

**Neighborhood Restore HDFC v Binjameel**

2024 NY Slip Op 34460(U)

December 17, 2024

Supreme Court, New York County

Docket Number: Index No. 190921/2014

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

*Justice*

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NEIGHBORHOOD RESTORE HDFC,

INDEX NO. 190921/2014

Plaintiffs,

**09/6/2024**

- v -

HYDER BINJAMEEL, ABDALLAH BINJAMEEL, and  
MARYAM BINJAMEEL,

**FINDINGS of FACT and  
CONCLUSIONS of LAW +  
JUDGMENT POST TRIAL**

Defendants.

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ORDERED and ADJUDGED that, for want of a fair preponderance of the credible evidence weighing in favor of plaintiff Neighborhood Restore Housing Development Fund Company (HDFC), adduced at trial, the second cause of action of the complaint seeking ejectment is dismissed; and it is further

ORDERED, DECLARED and ADJUDGED, upon a fair preponderance of credible evidence that weighs in favor of defendant Maryam Binjameel, on the first cause of action of the complaint, adduced at trial, a declaratory judgment with respect to the subject matter of that cause of action shall be rendered in favor of defendant Maryam Binjameel [the declaratory judgment ~~is~~ *is* dismissed,

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DATE: 12/17/2024

DEBRA A. JAMES, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify \_\_\_\_\_)

**OTHER ORDER – NON-MOTION**

but rather a declaration shall be made in defendant's favor (See D. Siegel, New York Practice § 440 (5<sup>th</sup> ed. Jan. 2017)]; and it is further

ADJUDGED and DECLARED that the rent stabilized Lease dated December 1, 2010 between 390 E 8<sup>th</sup> Street HDFC, as landlord, and defendant Maryam Binjameel, as tenant, is valid, and defendant Maryam Binjameel has the right to occupy Unit 2E, as a rent stabilized tenant under such Lease, and under the Lease Renewal Form dated October 30, 2012, and under any and all subsequent Lease Renewal Forms, which plaintiff is directed to issue, forthwith, to such defendant; and it is further

ORDERED that defendant Maryam Binjameel shall take the affirmative steps of signing the proffered Renewal Lease Form dated October 30, 2012, and any subsequent renewal lease forms for Unit 2E to date, which shall be retroactively, in effect, and that defendant Maryam Binjameel shall pay and plaintiff shall receive, the accrued and outstanding rent for Unit 2E to date, to which plaintiff is entitled by operation of the Rent Stabilization Law, within sixty (60) days of her receipt of invoices addressed to such defendant that set forth in month by month detail the amount due; and it is further

ORDERED and ADJUDGED that, as the fair preponderance of the credible evidence adduced at trial does not weigh in favor of defendants, the counterclaims, interposed in their answer,

asserting retaliatory eviction, discrimination based on religion and national original, inter alia, wherein defendants seek injunctive relief, are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

FINDINGS of FACT

1. By Deed dated November 30, 2011 (Plaintiff's Exhibit i.e. 2), the building known as 388-390 East 8<sup>th</sup> Street, New York, New York, was conveyed to plaintiff, and plaintiff became title owner of such building.

2. The Renewal Lease Form dated October 30, 2012, (Defendants' Exhibit R, K i.e.) states, in pertinent part:

**"THIS IS A NOTICE FOR RENEWAL OF LEASE AND RENEWAL LEASE FORM ISSUED UNDER SECTION 2523.5(a) OF THE RENT STABILIZATION CODE.**

Tenant's Name and Address  
Maryam Jameel Bin  
388-390 East 8<sup>th</sup> Street  
Unit 2E  
New York, New York 10009

Owner's Agent's Name and Address  
Neighborhood Restore, HDFC  
c/o HSC Management Corp  
P.O. Box 600  
Yonkers, NY 10708

The owner hereby notifies you that your lease will expire on: 11 30 12

PART A - OFFER TO TENANT TO RENEW

1. You may renew this lease, for one or two years, at your option, as follows:

2.

<b>Column A</b> Renewal Term	<b>Column B</b> Legal Rent Sept 30 <sup>th</sup> Preceding Commencement Date of this Renewal Lease	<b>Column C</b> Guideline % or Minimum \$ Amount	<b>Column D</b> Applicable Guideline Supplement, if any	<b>Column E</b> Lawful Rent Increase, if any, Effective after Sept 30th	<b>Column F</b> New Legal Rent (If a lower rent is to be charged, see item 5 below)
1 Year	\$ 545.54	(N/A) \$20.00			
2 Year	Same as above	(N/A) \$40.00			

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6. This renewal shall commence on 12 01 12, which shall not be less than 90 days nor more than 150 days nor more than 150 days from the date of mailing or personal delivery of this Renewal Lease Form. This Renewal Lease shall terminate on 11 30 13 (1 year lease) or 11 30 14 (2 year lease).

7. **This renewal lease is based on the same terms and conditions as your expiring lease** (bolding and underlining supplied)."

3. Defendant Maryam Binjameel did not sign the Renewal Lease Form, on advice of counsel, as she contested the "Rent Increase for Major Capital Improvement" Addendum, which required her to agree "to pay the increase in rent as provided in [any MCI] Order until the effective date of [her exercise of her option to cancel] Lease."

CONCLUSIONS OF LAW

Plaintiff, by its prior managing agent H.S.C. Management Corp, sent the Renewal Lease Form dated October 20, 2012, for Unit 2E (Defendants' R i.e.) to defendant Maryam Binjameel, as rent

stabilized tenant of record. Such Form was not addressed to Saleha Mahmood, who plaintiff claims, at that time, was the record rent stabilized tenant of Unit 2E, and of whom plaintiff claims to have been unaware died almost eight years before. (Plaintiff's Exhibit 9 i.e., December 23, 2004 Death Transcript). Such Renewal Lease Form stated that Maryam Binjameel had a rent stabilized lease for Unit 2E that expired on November 30, 2012. The expiration date, monthly rental amount, and lease date, stated in such Lease Renewal Form, jibe completely with the terms set forth in the rent stabilized lease dated December 1, 2010, between 390 East 8<sup>th</sup> Street HDFC and Maryam Binjameel (Defendants' K i.e.). On such basis, the written Renewal Form offer, which plaintiff does not deny was issued, impeaches plaintiff's trial testimony that it had no knowledge of any rent stabilized lease with defendant Maryam Binjameel until such lease was produced for the first time on August 11, 2014, during the NYC Civil Court summary hold-over proceeding against defendant Maryam Binjameel. See Sessa v Shevers Ice Cream Co, 215 AD 390 (1<sup>st</sup> Dept 1926) and Roge v Valentine, 280 NY 268, 277 (1939).

In addition, plaintiff offers no evidence of any refusal on its part to renew defendant Maryam's lease pursuant to Rent Stabilization Code § 2523.5(a) at the time such Renewal Lease Form was sent to defendant Maryam Binjameel. Nor does plaintiff offer any proof that such Renewal Lease Form was sent, at most, other

than as a result of an alleged unilateral mistake. Plaintiff offers no evidence that defendant Maryam Binjameel had "'knowledge of the error [by her], fraud or other equitable consideration,'" Herman for Benefit of Herman v Meryn, 159 Misc2d 851 (NYS Civil Court, NY County 1993).

Distinguishable on its facts from South Pierre Associates v Mankowitz, 17 Misc3d 53 (App Term, First Dept 2007) is the action at bar, as the Lease dated December 10, 2010 and issued to defendant Maryam Binjameel slightly more than two years after the death of her grandmother Saleha Mohammed, the prior tenant of record, was not a renewal lease sent to Saleha Mohammed, or to her granddaughter as an alleged occupant based on rent-stabilized succession rights pursuant to Rent Stabilization Code § 2524.4(c).<sup>1</sup> On such basis, the court credits the authenticity of the Lease dated December 1, 2010, and, as evidence in chief, finds that

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<sup>1</sup>A further distinction from the facts in South Pierre Associates v Mankowitz is that at trial, the instant plaintiff proffered no evidence, indeed there is none in the record, that defendant Maryam Binjameel ever concealed the death of her grandmother from plaintiff or from any predecessor owners. Moreover, although at trial, both sides offered substantial evidence in support of or in opposition to defendant Maryam Binjameel's alleged rent stabilized tenancy succession rights, i.e., whether she ever co-resided with her grandmother in Unit 2E, this court finds that neither alleged in the complaint is any cause of action to deny renewal of the rent stabilized lease, based on family member succession, to defendant Maryam Binjameel, nor alleged in defendants' answer is any counterclaim for rent stabilization tenancy succession rights. Therefore, such issue has not been joined and is not before this court.

such rent stabilized lease has been in effect since December 1, 2010.

“By its terms, [such] lease renewal was improper since it did not afford defendant [Maryam Binjameel] the 120 day window period, see Rent Stabilization Code § 2523.5(a)(c).

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“Since the defendant-tenant was not served with a proper renewal lease, she has established as a matter of law her right to receive a proper renewal lease”.

South Park Associates, LLC v Toledano, 259 AD2d 306 (1st Dept 1999). Therefore, defendant Maryam Binjameel has the right to occupy Unit 2E, as a rent stabilized tenant under such Renewal Lease Form and any subsequent Renewal Lease Forms that should be issued to date.

+With respect to defendants' case, at trial, defendants offered no evidence in support of their counterclaim for discrimination based upon national origin and religion, and therefore, that counterclaim must be dismissed.

As they are mere tenants and not corporate directors and/or shareholders, defendants have inadequately pled their counterclaim for waste of corporate assets against plaintiff. See Rapoport v Schneider, 29 NY2d 396 (1972). In addition, they have offered no evidence in support of their counterclaim that seeks an affirmative injunction directing that the building be transferred to them, and be converted to an affordable housing cooperative under Article XI of the Private Housing Finance Law.



Finally, with respect to defendants' counterclaim for retaliatory eviction pursuant to Real Property Law § 223-b, even assuming arguendo, defendants, at trial, presumptively established that plaintiff is prima facie liable, neither side offered any evidence with respect to measurable civil damages, and therefore such counterclaim must be dismissed. Compare Mayfair York LLC v Zimmerman, 183 Misc2d 282 (NYC Civil Court, NY County 1999).