
CLIENT ADVISORY

APRIL 2007

COOPERATIVE ORDERED TO PAY ATTORNEYS' FEES IN UNSUCCESSFUL SUIT AGAINST SHAREHOLDER-TENANT

Most leases, including proprietary leases for cooperative apartments, provide that if the landlord brings a successful suit against the tenant based on a breach of the tenant's obligations under the lease, the tenant must pay the landlord's reasonable attorneys' fees. To level the playing field, the Legislature adopted **New York Real Property Law § 234**, which provides that such an attorneys' fee provision in a residential lease will be deemed reciprocal, so that the tenant can recover attorneys' fees from the landlord if the tenant is the successful litigant.

This statute was most recently applied to require a cooperative to pay for a shareholder-tenant's legal representation in **Parkview Apartments Corp. v. Guy**, 2007 N.Y. Slip Op. 50522(U), 2007 WL 841002 (Ossining Town Ct. Mar. 19, 2007). In that case, the cooperative brought a summary proceeding to evict the shareholder-tenant for allegedly subletting without authorization and harboring a prohibited dog. The court dismissed the cooperative's suit on procedural grounds, holding that the papers had not been properly served. On this basis, the shareholder-tenant was held to be the prevailing party and entitled to recover his attorneys' fees and disbursements.

Attorneys' fee awards under RPL § 234 can be substantial. In **Measom v. Greenwich & Perry St. Housing Corp.**, 8 Misc. 3d 50, 798 N.Y.S.2d 298 (App. Term 1st Dep't 2005), for example, the court awarded fees of \$128,000 to shareholder-tenants who sued their cooperative for breach of the warranty of habitability because their basement apartment became uninhabitable, even though the actual damages awarded to the tenants were only \$79,000. Thus, while boards should be vigilant in protecting their cooperatives' rights, the possibility of a fee award under this statute should be considered when determining whether to pursue litigation.

LAW AGAIN PROPOSED TO REQUIRE COOPERATIVE BOARDS TO DISCLOSE REASONS FOR REJECTING PURCHASE APPLICATIONS

From time to time, legislation is introduced before the New York City Council that would enact a Local Law requiring cooperative boards to advise unsuccessful applicants of the reasons why their applications to purchase were rejected. While such legislation has not been enacted to date, it is again being considered by the City Council. The proposed law, on its face, would not abrogate a board's right to reject an application in the exercise of its business judgment for any reason other than an unlawful or discriminatory one. Nonetheless, most commentators agree that requiring boards to provide specific reasons for rejecting applications would lead to a substantial increase in disputes and litigation following such rejections. For example, many rejected applicants would be expected to challenge the candor of the board's stated reasons for rejection, the accuracy of the board's conclusions, or whether the board's approval criteria had been applied even-handedly to other applicants. (Additional concerns raised by proposed legislation of this type are discussed in the April 2006 issue of this **Client Advisory**.) In view of the potentially serious impact that this legislation, if enacted, could have upon cooperative boards and residents, interested persons may wish to contact their City Council Member to express their opinion on the proposed legislation.

NEW YORK'S "PULLMAN" STANDARD FOR OUSTING

A COOPERATIVE SHAREHOLDER APPLIED AT SEA

Unlike many other fields of law in which New York law is applied in disputes arising all over the world, cases applying New York's legal principles governing cooperative residences generally arise only from properties located within New York State. An unusual exception, in which New York cooperative law was applied to resolve a dispute that began on a passenger ship docked in Singapore, is the federal court decision in **World of Residence II, Ltd. v. Villasenor, 2007 WL 895107** (S.D.N.Y. Mar. 21, 2007). Despite the case's atypical origin, however, much of the legal analysis in the court's decision would apply to any New York cooperative.

The case involved ownership of shares in a passenger ship, which were associated with a Residence Agreement authorizing occupancy of an apartment on board the ship. One of the ship's shareholders was accused of sexually harassing a minor guest and violating its house rules, the "Ship Rules." The Ship Board investigated the shareholder's actions through outside counsel and then permanently barred him from the ship. The shareholder sought an injunction allowing him to return.

The court observed that, although the ship was a "unique residential community" posing special challenges to the board of directors and the crew, its "ownership structure can be analogized to a cooperative apartment building or a residential development." Therefore, the court's analysis followed the New York Court of Appeals' Pullman ruling, under which a board decision to terminate a cooperative shareholder's tenancy is generally reviewed under the deferential standard of the business judgment rule. A more searching review is only conducted where the board acted either "(1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose, or (3) in bad faith." (Please see the June 2003, February 2005, September 2005, and June 2006 issues of this **Client Advisory** for discussion of cases applying this standard.)

In its opinion, the court noted that the Board of Directors had "provided [the shareholder] with a forum to dispute the alleged objectionable behavior" and concluded that "[t]he decision of the Ship's Board to bar [the shareholder] from the Ship was based on the sum total of all of the evidence of his misconduct, and was a reasonable exercise of the Board's discretion" entitled to deference under Pullman. The court also rejected a claim of national origin discrimination.

However, the court went on to hold that it would be inequitable to bar the shareholder from his residence without compensating him for the value of his ownership interest. Applying its equitable discretion and in view of the unique circumstances, in a fashion that probably would not apply in the case of a cooperative located on land where the shareholder probably would be granted the right to sell the unit to a third party, the court ordered that the shareholder be paid the value of his ownership rights, to be determined by agreement of the parties or at an appraisal hearing.

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