

**Bradbury v 342 W. 30th St. Corp.**

2007 NY Slip Op 34049(U)

November 29, 2007

Supreme Court, New York County

Docket Number: 0120839/2003

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK I.A.S. PART 17

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JOHN BRADBURY,

Plaintiff,

Index No. 120839/03

-against-

Trial Decision

342 WEST 30<sup>TH</sup> STREET CORP.,

Defendant.

-----X  
**EMILY JANE GOODMAN, J.S.C.:**

The question to be decided by the Court after a bench trial, is whether Plaintiff's apartment is rent stabilized. To answer that question, another question must be asked. Did Defendant landlord pay at least \$60,760 for renovation of Plaintiff tenant's apartment? If so, the apartment has been lawfully eliminated from the protection of New York's Rent Stabilization Law and Rent Stabilization Code. Using a statutory formula of various landlord entitlements plus 1/40 of the cost of improvements to calculate new rent, Defendant ("Landlord") must establish that they actually paid \$60,760, which would put it over the tipping point for destabilizing this particular unit.<sup>1</sup> That is, if paid costs added to the other variables in the formula bring the apartment to a \$2,000 threshold, it becomes destabilized. But if the Rent Stabilization Law does apply, then the \$2,000 rent Defendants charged will have constituted willful overcharge and the apartment must remain rent stabilized. Rent Stabilization Code §2526.1.

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<sup>1</sup>This is the amount in this particular case and has no relevance in other cases.

### Background

Plaintiff John Bradbury (Plaintiff or Bradbury) moved into apartment 5R, 346 [sic] West 30<sup>th</sup> Street, in New York County, January 2002, having signed a lease a few weeks before with a monthly rent of \$2,000. 5R had been occupied for many years by a Dulce Sosa whose last stabilized rent was \$402.43. Bradbury seeks a declaration that the apartment is rent stabilized.

It is undisputed that the apartment underwent renovation. Defendant claims to have spent either \$90,000 or \$105,000, but has decided to rely on the lesser sum to determine the rent. The \$60,760 question, then, is, what renovation costs were actually incurred and paid?

### Evidence at Trial

#### Plaintiff:

Plaintiff Bradbury's testimony was simply that he rented the apartment, that he signed a lease, that he had previously occupied another apartment in the same building for many years, that he is a lawyer, that renovations were made, that he was charged \$2,000 a month.

#### Defendant:

The witnesses for defendants were Anthony Argento, three contractors or workers who had participated in the renovation, and the building superintendent.

Plaintiff (Rebuttal)

Expert witness: Licensed Architect, Christopher Fritz

Defendant's Witnesses:

Rahamansam Mohammed, an employee of Islam Contracting performed tile work on the kitchen floor. He described himself, credibly, as a laborer who "does not do paperwork," and is not familiar with financial matters. When shown an affidavit, purportedly from him, an affidavit that was used to defeat Plaintiff's summary judgment motion, he emphatically and unambiguously stated that he had not signed the document, and that the signature was not his.<sup>2</sup> The Court credits the testimony of Mohammed that he did the work on the floor, and that he did not sign the affidavit. (Court Ex 1)

Moreover, the affidavit, "sworn to on February 24, 2006," states that this was a one day installation of tiles, and that the day was November 14, 2001, a date 5-1/2 years before the affidavit was executed by someone, a date which Mohammed could hardly have known or been able to reconstruct in order to swear to the truth of it. This is especially vexing since Mohammed testified that he did the work over parts of six days.

Forsendo Dominguez, the superintendent, testified that the apartment was renovated, which is not in dispute, and is accepted as true.

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<sup>2</sup>The affidavit was notarized by an attorney who is the husband of the principal of the named Defendant. That attorney's role, if any, in the preparation and execution of the affidavit and the submission of it to the Court in opposition to Plaintiff's motion for summary judgment is unknown at this time.

Jacques Guillet, a demolition contractor since 1965, “didn’t know” if permits were required for the job, giving as the reason, that Defendant Landlord was the general contractor, and he does a lot of work for the same Landlord. As with the other trades, no contracts existed between Defendant and this witness. Guillet’s testimony that he also did electrical work (though there was no evidence that he is an electrician), was contradicted by the actual licensed electrician who claimed to have done all the electric work in the apartment (and Landlord’s other properties).

The Court credits the witness’s testimony to the extent that the demolition work was done by him. But this witness’s testimony that he was paid, \$25,000 is rejected as incredible and as an effort to comply with the desires of Defendant. Checks drawn to the order of this witness for “repairs” which do not relate to the renovation are accorded no weight, especially since repairs are not equivalent to renovation; also, the sum is decidedly different from the expert’s testimony; this witness’s demeanor on the witness stand did not impress the Court as reliable.

Panagiotis Karakalpakidjs, the owner of Bass Electric, also regularly does work for this Landlord and did the electrical work in Apartment 5R. While the court accepts that he was paid, and was paid in cash, the credible amount is not what is now alleged, i.e., \$15,000, but the original payment of \$5,000. If he was ever paid an additional \$10,000 it was not contemporaneous with the work in this apartment, and cannot be considered as

being for this apartment, both on credibility and for other reasons herein described. The Court finds this witness's testimony to be tailored to fit the theory of the Landlord or Anthony Argento to whom he repeatedly looked, furtively, during his time in Court.

Anthony Argento (Landlord or Defendant) who has 20-30 years experience in the construction and related real estate businesses, variously described himself as a principal of two intertwined corporate owners, but also as a non-principal, as an officer, an agent, a contractor, as the son of the owners and contractors, as the brother of the owners, as one who deals with bills and payments and one who does not deal with bills and payments. Of the two incestuous corporations, the named Defendant, is in the real estate business, while the other, Diamond, is in the construction business. Argento is primarily responsible for construction which would include the issues here. The companies, or their principals and agents negotiate and contract with each other - - in effect, themselves - - to renovate and maintain properties that they own.

However, whether counsel failed to prepare this client for trial, or he was evasive by design, Argento does not have a good memory. He frequently answered questions with variations of , "I don't know," "I don't remember," "I don't recall," "I'd have to look it up," "I have a vague recollection," and pleas that lawyers, accountants, architects, bookkeeper, managing agent, and his sister (none of whom was called as a witness), would know the answers, not he. The Court found Argento generally unworthy of belief based on his lack of candor; based on his claim of such business practices as allegedly

handing over large amounts of U.S. currency without obtaining contemporaneous receipts; and, of very great significance based on his being impeached by an affidavit signed by him and used to defeat Plaintiff's summary judgment motion, in which Argento, states and swears that there were no cash payments, directly contradicting his trial testimony, also sworn, concerning payments which are undocumented, i.e., cash. Either way, the Court finds that most of the claims of cash payments and proffered documentation of payments, were fabricated for this lawsuit. Incredibly, while the entire case is about rent stabilization, Argento claimed not to know what "RS" meant when written next to Apartment 5R on a document filed with the City of New York. (It is unnecessary to consider whether that collaterally estops any argument that the apartment is not "RS.") Although Argento claimed that one of the family corporations contracted to pay the other \$45,000, the Court rejects this testimony and does not believe that any such payment was made. Even if it was, it was not until seven months after Plaintiff took occupancy; the payment was by check of \$20,000. The Court rejects and finds incredible, Falsus In, that any additional payments were actually made by Defendant 342 West 30<sup>th</sup> Street Corp. to Diamond, attributable to this apartment.

### Rebuttal

In rebuttal, Bradbury called Christopher Fritz, a licensed architect, as an expert witness. He estimated that the cost of the electric work should be about \$5-6,000, even possibly \$8,000, and the Court concludes that, in fact, the original sum of \$5,000 was paid for work on this unit, and that an additional \$10,000 has been added on paper for the purpose of this lawsuit. The Court accepts the Fritz testimony that the number of electrical accessories the contractor claims he used are not actually on the premises. Also, the type of "pole" he used had, in effect, branches into other apartments which would benefit the Landlord in other apartments, not just the one in question. Whether the same work is attributed to other apartments, need not be addressed. Moreover, as an expert in NYC architecture and buildings, Fritz testified that City approval for the work was required, but not obtained, which further diminishes the credibility of the defense. The Court also accepts the expert's opinion that the demolition job should have cost about \$6,500, not \$23,000 or \$25,000, and the kitchen floor tile job, the subject of a forged affidavit, possibly as much as \$2,500.

Fritz's testimony was reliable and trustworthy in all respects.

### Findings and Law

Defendant's witnesses and proffered documentation illustrate the fragile veracity of this entire enterprise.

The burden of proof is on the Defendant to establish what monies were paid for the

work in Apartment 5R. Two incestuous corporations (one of which is the named Defendant) enter into contracts with each other and with themselves. While this type of self-dealing is not impermissible, it requires a probing degree of scrutiny. In matters of this kind, the Court looks for cancelled checks that are contemporaneous with (or soon after) the completion of the job, and paid invoices, checks, contracts and reliable documentation.

The Court has considered that both Bradbury and Argento are interested witnesses, and treated them accordingly in evaluating their testimony. The Court has also considered that despite defendant's assertions that other people in the organization such as Argento's sister, such as a bookkeeper, such as the managing agent who deals with filings, permits, city agencies, have knowledge superior to his, they were not called as witnesses although those individuals are easily accessible to Defendant and must therefore be treated as missing witnesses, i.e., their testimony would not have supported the Defendant's position in this case. In fact, had she been called as a witness, Ms. Gina Argento who is the principal of the named Defendant, and is Anthony Argento's sister, should have been able to answer the questions that her brother could not answer due to lack of knowledge, lack of evidence, lack of memory, lack of preparation or lack of credibility.

In considering the testimony of the expert witness, architect Christopher Fritz, the Court considered his qualifications and credentials. Though not bound by his

answers, it is noted that he was the only witness who had no interest in the outcome of the case, or anything to gain such as future business or better business connections. I accept his estimates of costs, except that I believe that Bass was paid \$5,000 for this job.

The Court also finds that both the electrician and the demolition contractor who get business from defendants on a frequent basis, have a motive to lie, and did. Each misrepresented material information and the Court applies the doctrine of *Falsus In Uno* and find them generally unbelievable except to the extent indicated herein.

The Court concludes that charges, bills and invoices *inter alia*, were fabricated for this litigation, that at least one forged document was submitted to the Court, and that the witnesses for the defense (except for the superintendent, Fosendo Dominquez's testimony that the apartment was renovated, and Mohammed's candid testimony that the floor was re-done, and that he never signed anything), were unreliable and untruthful in material ways.

The Court need not calculate all the variables in the formula, but focuses on what was established as paid costs. The Court rejects what Argento, who was unbelievable in all material matters, says his companies paid themselves. Bass was paid \$5,000. Defendants paid Diamond \$20,000, not \$45,000 or \$50,000. Tile \$2,500 costs were paid and Demolition was \$6,500. The total paid was no more than \$34,000, not \$60,760, or \$90,000 or \$105,000.

Accordingly, the defendants have presented a case of which the Court takes a very dim view. This is a sham, filled with perjury, forgery, fabrications all designed not only to raise the rent of the apartment in question to an unlawful level, but to mislead the plaintiff, counsel and the Court.

#### Conclusion

The burden of proof is on the Landlord. That burden has not been met. The Court finds, based upon what little credible, admissible trial evidence there is, that the work performed and paid for did not reach the sum of \$90,000 claimed by Defendants and was not more than \$34,000. After applying the statutory formula, this sum does not meet the required total figure of \$60,760 to destabilize the apartment.

The Court further finds that the incorrect rent was imposed wilfully and intentionally.

ACCORDINGLY, the trial Decision of the Court is:

The apartment, 5R at 346 W. 30<sup>th</sup> Street, is determined to be governed by the Rent Stabilization Law and Code, and it is

ORDERED that counsel for both sides submit to the Court within 30 days proposed orders including the corrected rent based on the statutory formula, and this declaration that the apartment is covered by Rent Stabilization, and in accord with the above, and it is further


ORDERED that Defendant shall be liable for Plaintiff's attorney fees, and Plaintiff shall move for reference to a Referee.

Settle Order.

This constitutes the Trial Decision of the Court.

Dated: November 29, 2007

ENTER:

  
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J.S.C.  
**EMILY JANE GOODMAN**