

COOP AND CONDO'S RECOVERY OF LEGAL FEES FROM COOP SHAREHOLDERS AND CONDO UNIT OWNERS

Cooperative's Disputes With Cooperative Shareholders

- General rule of law in New York State is that each party to the litigation is responsible for its own legal fees. (Hooper Assocs. Ltd. V. AGS Computers, Inc., 74 NYS2d 487 (1989).)
 - The general rule of law may be altered either by statute or by contract. (Hooper Assocs. Ltd. V. AGS Computers, Inc. supra; see also Trays Wrap Inc. v. Pacific Tomato Growers, Ltd., 18 Misc3d 1122(A), 856 NYS2d 503 (NY Co.).)
 - Any statute or contract which alters the general rule of law concerning legal fees will be strictly construed by the courts.
- The Coop and shareholder's relationship is governed by the proprietary lease which creates a landlord-tenant relationship by and between the Coop and the shareholder.
 - While the terms and provisions of every proprietary lease vary from Coop to Coop, many proprietary leases provide for reasonable attorneys fees to be paid by the shareholder to the Coop as "additional rent" if the shareholder is in default and the Coop incurs legal fees in (a) instituting an action or proceeding or (b) defending or asserting a counterclaim in an action or proceeding brought by the shareholder.
 - Under such a lease provision if litigation between Coop and shareholder results without the shareholder being in default, the Coop will not be entitled to recover attorneys' fees.
 - Some proprietary leases provide for recovery of legal fees only if the shareholder is in default and the Coop's lawsuit is based upon the default.
 - Thus, if the Coop commences a declaratory judgment action seeking a declaration of the rights and obligations of the Coop and the shareholder without there being any default on the part of the shareholder, the Coop would not be entitled to recover legal fees.
- "Prevailing Party" requirement in New York is that the courts require a party to generally prevail in order to recover legal fees.
 - What is a "prevailing party"?
 - A "prevailing party" must win on the central claims advanced in the litigation and receive substantial relief. Nestor v. McDowell, 81 NY2d 410 (1993); 490 Owners Corp. v. Israel, 189 Misc2d 34 (App. Term, 2nd Dept 2001).
 - It is important to note that "substantial relief" does not mean "all relief sought". Thus, a prevailing party does not have to win on all claims asserted. (Board of Managers of 55 Walker St. Condo v. Walker St. LLC, 6 AD3d 279, 774 NYS2d 701 (2004).)
 - A prevailing party can also be a party who substantially prevails on their claim by means of a stipulation settling an action, as opposed to a judicial determination, if, through the stipulation, a party obtains substantially the relief sought in the litigation. (Sykes v. RFD Third Ave. I Assoc LLC, 39 AD3d 279 (1st Dept 1999).)

- This is why it is important to include a provision concerning the issue of attorneys' fees in any stipulation resolving litigation.
 - It is not necessary that a prevailing party seeking reimbursement of reasonable attorneys fees incurred establish that the fees sought have actually been paid by the Coop or the shareholder.
 - Reimbursement of fees is allowed even if the Coop's fees were paid by the Coop's insurance carrier (O'Neill v. 225 East 73 Owners Corp., 298 AD2d 239 (1st Dept 2002)) or if the shareholder's counsel was a not-for-profit service provider. Maplewood Mgmt., Inc. v. Best, 143 AD2d 978 (2nd Dept 1998)).
 - A "prevailing party" may be a party who breached the lease but nonetheless substantially succeeded at the trial. (Ram I LLC v. Stuart, 248 AD2d 255, 668 NYS2d 888 (1st Dept 1988); El-Kam Realty Co. v. Epstein, 148 Misc2d 853, 568 NYS2d 259 (App. Term 1st Dept. 1990).)
- As noted above, a Coop proprietary lease generally provides for the Coop's recovery of reasonable legal fees from a shareholder. However, the reverse, namely a shareholder's recovery of legal fees as against the Coop, is rarely provided for in the proprietary lease.
 - Real Property Law (RPL) section 234, which is applicable to Coops, provides a reciprocal independent right to a tenant under a lease to recover attorneys' fees if the lease contains such a provision in favor of the landlord.
 - The legislative purpose of RPL section 234 was to level the playing field between landlords and tenants. (Duell v. Condon, 84 NY2d 773, 622 NYS2d 891 (1995).)
 - The reciprocal nature of RPL section 234 was also meant to discourage landlords from commencing frivolous and/or vexatious litigation against a tenant.
- Attorneys' fees sought to be recovered must be reasonable.
 - The prevailing party seeking legal fees is not entitled to necessarily recover 100 cents on the dollar of fees incurred. The prevailing party must prove that the fees sought are "reasonable".
 - To determine the reasonable value of fees, the courts in this state have used the "lodestar" method. The Lodestar method is a calculation of the time reasonably spent by counsel times a reasonable hourly rate. (Solow v. Wellner, 150 Misc.2d 642 (NY CO. 1991); Zauderer v. Barcellona, 130 Misc2d 234 (NY Co. 1985).)
 - Reasonableness of legal fees takes into consideration the following factors: (1) Nature of services rendered; (2) Complexity and/or novelty of issues; (3) Attorneys' professional reputation and experience; (4) Level of skill involved in handling the case; (5) Result obtained, and (6) Average legal fee rate in the community for comparable services. (Newman v. Silver, 553 F. Supp. 485 (SDNY 1982).)
- "Fee on Fee" awards are recoverable. A "fee on fee" is the fees sought by counsel of the prevailing party for work performed in seeking recovery of legal fees.
 - "Fee on fee" awards while they are typically granted by New York Courts are; however, discretionary.

- Thus, if a prevailing party seeking recovery of fees fails to satisfy the burden of proving the reasonable value of the services performed, the fees incurred in such a failed effort are not recoverable. (30-40 Fleetwood Ave. Corp. v. Debellis, July 12, 1995 NYLJ, p. 32, col. 3.)

Condominium Disputes With Unit Owners

- Inasmuch as there is no lease agreement between the condo and the unit owner, the issue of recovery of attorneys fees in the event of litigation by and between the condo and a unit owner is not governed by any contractual agreement.
 - Furthermore, because there is no lease agreement, there is no landlord-tenant relationship between the condo and the unit owner; therefore, RPL section 234 is not applicable.
- Recovery of legal fees by a condo as against a unit owner is governed by statute.
 - Real Property Law section 339-j provides that a condo unit owner must comply strictly with the by-laws and with the rules, regulations and decisions of the condo.
 - Thus, the by-laws of a condo will generally provide, similar to a coop proprietary lease, the provision for recovery by the condo against a unit owner for legal fees. (Board of Managers of Stewart Place Condo v. Bragato, 54 AD3rd 791 (2nd Dept 2008).)
 - While most governing condo by-laws allow the condo to recover attorneys fees for litigation ensuing as a result of a unit owner's default, very rarely do by-laws give a unit owner a reciprocal right to recover.
 - As already noted above, because there is no landlord-tenant relationship by and between the condo and the unit owner, RPL section 234 is inapplicable.
 - Thus, in the greater majority of condo situations, a unit owner will have no recourse as against the condo for recovery of attorneys' fees.