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CLIENT ADVISORY

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COOPERATIVE'S EVICTION OF OBJECTIONABLE TENANT DELAYED BASED ON IMPROPER SERVICE OF NOTICE

A Cooperative's otherwise valid attempt to oust a shareholder-tenant for repeated objectionable conduct in violation of her proprietary lease was thwarted because the notice of cure had been sent to the wrong address more than four years earlier.

In **Trump Plaza Owners, Inc. v. Weitzner, 16 Misc. 3d 1115(A), 2007 WL 2161093 (Sup. Ct. N.Y. Co. June 22, 2007)**, the Cooperative's board of directors served a shareholder-tenant with a notice to cure in 2002, contending that she had engaged in objectionable conduct. When the shareholder failed to cease such conduct, the board, by a two-thirds vote as required by the proprietary lease, adopted a resolution terminating her lease. After the shareholder failed to move out, the board sued to evict her. The shareholder responded that the board's notices were not specific enough. In an attempt to resolve this issue, the board then adopted more specific resolutions, which described the objectionable conduct as including the shareholder's "pounding on the walls of [her] apartment, ... shouting obscenities and death threats at [her neighbors] and engaging in other conduct which is causing [her] neighbors to fear for their safety," as well as making false allegations that she was being spied and eavesdropped upon.

The court held that the original notices were sufficiently specific. Even the initial 2002 notice of cure, "although setting forth no names, dates, or specific instances of the misconduct, describe[d] a nuisance ... with sufficient detail to have allowed [the shareholder] to prepare a defense."

However, the court found that the 2002 notice to cure had been sent to the shareholder at a post-office box address. This was invalid service because the proprietary lease required that notices to shareholders must be sent to their address at the building unless otherwise requested. This mistake, the court held, voided the entire eviction procedure and required the board to start over. The case is a reminder that seemingly "technical" requirements such as mailing papers to the correct address must be observed before the court will consider terminating a tenancy.

COOPERATIVE PERMITTED TO OUST SHAREHOLDER FOR NUMEROUS INSTANCES OF IMPROPER BEHAVIOR

Another Cooperative was more successful in its recent attempt to oust a shareholder-tenant who engaged in a pattern of objectionable behavior. **Breezy Point Cooperative, Inc. v. Young, 2007 WL 2253542, 2007 N.Y. Slip Op. 27324 (App. Term 2d & 11th Dists. July 13, 2007)**.

Like many proprietary leases, the shareholder-tenant's lease in this case provided that the lease could be terminated by stockholder vote if "objectionable conduct on the part of the Lessee" renders his or her continuing tenancy undesirable. Objectionable conduct was defined as including the shareholder's "repeatedly ... violating or disregarding the [Cooperative's] rules and regulations."

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In this case, after a long series of incidents, 225 shareholders of the Cooperative signed a petition requesting a vote on a resolution to terminate the defendant shareholder's tenancy for "conduct ... in continual disregard and violation of the rules and regulations of the judicial system in bringing unfounded lawsuits against the [Cooperative]." The board of directors then convened a vote at the annual shareholders meeting. Several shareholders, including the defendant, spoke at the meeting with regard to the resolution, after which a substantial majority of the shareholders voted to approve the resolution.

The Cooperative then served defendant with a notice of termination specifying 94 violations of the Cooperative's by-laws and rules and regulations. These included harassment of security officers, defacing the Cooperative's property, "numerous violations of noise, litter, animal and motor vehicle regulations (certain of which threatened the safety of other stockholders)," and "interfering with the rights of other stockholders."

The court found that defendant's tenancy had been validly terminated. The procedures used by the board and shareholders in terminating the tenancy complied with the requirements of the shareholder's proprietary lease, and the shareholders' decision was entitled to judicial deference under prevailing caselaw. The court also cited precedent holding that conduct such as violating a Cooperative's rules and regulations and engaging in unfounded litigation against the Cooperative constituted objectionable conduct. This is one of an increasing number of cases in which the courts uphold a Cooperative's right to terminate an objectionable resident's proprietary lease, provided that the Cooperative acts in good faith and in the corporate interest and that the appropriate procedures set forth in the proprietary lease and by-laws are followed.

BROKER AND SELLER HELD POTENTIALLY LIABLE FOR
MISSTATING NUMBER OF LEGAL ROOMS IN CONDOMINIUM UNIT

A disappointed purchaser's claims for fraud and negligent misrepresentation against the seller of a condominium unit and the seller's broker survived a motion for summary judgment in **Joseph v. NRT Inc., 2007 WL 2324320, 2007 N.Y. Slip Op. 6441 (App. Div. 1st Dep't Aug. 16, 2007).**

The plaintiffs in this case purchased a condominium apartment advertised as having three bedrooms. However, after the closing, they learned that a renovation by the seller had added two bedrooms with windows unlawfully placed on the lot line, and that the apartment was legally a one-bedroom apartment. Plaintiffs sued the seller and the seller's broker for fraud and misrepresentation in the sale of the unit. Both defendants moved for summary judgment dismissing the Complaint.

The court denied the motions for summary judgment, finding numerous factual issues in dispute. Among other things, the court held that it was unclear whether the broker, individually and as agent for seller, had misrepresented the number of legal bedrooms in the unit and, if so, whether plaintiffs relied on the misrepresentations and whether they were justified in doing so. A "general disclaimer" clause in the contract would not bar plaintiffs from presenting "parol evidence" outside the contract itself, the court held, because there was no specific disclaimer language precluding reliance on representations as to the number of bedrooms.

The court agreed with defendants that they would not be liable if plaintiffs had the means to discover the true facts concerning the legal status of the two additional rooms. However, the record before the court did not establish that this was the case. Important documents such as the condominium plan and certificate of occupancy were not in the record, and there was no showing that these documents, if reviewed by plaintiffs before the closing, "would have alerted a reasonable person to the problem."