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The Legal Landscape for Condominium Sponsor Defects Cases: Acting Before Time Runs Out

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In New York, condominium sponsor defect cases provide essential protections for unit owners and boards of managers facing construction flaws attributable to the sponsor. Sponsors are responsible for overseeing the assembly, construction, and sale of condominium units, as well as issuing the offering plan that contains representations concerning the building's construction and design.

There are a number of potential remedies to consider when seeking to address such defects, including those provided by common law, statute, the condo's governing documents (including the offering plan and declaration) and individual unit owners' respective purchase and sale agreements. As explained herein, it is extremely important to act promptly in pursuing these remedies as there are often strict timing restrictions which must be complied with, otherwise the claims may be deemed waived. Further, even if timely brought, if the sponsor has sold all its units at the time of an award of damages, there could be issues collecting on the award which may require costly litigation to breach the corporate veil (i.e. seek to hold the sponsor's individual principals liable) and/or claw back fraudulent transfers that the sponsor may have initiated in an attempt to avoid collection.

Common Causes of Action in Sponsor Defect Cases

Sponsor-defect litigation may involve claims based on breach of warranty, breach of contract, fraud, breach of fiduciary duty, and negligence. Each type of claim provides different avenues for relief, but the strict statutes of limitations demand early action by unit owners and boards.

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1. Breach of Warranty

New York's General Business Law §777-b provides an implied housing merchant warranty for newly constructed condominium units within multi-unit structures of five stories or less. This warranty includes coverage against material defects for six years, as well as protection against plumbing and electrical

issues for two years and skillful construction-related defects for one year after construction completion. Importantly, this implied warranty does not apply to buildings over five stories (see Bd. of Managers of Beacon Tower Condominium v 85 Adams St., LLC, 136 AD3d 680 [2d Dept 2016]).

For larger buildings, owners must rely on limited warranties from the sponsor set forth in the Offering Plan and/or Declaration. These warranties are often narrow in scope and designed to supersede the implied warranty. These limited warranties may also include specific notice requirements, limiting the owners' ability to bring breach of warranty claims unless they follow strict timelines (see Finnegan v Brooke Hill, LLC, 38 AD3d 491 [2d Dept 2007] and Pine St. Homeowners Association (Ass'n) v 20 Pine St. LLC, 109 AD3d 733 [1st Dept 2013]). Courts have upheld sponsors' ability to limit liability by providing specific warranty terms in offering plans and purchase agreements.

2. Breach of Contract

Unit owners or condominium boards can bring a claim for breach of contract to enforce promises within the offering plan or purchase agreements, especially when they are separate from the limited warranty. For instance, in Bd. of Managers of Be William Condominium v 90 William St. Dev. Group LLC, 187 AD3d 680 (1st Dept 2020), the sponsor was held to have breached the offering plan by failing to obtain a permanent certificate of occupancy and not adhering to construction standards outlined in the offering plan.

Offering plans often detail the layout, construction standards, and materials, creating enforceable expectations under contract law. Courts will permit breach of contract claims if the sponsor failed to fulfill specific promises, provided they are distinct from warranty obligations (see Tiffany at Westbury Condominium By Its Bd. of Managers v Marelli Dev. Corp., 40 AD3d 1073 [2d Dept 2007]).

3. Fraud

Fraud claims provide another remedy, particularly if a sponsor made affirmative misrepresentations in the offering plan. To sustain a fraud claim, plaintiffs must show intentional falsehoods rather than omissions (see Bd. of Managers of Latitude Riverdale Condominium v 3585 Owner, LLC, 199 AD3d 441 [1st Dept 2021]). Courts have supported fraud claims where sponsors actively concealed or misrepresented material conditions, such as hiding water damage by painting over it (see Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership, 12 NY3d 236 [2009]), installing dummy air vents that did not lead anywhere (see 18 E 80 th Realty Corporation v 68 th Associates, 173 AD2d 245 [1 st Dept 1991]), and installation of an unsafe and unfunctional gas furnace (see Hamlet on Olde Oyster Bay Home Owners Association v The Holiday Organization, 12 Misc.3d 1192[A] [Sup Ct, Nassau County 2006]).

Courts have also permitted fraud claims against individual principals of the sponsor entity, where the plaintiff can allege specific facts to support the claim (see The Bd. Of Mgrs. Of 252 Condo. v World-Wide Holdings Corp., 2024 WL 3409160, 2024 NY Slip Op 32511[U] [Sup. Ct, New York County, Masely, J.]).

However, fraud claims can be dismissed if duplicative of breach of contract claims unless they involve distinct tortious conduct beyond contractual breaches (see Bd. of Managers of Beacon Tower Condominium v 85 Adams St., LLC, 136 AD3d 680 [2d Dept 2016]; Pine St. Homeowners Ass'n v 20 Pine St. LLC, 109 AD3d 733 [1st Dept 2013]).

4. Breach of Fiduciary Duty

Sponsor-appointed board members have fiduciary duties to the condominium as a whole, even during the sponsor's control period. Although sponsors may retain control of the board for a period of time post-construction, typically around five years, their appointed board members must act in the best interests of the condominium. In Bowery 263 Condominium Inc. v D.N.P. 336 Covenant Ave. LLC, 169 AD3d 541 [1st Dept 2019], the court confirmed that board members appointed by the sponsor still owed fiduciary duties to unit owners.

Breach of fiduciary duty claims against sponsor-appointed members can be challenging unless the allegations specify individual wrongdoing. The business judgment rule further protects board members when actions taken in good faith fall within their authority (see Bd. of Managers of Latitude Riverdale Condominium v 3585 Owner, LLC, 199 AD3d 441 [1st Dept 2021]).

5. Negligence

In cases where sponsors have breached duties that go beyond contractual obligations, unit owners can bring negligence claims. However, negligence claims are often dismissed if they overlap with breach of contract claims. For instance, courts have rejected negligence claims in cases lacking allegations of duties independent of contractual agreements (see Bd. of Managers of Beacon Tower Condominium v 85 Adams St., LLC, 136 AD3d 680 [2d Dept 2016]; Pine St. Homeowners Ass'n v 20 Pine St. LLC, 109 AD3d 733 [1st Dept 2013]).

6. Statutes of Limitations for Defect Claims

New York law enforces strict statutes of limitations on construction defect-related claims, with deadlines varying by claim type. Missing these deadlines could forfeit owners' ability to recover damages.

Breach of warranty claims are subject to a six-year statute of limitations under CPLR 213(2). This period generally begins upon substantial completion of construction or occupancy (see Bayridge Air Rights, Inc. v Blitman Const. Corp., 160 AD2d 589 [1st Dept 1990], affd, 80 NY2d 777 [1992]). Limited warranties typically contain far shorter notice requirements, as in Tribeca Space Managers, Inc. v Tribeca Mews Ltd., 200 AD3d 626 [1st Dept 2021].

The statute of limitations for breach of contract claims is six years from when the cause of action accrues, typically at substantial completion or upon occupancy (see Garron v Bristol House, Inc., 162 AD3d 857 [2d Dept 2018]). CPLR 213(8) governs fraud claims, which must be filed within six years from the date of the wrongdoing or two years from discovery of the fraud (or when it should have been discovered with reasonable diligence). This extended timeframe applies specifically to fraud-based claims.

Negligence claims carry a three-year statute of limitations from the injury date, though this period may be tolled if there is evidence of ongoing negligence (see Bd. of Managers of Yardarm Beach Condominium v Vector Yardarm Corp., 109 AD2d 684 [1st Dept 1985]).

7. Defenses to the Statutes of Limitations

Several legal doctrines may extend or toll statutes of limitations, though they are applied sparingly: Continuing Wrong Doctrine: This doctrine may toll limitations for ongoing wrongful acts, such as continual building maintenance issues (see Garron v Bristol House, Inc., 162 AD3d 857 [2d Dept 2018]). However, it does not apply if the wrong's effects are ongoing rather than the act itself (see Henry v Bank of Am., 147 AD3d 599 [1st Dept 2017]).

Equitable Estoppel: Equitable estoppel applies when a party's misconduct prevented timely action. For instance, in Rite Aid Corp. v Grass, 48 AD3d 363 [1st Dept 2008], plaintiffs claimed equitable estoppel due to the defendant's actions that misled them from timely filing. However, to invoke this doctrine, plaintiffs must show due diligence in discovering the facts and initiating the action.

8. The Importance of Acting Quickly

Given the various statutes of limitations and specific procedural requirements, boards and unit owners must take swift action to identify defects and file claims. The first step is to identify and document all defects. This should be done by engaging a licensed engineer or architect, together with legal counsel, so that a detailed report with photos, video and conclusions and observations from the engineer and/or architect. As the cost of this step can be significant, to the extent there is not yet a non-sponsor board of managers, residents often pool their resources and pursue these claims collectively.

9. Conclusion

Condominium sponsor defect cases are time-sensitive matters, as statutes of limitations impose strict deadlines on various claims and the governing contracts impose even stricter requirements for the limited issues that may be covered under such express warranties. In the competitive and complex landscape of New York real estate, boards and unit owners must act quickly to enforce their rights.

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