ASSAULT

Sangare v. Edwards [Soho Plaza Corp.], 937 NYS2d 32 (App. Div. 1st Dept. 1/19/2012) – Super brought an action against a shareholder who assaulted him in the lobby (with a box of magazines) and the managing agent. Coop continued to pay his salary and no claim was made against it. Managing agent's motion on the eve of trial to refer the suit to the workers compensation board for a determination of its status as an employer was denied as untimely.

WORKER

Dwyer v. Central Park Studios, Inc., 951 NYS2d 16 (App. Div. 1st Dept. 9/18/2012) – Action by worker in apartment renovation who fell from allegedly defective ladder. Worker granted summary judgment against the coop under the ladder law (Labor Law § 240). Coop granted summary judgment on its claims for indemnity against the shareholders even though the indemnity did not specifically exclude negligence on the part of the coop because the liability was statutory. Motion by the contractor, who signed the alteration agreement and named the coop as an additional insured, for summary judgment was denied.

Phillip v. 525 East 80th Street Condominium, 940 NYS2d 631 (App. Div. 1st Dept. 3/27/2012) – Action by worker who fell off a truck while unloading material for constructing a sidewalk bridge. Claims for negligence were dismissed – there was no evidence the condominium supervised or controlled plaintiff's activities. Worker granted summary judgment under the ladder law –plaintiff's injury was caused by falling from a height.

TRIP AND FALL

Araujo v. Mercer Square Owners Corp., 944 NYS2d 126 (App. Div. 1st Dept. 5/15/2012) – Trip and fall on sidewalk adjacent to commercial unit of the condominium. Summary judgment of dismissal was granted to Commercial unit owner. Sidewalk was a general common element and condo board was responsible to repair. [Coop's motion for summary judgment had been denied because the super testified he was responsible for repairing the sidewalk, and this was not appealed].

SLIP AND FALL

Pechman v. Vista at Kingsgate Section II, 948 NYS2d 662 (App. Div. 2d Dept. 7/18/2012) – Unit owner slipped on a door mat placed in the stairway by another unit owner. Summary judgment motions by the unit owner and the board were denied. Unit owner created the dangerous condition, and the board failed to show when the stair had last been inspected, and thus did not show it lacked constructive notice of the dangerous condition.

I. LEGAL ISSUES INVOLVING THE SPONSOR

VOTING

Natt v. White Sands Condominium, 943 NYS2d 231 (App. Div. 2d Dept. 5/1/2012) – Action by unit owners seeking a declaration as to the voting rights of the sponsor. Offering plan contained conflicting provisions. Ambiguity was construed against the sponsor-drafter. Sponsor and its designee were limited to designating 2 members of the board and could not vote in the election of the other 3 members.

HOLDERS OF UNSOLD SHARES

Queens Units Venture, LLC. V. Tyson Court Owners Corp., 2012 WL 1965902 (Sup. Ct. NY Co. 5/18/2012) – Assignee of bank that foreclosed on 7 unsold units pursuant to a defaulted loan to a sponsor was a holder of unsold shares. Movement of the Shares through several hands by itself did not affect their identity as unsold shares as long as they never became the property of a purchaser for bona fide occupancy. [*Sassi-Lehner* is superseded by *Cole*]

II. RIGHTS AGAINST THIRD PARTIES

INVERSE CONDEMNATION

Corsello v. Verizon New York, Inc., 944 NYS2d 732 (Ct. Appeals 3/29/2012) - Defendant Verizon New York, Inc. (Verizon) attached a box to a building that plaintiffs own, and used the box to transmit telephone communications to and from Verizon's customers in other buildings. Plaintiffs claim that Verizon took their property without paying them just compensation. Plaintiffs have stated a valid "inverse condemnation" claim for just compensation, and that that claim is not time-barred.

Board of Managers of Bayside Mews Condominium v. Posner, 2012 Slip. Op. 51048 (Sup. Ct. Queens Co. 6/13/2012) – Action against architect for malpractice was dismissed on summary judgment. More than 3 years elapsed between the completion of work on the parapet project and the commencement of the action. Testimony by the architect in a separate proceeding against the contractor did not constitute continuing representation so as to toll the statute of limitations.

INSURANCE

Central Park Studios v. Slosberg [Pacific Indem. Co., Delos Ins. Co.], 2012 Slip Op. 51522 (Sup. Ct. NY Co. 6/5/2012) – Declaratory judgment action by coop and managing agent against insurance carriers for unit owner and contractor seeking a declaration that the carriers are obligated to defend and indemnify them in an action brought by an injured worker [see below]. Plaintiffs were not named as additional insureds on the unit owners' policy, and insurance carrier was not obligated to defend them even though it was obligated to indemnify the unit owners for claims against them. Plaintiffs were named as additional insureds on contractor's policy, and the carrier is obligated to provide a defense to the underlying claim

III. LIABILITIES TO THIRD PARTIES

DISCRIMINATION

Dupree v. UHAB-Sterling Street HDFC, 2012 WL 3288234 (USDC EDNY 8/10/2012 – Action by terminated super for employment discrimination. Coops motion for summary judgment denied. Statement of employee of former owner that new owner would not hire blacks, termination of both black employees by former employer, creation of paper trial of incidents, and hiring of two Hispanic employees to replace them by new employer whose employees were alleged to be mostly Hispanic was sufficient to require a trial.

Rosati v. Brigham Park Co-operative Apartments, Sec. No. 2, Inc., 2012 NY Slip Op. 51315 (Sup. Ct Kings Co. 7/17/2012) – Action for personal injuries and property damage due to mold exposure. Lengthy analysis of the state of NY law concerning mold injuries.
"Plaintiff has shown that "a reasonable quantum of legitimate support exists in the literature for [his] expert[s'] views" as to general causation … and Defendants have not shown that "there is a generally or widely held view in the [medical] community rejecting such conclusions outright…Plaintiff must yet show specific causation, including that he "was exposed to sufficient levels of [mold] to cause the illness" he alleges".

FLOOR DAMAGE

Santiesteban v. Crowder, 939 NYS2d 28 (App .Div. 1st Dept. 2/21/2012) – Action by shareholders against directors and officers for paying themselves salaries not authorized in accordance with the by-laws. Summary judgment of liability granted, but triable issue of fact as to actual damages to the coop, since defendants showed they performed valuable services (managing the building and superintendent services)

ELECTIONS

Summer v. Ruckus 85 Corp., 2012 WL 3018629 (Sup. Ct. NY Co. 7/13/2012) – Action by shareholders against the coop and other shareholders concerning voting rights in connection with authorization of repairs. Shareholder is entitled to a preliminary injunction against interfering with her voting rights for failure to pay late fees and legal fees. By-Law provision (apparently disqualifying shareholder from voting when the shareholder is in arrears) is probably invalid as being inconsistent with BCL § 612 (a). [quote]

ATTORNEYS FEES

White v. Gilbert, supra. - Standard form of proprietary lease does not authorize recovery of legal fees incurred in attempting to cure a shareholder's default until a court action or proceeding is instituted. Coop breached the lease by requiring payment of fees as a condition to granting consent to an alteration.

PREVAILING PARTY

Kralik v. 239 East 79th Street Owners Corp., 940 NYS2d 488 (App. Div. 1st Dept. 3/22/2012) – Plaintiff who had previously prevailed on its claim to be a holder of unsold shares was not entitled to attorney's fees because the coop's position was justified by the law when the action was commenced. Courts have discretion to deny fees based on equitable considerations.

Goldstone v. Gracie Terrace Apartment Corp., 2012 WL 4864030 (Sup. Ct. NY Co10/2/2012) – Action for damages for failure to repair apartment after water damage in 2003. Plaintiff is not entitled to an award of attorney's fees for obtaining summary judgment of liability on 3 of 14 causes of action – prevailing party cannot be determined until the entire case is concluded.

Berenger v. 261 West LLC [Onyx Chelsea Condominium], 940 NYS2d 4 (App. Div. 1st Dept. 2/2/2012) - Unit owners action against sponsor, sponsor directors, and the condo asserting trespass and nuisance caused by water leaks and noise from a cooling tower on the roof, and seeking an injunction. Documents raise triable issues of act concerning intentional failure to repair the leak was a trespass, and whether noise levels were excessive and recurring so as to constitute nuisance. Action dismissed against the individual board members under business judgment rule. Corporate veil could not be pierced unless individual exercised dominion over the corporation. Claim for injunction against an individual director was dismissed as being a legal impossibility.

LEAKS - WATER DAMAGE

Caldwell v. Two Columbus Avenue Condominium, 940 NYS2d 15 (App. Div. 1st Dept. 2/7/2012) – Unit owner's action against the board(s) arising out of leaks was dismissed on summary judgment. The condominium demonstrated that the actions they took to remedy the leaks were taken in good faith.

Gordon v. Board of Managers of the 18 East 12th Street Condominium, 2012 NY Slip Op. 51245 (Sup. Ct. NY Co. 6/29/2012) – Action by unit owner for damages caused by a water leak thru a skylight. Despite promises to repair, there was an unexplained 1 year delay in making repairs. Unit owner granted summary judgment of liability – amount to be set at trial.

Manor v. Feldstein [605 Apartment Corp.], 2012 WL 368236 (Sup. Ct. NY Co. 1/26/2012) – Shareholder brought action against the coop, the managing agent, and the upstairs shareholder for damage from a broken toilet valve. Summary judgment of dismissal granted to the coop and the agent based on ¶ 18 of the proprietary lease. [Summary judgment for plaintiff granted against upstairs neighbor based on res ipsa loquitur – because they were in control of the apartment even though they had not yet moved in.]

Samson v. 91st Street Tenants Corp., 2012 WL 1309383 (Sup. Ct. NY Co. 4/10/2012) – Shareholder brought action against the coop, the managing agent and the upstairs shareholder for damage from an unknown cause, possibly a leaky valve in the bathtub. Defendant's motions for summary judgment denied – issue of fact as to the source of the leak. Res ipsa loquitur does not apply since the source of the leak is unknown.

McCrossin v. Benson Ave. Owners Corp., 2012 Slip. 50937 (App. Term 2d Dept. 5/15/2012) – Small Claims action against the coop for water leak from upstairs apartment after renovations. Judgment of liability for plaintiff – coop breached the warranty of habitability. Trial on damages based on estimated cost of repairs

Mandler v. 71-11 Yellowstone Blvd. Corp., 950 NYS2d 492 (App. Term 2d Dept. 1/24/2012) (2 to 1 decision) – Coop liable for replacement of wallpaper it removed in order to repair a leak in the ceiling –coop caused the damage.
DISSENT – Proprietary lease makes shareholder responsible for repair of wallpaper. No showing of negligence or that coop was liable for the leak.

Reinhard v. Connaught Tower Corporation, 2011 WL 6119800 (Sup. Ct. NY Co. 11/30/2011) – Action against the coop and the president for failure to remedy second hand smoke in plaintiff's apartment. Various experts disagreed as to whether there was smoke in the apartment and if so how it got there.
Summary judgment motion for the coop denied – there are triable issues of fact as to whether there was sufficient smoke to support the complaint. Motion for summary judgment by the president was granted – there was no evidence of any independent tortious conduct.

TOXIC MOLD

Cornell v. 360 West 51st Street Realty, LLC, 939 NYS2d 434 (App. Div. 1st Dept. 3/6/2012) (3-2 decision) – Tenant's action against landlord for personal injuries due to mold exposure. Summary judgment for landlord reversed. There is sufficient scientific evidence that mold can cause plaintiffs illness. Fraser v. 301-52 Townhouse Corp. [2008] does not foreclose mold actions.

CONSENT TO SUBLET

Razzano v. Woodstock Owners Corp., 2012 WL 5230645 (Sup. Ct NY Co. 10/5/2012) – Shareholders action alleged 9 causes of action involving breach of contract, fraud and discrimination against the coop, the managing agent, and the president based on the refusal of the coop to permit shareholder to sublet the apartment. The coop has a rule from 2002 that no new shareholder may sublet, and plaintiff signed an agreement so acknowledging. Motion to dismiss action was granted. [Court did not discuss the BCL 501 argument that there was unequal treatment of shareholders]

Bregman v. 111 Tenants Corp., 943 NYS2d 100 (App. Div. 1st Dept. 5/3/2012) – Shareholder bought 2 apartments in 1972 based on alleged assurance by sponsor she would have unconditional subletting rights. In 2003 the Board adopted a new sublet policy restricting subletting. Shareholders suit for an injunction and damages for breach of contract was dismissed on summary judgment Documents showed sponsor did not promise unfettered rights, and BCL § 501 requires that the policy had to be applied equally to similarly situated shareholders. "[I]f a board of directors becomes aware of a situation or conduct of a particular shareholder that it considers contrary to the interests of the cooperative generally, there is no prohibition against the board's adoption of a policy protective of those broader interests, even if the policy is responsive to a single shareholder's situation or conduct."

SECURITY GUARD

Himmelberger v. 40-50 Brighton First Road Apartments Corp, 943 NYS2d 118 (App. Div. 2d Dept. 4/10/2012)- Action by coop to recover from the proceeds of the sale of the apartment the costs of a security guard allegedly necessitated by the presence of the unauthorized occupant (the son of the deceased shareholder). Lower court held that Paragraph 19 concerning the right to recover the expenses of removing an objectionable condition requires the service of a notice of the condition, and Paragraph 31(f) concerning objectionable conduct was not the basis of the holdover action. The decision was affirmed.

PERSONAL INJURY AND PROPERTY DAMAGE

NUISANCE - NOISE

Carroll v. Radoniqi [Charles House Condominium] 2012 WL 4086956 (Sup. Ct. NY Co. 9/7/2012) – Unit owner sued superintendent for nuisance for making excess noise while renovating a unit in the building.
Action dismissed on summary judgment. Renovation work was "routine", and done during ordinary business hours. No showing that noise was at unacceptable levels.
"The law of private nuisance involves a balancing of interests. …Persons who live in organized communities have to tolerate some damage, annoyance or inconvenience from each other. …The prevailing philosophy has been that noise and odors are an inescapable reality of urban life; indeed, mere annoyance in and of itself does not create a nuisance. "A person who resides in the center of a large city must not expect to be surrounded by the stillness which prevails in a rural district. No one is entitled to absolute quiet in the enjoyment of his property; he may only insist upon a degree of quietness consistent with the standard of comfort prevailing in the locality in which he dwells.

Williams v. Esplanade Gardens Inc., 2012 WL 3164286 (Sup. Ct. NY Co. 7/23/2012) – Action by a shareholder against the upstairs neighbor and the coop for unreasonable noise – thumping, dragging heavy objects, tapping. Motion for preliminary injunction denied – there are issues of fact as to whether any noise caused a substantial and unreasonable interference with plaintiff's use of her apartment.

COLLECTION OF ARREARS

York Towers, Inc. v. Kotick, 2012 WL 984356 (Sup. Ct. NY Co. 3/13/2012) – Action by coop for unpaid maintenance – 15 counterclaims asserted by lawyer-terrace shareholder. Shareholder directed to pay future maintenance and put arrears in escrow. Counterclaims for harassment based on allowing process server to ring the doorbell unannounced, for alleged unequal enforcement of rule prohibiting trees on terrace, and for conditions repaired by the coop were dismissed. Counterclaims alleging failure to repair a leak, and for not properly cleaning the hallways, for alleged excessive noise from a roof-top AC unit, and for trespass for the board entering the shareholders apartment to listen to the noise from the AC unit, were not dismissed, and raised triable issues of fact.

PAYMENT OF COMMON CHARGES

Fernandez v. Akam Associates, Inc. [425 Fifth Ave. Condominium], 2012 WL 3449460 (Sup. Ct. NY Co. 8/6/2012) – Unit owner's action to void move-in fee, late fee and sublet fee, and repayment of electrical charges. Board was authorized by the by-laws to impose the fees, and the repayment plan was the same for all affected unit owners. Board's action governed by business judgment rule. Board granted summary judgment of dismissal.

Board of Managers of National Plaza Condominium I v. Astoria Plaza, LLC, 946 NYS2d 843 (App. Div. 2d Dept. 6/20/2012) – Action to foreclose a lien for unpaid common charges. Circumstances surrounding the election of the board of managers do not constitute a defense to pay common charges. Judgment for condo after trial.

Board of Managers of the Wingate Condominium v. Ruf, 2012 Slip Op. 51100 (Sup. Ct. Queens Co. 6/15/2012) – Action to foreclose a lien for unpaid common charges. Unit owner was deceased before the action started. Action is a nullity. Substitution of a personal representative not available since decedent was never a party. Action dismissed.

ASSESSMENTS

Board of Managers of the 4260 Broadway Condominium, v. Caballero, 2012 Slip Op. 51402 (Sup Ct. NY Co. 7/20/2012) – Action to foreclose a lien for unpaid assessments totaling $900,000. By-laws require unit owner approval for improvements over $25,000 per year, but not for repairs. Board was required to demonstrate that assessments were for repairs, or obtain approval, and payment records were inadequate to show amounts due. Summary judgment for board denied.

TRANSFERS AND SUBLETS

CONSENT TO TRANSFER

Romanoff v. Levitas [101 East 81 Realty Corp.], 201 WL 3527214 (Sup. Ct. NY Co. 8/6/2012) - Action by purchaser to compel transfer of apartment by seller and coop was dismissed on summary judgment. Absent discrimination, coop owed no duty to purchaser.

TRANSFER FEE

Norton v. 360 Riverside Owners Corp., 2011 WL 6445231 (Sup. Ct. NY Co. 12/4/2012) – Action by shareholder to recover a transfer fee paid at closing against the coop, the individual directors and the managing agent. Action dismissed against the individuals for failure to allege independent torts, and against managing agent. Motion to dismiss by coop denied because, despite general authority in the offering plan, proof of collection for the entire existence of the coop, and ratification by board 10 years ago, the minutes of the original meeting at which it was passed in the 1980s was missing [Apparent perjury by plaintiffs – former treasurers of the coop – that they were unaware of the transfer fee was ignored.]

kitchen cabinets. Plaintiff's claim that other shareholders and board members were not fined for similar incidents stated a claim for unequal shareholder treatment, and raised a triable issue of fact sufficient to defeat the coop's motion for summary judgment. Action was dismissed against the individual board members for failure to assert individual tortious conduct.

ALTERATION AGREEMENTS

STOP WORK ORDER

Wood v. 139 East 33rd Street Corp., 2012 WL 1079223 (Sup. Ct. NY Co. 3/23/2012) – Action by shareholder against the Coop and the managing agent for breach of contract, discrimination because she is hearing impaired, and an injunction because coop stopped work on her alteration. Plaintiff performed unauthorized work, including drilling into the ceiling, replacing the floors with cork, reducing the height of the ceiling below 8 feet, and repartitioning of rooms. Motion to dismiss granted – the alteration agreement gave the coop the right to stop work and plaintiff never submitted new plans.

Wachsman v. Catcendix Corp., 2012 WL 2951885 (Sup. Ct. NY co. 7/6/2012) – Action by shareholder against the coop, the managing agent, and the president, for a declaration that they are not in default, and an injunction. Action dismissed against the president for failure to show individual conduct other than on behalf of the board, and plaintiffs do not allege discrimination. Motion to dismiss by the coop was denied – plaintiffs sufficiently claim a breach of contract because the work was stopped (allegedly because plaintiff installed an unauthorized door after the deadline for completing work). Alteration agreement did not specify a start date for the work, and there was a dispute as to its terms.

ROOF GARDEN

Baker v. 16 Sutton Place Apt. Corp., 2012 WL 781851 (Sup. Ct. NY Co. 3/5/2012) - Action by lawyer/terrace shareholder to enjoin the coop from constructing a roof garden on the roof over plaintiff's apartment. Amendment to the proprietary lease gives the Board the right to construct the garden. Second action alleging 7 new causes of action also dismissed. Shareholder has no vested right in the status quo, and oral statements by prior board members do not overcome the written documents.

DERIVATIVE ACTION

Radwan v. Tsikasis [618 Riverside Drive Owners Corp.], 2012 WL 3230694 (Sup. Ct. NY Co. 6/4/2012) – Shareholders action against sponsor directors to enjoin voting on conflicted matters, and to compel bringing of lawsuit against sponsors. Preliminary injunction granted to prevent voting on matters in which directors have financial interests; however injunction to compel the board to take action was denied except to require the calling of a meeting.

Hubshman v. 1010 Tenants Corp., 2012 WL 4472559 (Sup. Ct. NY Co. 9/19/2012) – Eleventh cause of action in second action between the shareholder and the coop was a derivative action alleging waste by the board in bringing the first suit which the shareholder won. Derivative action dismissed on summary judgment – shareholder displayed hostility and lack of objectivity and was not a proper plaintiff to bring an action allegedly on behalf of her fellow shareholders.

LOCAL LAW 11

DOGS

Murphy v. 14 Sutton Tenants Corp., 2011 WL 6131084 (Sup. Ct. NY Co. 11/23/2011) – Shareholder brought an action against the coop and the individual directors for inflicting mental distress by requiring her to take her unruly dog only in the service elevator. Motion to dismiss based on the business judgment rule was granted as to the individual directors for failure to allege independent acts, but denied as to the coop

DISCRIMINATION

Stalker v. Stewart Tenants Corp., 940 NYS2d 600 (1st Dept. 3/22/2012) – Action by selling shareholder for rejecting purchaser of apartment allegedly due to national origin (Brazilian) of spouse of seller and age of Florida resident purchasers. Coop said it had rule requiring apartment to be primary residence. Action dismissed against directors individually because it did not allege independent tortious acts. Plaintiff stated causes of action against the coop under the Human Rights Law and Fair Housing Act. Motion to dismiss denied.

BUT

Fletcher v. The Dakota, Inc., 948 NYS2d 263 (1st Dept. 7/3/2012) – Action by black shareholder for rejection of his purchase of adjacent apartment. Court *sua sponte* limited the Pelton rule to claims of breach of contract. The participation of a director in a corporation's tort is sufficient to give rise to individual liability. Participation may include directing, approving or ratifying the decision that led to the injury. Liability is not limited to cases of individual tortious conduct.
Claim for tortious interference with contract was sustained against the coop but dismissed against the individual director under the Pelton rule.
Complaint also stated a valid claim for retaliation because plaintiff alleged he opposed discrimination against a Jewish couple in 2007 and was turned down in retaliation in 2010.
[Also issue of Defamation]

Fair Housing Justice Center, Inc. v. Edgewater Park Owners Coop., Inc., 2012 WL 762323 (USDC SDNY 3/9/2012) – Coop had rule that purchasers had to submit 3 references from existing shareholders. Statements of independent real estate broker and circumstantial evidence of lack of minority residents of coop was sufficient to raise a triable issue of fact and summary judgment motion of the coop was denied.

DISABILITY

Feldman v. Cryder House, Queens Co. Index No. 16570/2006 (Sup. Ct. Queens Co. 11/16/11) – Shareholders action to declare they have a right to maintain an air conditioner thru the outside wall. Plaintiff required the air conditioner due to breathing and allergic problems. The failure to permit the air conditioner was an unlawful discriminatory act. Injunction granted and plaintiffs awarded attorney's fees pursuant to the FHAA.

FINES

Cave v. Riverbend Homeowners' Association, Inc., 951 NYS2d 758 (App. Div. 2d Dept. 10/10/2012) – Action by unit owner to declare certain fines and fees imposed by the association null and void. The by-laws authorize the imposition of fines for violation of the rules and regulations. Rules concerning leasing of units, parking, and pet ownership were within its authority. No issues were raised concerning the legitimacy of the board's actions. The action was dismissed on summary judgment.

Williams v. Leisure Knoll Association, Inc., 2012 WL 1669798 (Sup. Ct. Suffolk Co. 5/1/2012) – Action against the condominium and all of the individual directors alleged 8 claims including harassment, nuisance, breach of contract, intentional infliction of emotional distress, based on assessment of fines, denial of use of community facilities, and denial of the right to run for office. Summary judgment was granted to the individuals because no separate torts were alleged. The By-Laws authorized the Board to impose fines and deny use of facilities to owners in arrears. Summary judgment was awarded to all defendants, with a limited right for plaintiff to replead certain claims.

BUT

White v. Gilbert, [Mid-83 House Corp.], 2012 WL 3260300 (Sup. Ct. NY Co. 7/24/2012) – Action by shareholder for unequal shareholder treatment in assessing fines against the coop the managing agent and the individual board members. Plaintiff was fined for not recycling trash, for not removing construction trash and for removing

ASSOCIATION OF RIVERDALE COOPERATIVES & CONDOMINIUMS

LEGAL DECISIONS OF 2012

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January 28, 2013

7:30 pm

ISSUES INVOLVING UNIT OWNERS AND RESIDENTS

BUSINESS JUDGMENT

INDIVIDUAL LIABILITY OF DIRECTORS

Grubin v. The Gotham Condominium, 946 NYS2d 66 (Sup. Ct. NY Co. 12/21/2011) – Bitter dispute arising out of damage to the apartment caused by failure to repair leaks, and use of a terrace as a staging area for exterior work causing damage to terrace. Unit owner alleged 8 causes of action for fraud, negligence, breach of contract, breach of fiduciary duty, trespass, nuisance, good faith and fair dealing, and overcharges.
Individual claims against the directors were dismissed, except claims against 2 directors alleged to have made fraudulent statements to plaintiff.

"These rules, with very strong protections for board members, are there for a very good reason. It is important that shareholders be willing to participate in the governance of their corporations. Shackling them with individual liability for the board's actions would deter them from participating. Only individual and separate acts of self-dealing or other personally corrupt activities should burden them with liability. A review of the factual allegations fails to disclose any such separate tortious activities of individual board members except board members Burke and Back."

Motion to dismiss by the Condominium was denied – the complaint must be accepted as true and stated causes of action.

1812 Quentin Road, LLC v. 1812 Quentin Road Condominium, 943 NYS2d 206 (App. Div. 2d Dept. 4/24/2012) – Unit owners action against the Board and a director for breach of contract was dismissed on summary judgment.

"Under the business judgment rule, the court's inquiry is limited to whether the board acted within the scope of its authority under the bylaws (a necessary threshold inquiry) and whether the action was taken in good faith to further a legitimate interest of the condominium. Absent a showing of fraud, self-dealing or unconscionability, the court's inquiry is so limited and it will not inquire as to the wisdom or soundness of the business decision"

Claim raised for the first time on appeal is not properly before the court.

GPS Global Parking Solutions, LLC v. 151 West 17th Street Condominium, 939 NYS2d 697 (App. Div. 1st Dept. 3/8/2012) – Action claiming trespass and disruption of business against condominium and the board of managers. Motion to dismiss denied. Complaint alleges that defendants directed the employees of the condominium trespass and disrupt business in bad faith. Conduct is not protected by the business judgment rule.