

[Stromberg v. East Riv. Hous. Corp.](#)

Supreme Court of New York, Appellate Division, First Department
August 21, 2025, Decided; August 21, 2025, Entered
Index No. 654047/22, Appeal No. 4356, Case No. 2024-00578

Reporter

241 A.D.3d 445 *; 239 N.Y.S.3d 45 **; 2025 N.Y. App. Div. LEXIS 4809 ***; 2025 NY Slip Op 04757 ****; 2025 LX 398614

[****1] Eleanor Stromberg et al., Respondents, v East River Housing Corporation, Appellant, et al., Defendants.

Subsequent History: As corrected through Wednesday, October 8, 2025.

Prior History: [Stromberg v. East Riv. Hous. Corp., 2023 N.Y. Misc. LEXIS 24350 \(N.Y. Sup. Ct., Dec. 26, 2023\)](#)

Core Terms

counterclaim, breach of contract claim, declaratory judgment, sale price, proprietary lease, summary judgment, alleged failure, attorney's fees, board's action, bylaws

Headnotes/Summary

Headnotes

Condominiums and Cooperatives - Board of Directors - Refusal of Board to Approve Sale of Cooperative Apartment

Counsel: [***1] Sills Cummis & Gross P.C., New York (Mitchell D. Haddad of counsel), for appellant.

Adam Leitman Bailey, P.C., New York (Jeffrey R. Metz of counsel), for respondent.

Judges: Before: Moulton, J.P., Scarpulla, Kapnick, Rodriguez, Higgitt, JJ.

Opinion

[*445] [**45] Order, Supreme Court, New York County (Gerald Lebovits, J.), entered December 28, 2023, which, insofar as appealed from, denied defendant's motion for summary judgment dismissing the breach of contract claim and granted plaintiffs' cross-motion for summary judgment dismissing defendant's counterclaims, unanimously modified, on the law, to the extent of dismissing the breach of contract claim insofar as it is based on defendant's alleged failure to provide notifications of board action as required by defendant's bylaws and proprietary lease, and otherwise affirmed, without costs.

Stromberg v. East Riv. Hous. Corp.

This appeal arises from the refusal by the board of defendant cooperative to approve the sale of plaintiffs' apartment. The motion court properly found that issues of fact exist as to whether the business judgment rule applies to defendant's rejection of the sale application. The parties sharply dispute whether a minimum sale price floor was implemented by defendant (*compare Singh v Turtle Bay Towers Corp.*, 74 AD3d 568, 568, 905 N.Y.S.2d 22 [1st Dept 2010] with *Oakley v Longview Owners*, 165 Misc 2d 192, 193-194, 628 N.Y.S.2d 468 [Sup Ct. Westchester County 1995] [***2]).

Plaintiffs have abandoned the branch of their breach of contract claim that is based on defendant's alleged failure to comply with certain notice provisions contained in the bylaws and proprietary lease regarding board action.

The motion court also correctly dismissed defendant's first and second counterclaims. The first counterclaim seeks a declaratory judgment that defendant's board of directors may properly consider an apartment's sales price when deciding whether to grant or withhold consent to a sale. Plaintiffs do not dispute that defendant may consider the purchase price; rather, they contend that the price may not be the *sole* criterion [**446] considered in approving or denying an application. The only question, as recognized by the motion court, is whether the particular *manner* in which defendant considered the apartment's sales price was legally permissible, and defendant is not seeking a declaratory judgment on that issue. Therefore, no justiciable controversy exists (see *CPLR 3001*), and the declaratory judgment counterclaim was properly dismissed.

As to the second counterclaim for attorneys' fees, it was based on an attorneys' fees provision substantially identical to the one we previously [***3] held unenforceable in *Matter of Krodel v Amalgamated Dwellings Inc.* (166 AD3d 412, 414, 88 N.Y.S.3d 31 [1st Dept 2018], *lv denied* 33 NY3d 910 [2019]).

[**46] We have considered the remaining arguments and find them unavailing. Concur—Moulton, J.P., Scarpulla, Kapnick, Rodriguez, Higgitt, JJ. [*Prior Case History: 82 Misc 3d 871*].

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