

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

Matter of 320 W. 87 LLC v. 320 W. 87th St., Inc.

Matter of 320 W. 87 LLC v. 320 W. 87th St., Inc. (Supreme Court of the State of New York Appellate Division
First Department 2025) · No. Index No. 654793/23; Appeal No. 5424; Case No. 2024-05822 · Decided
December 18, 2025

SUMMARY

The Appellate Division, First Department held that 320 W. 87 LLC qualified as a holder of unsold shares in a cooperative based on the governing documents and the parties' conduct, including the cooperative's waiver of contrary provisions. The court modified the lower court's order by removing an exception for building-systems renovations, granting a permanent injunction protecting the petitioner's rights, and clarifying that the denial of money damages was without prejudice to a related action.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Scarpulla, J.; Friedman, J.; Shulman, J.; Rosado, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	December 18, 2025
DOCKET	Index No. 654793/23; Appeal No. 5424; Case No. 2024-05822
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeals from an order and judgment granting in part the converted motion for summary judgment on the petitioner's declaratory-relief claim and denying the respondent's converted cross-motion for summary judgment.
STANDARD OF REVIEW	De novo review of the order and judgment on the law, including the propriety of summary judgment and the interpretation and application of the governing cooperative documents.
PRECEDENTIAL VALUE	published
PARTIES	Matter of 320 West 87 LLC, Petitioner-Respondent-Appellant, 320 West 87th Street, Inc., Respondent-Appellant-Respondent v. 320 West

TOPICS

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PRACTICE AREAS

real estate cooperative housing contracts equitable relief appellate procedure

QUESTIONS PRESENTED

1. Whether petitioner qualified as a holder of unsold shares under the governing cooperative documents and the parties' subsequent conduct.
2. Whether the cooperative waived or modified governing-document provisions, including a prohibition on transferring unsold shares to another entity and a no-waiver provision, by treating petitioner as a holder of unsold shares for an extended period.
3. What declaratory and injunctive relief petitioner was entitled to as a holder of unsold shares.

HOLDINGS

1. A party's holder-of-unsold-shares status is determined from the documents defining its contractual relationship with the cooperative, but the parties may waive or modify those provisions. Although the governing documents did not unambiguously permit an entity receiving transferred unsold shares to qualify as a holder of unsold shares, the evidence established that the parties modified or waived the relevant provisions, and petitioner therefore established its holder-of-unsold-shares status on summary judgment.
2. The cooperative waived the no-waiver provision by actively treating petitioner as a holder of unsold shares over a continuous and extended period.
3. Petitioner was entitled to the general exemptions attendant to holder-of-unsold-shares status, without a building-systems exception to the renovation exemption, and to a permanent injunction prohibiting the cooperative from interfering with those rights. The denial of money damages was clarified to be without prejudice to seeking damages in a related action.

KEY QUOTATIONS

“Whether a party is a holder of unsold shares (HUS) for a cooperative is determined based upon “the terms of the documents defining their contractual relationship with the cooperative corporation”” ([*1])

“Although petitioner concedes that the proprietary lease contained a “no-waiver” provision, the record establishes that the Cooperative waived the no-waiver provision by actively treating petitioner as an HUS for a continuous and extended period” ([*1])

FACTUAL BACKGROUND

Petitioner acquired cooperative shares associated with apartments but never occupied the corresponding apartments. The cooperative and petitioner treated petitioner as a sponsor and holder of unsold shares for nearly two years: petitioner was offered the sponsor's two board seats, paid none of the typical shareholder fees, and conducted renovations and sublets without prior board approval. The governing documents contained a no-waiver provision and did not unambiguously authorize transfer of unsold shares to another entity, but the record showed that the cooperative nevertheless treated petitioner as a holder of unsold shares.

PROCEDURAL HISTORY

Supreme Court, New York County, granted in part the petitioner's converted motion for summary judgment, declared that petitioner was a holder of unsold shares and exempt from specified cooperative requirements, denied a permanent injunction and money damages, and denied respondent's converted cross-motion. The Appellate Division modified the order and judgment to eliminate the building-systems exception, grant a permanent injunction, and clarify that the denial of damages was without prejudice to a related action; it otherwise affirmed.

DISPOSITION

affirmed

CASES CITED

- Kralik v. 239 E. 79th St. Owners Corp., 5 NY3d 54, 57 (2005)
- Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgt., L.P., 7 NY3d 96, 104 (2006)
- RFLP, LLC v. 255 W. 98th St. Owners Corp., 205 AD3d 594, 596 (1st Dept. 2022)
- Cole v. 1015 Concourse Owners Corp., 70 AD3d 597, 598 (1st Dept. 2010)
- Kenyon & Kenyon v. Logany, LLC, 33 AD3d 538, 539 (1st Dept. 2006)
- Sakele Bros. v. Safdie, 302 AD2d 20, 27-28 (1st Dept. 2002)
- Matter of Blum v. Pathstone Corp., 172 AD3d 1679, 1681-1682 (3d Dept. 2019)

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