



John T. Van Der Tuin

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Areas of Practice

Real Estate Law | Cooperative and Condominium Practice | Litigation/Trial Practice | Mediation| Construction Dispute Resolution | Israeli Practice

John T. Van Der Tuin is a Partner in the Litigation and Cooperative & Condominium Practice groups of Smith, Gambrell & Russell, LLP.

Mr. Van Der Tuin has specialized in real-estate and cooperative/condominium related litigation and dispute resolution for thirty years. He has advised and represented cooperative and condominium boards, corporate and individual real estate owners, commercial tenants and investors in a broad range of matters including partner/deal disputes, commercial and residential lease disputes, shareholder and unit owner litigations, construction disputes, land-use and environmental matters and lien foreclosures.

Mr. Van Der Tuin is a graduate of Carleton College and New York University School of Law. He clerked for Hon. Robert T. Donnelly of the Missouri Supreme Court.

He has practiced in all of the New York State courts with jurisdiction in the New York City metropolitan area, as well as the federal courts for the Eastern and Southern Districts of New York and the Second Circuit Court of Appeals. He has particular expertise in appellate practice in the New York State courts. He has worked with Hebrew interpreters, in Israel and New York, in representing Israeli clients. Mr. Van Der Tuin also frequently assists clients in utilizing alternative dispute resolution processes to obtain optimal results without the expense and delay of conventional litigation.

Prior to joining Smith Gambrell, and after his judicial clerkship and practice in the Legal Aid Society Appeals Bureau, Mr. Van Der Tuin was an associate and partner in the firm of Balber Pickard Maldonado & Van Der Tuin, P.C. He has been a

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member of committees of the Association of the Bar of the City of New York and the New York State Bar Association related to real estate law, environmental law and commercial litigation, and was in early years a member of the editorial board of the Missouri Bar Journal.

In his “down time”, Mr. Van Der Tuin is a bit of a weekend warrior in rowing sculls, on cross-country skis, or with his chain saw, much to the amusement of his wife and children, and provides support to his church, rowing clubs, and community groups.

Experience

Litigation and Appellate Practice

Building on his early appellate training as a clerk for Hon. Robert T. Donnelly of the Missouri Supreme Court and in the Appeals Bureau of the Legal Aid Society, Mr. Van Der Tuin has a successful appellate practice, including successful representation of clients in three landmark cases before the New York Court of Appeals:

- In *Coca-Cola Bottling Co. of New York v. New York City Board of Estimate*, the Court ruled that New York City’s land use review regulations that had allowed a nuisance use to be approved for property adjoining the property of Mr. Van Der Tuin’s client, Coca-Cola Bottling, failed to comply with the New York State Environmental Quality Review Act. The approval was rescinded and the regulations were required to be re-written.
- In *40 West 67th Street v. Pullman*, the Court ruled that courts must defer to the business judgment, properly exercised, of his client, a residential cooperative corporation board of directors that had determined that the tenancy of a cooperative apartment shareholder was undesirable and should be terminated.
- In *Roni, LLC, v. Arfa*, representing Israeli investors in New York real estate, Mr. Van Der Tuin successfully argued that the promoters of limited liability companies organized to make real estate investments owed his clients fiduciary duties of full disclosure and loyalty and that those duties are not pre-empted by New York’s investor disclosure statute.

He has also represented clients on appeal to the United States Second and Ninth Circuit Courts of Appeal.

Other representative matters in the trial and intermediate appellate courts of New York include:

- *Verizon New York, Inc. v. 50 Varick LLC*, in which Mr. Van Der Tuin obtained a judgement in favor of Verizon as a commercial condominium unit owner against another commercial unit owner for damages caused by the other owner’s faulty construction project.

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- *Building Service Local 32B-J Pension Fund, et al. v. 101 Limited Partnership*, in which Mr. Van Der Tuin was co-counsel for one of New York City's largest labor unions and its benefit funds in a litigation concerning the terms of a long-term office building net lease with their commercial landlord. Plaintiffs were successful in partial summary judgment, at trial and on appeal.
- *Siegel v. The Dakota, Inc.*, where Mr. Van Der Tuin represented a residential cooperative corporation in obtaining dismissal of a shareholder's claims of breach of lease, easement infringement and related claims. The dismissal was affirmed on appeal.
- *MacArthur Properties I, LLC v. The Board of Managers of The Lex 54 Condominium*, in which Mr. Van Der Tuin successfully represented the condominium board of managers in obtaining dismissal of a claim by the commercial unit owner in a dispute as to allocation of common charges. The dismissal was affirmed on appeal.
- *Verizon New York, Inc. v. 435 West 50th LLC and Bay Bridge Enterprises, Ltd.*, where Mr. Van Der Tuin obtained partial summary judgment of liability in favor of Verizon, a commercial condominium unit owner in a mixed-use building, as to damages caused during construction by the residential development unit owner and then a favorable settlement.
- *In Re Rachel Lisa Arfa*, in which Mr. Van Der Tuin, working with bankruptcy co-counsel, tried an adversary proceeding in the Bankruptcy Court of the Southern District of New York that successfully blocked discharge of the claims of his Israeli client investors against one of the bankrupt individual promoters of the real estate investment funds in which they had suffered losses.

Cooperative and Condominium Practice

In parallel with his litigation practice, Mr. Van Der Tuin acts as general outside counsel to the boards of numerous residential and commercial cooperative corporations and condominium associations, where he can also call on the wide experience of his colleagues at Smith Gambrell & Russell in leasing, finance, construction, employment and other shareholder and governance matters. The buildings range from purely residential to mixed residential, commercial and retail, and from small self-managed buildings to buildings with hundreds of apartments and a million square feet or more of occupied space.

Admissions

New York