

Neighbor v. Neighbor

BY DALE J. DEGENSHEIN



WHEN YOUR NEIGHBOR

breaches the proprietary lease, can you successfully sue him? The question of whether a shareholder was a “third-party beneficiary” of the lease between her upstairs neighbor and the cooperative was at the heart of a recent case, *Ran v. Weiner*.

Sam Weiner and Faye Ran are shareholders at the 451 West Broadway Cooperative in Soho. Weiner resides in the apartment directly above Ran. Ran alleges that, on November 5, 2011, a leak in Weiner’s apartment caused the ceiling to collapse in her apartment. There was significant damage to the apartment and her personal property – roughly \$27,000 beyond what her insurance carrier would reimburse, she said. When Weiner refused to pay, Ran sued him, claiming that he was required to reimburse her because of requirements in the cooperative’s house rules. She also sued the co-op, demanding that it act to enforce those rules.

The co-op’s proprietary lease contains a provision found in most leases. It permits the board to amend, alter, adopt, and repeal house rules. Once adopted, a house rule is enforced after it has been incorporated into the lease. In this case, the board had adopted a house rule stating that “damage caused by any water leakage is the responsibility of the Lessee in whose apartment the leak originated.” Based on that, Ran argued that Weiner was required to reimburse her and that the co-op was required to enforce its own house rules.

Both Weiner and the co-op moved to dismiss the complaint. Even though all proprietary leases in the building are identical, the lease remains a contract between the cooperative corporation and each individual

shareholder. The court’s decision thus hinged on whether Ran was a third-party beneficiary of the lease between Weiner and the co-op.

The court discussed the law of third-party beneficiaries. In order to claim rights under that doctrine, Ran had to establish (i) a binding and valid contract between other parties, (ii) that was intended for her benefit, and (iii) that this benefit was direct, and not incidental. Importantly, the court found that the parties’ intent to benefit the third party must be apparent from the face of the contract. If there is no clear contractual language evidencing that intent, courts are reluctant to impose third-party beneficiary status. The court also explained that an “intended” beneficiary may maintain an action,

while an “incidental” beneficiary – one who may derive a benefit but has no independent rights – may not. The court found that there was nothing in the plain language of the proprietary lease or the house rules that “clearly” conferred rights to Ran, or to any third party. While the house rule did say that damages caused by a water leak are the responsibility of a lessee in whose apartment the leak originated, it did not indicate that the provision could be enforced by a third party – even another shareholder. Thus, Ran is nothing more than an incidental beneficiary and the court dismissed Ran’s action against Weiner.

The court next turned to Ran’s action against the co-op. The co-op claimed the action should be dismissed



because the co-op was not responsible for Weiner's alleged violation of the house rules, and because the proprietary lease specifically provides that the co-op "shall not be responsible to the lessee for the non-observance or violation of House Rules by any other lessee or person." Because all proprietary leases are identical, this language applies to both Ran and Weiner.

Ran, however, argued that the co-op had its contractual obligation to her to enforce the house rules against Weiner. Moreover, Ran stated that, if the co-op was not required to enforce the house rule, the rule became illusory. Put another way, if the provision is unenforceable as to fellow shareholders, it is meaningless. The court was not persuaded and relied heavily on the language of the lease, which makes clear that it is not the co-op's

responsibility if another shareholder does not comply with the house rules.

Reading the Ruling

Whether shareholders can enforce house rules against other shareholders is not something many attorneys address directly when drafting or vetting a co-op client's house rules. But, as this case demonstrates, it is important. Shareholders should understand that they can pursue a claim directly against a neighbor if that neighbor breaches the proprietary lease, but they must also understand the co-op/landlord's role.

This decision seems to say that the house rule would apply only if a shareholder leaked water into a common area. The co-op, as one of the parties to that specific lease, presumably could require the

shareholder to pay for any damages. But the finding that shareholders cannot enforce house rules against each other would arguably apply to all house rules.

Ran has filed an appeal. Assuming it goes forward, it will be interesting to see what the appellate court decides. Meanwhile, boards may want to rethink how they draft certain house rules. ■

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