

COUNSEL'S CORNER

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Court Approves Cooperative Alteration Agreement Requiring Shareholder to Pay Cooperative Costs

WHITE PLAINS—A New York State appeals court (the Appellate Division for the First Department) recently upheld a cooperative's right to require a shareholder to pay the cooperative's costs associated with the shareholder's apartment renovations.

In *Batsidis v. Wallack Management Company, et al*, decided July 2, 2009, the Plaintiff, Arthur Batsidis, was a shareholder in the cooperative 225 East 57th Street Owners, Inc., which was managed by Wallack Management Company. Batsidis was also the proprietary lessee of Apartment 9C at 225 East 57 Street, the building owned by the cooperative.

Batsidis sought to renovate the kitchen and one bathroom in his apartment. He submitted plans and entered into an agreement with the cooperative as to the alterations. The agreement included a provision allowing the cooperative, in its discretion, to obtain legal, engineering, architectural or other advice and obligated Batsidis to reimburse the cooperative for all expenses related to same, regardless of whether permission was granted and regardless of whether the expenses were incurred prior to or after the commencement of the work.

The agreement further provided that the fees would be considered additional rent (important because as such they could be the subject of an eviction proceeding).

A Work Stoppage

The cooperative approved the work as per the submitted plans and Batsidis commenced the work. However, the cooperative determined

that the work being done exceeded that which was authorized and caused the work to stop as permitted also under the agreement.

In response, Batsidis commenced the lawsuit in Supreme Court seeking an injunction. The cooperative and Batsidis reached a stipulation

ing the safety and comfort of residents, financial interest of the cooperative, and the structure of the building.

Specifics

In particular, with respect to the cost-shifting provision, the Court held that it "is intended to ensure that the co-op and

in accordance with the stipulation entered into by the parties, it did so with the specific proviso that "this ruling does not extinguish or interfere with defendants' [the Cooperative] right to collect the claimed fees in full, when they may do so by a variety of means, including charging the fees as additional rent..."

The procedural nature of the case gave rise to an interesting decision, wherein the appeal was decided in favor

of the shareholder and against the Cooperative, but with substantial language determining the cooperative's ultimate right to collect the costs expended from the shareholder.

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as to the manner of proceeding with the work. However, thereafter, the Cooperative required Batsidis to pay for the various costs incurred, including legal fees and engineering fees, prior to the commencement of work.

The Court held that the cost provision in the agreement was not akin to a legal fee provision in a lease requiring a tenant to pay for a landlord's incurred legal fees. To the contrary, the Court held that this was a "cost-shifting" provision. In reviewing the provision, the Court referenced the general policies of the cooperative alteration agreement, including ensur-

its other shareholders are not burdened with any expenses resulting from renovations to a shareholder's individual unit." The Court observed that such expenses were not contingent upon lawsuits or whether the renovations were actually approved or undertaken.

The Court held that "to require the renovating shareholder to pay those costs is an appropriate means of allowing unit owners to perform renovations while protecting the co-op and its members from being saddled with the expenses that they incur arising out the renovations."

While the Court did permit the renovations to proceed to

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