

Zayas v. Franklin Plaza, 2009 WL 909664 (Civ. Ct. NY Co. 4/6/2009) –

Summary: Shareholder was awarded damages for loss of personal property and medical treatment but not costs of remediation caused by bedbug infestation. It was duly noted that the shareholder was responsible for maintaining the apartment and extermination within the apartment, but infestation was building wide and the co-op took no steps to remedy the condition or keep the building in good repair.

Generally, bedbug infestation is interposed as a means for a tenant to obtain an abatement of rent based on the breach of the warranty of habitability. In this case, despite the fact that HPD submitted a letter opining that each shareholder at Franklin Plaza is responsible for the extermination (the generally accepted principle applicable in bedbug cases), that circumstance did not provide the cooperative corporation with a safe harbor. A shareholder of a cooperative is responsible for maintaining the apartment in good repair and would be responsible for extermination within the apartment. However, in this case, the claim was for damages and was predicated upon claimant's credible and undisputed testimony that there was building-wide bedbug infestation. Section 78(1) of the Multiple Dwelling Law imposes a non-delegable duty upon the cooperative corporation, as landlord, to maintain the building in good repair – a responsibility that has regularly been upheld in courts of law. In the Zayas case the court found that the cooperative corporation breached its duty of care. Defendant was on notice of the bedbug infestation and took no steps to remedy the condition; therefore, Franklin Plaza's negligence was a proximate cause of the damage sustained by claimant (who was therefore awarded due compensation).

7 West 92nd Street Housing Development Fund Corp. v. Vidal, 2017 WL 106649, Supreme Court, New York County, January 10, 2017.

Pursuant to the proprietary lease, the obligation to repair the conditions in the apartment required to eradicate the bed bug infestation is imposed on the defendant. It was re-asserted in this case that if the apartment owner declines to perform this work when requested to do so, the HDFC has the right to perform the work and recover the expenses of the work from the tenant. The determination by the HDFC that there is in fact a bed bug infestation in the defendant's apartment and that the work recommended to eradicate the condition must be performed by defendant is protected by the business judgment rule. The determination by the Board to require defendant to implement the recommendations to eradicate the bed bug infestation in her apartment is protected by the business judgment rule, as a result of which the court need not determine whether there is in fact a bed bug infestation or whether these repairs are required to eradicate the infestation. The actions were taken by the directors in good faith and in the exercise of honest judgment that this work was required to eradicate the bed bug infestation in the building. The motion by defendant to vacate her default was denied and the stay issued by this court of the enforcement of the judgment and order was vacated.