

322 W. 47th St. HDFC v Guarino
2026 NY Slip Op 30591(U)
February 13, 2026
Supreme Court, New York County
Docket Number: Index No. 160162/2014
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57M

Justice

-----X

322 WEST 47TH STREET HDFC,

INDEX NO. 160162/2014

Petitioner /Counterclaim Defendant,

- v -

DECISION AFTER TRIAL

LAWRENCE GUARINO

Respondent/Counterclaim-Plaintiff

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BACKGROUND

322 West 47th Street HDFC (“HDFC”) commenced this summary holdover proceeding seeking to evict Lawrence Guarino (“Guarino”) based on its claim that Guarino was a month-to-month tenant whose lease had expired, and the HDFC had good cause to seek his eviction. Guarino asks the Court to find that he is a proprietary lessee and therefore not subject to eviction on HDFC’s petition.

The Court held a bench trial on February 9th and 10th and reserved decision at the conclusion of the trial.

For the reasons set forth below, the Court finds that HDFC has established a right to a judgment of possession and that Guarino failed to establish that he is a proprietary lessee.

RELEVANT PROCEDURAL HISTORY

In February 2008 the HDFC and Board President Martha Hauze (“Hauze”) became the subject of an action (Index No 102278/2008) commenced by two shareholders Betty Benavides (“Benavides”) and Cindy Ho (“Ho”) regarding which of the three were legitimately entitled to be

acting on behalf of the HDFC. A jury found that Hauze had not breached her fiduciary duties, and that Benavides had. The Court declared that Benavides and Ho were not shareholders in good standing and enjoined them from acting as directors and that Hauze was HDFC's only director and its duly elected president.

HDFC commenced this action in 2014 seeking a judgment of possession and the eviction of Guarino along with three other tenants in the subject building. Guarino counterclaimed seeking a declaration that he is not a holdover tenant, but a shareholder and proprietary lessee of apartment 5F. Supreme Court dismissed the complaint in 2016 and severed the counterclaim.

In 2017, HDFC commenced a summary holdover proceeding in Housing Court under L&T Index No 68515/2017. In 2018, Supreme Court ordered the removal of the summary proceeding and joined it with this action.

Two subsequent summary judgment decisions by the Court (Cohen, J) limited the issues for trial.

In the first decision, the Court dismissed most of Guarino's defenses and counterclaims, including the affirmative defenses of waiver and laches. The Court found that the predicate notices asserted good cause of Guarino's eviction.

The Court did not dismiss Guarino's second counterclaim seeking a declaration that he became a shareholder in 2009 by signing a proprietary lease. The Court also left Guarino's first affirmative defense to the holdover proceeding which asserted that the petition misstates Guarino's interest in the subject apartment because he is a shareholder and not a month-to-month tenant; his seventh defense alleging he has a post judgment right to cure pursuant to RPAPL § 753(4); and that part of his eighth affirmative defense that the proposed amount of the increase in the renewal offered to Guarino was unconscionable and therefore void.

The Court granted Guarino's motion to for leave to amend his pleadings to assert a claim of collateral estoppel based on the 2008 action. Justice Cohen's decision was affirmed by the Appellate Division (196 AD3d 411).

In the second decision, which was issued after completion of discovery, the Court held that Guarino's claim of collateral estoppel lacked merit and denied Guarino's motion for summary judgment on said claim. The Court held in pertinent part:

Where the Derivative Action involved a dispute between board members Benavides and Ho opposing Hauze, the present action is an eviction holdover proceeding between two distinctly different parties—plaintiff and Guarino. In the Derivative Action, among other things, Hauze sought a judgment declaring all contracts entered into by Benavides and Ho with any third party as null and void, a position the jury affirmed with regard to future contracts but not past contracts. Although Guarino's proprietary lease was not invalidated by the jury's general refusal to invalidate past contracts, Guarino's proprietary lease agreement was not and has not been necessarily and decisively decided in a prior action.

(NYSCEF Doc No 438).¹

FINDINGS OF FACT

HDFC is a housing development fund corporation formed under Section 402 of the Business Corporation Law and Article XI of the Private Housing Finance Law (Ex 1). HDFC is the owner of 322 West 47th Street, New York New York a/k/a Block 1032 Lot 46 ("Subject Building") pursuant to a deed dated January 20, 1993 (Ex 2). HDFC was organized exclusively for the purpose of developing a housing project for persons of low income (Ex 1). The Subject Building is a multiple dwelling and there is a current and valid multiple dwelling registration on file with HPD (Ex 3).

The offering plan for the HDFC provides that it is an eviction plan (Ex 4). The building is exempt from rent stabilization as previously held by Justice Cohen.

¹ While the Justice Cohen did not search the record and dismiss the claim of collateral estoppel the Court finds that it is law of the case that said claim is without merit.

Guarino became a tenant of Apartment 5F at the Subject Building, pursuant to a written lease dated June 1, 1993, that ran for a period of six months through December 31, 1993, at a monthly rent of \$215.00 (Ex. 5). The lease was executed by Guarino and Billy Cancel, as President of the HDFC. The rider to the lease provided:

Tenant acknowledges that the six month term of this lease will act a probationary period for the 322 West 47th Street HDFC to evaluate his\her future contribution to the low income coop. He/she agrees to work with the coop board-to better its function and purpose of operating the building. The purpose of such an evaluation period is to determine- whether the 322 West 47th Street HDFC will offer to sell the shares and attendant proprietary lease in the Coop cooperatin (sic) to the Tenant.

Two weeks prior the end of this lease, the HDFC, at its sole discretion, shall take one the following actions:

- a) Notify the tenant he/she has passed the probationary period and in writing offer the apartment for sale at a price of \$250. Tenant will have 2 weeks from the date of offer to schedule a closing
- b) Notify the tenant he/she the probationary period has been extended for 3 more months.
- c) Notify the tenant he/she has not passed the probationary period and must quit the apartment within one month from the date of that notice.

In connection with the execution of this lease, Guarino paid a security deposit of \$215.00.

In January 1994, CHDC then the managing agent for the Coop sent Guarino a letter stating he had successfully completed his six-month probationary period, that he could purchase the apartment for \$250.00 and that he should reach out to schedule a closing. The letter further stated that his "security account" would be used towards the purchase of the apartment (Ex I).

This offer however was never consummated. Guarino never went forward with the closing. Guarino testified this was because Billy Cancel demanded extra money under the table. There is no other evidence in the record supporting Guarino's testimony in this regard. Additionally, as noted above, Justice Cohen dismissed any claims in the litigation that Guarino asserted based on the 1993 conduct of the parties, as barred by the statute of limitations.

Between 1996 and 1998, the HDFC brought two summary proceedings seeking to evict to evict Guarino under L&T Index No 108802/96 (NYSCEF Doc 310) and L&T Index Number 115827/97 (NYSCEF Doc 311), neither resulted in his eviction or in any final order presented to this Court.²

As noted above, in 2008 there was Supreme Court litigation to resolve the issues among shareholders and Board members as to who had the right to govern the Board and act on behalf of the HDFC. Lawrence Omansky, Esq. (“Omansky”) represented Benavides and Ho in that action (Ex 11).

In 2013, HDFC offered Guarino a lease renewal (Ex 6). The proposed renewal was for a one-year term commencing May 1, 2013, and running through April 30, 2014 at a monthly rent of \$700.00. Guarino elected not sign the renewal.

Guarino and Omansky both testified at trial that they had known each other for years. They had worked together, Omansky had represented Guarino in various matters as early as 2003. Guarino had done construction projects for Omansky, and sometimes they bartered services. Guarino introduced Omansky to Benavides and Ho for the purpose of commencing the litigation against Hauze.

Guarino’s only remaining claim to being a shareholder is based on an alleged closing that took place in June 2009.

One month before said closing, Guarino received a letter (Ex 8) from Hauze, as President of the HDFC which stated the following:

Please be advised that neither Beny Benavides nor Cindy Ho is legally authorized to act on behalf of 322 W 47th Street HDFC; therefore, any and an contracts entered by Ms. Benavides and/or Ms. Ho purportedly on behalf of the HDFC are invalid. Again, the

² The Court note that Guarino in his post-trial memorandum of law claims that he moved into the apartment after the 2009 “closing” and that he has lived there for 16 consecutive years prior to the trial (NYSCEF Doc # 534, p.3). The Court was not provided any evidence of where else Guarino lived between 1993 and 2009 or for how long.

Corporation does not recognize any actions made in its behalf by the above mentioned shareholders.

As a reminder, all of your rent payments and any other dealings or communications with the Corporation must be directed to me because I am the only Board member with authority to act on its behalf.

Guarino confirmed that he received the letter prior to the closing, and that he read it and chose to ignore it.

The Court did not find Guarino to be a credible or a reliable witness at trial. The Court also finds, based on all the evidence and credible testimony at trial, that Guarino brought Omansky into the picture because Guarino knew he was not a shareholder and that the HDFC did not want to make him a shareholder and he sought to circumvent the valid authority of Hauze in this regard.

To the extent that Guarino and Omansky testified that they believed Benavides had authority to act on behalf of the HDFC in selling Guarino the apartment the Court finds said testimony to be wholly lacking in credibility. Guarino testified that he knew Hauze would not approve the sale of the apartment to him in 2009.

The Court's finding that Omansky and Guarino in fact knew there was no such authority and were attempting to work around said lack of authority is supported by the highly unusual circumstances surrounding the alleged June 2009 "closing" pursuant to which Guarino asserts his rights as a shareholder.

The Court initially notes that there was no contract of sale executed by the parties in advance of the 2009 closing.

Equally unusual was Omansky's role at the closing. Initially, Guarino testified at trial and prior to trial that he was represented by Omansky at the closing. Guarino later changed his

testimony at trial to state he was not represented by Omansky at the closing. Omansky testified that he initially represented Guarino in regards to the closing, but then switched to representing the HDFC at the closing. Omansky testified that unless he had taken on such dual representation the closing could not have occurred because Benavides and Ho were otherwise incapable of moving forward with the closing.

In addition to this lack of authority, Guarino failed to establish he paid the required amount of \$250.00 at the closing. Guarino testified he brought two twenty-dollar bills to the closing. Guarino testified he had to bring cash because he didn't have a check book. Omansky testified that he had instructed Guarino to bring several checks to the closing, but Guarino forgot his check book.

Benavides testified that she received \$40.00 in cash at the closing which was to go towards the \$250.00 purchase price of the apartment. Benavides testified that she deposited this money into an account she maintained for the HDFC within a few days of the closing. The Court found the testimony of Benavides to be unreliable and lacking in credibility. This testimony is belied by Benavides' own books and records which in fact show no money was deposited into the account in June 2009 as proceeds for the closing (Ex 9). The lack of payment of said funds was further confirmed by an independent audit conducted by Alan Zuckerman done in 2019 (Ex. 17). The Court found Zuckerman's testimony to be both credible and reliable.

Guarino testified he did not know how much to bring to the closing. Guarino then testified that he knew it was \$35.00 but brought \$40.00 in case there were extra fees. Guarino testified he was not provided with a receipt at closing for any payment only the proprietary lease. Guarino testified that Omansky kept a copy of the receipt for the alleged cash payment. No

receipt for any such payment was admitted into evidence. Guarino had previously given conflicting testimony about how much he brought to the closing and how much he paid.

Guarino, Benavides and Omansky testified that the balance of the amount due for the apartment was to be paid by a transfer of the security deposit. It is undisputed that no such transfer ever occurred and that Guarino, Omansky and Benavides took no steps for such transfer to occur. It is also undisputed that all three said individuals were aware, prior to the closing, that the security deposit was not within in their control and that it could not have been applied to the balance of the purchase at closing. It was therefore clear to all three parties that the security deposit would not be transferred, because no party involved had the authority to direct said transfer.

Thus, the credible evidence at trial establishes that the HDFC never received any money towards Guarino's alleged purchase of the apartment.

It is also undisputed that no stock certificate was provided to Guarino at the closing.

A proprietary lease was provided to Guarino at closing. Omansky testified that there were two originals of the proprietary lease and that after the closing Guarion was provided with one and Omansky maintained the other. No proprietary lease was admitted at trial. Guarino's original was no longer intact at the time of trial, pages had been taken and replace by unknown persons at unknown times. The original Omansky retained after the closing was also not produced at trial. Omansky testified he retained the original in his own records until this litigation commenced. The HDFC was thus never provided with the alleged proprietary lease anytime in or around the closing.

It does not appear that Omansky ever created or provided either client with a closing statement. There is no evidence in the record as to who, if anyone paid Omansky for the dual representation.

No documentation was provided to HPD after the alleged closing and no payment was made to HPD.

Omansky and Guarino both testified that they knew the HDFC was only for low-income tenants and it is undisputed that Guarino provided no documentation of his income prior to or at the alleged closing.

Benavides' testimony did not add anything to the lack of propriety of the alleged closing. Benavides testified that the closing took place in Omansky's office. Benavides testified there were two attorneys at the closing. Benavides testified that she met Omansky for the first time at the closing, she later offered different testimony that she first met Omansky when they started the Supreme Court action. Benavides testified she had no access to the bank account where tenant's security deposits were being held. Benavides testified she lacked knowledge of any security deposits being released to tenants during the period of 1993 through 2009.

Benavides testified that Guarino paid her \$40.00 cash at the closing and that she deposited it into the account within a few days. As noted above, the Court does not credit this testimony as it is belied by Benavides' own records for said period, and she offered no explanation as to why the records she maintained failed to show any such deposit. The statement prepared by Benavides after the alleged closing (Exhibit 9) in addition to showing no funds were deposited, also lists Guarino as a tenant, not a shareholder. Also missing from Exhibit 9 is any evidence that Guarino paid either rent or maintenance for June 2009.

Benavides testified that she could not issue a stock certificate at the closing because she had no access to the HDFCs stock certificates. Only Hauze had access to them. Benavides also did not have the original corporate seal for the HDFC, Hauze was in possession of the original corporate seal.

Benavides acknowledged that in 2009 the HDFC was no longer offering apartments for sale for \$250.00, but Benavides still wished to allow Guarino to purchase for the \$250.00.

From 2009 until the end of the Supreme Court action neither Benavides nor Ho paid their maintenance to the managing agent. Instead, Benavides maintained such payments into an account Benavides maintained.

Omansky was the last witness to testify for Guarino. Omansky testified he has been an attorney for approximately 50 years and specializes in real estate criminal matters and breach of contract actions. Omansky testified that during his 50 years of practice he has done at least 500 closings and that he is familiar with HDFCs, but Omansky did not know what HDFC stands for. Omansky testified that the HDFC in this action is the only HDFC he has ever represented.

Omansky testified that he initially he represented Guarino in regard to the closing, but he “switched” to representing the HDFC at the closing, and that the HDFC waived the conflict of interest when he switched. Omansky testified he represented only the HDFC at the closing. Omansky testified that the people acting on behalf of the HDFC in regard to the closing did not know what they were doing, and that a few weeks before the closing he switched from representing Guarino to representing the HDFC. Omansky testified that he only represented Guarino for a few days in regard to the closing. Omansky acknowledged that typically at a coop closing the purchaser would receive a stock certificate. Omansky did not recall if Guarino received a stock certificate at the closing. Omansky testified he lost many documents after the

closing, but ordinarily a stock certificate would have been included in his records. Omansky testified he reviewed the by laws prior to closing but he was not aware that a stock certificate was required by the bylaws. Omansky testified that he was aware at the time of the closing that shareholders who were behind in their rent were not in good standing, but that he was not aware that Benavides and Ho had not been paying maintenance to the managing agent for the HDFC but had been keeping the money in Benavides' account. Omansky testified that no affidavit of sale was executed at the closing because he wasn't aware it was required by the bylaws.

Omansky testified he had no written retainer agreement with the HDFC. The Court notes that Benavides records (Ex 9) do not appear to reflect any payment was made to Omansky in connection with his representation of the HDFC at the closing. Omansky however testified he was paid for the closing and he believed it might have been \$250.00 for his fee. Omansky testified that the closing took 15 minutes.

The Court found that Omansky's testimony about what occurred at the closing lacked credibility. For example, the Court does not credit his testimony that he asked and saw identification from Guarino, Benavides and Ho. The Court does not credit his testimony regarding the creation and maintenance of the proprietary leases. The Court does not credit his testimony that Guarino paid transfer taxes in connection with the closing. The Court does not credit his testimony that he believed he had a written waiver of the conflict of interest between the HDFC and Guarino but that he has no record of it. Based on the foregoing, the Court does not give great weight to any of Omansky's testimony.

The last witness to testify at the trial was Alan Zuckerman ("Zuckerman"), a CPA, who was called in rebuttal by HDFC. The Court found Zuckerman to be a credible witness. Zuckerman has been a CPA since 1992 and for the last 13 years his practice has focused on

Common Interest Realty Associations such as HDFCs, coops and condos. Zuckerman was retained by HDFC to prepare financial reports for the calendar year 2009. Zuckerman was retained to do an Audit Engagement which encompassed preparing a financial report for the HDFC. Zuckerman concluded there was no evidence of any shares of stock being transferred or a proprietary lease being issued in 2009. There was no evidence that any money had been provided to the HDFC in connection with the alleged transfer.

DISCUSSION

The Court finds that based on the above evidence Petitioner has established the right to a judgment of possession. Petitioner established a *prima facie* entitlement to same based on its holdover petition. In addition to the findings of fact above, the Court takes judicial notice of the thirty-day notice of termination dated May 18, 2017, and the annexed affidavit of service. The notice provided that Guarino's tenancy was being terminated because he is not a shareholder, he failed to execute the renewal lease, and the HDFC intends to sell the unit to provide of expense of the building. The basis asserted for the underlying eviction establishes good cause, as previously found by Justice Cohen in his dismissal of part of the eighth affirmative defense.

Guarino's tenancy was terminated effective June 30, 2017.

The Court further notes a notice of petition and petition were thereafter filed with proof of service.

Guarino provided absolutely no evidence to support the remaining portion of his eighth affirmative defense that the increase in the renewal lease was unconscionable. Nor is the defense addressed in his post-trial memo. As such the Court deems this remaining portion of Guarino's eighth affirmative defense abandoned and same is dismissed.

The Court finds that no valid closing took place in June 2009, and there is therefor no transfer to void. The Court finds that the alleged closing lacked all indicia of an arm's length good faith transaction. The Court finds no consideration was ever paid by Guarino for the alleged closing. The Court notes no proprietary lease was accepted into evidence and there is no evidence that a proprietary lease by two authorized board members was ever executed. The Court finds that based on the terms of the By Laws neither Ho nor Benavides was authorized to execute the proprietary lease or okay a closing as neither had been paying their maintenance to the managing agent of the Subject Building. Moreover, it was no surprise to Guarino or Omansky that Benavides and Ho were not authorized to conduct such a closing, knowing this they instead conspired to make Guarino a proprietary lessee because they knew the HDFC would not do so.

The arguments made by Guarino in his post-trial memo do not warrant a different result.

Guarino argues he is not responsible for "the HDFC's internal governance failures. He retained counsel, paid fair value, and had no knowledge of any defect." However, it does not appear that Guardino retained counsel or was represented by counsel at the closing. There is no evidence that he paid anything for the coop and even if he had proof of a \$250.00 payment, his own witness Benavides testified this was not fair value for the apartment in 2009. The HDFC was not involved in the alleged closing, only Guarino's allies Ho and Benavides were there. Guarino was advised in writing in advance of the closing that they lacked authority to proceed, and he was advised by Omansky that Benavides and Ho had no idea what they were doing, which was why Omansky had to switch from representing Guarino to Ho and Benavides.

Guarino next argues the HDFC ratified the transaction by accepting benefits for years. and accepted maintenance payments without objection. Ratification is not asserted as a defense

or a claim in any of Guarino's pleadings. Assuming arguendo it was, the record is devoid of proof of any payments made to HDFC other than use and occupancy which was paid and accepted without prejudice during the course of this litigation.

Guarino makes arguments based on laches and equitable estoppel which were dismissed in advance of the trial.

The Court has considered Guarino's remaining arguments and finds them to be without merit.

RPAPL § 753(4) & Attorneys Fees

Neither side in their post-trial submission addressed the affirmative defense which seeks a post-judgment opportunity to cure. RPAPL §753(4) applicable to summary holdover proceedings provides:

In the event that such proceeding is based upon a claim that the tenant or lessee has breached a provision of the lease, the court shall grant a thirty day stay of issuance of the warrant, during which time the respondent may correct such breach.

N.Y. Real Prop. Acts. Law § 753 (McKinney).

The underlying holdover proceeding in this action is not based on a breach of lease but on a failure to renew and because the HDFC seeks to sale the subject apartment. However, a failure to renew has been held to be subject to a post-judgment to cure. *West 136 Street HDFC v. Olivares* 2014 NY Slip Op 31474(U) (N.Y.City Civ.Ct.).

Based on the foregoing, issuance of the warrant must be stayed thirty for Guarino to cure by executing the lease renewal and paying the difference between what he has paid to date from the 2013 renewal offer forward and what he should have paid to date if he had executed the lease, Unfortunately, neither party submitted sufficient evidence at trial for the Court to determine this amount.

It is agreed that from November 2018 to date Guarino has paid \$315 per month in use and occupancy. Therefore, the difference due for November 2018 through February 2026 would be \$38,115.00. However, this does not take into account the period between the lease renewal offer and when the use and occupancy started in November 2018. The record is devoid as to what if anything was paid by Guarino during this period. Therefore, before determining what amount must be paid to effectuate a cure the Court must conduct a further hearing.

Additionally, Petitioner is entitled to attorneys' fees pursuant to paragraph 23(d)(3) of Guarino's lease agreement and as the prevailing party in this action. However, a hearing is necessary to determine the reasonable amount of said fees.

Therefore, the parties are directed to appear before this Court on March 11th, 2026, at 9:30 for a hearing to determine the above referenced amounts.

WHEREFORE it is hereby:

ORDERED that HDFC is entitled to a final judgment of possession; and it is further

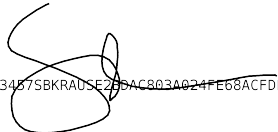
ORDERED that Guarino's counterclaim and affirmative defense seeking a declaration that he is the proprietary lessee of the subject apartment is dismissed; and it is further

ORDERED that HDFC is the prevailing party in this action and entitled to reasonable attorneys' fees; and it is further

ORDERED that Guarino is entitled to a cure pursuant to RPAPL 753 (4) and that the amount to be paid to effectuate said cure be determined at a hearing; and it is further

ORDERED that the parties appear before this Court on March 11, 2026, at 9:30 am for a hearing on the amount to be paid to cure as well as the reasonable amount of attorneys' fees.

This constitutes the decision and order of the Court.


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DATE: 2/13/2026

SABRINA KRAUS, JSC

Check One: Case Disposed Non-Final Disposition

Check if Appropriate: Other (Specify _____)