so extreme and outrageous as to be beyond all possible bounds of decency”. Jacobs asserted that statements made by members of the Board of Directors of the Cooperative at her interview to purchase her apartment, concerning noise and water pressure, constituted fraud. The Appellate Division disagreed, holding that the cause of action is not sustainable absent evidence that such statements were known to be false.

Finally, the Appellate Division held that the plaintiff’s cause of action for breach of the warranty of habitability, alleging the Cooperative’s refusal to enforce House Rules and to remedy noise, low water pressure and other unpleasant living conditions in the building, do not show conduct so “morally reprehensible as to warrant an award of punitive damages”.

SCAFFOLD LAW AMENDMENT PROPOSED

Labor Law §§ 240 and 241, which are known as the “Scaffold Law”, create a strict liability standard applicable to employers and building owners for injuries to workers working above ground level. In an action against an owner arising out of this type of injury, even a showing that an employee was intoxicated, or deliberately flouted safety rules imposed by the employer, is no defense to a claim against an owner or employer under the present law.

Recently however, a bill was introduced by State Senator Dale M. Volker and Assemblyman Joseph E. Robach, which would permit owners or contractors to introduce in any such case relevant facts, including their compliance with safety procedures and practices. In addition, the bill would offer defendants a safe harbor from liability, provided that they have complied with federal and state occupational safety and health regulations. This amendment, if passed, should result in lower insurance costs for contractors and owners for above ground level work, and reduce the amount of litigation arising out of these types of accidents.

FREE HOUSING EDUCATION PROGRAM

The City of New York Department of Housing Preservation and Development is offering eleven courses taught as seminars, interactive courses and standard classroom sessions covering various topics relating to housing including “Introduction of Residential Management and Building Systems” and Advanced Building Management” as well as seminars on heat and hot water, and child health initiatives.

“Last year, more than 2,000 building owners and managers enrolled in Housing Education Program (HEP) courses,” said Commissioner Jerilyn Perine. “The classes are free, and they provide an excellent opportunity for property owners to learn how to maintain their building more cost-effectively. I encourage all property owners to either take classes themselves or send their superintendents.” The classes are free, but students must pre-register by calling (212) 863-8830.