GANFER & SHORE, LLP

CLIENT ADVISORY

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TENANT-SHAREHOLDERS' PROPRIETARY LEASE VALIDLY TERMINATED FOR OBJECTIONABLE AND "ANTISOCIAL" CONDUCT

The ultimate sanction available to a cooperative – termination of a tenant-shareholder's proprietary lease followed by eviction from the building – has again been successfully invoked by a New York City cooperative. **76th Street Owners' Corp. v. Elshiekh, 2010 WL 2490915, 2010 N.Y. Slip Op. 51087(U) (Civil Court Bronx Co. June 16, 2010).**

The tenant-shareholders in this case were accused of a long pattern of "objectionable conduct" in violation of their proprietary lease. Their actions ranged from failing to maintain their unit and thereby causing violations to be placed on the building, refusing to cooperate in the installation of a building-wide intercom system, "communicating in a hostile and antisocial manner," and interfering with board functions such as the conduct of elections. The proprietary lease and the by-laws authorized the board of directors to terminate a proprietary lease based on the tenant-shareholder's objectionable conduct. The court found that the appropriate procedures for terminating a proprietary lease had been followed, in that the board had initially served the tenant-shareholders with a detailed notice to cure, and that the tenant-shareholders had also been notified of a special board meeting at which they and their attorney would be given an opportunity to address the board on the proposed termination of their tenancy.

The court held that the termination was valid and that the board's decision was protected by the Business Judgment Rule. The court rejected the tenant-shareholders' contentions that the board members had discriminated against them based on their religion and ethnicity and that the board was unfairly blaming them for conditions that were the board's responsibility to repair. The tenant-shareholders had offered only "conclusory, unsupported and self serving allegation and conjecture" in support of their position, which was insufficient. A warrant of eviction was issued.

CHALLENGE TO COOPERATIVE BOARD ELECTION DISMISSED

A tenant-shareholder's challenge to the annual election of five members to the Board of Directors of a large residential cooperative was dismissed in **Cylich v. Riverbay Corp., 2010 WL 2486431, 2010 N.Y. Slip Op. 5485 (App. Div. 1st Dep't June 22, 2010)**. The court held that the lawsuit was procedurally defective because the tenant-shareholder challenging the election had failed to name the individuals elected to the board as parties, as required by the Business Corporation Law, and it would be unfair for the case to go forward in their absence because their interests could be prejudiced. Moreover, it was too late to add the successful candidates as parties because the applicable four-month statute of limitations had expired. Even were this not the case, the court added, the election challenge would have been dismissed anyway. The election had been properly supervised by an Election Committee appointed by the board in accordance with the by-laws of the Cooperative, and there was no showing that the committee had erred when it disqualified one candidate for engaging in "improper electioneering" during the election.

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DEFENDANT THAT DID NOT CONTROL SITE OR WORK NOT LIABLE UNDER SCAFFOLD LAW, COURT HOLDS

New York Labor Law § 240, commonly referred to as the "Scaffold Law," imposes liability on property owners, general contractors, and certain other persons when an employee is injured in an elevation-related fall from a ladder, scaffold, or similar device. The duties imposed under the Scaffold Law are non-delegable and liability will generally apply regardless of whether the owner or contractor exercised actual control over the work or was negligent in any fashion. However, in a recent decision, a court held that a company was not liable to an injured worker for contribution under the Scaffold Law where its role was limited to procuring a contractor to perform the work. **Fox v. H&M Hennes & Mauritz, LP, Index No. 14957/06 (Sup. Ct. Kings Co. May 28, 2010).**

In this case, the plaintiff was employed by an electrical contractor. He sued the site owner for injuries allegedly suffered when he accidentally touched a live power line while "maintaining" a light fixture, purportedly resulting in his falling off the ladder. The site owner, in turn, brought a third-party action against a procurement company that the site owner had retained to identify potential electrical contractors to perform the work. (The plaintiff was barred from suing his employer, the electrical contractor, directly because his exclusive remedy was compensation benefits under the Workers' Compensation Law.)

The procurement company submitted evidence that it was not a general contractor, as the plaintiff contended, but simply a middleman that matches contractors with customers. Moreover, the procurement company had not even selected the electrical contractor to work on this project, but was directed by the general contractor to use a contractor with whom it had worked in the past. The procurement company also denied that it had any supervisory control or role in determining the scope of the project, that it provided any equipment, or that it even it had any employees on the worksite.

The court agreed that the procurement company did not control or supervise the worksite or have any duty to do so. Because it did not have the duties or responsibility of a general contractor, an agent of the owner, or a party responsible for the workers' safety, it was not liable under the Labor Law. While defendant claimed the procurement company would have had authority to stop work if it had become aware of a dangerous situation, no such situation had ever arisen. Testimony regarding this "hypothetical and speculative" question was insufficient to raise an issue of fact. Accordingly, the procurement company's motion for summary judgment was granted and all claims asserted against it were dismissed. Ganfer & Shore, LLP represented the procurement company in this case.

GANFER & SHORE, LLP TO OFFER NEW MONTHLY LABOR LAW ADVISORY TO CLIENTS AND FRIENDS

For many years, Ganfer & Shore, LLP has distributed this monthly *Client Advisory* to our clients and friends to keep them abreast of recent caselaw, statutory, and other developments primarily in the fields of cooperative and condominium housing and real estate law. Beginning this month, in addition to this *Client Advisory*, Ganfer & Shore, LLP will also distribute a monthly *Client Advisory* discussing issues in the field of labor and employment law. If you would like to be certain that you will receive this new monthly advisory, please send an e-mail to agarcia@ganfershore.com with your name, postal and/or e-mail address, and affiliation. Please specify whether you would like to receive the new advisory by regular mail, e-mail. or both. Copies of both this *Client Advisory* as well as the new labor-law *Client Advisory* are also available on our updated website, www.ganfershore.com.