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This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly evolving area of law.

About The Group

Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group represents clients in all aspects of condominium and

cooperative law. If you have any questions regarding the matters raised in this newsletter, please feel free to contact Bill McCracken of our New York City office at **wmccracken@moritthock.com**.

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As discussed in the **prior edition of the Condo/Co-op Digest**, Local Law 97 is the centerpiece of New York City's Climate Mobilization Act (CMA) of 2019, the ambitious effort to achieve an 80% reduction in greenhouse gas emissions in the City's buildings sector by 2050. In 2022, a coalition of residential cooperatives and building owners (mostly based in Queens) filed a lawsuit seeking to invalidate Local Law 97 on various constitutional grounds. Last month, the court in **Glen Oaks v. City of New York, Index No. 154327/2023 (Sup. Ct. N.Y. Co.)**, rejected those constitutional challenges and dismissed the complaint in its entirety.

Plaintiffs' primary constitutional argument was that Local Law 97 had been pre-empted by New York State's Climate Leadership and Community Protection Act (CLCPA), which the State legislature had passed in 2019 not long after New York City enacted the CMA. The court rejected this argument, highlighting textual evidence in the CLCPA that the two laws were intended to complement each other, because emissions reductions problems must be tackled at both the State and local level.

Plaintiffs also argued that while the CMA provides for annual fines to be issued against covered buildings that do not meet their emissions targets, those fines are actually unconstitutional **taxes** on carbon emissions. The court disagreed and found that the fines are a valid exercise of New York City's police power.

The court also found that the mere possibility of fines being issued to plaintiffs did not "deprive them of property without due process of law." Rather, the court found that plaintiffs' fears were premature because they had not been issued any fines yet, and in any event, they

would have "ample opportunity" to challenge any fines before a court or administrative tribunal.

The court summarily dismissed two other constitutional arguments offered by plaintiffs. First, the court held that Local Law 97 was not unconstitutionally "retroactive" in application merely because many of the plaintiffs had undertaken expensive capital projects based on existing environmental requirements. Second, the court held that Local Law 97 was not unconstitutionally "vague" on its face.

This decision is unlikely to be the last word in the **Glen Oaks** litigation, as plaintiffs have filed a notice of appeal of the motion court's decision.

Together with the DOB "good faith efforts" rules covered in the **previous Condo/Co-op Digest**, the **Glen Oaks** litigation illustrates the broad scope and intensity of opinion surrounding Local Law 97. On the one hand, the DOB rules were heavily criticized by climate activists as too lenient because the rules give some building owners the chance to delay immediate work on their buildings and to reduce or even eliminate penalties for noncompliance. On the other hand, the **Glen Oaks** plaintiffs speak for many in the real estate industry in decrying the heavy financial burdens of compliance and the harshness of Local Law 97's potential penalties.

The Appellate Division, First Department Dismisses Unjust Enrichment Claims Arising Out Of Condominium's Offering Plan

The Appellate Division, First Department recently dismissed unjust enrichment claims asserted by a condominium's board of managers against the principals of the sponsor of the condominium's offering plan. In **Board of Managers of the 15 Union Square West Condominium v. BCRE 15 Union Square West LLC et al., Index No. 162500/2015 (Sup. Ct. N.Y. Co.)**, the condo board of a recently-converted project in Union Square sued the sponsor, the sponsor's principals, and other related

parties for breach of contract, fraud, and unjust enrichment, among other things, seeking $5 million in damages. The defendants filed motions to dismiss which were partially successful, but the motion court allowed certain claims to continue against certain defendants, including an unjust enrichment claim against the constituent members of the sponsor.

The members of the sponsor appealed that ruling, and the Appellate Division, First Department reversed. It is well-settled that claims for unjust enrichment are barred where there is a valid contract in place (in this case, the offering plan) and the contract covers the subject matter of the dispute. The issue here was that none of the sponsor members were signatories to the offering plan, so the question was whether there was a "contract in place" that barred quasi-contractual claims against them. The appellate court found that there was. In short, the bar to unjust enrichment and other quasi-contractual claims applies even to non-parties where there is a valid contract covering the subject matter of the dispute. Accordingly, the appellate court reversed the lower court's decision and dismissed the sponsor members from the case.

Court Rules Amended To Allow The Wider Use Of Unsworn Affirmations

New York State recently passed legislation permitting any individual to file affirmations under the penalty of perjury in civil actions in New York State Court governed by the CPLR, rather than requiring sworn and notarized affidavits. Previously, CPLR 2106 allowed only certain professionals, including attorneys and physicians, and individuals located outside the physical boundaries of the United States, to submit unsworn affirmations. The newly-amended CPLR 2106 allows any individual to file unsworn affirmations so long as they include precise statutory language affirming that the submissions is made under penalty of perjury.

This new legislation will be of particular benefit to non-professional and/or retired condo and co-op board members or indeed to any individuals who do not enjoy ready access to notarial services. It should

be noted, however, that this amendment does not entirely eliminate the need for sworn affidavits in court proceedings. For example, notaries are still required to establish the declarant's identity (like a witness at a deposition), to establish the authenticity of a document, or to take an oath of office.

A Year-End Reminder To Board Members To Comply With Annual Legal Requirements

As the end of the year approaches, a reminder that condominiums and cooperatives are subject to many compliance obligations that recur on an annual basis. Most of these annual requirements should be familiar to your management company and performed on a routine basis, but some (for example, the conflict-of-interest disclosure reports required by BCL 727 or the anti-harassment training required under State and local laws) are of relatively recent vintage. If you have any questions about any annual compliance requirements, please contact us.

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