
CLIENT ADVISORY

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GANFER & SHORE, LLP WELCOMES NEW ATTORNEYS

Ganfer & Shore, LLP is pleased to announce the addition of several new practice areas – criminal law, intellectual property, and entertainment law – further enhancing the scope of services that we can provide to our clients. These practice areas will be led by two experienced attorneys who have recently joined the Firm.

Thomas J. Curran has joined the Firm as a partner. Tom, a graduate of Fordham Law School and a former Assistant District Attorney in Manhattan, practices in the areas of regulatory law, white-collar criminal defense, and litigation. He also has extensive experience in conducting internal investigations, often on highly sensitive matters, for corporations and non-profit entities.

Arthur J. Lieberman has joined the Firm as of counsel. He has extensive litigation and transactional experience in trademark, trade secret, unfair competition, copyright, and patent matters, as well as in entertainment law. He has litigated more than one hundred cases concerning intellectual property issues, many on behalf of Fortune 100 companies. He also has considerable experience in the entertainment industry, representing actors, producers, projects, and writers. Arthur was formerly senior partner of the law firm of Lieberman & Novak. His clients include Boeing Corp., The Dow Chemical Company, and Stan Lee.

Further information about all our attorneys and practice areas is available on our website, www.ganshore.com.

APPELLATE DIVISION REJECTS INDEMNIFICATION CLAIM WHERE FAULTY REPAIRS CAUSED WATER LEAK, MOLD DAMAGE

A condominium unit holder may not obtain indemnification for liability caused by faulty alterations to an upstairs apartment, where the unit holder's own negligence was at least partially responsible for the liability, according to the Appellate Division decision in Edge Management Consulting, Inc. v. Blank, 2006 WL 44172 (1st Dep't Jan. 10, 2006).

In this complex case, the owner ("Blank") of Unit 8E in a condominium building leased the apartment to a tenant ("Edge"). Subsequently, a water leak developed during renovations to Unit 9E, which is directly above Unit 8E, resulting in the growth of mold, mold spores, and mushrooms in Unit 8E. After Edge's repeated requests that Blank address the problem were ignored, Edge vacated and sued Blank for damages. Blank then sued the owner of Unit 9E ("Irmas"), claiming indemnification or contribution for any liability that Blank might have to Edge.

The Appellate Division dismissed the indemnification claim. The court recognized the general rule that a "defendant whose liability to an injured plaintiff is merely secondary or vicarious is entitled to common-law indemnification from the actual wrongdoer who by actual misconduct caused the plaintiff's injuries, and whose liability to the plaintiff is therefore primary." However, the court continued, a party asserting indemnification must be "without fault." In this case, any liability of Blank to Edge would result from Blank's violation of its own duty to

maintain Unit 8E in good repair, and therefore provided no basis for indemnification. The Appellate Division also affirmed, without discussion, the trial court's dismissal of the contribution claim on the ground that contribution, or allocation of damages based on comparative fault, is not available for economic damages in a breach-of-contract case.

In the same decision, the Appellate Division also considered the effect of an Alteration Agreement that Irmas had entered into with the Condominium's board of managers. Irmas argued that only she and the board of managers were parties to the Alteration Agreement and that it did not confer rights on other unit holders. The court rejected this argument because, the Alteration Agreement expressly provided for Irmas to indemnify and hold harmless all other unit holders from any damages caused by the renovations to Unit 9E. However, the court further observed that a contractual indemnification provision will not be enforced for the benefit of a party that is itself negligent, to protect that party against the consequences of its own negligent acts, unless the contract clearly provides otherwise. Once again, the court reasoned that if Blank was liable to Edge, this resulted from Blank's own negligent failure to fix the water and mold damage to Unit 8E after being put on notice of the condition. Accordingly, this indemnity claim was also rejected.

HOME INSPECTORS IN NEW YORK STATE MUST NOW BE LICENSED

Effective December 31, 2005, **Real Property Law Article 12-B** requires that all home inspectors in the State of New York (other than licensed architects and engineers) must hold a professional home inspector license issued by the New York State Department of State. Home inspection is defined to mean "the process by which a home inspector observes and provides a written report of the systems and components of a residential building including but not limited to heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components or any other related residential building component...." Licenses will be issued to applicants who meet a series of educational and experience requirements.

For purposes of this statute, "residential buildings" are defined as structures, other than new construction, containing one to four dwelling units. Thus, apartment cooperatives or condominiums of more than four units are not covered, but certain townhouse developments may be included.

The law requires that a home inspector must provide the client with a written report of the inspection findings within five business days after the inspection. The law seeks to eliminate conflicts of interest by forbidding a home inspector from performing any repairs on a building that he or she has inspected, or by accepting any fee contingent on the outcome of the inspection. Home inspectors are also required to carry liability insurance.

Because many home inspectors have not obtained the newly required licenses, some commentators have predicted that licensed inspectors may be in short supply during the upcoming months. Therefore, anyone planning to buy or sell a single-family home or other residence covered by the new law should ensure that a licensed inspector is lined up and that the timetable for the transaction allows sufficient time for the inspection to take place.