

Ramos v 4-6 West 105th St. Hous. Dev. Fund Corp.

2013 NY Slip Op 33710(U)

December 30, 2013

Sup Ct, New York County

Docket Number: 105909/11

Judge: Nancy M. Bannon

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY – PART 42**

-----X
RAYMOND RAMOS,

Plaintiff,

-against-

**4-6 WEST 105th STREET HOUSING
DEVELOPMENT FUND CORPORATION,**

Defendant.

-----X
NANCY M. BANNON, J.

DECISION AFTER TRIAL

Index No.: 105909/11

Background

In this action, the plaintiff, Raymond Ramos, seeks a judgment declaring that he is a lawful shareholder of a cooperative apartment at 4-6 West 105th Street in Manhattan and entitled to possession of the apartment. The subject building is owned by the defendant, 4-6 West 105th Street Housing Development Fund Corporation (HDFC), a non-profit housing cooperative created to provide affordable housing for low or middle income individuals who were formerly tenants of the City of New York. The plaintiff argues that the shares allocable to the apartment were validly transferred to him as per a stock certificate dated July 27, 1995, claims a right to possession pursuant to a proprietary lease and maintains that the HDFC waived its right to challenge his status as a shareholder. HDFC counterclaims for a judgment declaring that plaintiff was not a shareholder of HDFC, that the purported stock certificate and proprietary issued to the plaintiff were “fake” and invalid, the product of mis-dealings by his mother when she was president of the HDFC’s board of directors. HDFC has withdrawn a separate counterclaim

against the plaintiff alleging fraud.

In 2009, the HDFC commenced a summary holdover proceeding against Patrick Millet, as shareholder of record, and the plaintiff, as a subtenant of the premises, in Civil Court, New York County under Index No. 61066/09. The instant action was commenced in April of 2011, and the plaintiff sought to consolidate the two. By so-ordered stipulation dated September 14, 2011, the holdover proceeding was marked off the calendar and stayed pending the outcome of this action.

A trial of the instant matter was held on May 1, 2 and 3, 2013. The plaintiff and his mother, Gladys Gutierrez, testified on his behalf. Kiros Berhe, Rafe Kamaal, Tesfa Seyoum, Elias Yacob, all board members and/or shareholders at relevant times, as well as Zola Farquharson, a Con Edison employee, testified on behalf of HDFC. The court credits the testimony of the defendant's witnesses, and credits the testimony of the plaintiff and Gladys Gutierrez only to the extent indicated in the following findings of fact.

Findings of Fact

The plaintiff, Raymond Ramos, claims to have lived in the subject one-bedroom apartment, 4A, since 1991. Prior to moving into 4A, the HDFC had provided the plaintiff with an apartment in the building, Apt. 1F, at no cost in exchange for his services as a temporary superintendent. Starting in 1991, he lived in 4A under a sublease from Patrick Millet, and claims that "James Smallhorn" lived there with him and that Smallhorn was also known as "John McCabe." Smallhorn/McCabe traveled a lot and freely came and went from the apartment through 2006. The plaintiff had several other roommates during this period. Because the roommates were not authorized by Smallhorn/McCabe, the plaintiff would vacate the apartment whenever he was in town to accommodate him. According to the plaintiff, in 1995, Millet,

although not living in the Apt. 4A, informed him that the apartment was too small for him and his wife now that she was pregnant, and offered to sell the apartment to the plaintiff. Plaintiff claims that the sale price was \$18,000 and that he paid Millet half of that since he was to be a co-owner with Smallhorn/McCabe, and that he received a stock certificate and proprietary lease. However, plaintiff never signed a contract of sale with Millet nor did he produce a copy of a canceled check, bank statement or any other document reflecting that he paid any amount to Millet for the shares. Although there were established income requirements for the apartment, plaintiff did not provide the board of the HDFC with any financial information before his alleged purchase of the shares nor did he recall whether he even filed tax returns for the years 1993-1994.

The plaintiff testified that sometime in 1995 after this conversation with Millet, he went to a "meeting downtown somewhere" to close the sale and that only he, his mother Gladys Gutierrez and an attorney for the coop, Anna Stern, were present. He left early from the meeting and entrusted the rest of the transaction to his mother. He did not sign any documents at the meeting and he never saw his mother sign any documents, but his mother delivered a signed stock certificate and proprietary lease to him a week later. Millet was not present at the closing and the plaintiff had no idea about his current whereabouts.

Gutierrez served as President of HDFC's Board of Directors from 1990 to 1996, and still lived in the building. According to the plaintiff and Gladys Gutierrez, in June of 1995, the Board passed a resolution approving the sale of 4A from Patrick Millet to the plaintiff for \$9,000. At that point, the board consisted of her as president, Tesfa Seyoum as vice-president, Liliana Kamenoff as secretary, Nilsa Adorno as assistant secretary, and Elias Yacob as treasurer. The one-page resolution admitted into evidence states that a meeting of the Board of Directors was held on an unspecified date in June 1995, that a quorum was present, and that a motion was

made and carried approving the sale of the shares for Apt. 4A by Patrick Millet to Raymond Ramos for \$9,000. Smallhorn/McCabe, who the plaintiff alleges was the co-purchaser, is never mentioned in the resolution. The resolution shows signatures of Gladys Gutierrez as president, Elias Yacob as treasurer and Nilsa Adorno as secretary. The resolution contains an indecipherable stamp in the section marked "seal." According to Gutierrez, Yacob, Adorno, and Seyoum all voted in favor of the resolution, although the document does not bear Seyoum's signature. Gutierrez maintains that she abstained from the vote. Gutierrez recalled the closing and testified that Millet did not appear because he had already signed the documents, and Kamenoff called to say she could not make it, and never signed the documents. Gutierrez also "did not think it was necessary" to disclose the Anna Stern, as the coop lawyer, that Ramos was her son.

Gutierrez admitted that certain procedures had to be followed when selling any HDFC apartment, including 4A. A seller needed to advise the Board in writing that he or she intended to sell, the Board had to approve the buyer and price, and the buyer's credit history and tax returns needed to be reviewed once the contract was signed. No such notice of intent nor any contract of sale was produced at trial. Although Gutierrez insisted that all proper procedures were followed in the sale of 4A, she also admitted that plaintiff's background was not checked since he had previously been employed by HDFC as a superintendent. She claims that there were 14 sales while she was president and all were done properly.

The copy of the stock certificate offered by the plaintiff and marked as an exhibit at trial, reflects that Smallhorn and the plaintiff were the owners of "two hundred fifty shares for apartment 4A." The copy of the certificate appears to have been signed by Gutierrez and vice-president Tesfa Seyoum. No clear reason was given for the absence of the original certificate.

The proprietary lease admitted into evidence, dated July 27, 1995, names the lessees as James Smallhorn and Raymond Ramos, and states that any lessee must be “either the holder of a membership certificate or shares of [HDFC].” Paragraph 14 of the lease expressly prohibits the use of the apartment for any purpose other than occupancy by the lessee or the lessee’s family and Paragraphs 15 and 38 prohibit subletting of the apartment for any period in excess of three months without the written consent of the lessor. Paragraph 26 provides that the HDFC does not waive any breach of the lease “unless in a writing expressly approved by the [Board].” Notwithstanding these lease terms and Gutierrez’ testimony that all proper procedures were followed by the board, she also testified that subletting was permitted and “primary residency was not an issue.”

While plaintiff initially maintained that he had not used a mailing address other than 4-6 West 105th Street since before 1995, he thereafter admitted that he had received bank statements at the same Brooklyn address, that of a friend named David, from 2002 until 2007. Those statements were admitted into evidence. He denied living at the Brooklyn address, but claimed that he used it as a mailing address because the mailboxes at the subject building had been vandalized.

Plaintiff further testified that the Con Edison bills for Apt. 4A were always in his name except during a short time when they were in a roommate’s name. In response to that testimony, the HDFC presented the testimony of Zola Farquharson, a customer service representative in the legal department of Con Edison. She testified that, from 2002 until the time of the trial, the bills for 4A have been in the names of five separate individuals - plaintiff (December 2008- present), Jorge Hernandez (January 2006 - October 2008), Gladys Gutierrez (September 2005 - January 2006), Michelle Cruz (August 2004 - August 2005), and Patrick Millet (November 2002 - October 2003). These records were admitted into evidence. In response to this proof, plaintiff

testified that he takes medication which “messes with [his] memory.”

Gutierrez denied receiving any rental income herself from Apt. 4A but testified that she has at times sublet her own apartment, 4D, and has in the past acted as an agent for another tenant, Chris Alex, to sublet his apartment, 5F. Gutierrez claimed that Alex moved in to the apartment in 1995 but “traveled a lot” and eventually moved out because he felt unsafe in the neighborhood. The defendant moved into evidence a “residential lease” for Apt. 5F, dated July 27, 2006, which identifies the lessor as “K. Alexiuv/G. Gutierrez”, provides a monthly rent of \$1,000 and requires that payment be made to G. Gutierrez at a Brooklyn address.¹

By 1997, Apt. 4A was in considerable arrears in maintenance, which was \$309 per month, and the Board commenced a non-payment proceeding against Millet, as the shareholder of that unit, and plaintiff, as sublessee. The proceeding was resolved by a stipulation of settlement dated September 23, 1997. The plaintiff signed the stipulation as sublessee and is referred to in the caption and throughout the stipulation as sublessee. In the stipulation, plaintiff agreed that he owed \$5,768 in arrears through 1997 (approximately 1 ½ years of maintenance), agreed to a payment plan, and agreed to provide the Board with a copy of his sublease. Pursuant to that stipulation, the plaintiff was also required to pay use and occupancy to the board of directors, but failed to keep current. At trial, the plaintiff admitted that by 1997 he had fallen behind in maintenance payments and attempted to work it out, and claimed that when he signed the

¹The court file indicates that in 2009, the HDFC commenced a proceeding in housing court to evict “Kris Alex” and a subtenant for illegally subletting apartment 5F without board approval. The HDFC’s theory was that Gladys Gutierrez was renting out the apartment and collecting income for herself. By an order dated July 22, 2010, the court found that “Alex”, who failed to answer or appear, never resided in the apartment and granted the HDFC a final judgment of possession as to him, and also evicted the current subtenant.

stipulation he was unaware that he was signing as a sublessee. By an order of the Civil Court, New York County, dated October 23, 1997, that stipulation was vacated, the matter was restored and the petition was dismissed after trial, without explanation.

Twelve years later, in 2009, the HDFC commenced a second proceeding, a holdover proceeding, in the same court against the plaintiff and any undertenants of Apt. 4A. In the petition, the HDFC alleged that the apartment had been owned by Patrick Millet but had been abandoned by him in 1998 and that Ramos was a sublessee of Millet, and not an owner. The HDFC alleged that it had served Ramos with a ten-day notice to quit the premises, and that he refused to vacate. As stated above, the plaintiff thereafter commenced this action in the Supreme Court and the holdover proceeding was then marked off the calendar and stayed pending the outcome of this action.

Kiros Berhe, a shareholder since 1994 and Treasurer of the Board since 2006, testified that, since he moved into the building, plaintiff had not lived there and that 4A had been sublet to others. Berhe, who spends much time in the building as he is permanently disabled and also has access to building security surveillance video, sees the plaintiff only every few months. He comes to repair the apartment when a tenant moves out. Berhe testified that 4A was currently in arrears in maintenance, the last payment being made in March 2012. Berhe explained that in 2006, in connection with a foreclosure proceeding, all shareholders were issued a new proprietary lease but neither plaintiff nor Millet were issued one. Berhe confirmed that both the prior lease and the new lease required the board's permission for any sublet.

Berhe was present at a shareholders meeting of December 18, 1995. The minutes of the meeting, admitted into evidence, state that 25 shareholders and all members of the board were

present. The minutes state that the president, Gutierrez, was not allowing other board members access to financial documents and mentioned concerns over the “self-ruling style” and “misdealing by the president for the 1995 fiscal year” which issues the president refused to address. Indeed, in a separate Supreme Court action commenced in 1996 by Gladys Gutierrez challenging the election where she was ousted, she was found to be in contempt of court and directed to turn over the financial records for nine apartments (not including 4A) or be committed to the custody of the sheriff. At trial, Gutierrez admitted that she withheld some documents from the board but claimed to have turned over the stockbook to the lawyer for the HDFC.

Rafe Kamaal, a shareholder since 1982, a Board member from 1983-94 and 2006 to the present, and the current Board president, testified that Millet was the original owner of Apt. 4A. He believed that 4A had been abandoned since he had not seen Millet since the early 1990's, never learned of a sale of that apartment, and because all records for the apartment bore Millet's name. Further, in contrast to Gutierrez's testimony that after her presidency she turned over to the Board the stock book used to record sales during, Kamaal stated that the Board did not receive the stock book. Kamaal further explained that once there was a contract for sale, a prospective buyer had to be interviewed by the Board regarding his employment and financial history. In contrast to the plaintiff's testimony, Kamaal knew of no problems with the mailboxes in the building.

Tesfa Seyoum testified that he served as the vice-president of the board in 1995 and that the board never approved a sale of 4A from Patrick Millet to Raymond Ramos. When presented with the purported stock certificate, Seymoun denied signing it. He explained that he moved from his apartment in mid 1995 but returned often to sign documents whenever Gladys Gutierrez asked him. He conceded that he signed many documents during that time and did not recall all of them,

but insisted that there was never a discussion of any sale of Apt. 4A in 1995.

The video deposition testimony of Elias Yacob was admitted into evidence. Yacob lived in the building until 2009 and served as treasurer in 1995. Although he attended all Board meetings that year, he was not informed that 4A was sold. He stated that the signature on the Board resolution, beside which appears the word “tresurer [sic]” was not his. Admitted into evidence was a copy of Elias Yacob’s New York State drivers license. The signature on the license bears no resemblance to the purported signature on the board resolution. Yacob further stated that, during his tenure as treasurer, Gutierrez did not allow him to conduct any of HDFC’s financial transactions and did not allow him or anyone else to see any of the documents relating to the building’s finances. She refused to turn over the documents when requested, including documents concerning 4A, and refused to turn over the corporate seal. Because the building was in poor financial health, the board was, at times, accepting maintenance from any tenant, even if they were not shareholders, just to keep the building afloat.

Yacob knew Raymond Ramos as “Mike” and testified that “Mike” never attended any shareholder meeting. Since Yacob purchased his own apartment, 4F, in 1994 he would see “Mike” going to his mother’s apartment and sometimes into 4A. However, around 1996 Yacob noticed that many different types of people stayed next door at the subject apartment, 4A, including “Russian and Spanish” people. Yacob testified that sometimes Gladys Gutierrez sometimes stayed in 4A and sublet her own apartment. Yacob testified that, while Millet was actually the record owner of 4A, he thought “Mike” acted “like an owner” in that he was “in an out” of the apartment. He further stated that the Board’s records regarding 4A indicate that Millet, who has not actually lived in the building since 1991, is still the owner of the apartment.

Yacob also recalled that Gutierrez proposed Alex as a shareholder for 5F and that he was interviewed by the board but at no time did he live there. A number of men and women he described as Korean lived in that apartment for years in violation of the by-laws, but the HDFC could not afford to evict them. He testified that shareholders must obtain written board approval for any sublet and permission could be granted for six months or a year, and that "everybody knew that." Apart from his interview of "Alex", Yacob was not involved in any other sale during his two years on the board, including the year as treasurer. Gutierrez did not involve Yacob or the other board members in such matters but mostly acted alone.

Because Gutierrez was not cooperating with the board and the HDFC was having financial problems, the possibility of hiring outside management was often discussed at board meetings. In 1996, after Yacob was elected Board president over Gutierrez, Gutierrez commenced an action in the Supreme Court challenging the election. She was directed by the court in that action to turn over to the Board documents relating, *inter alia*, to 4A. However, Gutierrez did not turn over and was found to be in contempt of court.

Conclusions of Law

The plaintiff failed to meet his burden of proof at the trial in that he failed to establish, by a preponderance of the evidence, that he is a lawful shareholder of Apartment 4A at 4-6 West 105th Street in Manhattan and entitled to possession of the apartment. The defendant has established its entitlement to the relief demanded in its counterclaim to the extent it seeks a judgment declaring that plaintiff is not a shareholder of HDFC and that the purported sale, stock transfer and proprietary lease for 4A are invalid.

Initially, the court notes that the plaintiff's own proof shows that this declaratory judgment action is untimely. It is well settled law that an action for a declaratory judgment is generally governed by a six-year limitations period (CPLR 213[1]) but a shorter period may apply. The action must be brought within the limitations period applicable to any other possible cause of action that could have been brought in a different form. See Solnick v Whalen, 9 NY2d 224 (1980); Akhunov v 771620 Equities Corp., 78 AD3d 870 (2nd Dept. 2010).

Here, the plaintiff seeks a declaration concerning a transaction that purportedly occurred in 1995, more than 18 years ago, and the gravamen of his claim is that the defendants breached the parties' purported agreement. A breach of contract action is governed by a six-year statute of limitations. See CPLR 213(2). Thus, the action is untimely under either statute. Furthermore, under the circumstances presented here, the action is barred by the doctrine of laches, since the plaintiff unreasonably delayed bringing this action to the prejudice of the defendant. See generally Weiss v Mayflower Doughnut Corp., 1 NY2d 310 (1956). As previously noted, in the context of a 1997 nonpayment proceeding, the plaintiff was not designated by the HDFC as the shareholder or owner of the subject apartment. Rather, Patrick Millet was so designated, and the plaintiff was named as a sublessee and even signed a stipulation of settlement as a sublessee. The plaintiff was clearly put on notice that year, 1997, that the defendant did not regard him as a shareholder. Yet he took no action for 16 years after that proceeding before seeking a judicial determination of his ownership rights. Indeed, even after the defendant commenced eviction proceedings for a second time in 2009, the plaintiff waited another two years before commencing the instant action, and he offers no cogent explanation for the lapse. See U.O.T.C. Inc. v DeBaron Assocs., LLC, 89 AD3d 538 (1st Dept. 2011); Philippine American Lace Corp. V 236 West 40th

Street Corp., 32 AD3d 782 (1st Dept. 2006); Tenants United at: 20 McGraw Place v Attorney General of the State of New York, 260 AD2d 161 (1st Dept. 1999). From the proof adduced at trial, it can reasonably be concluded that the plaintiff made a considered decision not to assert any ownership rights in a judicial forum prior to 2011 because he knew he had none and because he did not want to jeopardize the income he was receiving from subletting the apartment.

Even if the instant action was not time-barred, the plaintiff failed to establish that a valid sale or transfer of shares to him occurred in 1995. The plaintiff admitted that he did not sign a contract of sale with Millet, the record owner, and thus, according to the Board's own policy, he was not qualified to be interviewed by the Board. Nor has plaintiff produce any documentary evidence to establish that he paid Millet \$9,000 in exchange for the shares, as he claims, and no board interview took place. Indeed, two of the board members for 1995 denied ever hearing about a sale of Apt. 4A, and Gutierrez admitted that she received no written notice from Millet that he intended to sell his unit. She also admitted that, despite the Board's obligation to check a buyer's finances, which obligation was confirmed by Kamaal, plaintiff failed to provide the HDFC with any financial information. Thus, plaintiff failed to follow the proper procedures to obtain the requisite Board approval for the sale and transfer. See Barbour v Knecht, 296 AD2d 218 (1st Dept 2002). The claim of plaintiff and Gutierrez that there was no need to check plaintiff's finances since he had worked as a temporary superintendent for HDFC prior to 1991 is unavailing.

In addition, Seyoum denied that the sale ever took place and denied that he signed the stock certificate. Thus, the only remaining signature on the stock certificate is that of Gutierrez, the plaintiff's mother. Further, the evidence established that Millet had been the shareholder of apartment 4A since 1991 and that the Board never received the purported certificate from

Gutierrez since she failed to turnover the stock book which purportedly recorded all 1995 sales. Further, plaintiff signed a stipulation in open court during the 1997 non-payment proceeding, two years after the alleged transfer, representing that he was the sublessee of 4A, and not the owner.

Similarly, the purported resolution approving the sale of the shares does not appear to be authentic. While it contains signatures of Gutierrez, Yacob and Adorno, Yacob denied that he signed the resolution. Gutierrez claims that she abstained from the vote, as she was required to do. This leaves only two of the five Board members as purported signatories to the resolution, an insufficient number for a quorum as she claims. Since a majority of Board members did not approve the resolution, the transfer of shares to plaintiff was not valid.

Nor is plaintiff entitled to a declaration that he is a proprietary lessee. The lease proffered by the plaintiff names him and Smallhorn/McCabe as lessees but the purported resolution approving the sale never mentions Smallhorn/McCabe. Further, the proprietary lease provides that the lessee shall be "either the holder of a membership certificate or shares of [HDFC]." Since plaintiff has not produced a membership certificate and, as discussed above, is not the owner of shares of HDFC, he cannot hold a proprietary lease under its very terms.

The plaintiff's argument that HDFC waived its right to challenge the proprietary lease by accepting payment from him is disingenuous since any monies paid by him, including the court-ordered use and occupancy payments, were accepted from him as a sublessee. Moreover, for much of the 18 years since the purported sale, no payments were made and the apartment was in arrears, as acknowledged by the plaintiff in the stipulation settling the non-payment proceeding.

The undisputed evidence in this case shows that Millet remained the record owner and proprietary lessee since 1991, and since that time the HDFC had commenced two separate

proceedings naming the plaintiff as a sublessee in an effort to gain possession of the apartment. Indeed, as noted above, plaintiff resolved one of those non-payment proceedings by executing a stipulation of settlement acknowledging his status as sublessee. There was no demonstrated intention to relinquish a known right. See City of New York v State of New York, 40 NY2d 659 (1976); Community Counseling & Mediation Svcs. v Chera, 95 AD3d 639 (1st Dept 2012).

Moreover, even adopting the plaintiff's argument that the proprietary lease was valid, its very terms preclude any waiver argument. Paragraph 26 expressly provides that HDFC does not waive any breach of the lease by plaintiff "unless in a writing expressly approved by the [Board]," and no such writing has been produced. Waiver clauses like the clause at issue have been routinely held to be valid and enforceable. See Katz v 215 West 91st Street Corp., 215 AD2d 256 (1st Dept. 1995) [board's issuance of specifications for roof planters and acceptance of rent from plaintiff did not invalidate lease provision prohibiting planters in light of no-waiver clause]. It is true that parties to a lease may, under certain circumstances, waive the no-waiver clause where the reasonable expectations of both parties under the lease have been modified by subsequent actions of the parties. See TSS-Seedman's, Inc. v Elota Realty Co., 72 NY2d 1024 (1988); Ray & W Cut Inc. v 240 West 37 LLC, 22 Misc3d 1103(A) (Sup Ct NY County 2008). The plaintiff failed to show such circumstances existed here. See City of New York v Staet of New York, *supra*. For these reasons, the court finds that plaintiff is neither a shareholder nor a proprietary lessee of 4A and has no right to possession of the unit.

To the extent that HDFC seeks a further declaration that it is the present owner of the shares of Apt. 4A, that relief is denied without prejudice. The HDFC's position throughout this action has been that Patrick Millet, and not the plaintiff, is the record owner of Apt. 4A, and its

proof supports that position. Whether the subject apartment has been abandoned by Millet is not an issue now before this court, but is more properly to be determined by the Civil Court in the stayed holdover proceeding commenced against Millet. In this regard, the court notes that Millet, who defaulted in the housing court proceeding, is not mentioned in the parties' stipulation dated September 14, 2011, but the stipulation expressly provides in part that, should this court rule in favor of the defendant on the merits and declare that the plaintiff is not a shareholder, the plaintiff consents to a final judgment of possession, warrant of eviction to issue forthwith.

Finally, as the court noted at the outset of this decision, the defendant HDFC is a non-profit housing cooperative created pursuant to the Private Housing Finance Law to provide affordable housing for low or middle income individuals who were formerly tenants of the City of New York. Section 573(4) of the Private Housing Finance Law provides that an HDFC project is to be "operated exclusively for the benefit of persons or families who are entitled to occupancy in such housing project by reason of ownership of shares in such corporation." See 546 West 156th Street HDFC v Smalls, 43 AD3d 7 (1st Dept. 2007). The credible evidence adduced at this trial established that the plaintiff, with the apparent assistance of his mother, not only disregarded that stated purpose but, in fact, sought to, and did, personally profit from the HDFC by improperly and deceitfully acquiring access to apartment 4A and thereafter resided in the unit without paying maintenance on any regular basis and, when he chose to reside elsewhere, unlawfully sublet the apartment. He now seeks to establish legal rights to the apartment with the aid of the court in order to avoid eviction in the pending housing court proceeding. The course of conduct exhibited by the plaintiff will not be countenanced and, most certainly, the court will not participate with the plaintiff to achieve that end.

Conclusion

The plaintiff failed to meet his burden of proof at trial and the defendant has met its burden on its counterclaim in part by establishing that plaintiff is not a shareholder of the defendant HDFC and that the purported sale, stock transfer and proprietary lease for 4A are invalid and void. Therefore, the plaintiff's complaint is dismissed and the defendant is granted judgment in its favor on its counterclaim to the extent indicated.

Accordingly, it is:

ORDERED that the complaint is dismissed; and it is further,

ORDERED that the defendant is awarded judgment on its counterclaim to the extent that it is hereby

ADJUDGED AND DECLARED that the plaintiff is not a shareholder of the defendant HDFC and that the purported stock certificate and proprietary lease issued to the plaintiff are invalid and void; and it is further,

ORDERED that the branch of the defendant's counterclaim seeking a declaration that the defendant is the rightful owner of the shares of 4A is denied without prejudice; and it is further,

ORDERED that the parties shall retrieve the trial exhibits from the court file within 60 days.

This constitutes the Decision and Order of the court.

Dated: December 30, 2013



NANCY M. BANNON, J.C.C.