

[Roth v. Bd. of Managers of 299 W. 12th St. Condo.](#)

Supreme Court of New York, Appellate Division, First Department

December 2, 2025, Decided; December 2, 2025, Entered

Index No. 154315/22, Appeal No. 5271, Case No. 2025-00394

Reporter

2025 N.Y. App. Div. LEXIS 6788 *; 2025 NY Slip Op 06670 **; 2025 LX 591495

[**1] Scott Roth et al., Plaintiffs-Appellants, v **Board** of Managers of 299 West 12th St. Condominium, Defendant-Respondent.

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: [Roth v. Board of Mgrs. of 299 W. 12th St. Condominium, 2025 N.Y. Misc. LEXIS 25 \(Jan. 2, 2025\)](#)

Counsel: [*1] Schlam Stone & Dolan LLP, New York (Erik S. Groothuis of counsel), for appellants.

Milber Makris Plousadis & Seiden, LLP, Woodbury (Patrick F. Palladino of counsel), for respondent.

Judges: Before: Renwick, P.J., Scarpulla, Kapnick, Mendez, O'Neill Levy, JJ.

Opinion

Order, Supreme Court, New York County (Mary V. Rosado, J.), entered on or about January 3, 2025, which granted defendant's motion for summary judgment dismissing plaintiffs' claims for breach of fiduciary duty (the first cause of action) and private nuisance (the second cause of action), unanimously modified, on the law, to deny the motion with respect to first cause of action, and otherwise affirmed, without costs.

Supreme Court should have denied the motion insofar as it sought dismissal of the cause of action for breach of fiduciary duty. Initially, defendant, as a condominium **board** of managers, may be sued as an unincorporated association on any cause of action for which the members may be liable individually or jointly ([General](#)

[Associations Law §13](#); see [Rosenthal v Board of Mgrs. of Charleston Condominium, 216 AD3d 442, 443, 189 N.Y.S.3d 163 \[1st Dept 2023\]](#); cf. [Tahari v 860 Fifth Ave. Corp., AD3d](#) , 2025 NY Slip Op 05584, *4 [1st Dept 2025] [cooperative corporation's **board** of directors may not be sued as an entity]).

As to the merits of the action, plaintiff raised [*2] issues of fact as to whether defendant breached its fiduciary duty to plaintiffs by permitting a purported breach of the bylaws and house rules to persist over plaintiffs' complaints about the unreasonable traffic and commotion in the common area hallway in front of their unit (see e.g. [Rosenthal, 216 AD3d at 443](#)). The parties submitted sharply contrasting evidence concerning whether and to what extent defendant investigated plaintiffs' complaints and whether defendant fulfilled its fiduciary obligation to enforce the condominium bylaws.

Although "[p]ersons living in organized communities must suffer some damage, annoyance and inconvenience from each other" ([Nussbaum v Lacopo, 27 NY2d 311, 315, 265 N.E.2d 762, 317 N.Y.S.2d 347 \[1970\]](#)), that principle does not eliminate defendant's duties under the bylaws to investigate alleged violations of the bylaws and house rules and to balance the unit owners' rights fairly without favoring one over the other (see e.g. [Fuisz v 6 E. 72nd St. Corp., 222 AD3d 402, 405, 201 N.Y.S.3d 26 \[1st Dept 2023\]](#)). Regardless of whether plaintiffs' neighbors' use of the unit fell within the bylaws' definition of residential use, plaintiffs have sufficiently raised an issue of fact as to whether defendant properly determined that the neighbor's conduct did not create a nuisance under the condominium bylaws and house rules.

However, Supreme [*3] Court properly held that defendant's enforcement of a neutral rule does not, on its own, establish disparate treatment. Therefore, plaintiffs cannot support their breach of fiduciary duty claim based on their allegations that they were singled out for mistreatment or retaliated against when defendant demanded that plaintiffs remove their Ring

camera, or when defendant investigated a leak purportedly originating in plaintiffs' unit (see [Pomerance v McGrath](#), 124 AD3d 481, 483, 2 N.Y.S.3d 436 [1st Dept 2015]).

Further, Supreme Court properly dismissed the private nuisance claim against defendant because it was not responsible for the creation of the purported nuisance (see [Bernard v 345 E. 73rd Owners Corp.](#), 181 AD2d 543, 544, 581 N.Y.S.2d 46 [1st Dept 1992]).

We have considered the parties' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 2, 2025

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