

**350 BLEECKER STREET CO-OP NEWSLETTER**  
**NUMBER 130**  
**December 27, 2000**

The board met on December 12 and 21, primarily to discuss the 2001 budget, which is attached.

The budget includes these charges:

1. Maintenance of \$4.65 per share per month (no increase)
2. Sublet fee of \$2.50 per share per month (up from \$1.25)
3. Sublet application fee of \$500 (up from \$275)
4. Bike room fee of \$100 per year per space (no increase)
5. Defense Fund Assessment of 39 cents per share per month for defending the garage lawsuit filed by Ken Newman (26% less than the monthly construction assessment which is now over). **This assessment will be reduced or eliminated if the garage negotiations come to a peaceful conclusion.** In the meantime, the co-op may have to defend itself against Ken's lawsuit if negotiations are not fruitful.

**If the garage negotiations are successful, any additional income to the co-op will be immediately applied to the costs listed above, so that the assessment and maintenance can be reduced promptly.**

6. **Construction assessment of 53 cents per share per month is eliminated.** The waterproofing job will be finished in 2001. There are several much smaller projects that many of us would like to see done, such as replacing the mailboxes, the intercom, the carpeting for floors 1 through 5, etc. The board will review the budget next fall in order to see which projects can be funded without further assessments.

**To allow all shareholders a reasonable time to get this Newsletter, the January charges (maintenance, assessment, sublet fees, bike room) will not be due until January 19<sup>th</sup>, instead of January 1, 2001.**

<b><u>INCOME</u></b>	Commercial Rent	\$ 86,004
	Additional Commercial Rent	18,974
	Laundry Income	12,000
	Dividend/Interest Income	11,600
	2% Transfer Fees	25,000
	Sublet Fees	2,500
	Late Fees @ \$50	350
	Bike Room Fees	1,400
	Defense Fund Assessment (39 cents x 17,222)	80,599
	Maintenance Fees (\$4.65)	960,988
	<b>Total Income</b>	<b>\$ 1,199,414</b>
<b><u>EXPENSES</u></b>	Real Estate Tax	300,000
	Payroll Tax	13,193
	NYS Franchise/General/Corporate Tax	1,475
	Mortgage Payments	290,400
	Interest Expense	193
	<b>Total Taxes + Interest</b>	<b>605,261</b>
	Gas for Cooking	316
	Electricity	23,449
	Gas for Hot Water (Summer)	21,994
	Gas for Steam Heat	16,580
	Cable TV	667
	Water + Sewer	26,995
	<b>Total Utilities</b>	<b>90,000</b>
	Directors' & Officers' Liability Insurance	1,836
	Disability Insurance	160
	Workers Compensation Insurance	8,161
	Liability Insurance	22,733
	Insurance Other	230
	Management Fees	35,000
	Legal (excluding certiorari)	12,000
	Legal Defense -- Garage Lease	75,000
	Accounting	7,200
	Phone	988
	Postage & Stationery	1,368
	Printing	3,818
	Licenses, permits, violations	2,315
	Office expenses	1,140
	Bank Charges	496
	Dues & Subscriptions	1,000
	Internet Site	300
	Miscellaneous	2,531
	<b>Total Administrative</b>	<b>176,274</b>
	Payroll	169,775
	Medical	17,396
	<b>Total Labor</b>	<b>187,171</b>
	Boiler, Plumbing, A/C	16,127
	Architect and Engineer	12,000
	Janitorial Supplies	1,206
	Building Supplies	5,963
	Elevator	10,928
	Electrician	2,500
	Windows	3,964
	Equipment Repair	396
	Intercom + Door Repairs	1,200
	Landscaping	3,962
	Exterminator	4,638
	General Contingency	15,000
	Repairs/Maintenance/Other	5,882
	Painting, Carpet	9,000
	<b>Total Maintenance / Repairs</b>	<b>92,766</b>
	<u>Construction / Capital</u>	
	AM+G - 10% holdback	105,000
	AM&G - Front of Building	20,000
	Nawkaw Brick Staining	7,000
	Grills	33,750
	AM+G Contingency	20,000
	Planter Landscaping	20,000
	Painting Zolotone	20,000
	Exercise Equipment	3,000
	<b>Total Construction/Capital</b>	<b>228,750</b>
	<b>Total Expense: (Including Contingency)</b>	<b>1,380,222</b>
	<b>Income Less Expense</b>	<b>\$ (180,808)</b>
	<b>Cash Reserve December 31, 2001</b>	<b>\$ 112,685</b>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BLEECKER CHARLES COMPANY,

00 CIV. 7827 (GL)

Plaintiff,

-against-

350 BLEECKER STREET APARTMENT  
CORPORATION,

ANSWER AND  
COUNTERCLAIM

Defendant,

-against-

BLEECKER PARKING CORP.,

Additional Counterclaim Defendant.

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Defendant, 350 Bleecker Street Apartment Corporation (the “Cooperative”) for its Answer and Counterclaim against plaintiff Bleecker Charles Company (the “Sponsor”) alleges as follows:

1. Admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 21 and 27.
2. Denies the allegation of paragraphs 7, 10, 11, except admit that the conversion was governed by the Plan, and respectfully refer the Court to the original thereof for its full terms.
3. Denies the allegations of paragraph 14, except admits that the Sponsor sold unit number LA on October 16, 1997.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, except admits that the Garage is located in the subcellar of the building and that its entrance faces West 10th Street..
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, except denies that the Garage accommodates well over 100 cars.

6. Denies the allegations of paragraph 17, except admits that a member of the Board of Directors called a meeting of unit owners not affiliated with the Sponsor for the purpose of a vote on the termination of the Garage portion of the Master Lease, that prior to the vote, members of the Board and the Sponsor provided the unit owners with written presentations of their views and that the vote held on June 24, 1999 failed to approve the termination..

7. Denies the allegations of paragraph 18, except admits that the Board of Directors caused a newsletter to be circulated containing notice of the June 27, 2000 meeting of unit owners not affiliated with the Sponsor.

8. Denies the allegations of paragraph 19, except admits that the Sponsor was the largest single shareholder of the Cooperative and that on June 27, 2000 prior to the holding of the vote, the Sponsor sent a letter to the Board objecting to the meeting and the vote on the basis that it had allegedly not received timely notice.

9. Admits the allegations of paragraph 20, except denies that there were 107 units eligible to vote on the termination resolution.

10. Denies the allegations of paragraph 22, except admits that a second notice of termination of the Garage portion of the Master Lease dated July 19, 2000 was sent to the Sponsor and received by him on July 20, 2000.

11. Repeats and realleges its answers to paragraphs 1 through 22 in response to paragraph 23.

12. Denies the allegations of paragraphs 24 and 25, and respectfully refers the Court to the Condominium and Cooperative Protection and Abuse Relief Act, 15 U.S.C. §§ 3601 – 3616 (the “Abuse relief Act) for its full terms and provisions.

13. Denies the allegations of paragraphs 26, 28, 29 and 30.

COUNTERCLAIM

14. The Cooperative brings this Counterclaim against the Sponsor and 350 Bleecker Corp. (the “Garage Operator”), the sublessor of the Garage space in the Cooperative, for a judgment:

- (1) against the Sponsor and the Garage Operator declaring that the parking garage portion (the “Garage Portion”) of the Agreement of Lease dated July 31, 1985 (the “Master Lease”) between the Cooperative and the Sponsor for the public parking garage (the “Garage”) located at the Cooperatives premises, 350 Bleecker Street in the City of New York (the “Premises”), has been properly terminated pursuant to the Federal Conversion Protection and Abuse Relief Act, 15 U.S.C. §§ 3601 *et. seq.* (the “Abuse Relief Act”);
- (2) against the Sponsor pursuant to 15 U.S.C. § 3611(b) apportioning the rent due under the remaining portion of the Master Lease;
- (3) against the Sponsor and the Garage Operator pursuant to 15 U.S.C. § 3611(b) awarding the Cooperative possession of the parking garage;
- (4) against the Sponsor pursuant to 15 U.S.C. § 3611(b) awarding the Cooperative damages, with appropriate interest, arising from the Sponsor’s refusal to surrender possession of the parking garage;
- (5) against the Sponsor awarding the Cooperative its reasonable attorney’s fees, independent engineer and appraisers’ fees and court costs pursuant to 15 U.S.C. § 3611(d); and
- (6) granting such other and further relief as the Court deems just and proper.

15. Upon information and belief, the Garage Operator is a corporation having its principal place of business in the County, City and State of New York.

16. The Cooperative and the Sponsor are as identified in the Complaint.

17. The Cooperative is a “cooperative association” as that term is defined in 15 U.S.C. § 3603(9).

18. The shareholders of the Cooperative are “cooperative unit owners” as that term is defined in 15 U.S.C. § 3603(13).

19. The Sponsor is a “developer” as that term is defined in 15 U.S.C. § 3603(14)(A).

20. This Court has jurisdiction over the Counterclaim pursuant to 15 U.S.C. § 3612.

21. Venue is proper in this district pursuant to 15 U.S.C. § 3612 in that the counterclaim defendants are found, inhabit and transact business in the district, and the sale of the units of the Cooperative took place in this district.

22. The Sponsor converted the Premises to cooperative ownership pursuant to an offering plan, filed with the New York State Department of Law, dated December 31, 1984 (the “Plan”).

23. Transfer of title to the Premises to the Cooperative occurred at a closing held on or about July 31, 1985 (the “Closing”).

24. At the time of the Closing, and continuing to the present time, the Sponsor exercised “special developer control” over the Cooperative as that term is defined in 15 U.S.C. § 3603(22), by reason of its having veto power over amendments to the Cooperative’s By-laws and Proprietary Lease. The Sponsor also exercised special developer control by reason of veto power over certain expenditures of the Cooperative, and related items.

25. At the Closing, the Sponsor caused the Cooperative to enter into the Master Lease between those two parties. The Master Lease covered the two ground floor commercial spaces and the Garage. The term of the Master Lease was 75 years.

26. The Master Lease provided for a base rent of \$86,000 per year payable monthly, and certain additional rent based upon increases in real estate taxes and certain operating expenses.

27. Upon information and belief, the rent provided for in the Master Lease was well below the market rent for comparable space.

28. Since 1985, the Sponsor has subleased the Garage to the Garage Operator, and, upon information and belief, has earned a substantial profit by doing so.

29. Pursuant to New York Multiple Dwelling Law § 60(1)(b), the residents of the Cooperative are given a preference for spaces in the Garage.

30. The Garage, by its nature, and regardless of the fact that it is open to the public, is “property serving the . . . cooperative units owners” within the meaning of 15 U.S.C. § 3607(a)(1).

31. At the time of the closing at the time of the Closing, the Premises contained 138 residential apartment units in addition to the Garage and the commercial space,

32. 137 of the residential apartments were “cooperative units” as that term is defined in 15 U.S.C. § 3603(12).

33. The remaining apartment, as to which no shares or proprietary lease were issued, was reserved for use by the building superintendent and is not a “cooperative unit.”

34. The Cooperative’s By-laws, which were drafted by the Sponsor, provide in relevant part at Article 5, Section 4 (“Regrouping of Space”) that the Cooperative’s Board of Directors, upon request of one or more cooperative unit owners: “may in its discretion at any time, permit such

owner or owners . . . (2) to combined [*sic*] all or any portions of any such apartments into one or any desired number of apartments; . . . .”

35. In or before 1989, with the consent of the Cooperative’s Board of Directors, cooperative units 6V and 6W were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 137 to 136.

36. In or before March 1995, with the consent of the Cooperative’s Board of Directors, cooperative units 4A and 4B were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 136 to 135.

37. In or before January 1996, with the consent of the Cooperative’s Board of Directors, cooperative units 3G and 3H were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 135 to 134.

38. In or before June 1996, with the consent of the Cooperative’s Board of Directors, cooperative units 3D and 3E were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 134 to 133.

39. In or before April, 1997, with the consent of the Cooperative’s Board of Directors, cooperative units 6C, 6D and 6E were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 133 to 131.

40. In or before April, 1998, with the consent of the Cooperative’s Board of Directors, cooperative units 6K and 6L were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 131 to 130.

41. In or before October, 1998, with the consent of the Cooperative's Board of Directors, cooperative unit 3F was combined with the previously combined unit 3D and 3E were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 130 to 129.

42. In or before March, 2000, with the consent of the Cooperative's Board of Directors, cooperative units 5W and 5X were combined into a single unit. This reduced the number of cooperative units in the Cooperative from 129 to 128.

43. 15 U.S.C. § 3607 provides in relevant part:

Any contract or portion thereof which is entered into after October 8, 1980, and which--

(1) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such project;

(2) is between such unit owners or such association and the developer or an affiliate of the developer;

(3) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association; and

(4) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer, may be terminated without penalty by such unit owners or such association.

(b) Time of termination

Any termination under this section may occur only during the two-year period beginning on the date on which—

- (1) special developer control over the association is terminated; or
- (2) the developer owns 25 per centum or less of the units in the conversion project, whichever occurs first.

(c) Vote of owners of units

A termination under this section shall be by a vote of owners of not less than two-thirds of the units other than the units owned by the developer or an affiliate of the developer.

(d) Effective date of termination

Following the unit owners' vote, the termination shall be effective ninety days after hand delivering notice or mailing notice by prepaid United States mail to the parties to the contract.

44. Upon information and belief, on October 16, 1997, the Sponsor sold apartment LA. Upon this sale, the Sponsor held a total of 34 of the then existing 131 cooperative units.

45. Upon information and belief, on December 16, 1997 the Sponsor sold apartment 6K. Upon this sale, the Sponsor held a total of 33 of the then existing 131 cooperative units.

46. Upon information and belief, on November 5, 1998 the Sponsor sold apartment 1E. Upon this sale, the Sponsor held a total of 32 of the then existing 129 cooperative units.

47. Upon information and belief, on May 14, 1999 the Sponsor sold apartment LN. Upon this sale, the Sponsor held a total of 31 of the then existing 128 cooperative units.

48. Upon information and belief, on May 18, 2000, the Sponsor sold apartment 5S. Upon this sale, the Sponsor held a total of 30 of the then existing 128 cooperative units.

49. The count of “developer” owned units, however, was augmented by two units owned by “holders of unsold shares” as that term is defined in the Plan and the Cooperative Proprietary Lease.

50. In particular, the Sponsor sold apartment 2L to Shirley and Anthony Lomanto, and apartment 6A to Kathleen Giannetti (now know as Kathleen Iwanczuk).

51. At the time of those sales, the Sponsor designated the purchasers of apartments 2L and 6A as successors to its status as “holders of unsold shares.”

52. As “holders of unsold shares” the unit owners of apartments 2L and 6A share with the Sponsor the offering of their interest in their cooperative units, and the authority to exercise “special developer control” in the project, including the right to: add, convert, or withdraw real estate from the cooperative project, and maintain sales offices, management offices and rental units; exercise easements through common elements for the purpose of making improvements within the cooperative or condominium; or exercise control of the owners' association.

53. Upon information and belief, Shirley Lomanto was at the time she purchased her unit and is now working for Kenneth B. Newman, or a company owned or controlled by him. Mr. Newman is the general partner of the Sponsor.

54. Upon information and belief, Kathleen Giannetti is, or was at the time she purchased her unit, an employee of the law firm which prepared the Plan. Upon information and belief, this law firm shared office space with Mr. Newman and his company at the time Ms. Gianetti purchased her unit, and for several years thereafter.

55. Upon information and belief, the owners of both apartments 2L and 6A opposed the termination of the Master Lease that is the subject of this action, as evidenced by the fact that neither voted in favor of the termination.

56. By reason of the foregoing, the owners of apartments 2L and 6A are successors of the Sponsor, and, as such, are “developers” as that term is defined in 15 U.S.C. § 3603(14)(B).

57. Accordingly, as of May 18, 2000, when the Sponsor sold unit 5S, the “developers” for the first time owned a total of 32 units, or 25 per centum or less of the units in the Cooperative.

58. As special developer control of the project by the developers never ended, the two year period for termination of the Master Lease opened on May 18, 2000, the first date that the developers owned 25 per centum or less of the units in the conversion project as set forth in 15 U.S.C. § 3607(b).

59. On June 1, 1999, an officer and member of the Board of Directors of the Cooperative sent a Notice to all shareholders of a meeting of unit owners not affiliated with the developers to be held on June 24, 1999 for the purpose of voting on the proposed termination of the Garage Portion of the Master Lease pursuant to the Abuse Relief Act.

60. Prior to the June 24, 1999, meeting, Kenneth B. Newman, acting for the Sponsor, sent a letter to all shareholders of the Cooperative. In this letter Mr. Newman set forth the Sponsor’s opposition to the termination. He also stated, among other things, that in the event of a successful vote to terminate the Garage portion of the Master Lease, the Sponsor would sue individually any shareholder who voted in favor of the termination.

61. Prior to the June 24, 1999 meeting, Mr. Newman, an attorney, who was at the time an officer and member of the Board of Directors of the Cooperative, also advised his fellow Board

members that, when the vote was taken, the unit owners could not accept proxies or votes submitted by less than all owners of any units jointly owned. There was no basis in the law for this advice.

62. The vote was held on June 24, 1999, and failed to approve the termination. Such vote, however, was moot because the two year period to terminate the Garage portion of the Master Lease would not open until May 18, 2000, as described above.

63. On or about July 9, 2000, the Board of Directors of the Cooperative sent a notice to all shareholders, including the sponsor, of a second meeting of unit owners not affiliated with the developers for the purpose of voting on the proposed termination of the Garage portion of the Master Lease pursuant to the Abuse Relief Act.

64. Neither the Abuse Relief Act, nor the New York State Business Corporation Law required that notice be given to the Sponsor, who was not permitted to vote at the meeting. Nevertheless, a copy of the notice was sent to the Sponsor. A copy of the meeting notice was also placed in the Cooperative's newsletter, a copy of which was sent by mail to the Sponsor, and further copies was posted on the Cooperative's internet web site and in the Cooperative's building lobby.

65. At the meeting held on June 27, 2000, the Garage Lease was terminated by a vote of owners of not less than two-thirds of the units other than the units owned by the developer or an affiliate of the developer.

66. On July 10, 2000, the Board of Directors sent to the Sponsor a notice stating that the Cooperative was terminating the Garage Portion of the Master Lease pursuant to Section 3607 of the Abuse Relief Act. This notice, however, contained a typographical error identifying the Cooperative as Bleecker Street Apartment Corp., rather than 350 Bleecker Street Apartment Corp. On

information and belief, no party to the Master Lease was misled or confused as to the actual identity of the parties referred to in the notice.

67. To avoid any argument that the July 10, 2000 notice was invalid, however, the Board of Directors, on July 19, 2000, sent a corrected notice to the Sponsor in which the Cooperative was correctly identified as 350 Bleecker Street Apartment Corp. Like the first notice, the corrected notice stated that the Cooperative was terminating the Garage Portion of the Master Lease pursuant to Section 3607 of the Abuse Relief Act.

68. The corrected notice of termination was sent to the Sponsor by prepaid United States mail (Express Mail service).

69. The corrected notice was received by the Sponsor on July 20, 2000.

70. Accordingly, pursuant to 15 U.S.C. § 3607(d), the termination of the Garage Portion of the Master Lease was effective no later than October 18, 2000, 90 days after the Sponsor received the corrected notice of termination.

71. The Sponsor's sublease with the Garage Operator for the Garage Lease, which is dependent upon the existence of the Garage portion of the Master Lease, has also terminated.

72. The Sponsor has refused to surrender possession of the Garage.

73. The Sponsor has also refused to pay a fair and reasonable market rent for the period subsequent to the termination that it has remained in possession of the Garage.

74. By reason of the foregoing, there exists a genuine controversy between the Sponsor and the Cooperative as to their respective rights and obligations under the Abuse Relief Act, which is ripe for determination by this Court.

CLAIM FOR RELIEF

75. The Plaintiff repeats and realleges the allegations of paragraphs 1 through 66 of this Complaint.

76. By reason of the foregoing, the Cooperative is entitled to a judgment declaring that Garage Portion of the Master Lease was terminated pursuant to the Abuse Relief Act no later than October 18, 2000.

77. By reason of the foregoing, the Cooperative is entitled to a judgment against the Sponsor pursuant to 15 U.S.C. § 3611(b) apportioning the rent due under the remaining portion of the Master Lease.

78. By reason of the foregoing, the Cooperative is entitled to a judgment against the Sponsor pursuant to 15 U.S.C. § 3611(b) awarding the Cooperative damages, in an amount to be determined at trial, arising from the Sponsor's failure to surrender possession of the Garage.

79. By reason of the foregoing, the Cooperative is entitled to a judgment against the Sponsor and the Garage Operator pursuant to 15 U.S.C. § 3611(b) awarding the Cooperative possession of the Garage.

80. By reason of the foregoing, the Cooperative is entitled to a judgment pursuant to 15 U.S.C. § 3611(d) against the Sponsor awarding the Cooperative its reasonable attorney's fees, independent engineer and appraisers' fees and court costs.

WHEREFORE, Plaintiff prays for judgment as requested above and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
December 29, 2000

FRIEDMAN, KRAUSS & ZLOTOW

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