
CLIENT ADVISORY

JUNE 2010

GANFER & SHORE WELCOMES ROBERT I. GOSSEEN

Ganfer & Shore, LLP is pleased to announce that Robert I. Gosseen has become Of Counsel to the firm. His practice is in the area of labor and employment law.

Mr. Gosseen has more than forty years of experience as a labor and employment lawyer. After graduating from the School of Industrial and Management Relations at Cornell University, he received his law degree followed by a Master's Degree in law from the New York University School of Law, where he has taught as an adjunct associate professor in the LL.M. program in labor law. Before joining Ganfer & Shore, LLP, Mr. Gosseen was a name partner in his own law firm for more than 25 years.

For four decades, Mr. Gosseen has represented both domestic and international clients in all aspects of labor and employment law, including union relations, employment discrimination law, and ERISA law. His practice has included numerous appearances before arbitrators, administrative agencies, and human rights commissions, as well as federal and state trial and appellate courts. He regularly conducts seminars for clients in areas such as preventing sexual harassment and discrimination, reducing the workforce, labor relations, and the hiring, discipline, and discharge of employees. He also counsels clients on creating and updating their employee manuals.

Mr. Gosseen's client base includes, among many others, cooperatives, condominiums, landlords, and managing agents. He has extensive experience in dealing with the specialized employment-law needs of these types of employers. We are pleased to welcome Mr. Gosseen and his clients to Ganfer & Shore.

RECENT COURT DECISIONS APPLYING THE BUSINESS JUDGMENT RULE

New York judicial decisions establish that many decisions by cooperative boards of directors and condominium boards of managers will be reviewed under what is termed the Business Judgment Rule. Under this rule, a board decision is presumptively valid and will be sustained if it was authorized by the governing documents and was taken in good faith and in furtherance of the legitimate interests of the cooperative or condominium.

In recent cases, the courts have continued to apply the Business Judgment Rule to a wide variety of types of board decisions. For example, in **Board of Managers of Waterford Association, Inc. v. Samii**, 2010 WL 2035798, 2010 N.Y. Slip Op. 4445 (App. Div. 1st Dep't May 25, 2010), the court applied the Business Judgment Rule to a Condominium's right of access to a unit owner's apartment pursuant to the By-Laws of the Condominium. The rule applied, the court held, in the absence of evidence that the Condominium had acted in bad faith or had treated one unit owner disparately from others.

In **Skouras v. Victoria Hall Condominium**, 2010 WL 1909573, 2010 N.Y. Slip Op. 4175 (App. Div. 2d Dep't May 11, 2010), the Appellate Division applied the Business Judgment Rule to a newly adopted policy under which unit owners who failed to pay special assessments would have their parking privileges revoked. After the plaintiff unit owner disputed an assessment and failed to pay it, the Board of Managers directed her to remove her car from the parking lot and had it "booted" by a towing company when she failed to comply. The appellate court held that the Board of Managers established that it "acted within the scope of its authority and in good faith in imposing and collecting the special assessments and in adopting the parking rule." The court also found that the plaintiff had failed to show evidence of "bad faith, fraud, self-dealing, unconscionability, or other misconduct which would trigger further judicial inquiry," nor was there evidence supporting her claim that "the board deliberately singled her out for harmful treatment or selective enforcement of its parking rule." Accordingly, plaintiff's claims against the Board of Managers were dismissed.

In still another case, **Bryant v. One Beekman Place, Inc.**, 2010 WL 2035787, 2010 N.Y. Slip Op. 4443 (App. Div. 1st Dep't May 25, 2010), the Appellate Division addressed a dispute concerning a cooperative tenant-shareholder's compliance with an alteration agreement. The court concluded that "[p]laintiffs, upon purchasing their cooperative apartment, voluntarily subjected themselves to the rules, by-laws and policies of defendant cooperative corporation, including the Alteration Agreement" that the Board required when they sought to renovate their apartment. Plaintiffs asserted that the Cooperative had wrongly directed that they stop work on their alterations and, after their contractor ignored the stop-work order, had padlocked an access point to their apartment. The court held that these actions were authorized by the Alteration Agreement and that plaintiffs had "fail[ed] to allege facts showing that the board's actions had no legitimate relationship to the welfare of the coop at large."

However, the Business Judgment Rule will not shield board action that contravenes the entity's governing documents. In **Yusin v. Saddle Lakes Homeowners Association, Inc.**, 2010 WL 2106234, 2010 N.Y. Slip Op. 4582 (App. Div. 2d Dep't May 25, 2010), the Board of Managers of a Condominium adopted a rule prohibiting pet owners from walking their pets in the Condominium's common areas. When plaintiff unit owners challenged the new rule, the court began its analysis by stressing the deference normally due to board decisions under the Business Judgment Rule. However, the By-Laws of the Condominium expressly provided that homeowners were permitted to walk their pets in the common areas. Any amendment of the By-Laws required approval by two-thirds vote of the unit owners, which it is undisputed had not taken place. Because the adoption of the new rule was unauthorized by the By-Laws, it was not protected by the Business Judgment Rule. Accordingly, the court invalidated the new rule and directed the Board of Managers to refund all fines that had been imposed for violations of such rule.

NEW FEDERAL LEAD-PAINT RENOVATION REGULATIONS TAKE EFFECT

Effective April 22, 2010, the U.S. Environmental Protection Agency has adopted a new set of rules governing renovation, repair, and repainting of surfaces in pre-1978 housing and child-occupied facilities, which may contain lead-based paint that could be harmful to children. These requirements, which are in addition to those imposed by New York State and City or other applicable local laws, require contractors and renovators (which may include building employees) to undergo accredited training courses, require owners to notify tenants before disturbing any painted services, and impose safety standards such as covering HVAC ducts, floor surfaces, and doors before performing such work. Further information on the new rule is available on the EPA's website.