
CLIENT ADVISORY

APRIL 2008

COURT AUTHORIZES EVICTION OF TENANT FOR “COLLYER-TYPE” CONDITIONS IN APARTMENT

A New York court has authorized the eviction of a rent-stabilized tenant in a cooperative building based on his exceptionally poor sanitary habits, which resulted in offensive odors and insect infestation that rendered the apartment “unfit for human habitation and a health-and-safety risk to other tenants.” **Cabrini Terrace Joint Venture v. O’Brien**, 18 Misc. 3d 1145(A), 2008 WL 623827 (Civil Ct. N.Y. Co. Mar. 7, 2008).

The tenant, an attorney, had resided in his apartment for more than 40 years. His landlord brought a proceeding seeking his eviction based nuisance and violation of a substantial obligation of the lease, based upon conditions in his apartment. At trial, several witnesses testified in detail about problems such as belongings strewn everywhere and piled up to three feet off the floor, objectionable smells that could be perceived from several feet outside the apartment, insect and rodent infestation, exposed electrical wires, and overall filthy conditions. The tenant admitted that these conditions had previously existed but claimed that he had cleaned his apartment and addressed the problems. To resolve this issue, the Housing Judge made an unannounced inspection to the apartment, after which he concluded that “the filth in respondent’s apartment was everywhere and extreme” to the point that eviction was warranted on grounds of nuisance.

The court next addressed whether the tenant should be allowed a further opportunity to cure the nuisance. Courts frequently afford tenants an opportunity to cure the breach before granting the drastic remedy of terminating a regulated tenancy. In this case, however, the court observed that the tenant had already had many opportunities to cure the unacceptable conditions. “The nuisance in respondent’s apartment has been ongoing for years,” the court found, including the full year that has elapsed since the landlord had filed the proceeding. Under the circumstances, the court concluded that “[t]he harm to other tenants in the apartment building outweighs the harm in respondent’s forfeiting his apartment” and terminated the rent-stabilized tenancy.

BOARD’S ALLEGED FAILURE TO REPAIR TERRACE WAS “CONTINUING WRONG” UNDER STATUTE OF LIMITATIONS

Where a Condominium’s By-Laws require the Board of Managers to repair limited common elements of the building, and the Board fails to do so over a period of time, the failure is an “ongoing wrong” that does not become time-barred under the statute of limitations, according to the court’s decision in **Kaymakcian v. Board of Managers of Charles House Condominium**, 2008 WL 714137, 2008 N.Y. Slip Op. 2487 (App. Div. 1st Dep’t Mar. 18, 2008).

The plaintiffs were Unit Owners who claimed that their apartment had been damaged by leaks originating in the terrace of the apartment above theirs. The By-Laws of the Condominium provided that the terraces were classified as “limited common elements” and that the Board of Managers was responsible for their repair. Plaintiffs alleged that they repeatedly complained to the Board concerning the leaks, but nothing was done to address them, and sued the Board of Managers for, among other things, breach of fiduciary duty. Because plaintiffs had been complaining about the leaks for more than three years, the trial court dismissed this claim based on New York’s three-year statute of limitations on claims for money damages for breach of fiduciary duty.

The appellate court reversed. Because the Board of Managers had a continuing duty to repair the terrace, its failure to do so constituted a continuing wrong each day the failure continued, rather than a discrete event that started the statute of limitations running on the date of the original leak. The court noted, however, that plaintiffs’ claim for damages for breach of fiduciary duty would be limited to the damages occurring within the three-year period before the case was filed.

**BUYER’S CLAIMS AGAINST SELLING AGENTS DISMISSED
WHERE OFFERING PLAN DESCRIBED UNITS ACCURATELY**

A dispute about rights to exclusive use of a roof setback led the purchasers of two condominium units to sue numerous defendants including the selling agents for fraud, negligence, and violation of New York’s statute governing condominium conversions. The claims were dismissed, however, because the Offering Plan that had been provided to the purchasers provided accurate information about what rights pertained to each unit. **Pappas v. New 19 West, LLC, 18 Misc. 3d 1138(A), 2008 WL 509087 (Sup. Ct. N.Y. Co. Feb. 20, 2008).**

Plaintiffs asserted that they met with the selling agent and advised her that they wanted to purchase a unit with outdoor space. The agent showed plaintiffs two adjoining units, one of which adjoins a setback in the roof and has a door opening onto the setback. Plaintiffs contended, in substance, that they were misled into believing that by purchasing the two units, they would enjoy exclusive use of the setback area. They also asserted that they were promised that the Sponsor would take steps to legalize the roof setbacks for use as a terrace.

The court rejected these claims on the ground that they were barred by disclosures made in the Offering Plan for the Condominium, which plaintiffs admittedly received before purchasing their units. The Offering Plan stated that the “Roof Setbacks are not legal Terraces” and that “All Roof Setbacks are General Common Elements of the Condominium.” The annexed floor plan for plaintiffs’ units also noted that the “Roof setback is not a legal terrace. See Offering Plan for details.” Because “the Offering Plan accurately described what Buyers were purchasing,” all fraud and misrepresentation claims were dismissed. Moreover, any reliance placed by plaintiffs on alleged promises to legalize the setback for their use as a terrace at some point in the future was unjustified because the contract of sale did not contain any such promise, and in fact contained a representation by plaintiffs that they were not relying on any promises except those contained in the Offering Plan or in the contract of sale itself.

The court also dismissed plaintiffs’ claim seeking to hold the selling agent liable for breach of the New York Real Property Law based upon the agent’s statement in an opinion letter that the allocation of common interests among the units was proportional to the floor area of the various apartments as adjusted for their other advantages. The court found that this statement would not have led a reasonable purchaser to reach any conclusion regarding roof rights that contradicted the express statements on this subject contained elsewhere in the Offering Plan.