

**Desai v Ninety Five Wall St. LLC**

2025 NY Slip Op 32577(U)

July 1, 2025

Supreme Court, New York County

Docket Number: Index No. 653312/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M**

*Justice*

-----X

SAGAR DESAI,

Plaintiff,

- v -

NINETY FIVE WALL STREET LLC,UDR, INC. (F/K/A  
UNITED DOMINION REALTY TRUST, INC.)

Defendant.

-----X

INDEX NO. 653312/2024

MOTION DATE 12/16/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for DISMISSAL.

This action arises out of an alleged violation of the New York State Real Property Law. Defendants now move to dismiss to the first amended complaint pursuant to CPLR § 3211(a)(1) and (a)(7)<sup>1</sup>. For the reasons set forth below, the motion is granted.

**Background**

Plaintiff is a former tenant of defendants’ property located at 95 Wall Street, New York, New York 10005. Plaintiff brings this action against defendants, Ninety Five Wall Street LLC, the owner of the apartment building and UDR Inc., the building’s parent managing company, alleging that defendants’ practice of requiring renters to pay “leasebreak fees” is in violation of N.Y. Real Prop. Law § 227-e, codifies a landlord’s duty, in a residential lease, to mitigate damages.

The parties entered into three residential lease agreements, with the final lease term running from June 9, 2020, to June 7, 2021. In addition to the leases, the parties entered into a

<sup>1</sup> The Court would like to thank Dina Aldad for her assistance in the matter.

“Lease Buy-Out Agreement” stating that, if tenants wished to terminate their lease early, they must provide 30-days’ notice and pay defendants a buy-out fee equal to two months of rent.

In December of 2020, plaintiffs informed defendants that they will be vacating their apartment prior to the expiration of their lease. On January 4, 2021, plaintiffs paid the two-month lease buy out fee and vacated the unit by February 1, 2021.

### **Standard of Review**

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. “The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Id.*

“In a motion to dismiss pursuant to CPLR § 3211(a)(1), the defendant has the burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383, 383 [1st Dept 2002] internal quotations and citations omitted). Further, dismissal pursuant to CPLR § 3211(a)(1) is warranted where documentary evidence “conclusively establishes a defense to the asserted claims as a matter of law.” *Gottesman Co. v A.E.W, Inc.*, 190 AD3d 522, 24 [1st Dept 2021].

### Discussion

Plaintiffs allege that the lease contains a “reletting fee” if the tenant moves out prior to the end of the lease term and without paying the rent for the remaining term of the lease. Plaintiff contends that this clause in the lease is illegal pursuant to RPL § 227-e, which provides “[a]ny provision in a lease that exempts a landlord’s duty to mitigate damages under this section shall be void as contrary to public policy.” Further, plaintiff argues that the lease buyout agreement is an illegal liquidated damages provision.

Defendants argue, and this Court agrees, the operative language at issue is not the terms of the lease agreement rather the agreement the parties entered into along with the lease, namely the lease buyout agreement. Defendants rely on the lease buyout agreement, in support of its motion pursuant to CPLR § 3211(a)(1).

Plaintiffs assert that it is undisputed that they vacated the apartment early in breach of the lease agreement, this however, as defendant contends and as is demonstrated by the documentary evidence, is not an accurate statement of the facts. By vacating the apartment early, the plaintiffs did not breach the lease agreement, rather they exercised their rights pursuant to the lease buyout agreement.

Plaintiffs assert three causes of action against defendants; i. unjust enrichment; ii. breach of the covenant of good faith and fair dealing or breach of contract; and iii. declaratory judgement. The Court will address each cause of action in turn.

#### *Unjust Enrichment*

Unjust enrichment is a quasi-contract cause of action, that creates an obligation absent an agreement, however when a contract controls the subject matter, a quasi-contract claim cannot be maintained (*see Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572 [2005], quoting *Clark-*

*Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987] [the "existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter"]]).

Here, the Court finds that the complaint fails to state a cause of action for unjust enrichment. The complaint fails to allege that defendants were unjustly enriched by plaintiffs choosing to exercise a right, terminate the lease early, without the consequence of a breach. The conduct here is governed by a contract between the parties, the lease buyout agreement, thus an unjust enrichment cause of action cannot be maintained. Accordingly, the first cause of action for unjust enrichment is dismissed in its entirety.

*Breach of the Covenant of Good Faith and Fair Dealing or Breach of Contract*

To state a claim for breach of contract, a party must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages. *VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013].

For a complaint to state a cause of action alleging breach of an implied covenant of good faith and fair dealing, the plaintiff must allege facts which tend to show that the defendants sought to prevent performance of the contract or to withhold its benefits from the plaintiff. *See Aventine Inv. Mgmt., Inc. v Canadian Imperial Bank of Commerce*, 265 AD2d 513, 514 [2d Dept 1999] *citing Dvoskin v Prinz*, 205 AD2d 661, 662. [2d Dept 1994].

Here, the complaint simply alleges that defendants breached the implied covenant of good faith and fair dealing by charging a "leasebreak fee". This claim, the Court finds, is also defeated by the documentary evidence. Plaintiffs repeatedly referring the lease buyout agreement as a leasebreak fee, does not render the agreement between the parties void. The lease buyout

agreement was a contract entered into willingly by all parties, and plaintiffs elected to exercise the right to avoid breaching the lease and the potential rent liability for the remaining lease term. A plain reading of the RPL§ 227-e, does not prohibit the parties from entering into these types of agreements, wherein both parties benefited from the bargain.

*Declaratory Judgment*

Plaintiffs third cause of action seeks a declaration that the lease buyout agreement is void and unenforceable as a matter of law. This claim is duplicative of plaintiffs first and second causes of action, when there is an adequate remedy at law (*Aerogen LLC v Tapjets Holdings Inc.*, \_\_\_AD3d\_\_\_, 2025 NY Slip Op 02990, \*2 [2025]). Moreover, the documentary evidence establishes a complete defense to the allegations herein.

The Court has reviewed plaintiffs’ remaining contentions and finds them unavailing<sup>2</sup>. Accordingly, it is hereby

ORDERED that the complaint is dismissed in its entirety.

  
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7/1/2025  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE:

<sup>2</sup> Because the Court is dismissing the complaint based on documentary evidence, it does not reach defendants’ arguments regarding UDR Inc.