

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Hubshman v. 1010 Tenants Corp.

Hubshman, 2026 NY Slip Op 03267 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 157779/24; Appeal No. 6724; Case No. 2025-01399 · Decided May 26, 2026

SUMMARY

The Appellate Division, First Department modified an order dismissing claims brought by a cooperative apartment shareholder concerning contractual rights to an appurtenant roof garden and terrace. The court reinstated claims for breach of the original proprietary lease and attorneys' fees, holding that the plaintiff adequately alleged that the cooperative amended the lease and curtailed her rights without the required consent while the original lease remained in effect. The court otherwise affirmed dismissal of the specific-performance claim relating to a prior settlement agreement.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Friedman, J.; Kapnick, J.; Shulman, J.; Pitt-Burke, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 26, 2026
DOCKET	Index No. 157779/24; Appeal No. 6724; Case No. 2025-01399
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' CPLR 3211(a)(1) and (7) cross-motion in part and dismissing claims for specific performance, breach of the proprietary lease, and attorneys' fees.
PRECEDENTIAL VALUE	published
PARTIES	Barbara Hubshman v. 1010 Tenants Corp., et al.

TOPICS

- contract interpretation
- breach of contract
- landlord tenant
- specific performance
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the claim for specific performance of the parties' 2011 settlement agreement was properly dismissed.
2. Whether plaintiff adequately pleaded a breach of the original proprietary lease based on defendants' adoption of a new lease eliminating her roof-garden rights without her consent.
3. Whether plaintiff's related claim for attorneys' fees was properly dismissed.

HOLDINGS

1. The specific-performance claim was properly dismissed because plaintiff did not identify a provision of the settlement agreement that defendants breached or were required to perform, and she did not allege that the work contemplated by the settlement agreement remained unperformed.
2. Plaintiff adequately pleaded that defendants breached paragraph 6 of the original proprietary lease by adopting a new proprietary lease that eliminated her paragraph 7 roof rights without her consent while the original lease remained in effect.
3. The attorneys' fees claim was reinstated because the proprietary lease expressly permitted the lessor to recover fees for a lessee's default, potentially entitling plaintiff to reciprocal fees under Real Property Law § 234 if she prevails on her breach-of-contract claim.

KEY QUOTATIONS

“In construing a contract, one of a court's goals is to avoid an interpretation that would leave contractual clauses meaningless” ([*2])

“Although the original proprietary lease was set to expire on September 30, 2024, plaintiff sufficiently alleged that she was entitled to invoke paragraph 6 because the vote to curtail her roof rights under paragraph 7 took place on May 22, 2024, while the original proprietary lease remained in effect.” ([*2])

FACTUAL BACKGROUND

Barbara Hubshman has been a shareholder and proprietary lessee of a penthouse apartment at 1010 Fifth Avenue since 1979. The offering plan and proprietary lease allegedly granted her exclusive use of the appurtenant roof garden and required her consent before the cooperative could change rights and obligations relating to that roof garden. Four months before the original lease expired, the cooperative's shareholders voted to amend the lease and eliminate those protections without Hubshman's consent.

PROCEDURAL HISTORY

Plaintiff brought an action concerning her alleged contractual rights to the roof garden and terrace appurtenant to her cooperative apartment. Supreme Court, New York County, dismissed the third, fourth, and sixth causes of action to the extent appealed from. The Appellate Division affirmed dismissal of the specific-performance claim but reinstated the breach-of-lease and attorneys' fees claims.

DISPOSITION

other

REMAND INSTRUCTIONS

Defendants' cross-motion was denied as to the fourth and sixth causes of action, those claims were reinstated, and the order was otherwise affirmed without costs.

CASES CITED

- Gross v. Kikuchi, 241 AD3d 1153, 1154 (1st Dept 2025)
- Two Guys from Harrison-N.Y. v. S.F.R. Realty Assoc., 63 NY2d 396, 403 (1984)
- Barbour v. Knecht, 296 AD2d 218, 224 (1st Dept 2002)
- Blutreich v. Amalgamated Dwellings, Inc., 28 AD3d 261, 262 (1st Dept 2006)

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