GANFER SHORE LEEDS & ZAUDERER LLP

CLIENT ADVISORY

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COOPERATIVE MAY ENFORCE ASSESSMENT EVEN IF IT LACKS A VALID CERTIFICATE OF OCCUPANCY

Section 302 of the New York State Multiple Dwelling Law provides that a landlord may not enforce a claim for rent against a residential tenant where the premises lack a valid certificate of occupancy. But this rule does not apply to a cooperative seeking to collect maintenance or an assessment from one of its tenant-shareholders, according to an appellate court's decision in **Grassfield v. JUPT, Inc., 208 A.D.3d 1219 (2d Dep't Sept. 21, 2022)**.

The plaintiffs in this case were tenant-shareholders who had not paid an assessment. They sued their cooperative seeking a preliminary injunction against the cooperative's foreclosing on their shares and terminating their proprietary lease, asserting that the cooperative could not enforce the assessment because it allegedly did not have a valid certificate of occupancy. A lower court denied plaintiffs' motion for a preliminary injunction and the appellate court agreed. The court held that cooperative tenant-shareholders "are essentially owner-occupants," rather than "residential occupants" protected by Multiple Dwelling Law § 302. In addition, plaintiffs failed to submit any evidence justifying their failure to pay the assessment.

For some legal purposes, the relationship between a cooperative and its tenant-shareholders resembles the relationship between an ordinary landlord and its tenants. However, this decision is a reminder that cooperatives are a unique form of ownership and that ordinary principles of landlord-tenant law may or may not apply to a given situation, depending on the specific legal issues involved.

CONDO OWNER'S MOTION FOR INJUNCTION AGAINST NOISY HOTEL DENIED WHERE THE HOTEL WAS PRESENT BEFORE PLAINTIFF BOUGHT HER UNIT

The owner of a residential condominium unit filed a lawsuit seeking an injunction against the owner of the condominium's hotel unit, alleging unreasonable noise levels emanating from the entertainment spaces at the hotel. A lower court denied plaintiff's motion for a preliminary injunction and the appeals court agreed.

The court found that plaintiff could not show that a balancing of the equities weighed in her favor, as required to obtain a preliminary injunction, because plaintiff "purchased a unit in a condominium where one of the units was a hotel, operating directly below her and where she was aware from the offering plan that entertainment spaces would be present in the hotel." This fact distinguished this case from a prior court decision that plaintiff relied on, because in that case "the club at the center of the noise complaints began operations after the plaintiffs were already owner[s]."

In addition, the court found that "[t]he harm to plaintiff in maintaining the status quo while awaiting trial on her claims is compensable by measurable money damages and therefore not irreparable," thus failing to satisfy another of the requirements for a preliminary injunction. **Montgomery v. 215 Chrystie LLC, 2022 N.Y. App. Div. LEXIS 5825, 2022 N.Y. Slip Op. 05955 (1st Dep't Oct. 25, 2022)**.

360 Lexington Avenue, New York, New York 10017 Tel: (212) 922-9250 Fax: (212) 922-9335 http://www.ganfershore.com

COOPERATIVE PROPERLY PLACED LIEN ON SHARES, COURT HOLDS

A cooperative board's imposition of a lien on a tenant-shareholder's shares was upheld because the board followed the procedures required by the By-Laws in doing so. **Matter of Ger v. Saxony Towers Realty Corp., 2022 N.Y. App. Div. 6157, 2022 N.Y. Slip Op. 06243 (2d Dep't Nov. 9, 2022)**.

The cooperative sent notices of default to certain tenant-shareholders by both certified mail and regular mail, addressed to their addresses at the building, advising that they were in default of their proprietary leases based on their failure to pay maintenance and other charges. The cooperative subsequently sent the tenant-shareholders notices of termination and notices of sale, also by certified and regular mail.

The tenant-shareholders sued the cooperative seeking, among other things, to invalidate the liens. A lower court canceled the liens because the notices served on the shareholders did not contain an itemized statement of the cooperative's claim. The cooperative appealed, and the appeals court held that while the notices should have included this information, its omission did not provide a basis for canceling the liens. The appeals court also held that the notices were properly served on the tenant-shareholders in the manner required by the proprietary lease. Thus, the tenant-shareholders had shown no basis for invalidating the liens.

CONCERNS GROW ABOUT BATTERY FIRES IN ELECTRIC BIKES

In recent months, there have been a number of fires in residential buildings originating with electric bicycles with lithium-ion batteries, including some that resulted in fatalities. Coop and condo boards may wish to consider reminding their owners and residents about safe practices concerning these devices.

Among other things, only e-bikes or other mobility devices that are certified by nationally recognized testing laboratories should be allowed in buildings. Bike owners should use only the original battery, power adapter, and power cord that come with the e-bike or manufacturer-recommended or lab-certified replacements. The e-bike should be plugged directly into a wall outlet when charging, not an extension cord or power strip. Chargers and batteries should be stored in a safe facility, outside the apartments if possible. A battery should never be charged unless someone is present, and one should immediately stop charging and call 911 in the event of fire, smoke, overheating, leakage, or any unusual smells or noises.

The New York City Fire Department will also be requiring all building owners and landlords to post notices concerning safe practices for e-bike chargers. The legal requirement to post the notices will take effect on April 30, 2023, but we expect that the notices will be available sooner.

NEW YORK CITY'S SALARY TRANSPARENCY LAW IS NOW IN EFFECT

All employers in New York City should be aware that the city's salary transparency law is now in effect. Under this law, job advertisements must include the salary or salary range for the position, including minimum and maximum salaries. The salary figures must represent the lowest and highest salaries that the employer believes in good faith it would pay for the position.

The new law applies to all employers with four or more employees (including independent contractors) in New York City. A violation will constitute an unlawful discriminatory practice under the New York City Human Rights Law, subjecting the employer to sanctions by the New York City Commission on Human Rights. The Human Rights Commission has issued guidance that the new law applies to both salaried and hourly positions where the work will be performed in New York City in whole or part, including remotely. Employers having questions about the salary transparency law should consult with their employment counsel.