
CLIENT ADVISORY

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COURT UPHOLDS COOPERATIVE'S TERMINATION OF SHAREHOLDER'S LEASE FOR SCREAMING, HARASSMENT

Cases being resolved by New York courts reflect the increased authority of cooperative boards to terminate the proprietary leases of shareholder-tenants who engage in a pattern of objectionable conduct. A recent appellate decision, Trump Plaza Owners, Inc. v. Weizner, 2008 WL 192051, 2008 N.Y. Slip Op. 00430 (App. Div. 1st Dep't Jan. 24, 2008), continues this trend.

In this case, a shareholder-tenant engaged in conduct such as yelling and screaming in a manner audible in other residents' apartments as well as threatening and harassing other residents and building staff. The appellate court found that "in voting to terminate the tenant's lease, the cooperative board acted for the purposes of the cooperative, within the scope of its authority, and in good faith." Accordingly, the board decision was upheld. The appellate court also found that based on the shareholder-tenant's conduct, the board was entitled to a preliminary injunction forbidding her from engaging in further misconduct. However, because the form of injunction granted by a lower court was too vague in describing what actions were prohibited, the matter was remanded for entry of a more specifically worded injunction.

On a procedural issue, the appellate court reversed the trial court's dismissal of the Cooperative's attempt to terminate the proprietary lease and evict the tenant. The trial court had ruled that dismissal was required because the Cooperative had sent some notices to the tenant at a different address from the one provided for in the lease. (This earlier ruling is discussed in the September 2007 issue of this *Client Advisory*.) However, "[t]he record demonstrate[d] that notice was sent to the tenant at her post office box, that she actually received the notice, and that the cooperative [also sent] several letters to the tenant at both addresses." In view of these facts, the appellate court held that dismissing the Cooperative's claims was unwarranted.

CONDOMINIUM BY-LAWS REQUIRED UNIT OWNER TO INDEMNIFY CONDOMINIUM AGAINST INJURY CLAIM

A Condominium's By-Law requiring a Unit Owner to indemnify the Condominium for any costs or expenses arising from alterations within the owner's unit, including claims for personal injury or property damage, was enforced in Canela v. TLH 140 Perry Street, LLC, 2008 WL 193296, 2008 N.Y. Slip Op. 440 (App. Div. 2d Dep't Jan. 22, 2008).

The plaintiff in this case was injured while performing work in a condominium unit. Plaintiff brought a personal injury action against the Condominium, its managing agent, and the Unit Owner. The case went to trial, and during the trial, the Condominium and managing agent agreed to and paid a settlement, reserving their right to seek contractual indemnification from the Unit Owner. The

Condominium and managing agent then demanded that the Unit Owner reimburse them for all costs and expenses they had incurred in the matter, including the amount paid in settlement as well as their legal costs and attorneys' fees.

The By-Laws provided that all Unit Owners making alterations to their units were deemed to agree "to indemnify and hold the [Condominium and its managing agent] . . . harmless from and against any . . . liability, cost and expense" arising from alteration work within a unit. The court found that the "by-laws, which are binding on the Unit Owners, are sufficient to impose a duty upon the Unit Owners to indemnify the [Condominium and managing agent] for the amount of the settlement proceeds they paid to the plaintiff and for the amount of their attorneys' fees incurred in defending the action." Condominiums and Cooperatives may wish to ensure that their By-Laws contain similar provisions.

COURT HOLDS THAT RENTAL TENANTS LACK STANDING TO CHALLENGE ATTORNEY GENERAL'S APPROVAL OF NON-EVICTION OFFERING PLAN

Existing residential tenants of a building whose owner seeks to convert it to condominium status may not bring a court challenge against the Attorney General's approval of a "non-eviction" Offering Plan, under which the tenants would be entitled to the same or greater rights after the conversion as they enjoyed previously. So holds Matter of Urquia v. Cuomo, N.Y.L.J., Jan 11, 2008, p. 26, col. 1 (Sup. Ct. N.Y. Co.). The decision contains a lengthy discussion of the history of cooperative and condominium conversions in New York and their regulation by the Legislature and the Attorney General.

To enjoy "standing" to bring this type of challenge, the court wrote, a party must be "aggrieved" by the Attorney General's action, that is, the party must show that his or her rights would be adversely affected by the decision under review. Reviewing the facts of the case before it, the court determined that "[n]ot only are all existing tenants of [the building] not disadvantaged in any legally recognized way should the Plan become effective, [but] if the Plan did become effective, their situation would only improve." The court found that the tenants would have the right to continued occupancy even if they chose not to purchase their apartments, and in fact they might enjoy additional rights under the rent stabilization laws after the conversion took effect. Earlier cases in which tenants had been accorded standing to challenge approval did not apply, the court held, because they involved "eviction" plans under which non-purchasing tenants risked losing their rent-regulated apartments.

Even though the petitioning tenants lacked standing, the court briefly addressed the merits of their challenges to the Attorney General's approval, and held that if the challenges were properly before the court, it would reject them. The court disagreed with the tenants' contention that because the originally filed Offering Plan contained deficiencies, the Attorney General was required to reject the plan. Instead, it was within the Attorney General's discretion to allow the Sponsor to file corrective amendments to remedy errors or inadequacies in the Offering Plan. The court then discussed a number of areas in which the tenants contended that the disclosures in the Offering Plan were inadequate or misleading. It found that in each instance, it was within the Attorney General's discretion to conclude that either the disclosures in the original Offering Plan were satisfactory or that they had been cured in an amendment. The court also decided that it was within the Attorney General's discretion to take action based on allegedly premature disclosure of the Offering Plan in violation of the Martin Act, or based on alleged harassment of tenants by the landlord in violation of the General Business Law sections governing conversions. The court noted that other forums were open to tenants who believed they had been harassed.