



# Waiting for the Sun

May 29, 2026

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## Bartelby the Scrivener Strikes Again



By **Steven M. Herman**  
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In a recent decision by the Supreme Court of the State of New York (the “**Court**”), Big City Outdoor, LLC (“**Plaintiff**”) was denied summary judgment in a contract dispute arising from a 2017 lease agreement for advertising window space at 35 Wall Street (the “**Agreement**”) with CS Wall Street LLC (“**Defendant**”). Plaintiff argued the Agreement provided for a six-year term with a unilateral option to renew and that performance was only temporarily suspended while scaffolding obstructed the windows. Plaintiff claimed that once the obstruction was removed, Defendants wrongfully denied access to the advertising space and allowed third parties to use the same, despite Plaintiff’s continuing contractual rights. Defendant argued that the Agreement either terminated when the premises was leased to JTRE 23 WS (DEL) LLC (“**Co-Defendant**” and together with Defendant, “**Defendants**”) or expired on December 31, 2023 and further contended that the renewal provision was unenforceable because it lacked essential terms of a valid contract.

Under CPLR 3212, a motion of summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law. The movant must first establish a prima facie case through admissible evidence, after which the burden shifts to the opposing party to demonstrate the existence of triable factual issues. Importantly, the court’s role in a motion for summary judgement is issue finding, as opposed to issue determination, meaning the motion must be denied if any material factual dispute exists.

Here, Plaintiff sought summary judgment declaring the Agreement valid and properly renewed, dismissing Defendants counterclaims and confirming Plaintiff’s right to continue using the advertised space. Defendants opposed and cross-moved for summary judgement, arguing the Agreement terminated upon the lease of the premises to Co-Defendant, or, at the latest, December 31, 2023, spoiling Plaintiff’s argument for summary judgement.

The core dispute in this case centered on a typographical error in the Agreement’s termination clause, which stated that the “Lessee” had the right to terminate the Agreement if the premises were leased or sold. Plaintiff argued this language was intentional and enforceable as written and interpreted the provision literally. Defendants, however, maintained that “Lessee” was a scrivener’s error and should have read “Lessor,” consistent with the parties’ prior 2013 and 2014 agreements. The Court agreed, finding Plaintiff’s interpretation commercially unreasonable, as it would allow a limited signage tenant to control termination rights affecting the entire property.

Relying on principles of contract interpretation and commercial reasonableness, the Court held that Defendants established by clear and convincing evidence that the Agreement did not reflect the parties’ actual intent. The Court reformed the Agreement by substituting “Lessor” for “Lessee” in the disputed provision, consistent with the parties’ prior course of dealing and ordinary commercial expectations. The Court also held that Plaintiff’s purported renewal option was unenforceable because it failed to include essential material terms, including rent, renewal duration and procedures for exercising the option. As a result, Plaintiff’s motion for summary judgment was denied in its entirety, while Defendants’ cross-motion was granted in part, including dismissal of Plaintiff’s claims and a declaration that no valid renewal occurred after December 31, 2023.

*Big City Outdoor, LLC v. JTRE 23 WS LLC* illustrates the Court’s unwillingness to enforce contractual language literally where doing so would produce absurd or commercially unreasonable results inconsistent with the parties’ prior agreements and course of dealing. The decision reinforces key principles involving contract ambiguity, scrivener’s error, commercial reasonableness and the limits of summary judgment in contract disputes.

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### The Long and Winding Road Does Not Need To Be Repaired!



By **Steven M. Herman**  
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On April 15, 2026, the Supreme Court of the State of New York dismissed a public nuisance claim in *Village of Head of Harbor v. The Ward Melville Heritage Organization, LTD., et. al.* and held that a municipality on behalf of its residents' had no right to require that a private owner permit access to a private road and maintain or repair such road.

The property in question is a two-lane private road utilized by the public for pedestrian and vehicular traffic, such road crosses the border between two towns. In August of 2024, this road was damaged by severe rain storms that caused flooding, destroying a portion of the property and rendering it inaccessible. Due to this, residents have been forced to take longer alternate routes to travel in and out of the town to all destinations. The municipality argues that the owner's failure to repair and maintain the road is a public nuisance because such failure negatively interfered with residents' use of the road (e.g. residents were inconvenienced by the longer alternate routes) and that the conditions of the remaining property were unsightly.

To satisfy a public nuisance claim the following indicia need to be met: (1) there is an act or omission obstructing or damaging the public's exercise of rights common to all – there is a substantial interference with a common public right affecting a considerable number of persons or (2) the public's health is injured.

The municipality did not allege that the public's health was injured, so the Court only reviewed the claims under number (1) above. The road in question in this case, is a private road located on private land. For this reason, the Court concluded that there was no common right of the public to use the road, and any such historical access had merely been allowed due to the owner's permission. Due to the private status of this road, the Court confirmed that the owner owed no duty to permit access, and could not be compelled to maintain and repair the affected unsightly property because there was no actual interference with the resident's use of any public property.

CREFC Annual Conference 2026



**CREFC Annual Conference**

“Career Conversations and Speed Networking”

June 8, 2026  
2:00 - 3:15 PM ET

Sulie Arias, *Partner*

CADWALADER

Cadwalader is proud to be a founding sponsor for the **Annual CRE Finance Council** at the New York Marriott Marquis from June 8-10, 2026.

Partner Sulie Arias will be speaking during the session, "Career Conversations and Speed Networking" as a mentor and industry leader.

The CRE Finance Council (CREFC) Annual Conference is a leading gathering for the commercial real estate finance industry. It brings together lenders, investors, issuers, servicers and policymakers to discuss market trends, capital markets and regulatory developments. The conference features high-level panels, networking opportunities and insights from industry leaders shaping the future of CRE finance.

Please join us by [registering](#) by June 5.

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### Real Estate Finance-Sponsored Charitable Events



The Cadwalader Real Estate Finance group is proud to be sponsoring four different charitable events in New York at the end of May through the beginning of June.

The firm was a Patron-Level Sponsor for the **2026 El Museo del Barrio Gala** on **May 28**. The Gala is an annual celebration of artistic visionaries for their support of contemporary art and their passionate commitment to furthering Latin art and culture. El Museo was founded in 1969 by artist and educator Raphael Montañez Ortiz and a coalition of Puerto Rican parents, educators, artists and activists who noted that mainstream museums largely ignored Latino artists. Since its inception, El Museo has been committed to celebrating and promoting Latino culture, thus becoming a cornerstone of El Barrio and a valuable resource for New York City. El Museo's varied permanent collection of over 8,500 objects, spans more than 800 years of Latin American, Caribbean and Latino art, includes Taíno to modern and contemporary drawings, paintings, sculptures and installations, as well as textiles, prints, photography, documentary films and video.

Serving as Neighborhood-Level Sponsors, the Real Estate Finance group will attend the **CitizensNYC Annual Gala** on **June 1** to celebrate community-led change and raise critical funds to support grassroots leaders across all five boroughs of NYC. These leaders organize food distributions, youth mentorship, climate resilience projects, community gardens, neighborhood cleanups and school-based initiatives that help communities thrive. Learn [more](#).

The team will also be sponsoring **10th Anniversary Laugh to Remember** comedy show on **June 3** to benefit the Taub Institute for Research on Alzheimer's Disease and the Aging Brain at Columbia University. The Taub Institute is one of the leading centers in the world for research on Alzheimer's disease, related dementias and normal aging of the brain. It is a leader in the discovery of the genetic substrates of the disease and the major coordinator of international studies in the genetics of dementia. Funds raised at the event will support the efforts of Columbia's medical teams to continue their groundbreaking work in neurological medicine. Remember to [purchase tickets](#) or [make a donation](#).

Lastly, the group will be a Supporter-Level Sponsor of Grace Institute's **Moving Women Forward: 2026 Mini-Conference** on **June 4**. The conference convenes workforce, nonprofit, corporate and government leaders to explore AI and equity in the workplace. From the gender divide to practical workplace impacts, participants will explore how professionals can leverage AI technology to propel women toward economic independence and self-sufficiency. Moving Women Forward will focus on the experiences of women who are unemployed and underemployed. The goal for this session is to spark discussion, lead action and uplift diverse voices through training and placement programs. Don't forget to [register!](#)

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## Real Estate Finance Hiring

Here is who's hiring in real estate finance:

**BNP Paribas** is seeking a Vice President - Legal Counsel to serve on the Asset Finance & Securitization ("AFS") Legal team. The AFS Legal team consists of four senior lawyers and provides legal advice to the AFS business in the Americas region. AFS structures and executes a wide variety of securitized products including CLOs, ABCP, ABS and RMBS which are secured by a broad range of loans (i.e., corporate, auto and mortgages), leases (i.e., aircraft, equipment and fleet) and receivables (i.e., trade and credit card). The role is responsible for advising AFS on internal and regulatory requirements and assist them with credit approvals for new products and transactions. Learn more [here](#).

**Blue Owl** is seeking a Real Assets Capital Markets Associate. The Associate will work on the Capital Markets team, partnering with Investments, Fund Management, Portfolio Management, Operations and Finance on a broad range of financing activity, including property-level single-asset and portfolio financing and fund-level financing facilities, loan on loan financing and repo facilities, managing and growing lending relationships, designing and executing rate hedging strategies, and optimizing associated internal processes across NNN, Digital Infrastructure and Real Estate Credit. Learn more [here](#).

**JP Morgan** is seeking several senior originators with at least seven years of experience, *plus* more junior underwriters to support them, to a team that writes CMBS, balance-sheet and construction loans on commercial properties. The hires would work in New York and possibly elsewhere in the U.S. Candidates are encouraged to email their resumes to Co-Head of Originations Chris Kosonen at [christopher.kosonen@jpmorgan.com](mailto:christopher.kosonen@jpmorgan.com).

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## Recent Transactions

Recent transactional highlights include Cadwalader representing:

- The borrower in the \$1.435 billion refinancing of a 17-property student housing portfolio located in 9 states.
- The lenders in connection with the \$690 million acquisition financing on behalf of a joint venture between a global alternative asset management firm and a private real estate investment firm to purchase the JW Marriott Marco Island Beach Resort.
- The lender in connection with the extension and modification of a loan secured by an office complex located in Sunnyvale, California and the increase of the loan to up to \$297 million.
- The lender in the \$100 million financing of the warehouse and headquarters of a major online grocery and food delivery service located in the Bronx, New York.
- The lender in connection with a loan up to ~\$39.25 million for refinancing (including a future funding component for accretive leasing and capital expenditure) of a cold-storage industrial property in Suffield, Connecticut.