

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

Etkin v. Sherwood Residential Mgt. LLC

Etkin, 2026 NY Slip Op 01301 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 655734/21; Appeal Nos. 6047-6048-6049; Case Nos. 2024-06940, 2025-00879, 2025-02561 · Decided March 10, 2026

SUMMARY

The Appellate Division, First Department modified orders concerning claims by a condominium unit owner against the condominium's management company and board. It reinstated derivative breach-of-contract claims relating to alleged defects and water damage affecting outdoor balconies, while affirming dismissal of smoke-related derivative claims and an individual nuisance claim. The court also granted renewal motions in part and denied sanctions.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Scarpulla, J.; González, J.; Rodriguez, J.; Higgitt, J.
JURISDICTION	Appellate Division, First Department, New York
DECIDED	March 10, 2026
DOCKET	Index No. 655734/21; Appeal Nos. 6047-6048-6049; Case Nos. 2024-06940, 2025-00879, 2025-02561
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from orders granting defendants' motion for summary judgment dismissing specified causes of action, denying plaintiff's motions to renew, and granting defendants' cross-motion for sanctions.
STANDARD OF REVIEW	The court reviewed the orders for errors of law and whether the record raised triable issues of fact on summary judgment; it also reviewed the renewal motions and sanctions ruling under CPLR 2221(e) and 22 NYCRR 130-1.1.
PRECEDENTIAL VALUE	Published

PARTIES

William Etkin v. Sherwood Residential Management LLC, The Board of Managers of the 500 West 21st Street Condominium, The 500 West 21st Street Condominium

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QUESTIONS PRESENTED

1. Whether Etkin had standing to assert derivative breach-of-contract claims on behalf of the condominium and its unit owners concerning defects in common-element balconies.
2. Whether the evidence raised triable issues of fact regarding Sherwood's and the Board's contractual maintenance and repair obligations for the balconies.
3. Whether the derivative breach-of-contract claims based on smoke infiltration were properly dismissed for lack of evidence of a contractual breach.
4. Whether Etkin's individual private nuisance claim concerning the balconies was duplicative of contractual repair obligations.
5. Whether Etkin lacked standing to assert nuisance claims based on smoke injury allegedly arising from common elements or equipment belonging to other units.
6. Whether Etkin's motions to renew based on newly issued DOB violations should have been granted and whether defendants were entitled to sanctions.

HOLDINGS

1. A condominium unit owner may bring a derivative breach-of-contract claim on behalf of the condominium and its unit owners for defects in balconies that the governing documents classify as limited common elements owned by the condominium.
2. Summary judgment was improper on the derivative breach-of-contract claims concerning the outdoor balconies because the record raised triable issues as to whether Sherwood and the Board fulfilled their contractual maintenance and repair obligations.
3. The derivative breach-of-contract claims based on smoke infiltration were properly dismissed because plaintiff's evidence established only the existence of a smoke issue and did not raise a triable issue that defendants breached a contractual maintenance or repair obligation.
4. The private nuisance claim concerning the balconies was properly dismissed as duplicative of the contractual claims because it arose entirely from the Board's contractual obligation to perform extraordinary maintenance or repairs.

5. Plaintiff lacked standing to assert a nuisance claim for injury caused by a common element, and claims concerning fireplaces, flues, or HVAC systems serving individual units had to be brought against the individual unit owners responsible for maintaining and repairing that equipment.
6. Plaintiff's motions to renew should have been granted to the indicated extent because newly issued DOB violations concerning continuing water damage were pertinent to the derivative claims, and the motions were not frivolous; defendants' sanctions motion should therefore have been denied.

KEY QUOTATIONS

“Thus, plaintiff appropriately brought a derivative claim on behalf of the condominium and its unit owners for alleged defects in the balconies” ([*1])

“Plaintiff's two motions to renew based on newly issued DOB violations related to ongoing water damages that affected the subject balconies were pertinent to the derivative claims and warranted consideration” ([*1])

FACTUAL BACKGROUND

William Etkin owns condominium unit 7A, whose outdoor balcony is a limited common element owned by the condominium. He alleged that construction defects in the balcony of penthouse unit A, located above his unit, caused water leaks and damage to his balcony, and that smoke from fireplaces or building systems entered his unit. Etkin presented photographs, deposition testimony, expert inspections, agency violations, and later-issued DOB violations concerning the balcony deterioration and water damage.

PROCEDURAL HISTORY

Plaintiff, a condominium unit owner, sued the condominium's managing agent, board, and condominium asserting derivative breach-of-contract claims concerning balcony repairs and an individual nuisance claim concerning balcony and smoke problems. Supreme Court, New York County, granted summary judgment dismissing the first, third, and fifth causes of action, denied plaintiff's motions to renew, and granted defendants' cross-motion for sanctions. The Appellate Division modified the orders by reinstating portions of the derivative balcony-repair claims, granting renewal to that extent, and denying sanctions, while otherwise affirming.

DISPOSITION

other

REMAND INSTRUCTIONS

The first and third causes of action may proceed to the extent they allege derivative breach-of-contract claims concerning defendants' obligations to repair the outdoor balconies appurtenant to unit 7A and penthouse unit A. The renewal motions are granted to that extent, and defendants' sanctions cross-motion is denied; all other portions of the orders are affirmed.

CASES CITED

- Davis v Prestige Mgt. Inc., 98 AD3d 909, 910 (1st Dept 2012)
- Owens v New Empire Corp., 244 AD3d 454, 456 (1st Dept 2025)
- Caprer v Nussbaum, 36 AD3d 176, 190 (2d Dept 2006)
- Calderoni v 260 Park Avenue S. Condominium, 220 AD3d 563, 564 (1st Dept 2023)

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