

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

---

AKIYO FURUYA,

Plaintiff,

-against-

MICHAEL J. PARRY and FRANK BARNETT, ESQ.,

Defendants.

---

Index Number: 158800/2018

AFFIRMATION IN SUPPORT OF  
CROSS-MOTION AND IN  
OPPOSITION TO MOTION TO  
DISMISS

Matthew Presseau, an attorney duly admitted to practice law in the State of New York, affirms under penalties of perjury:

1. I am a member of the law firm Miki Dixon & Presseau, PLLC, attorneys for the plaintiff, Akiyo Furuya. I am familiar with the facts of this case and submit this affirmation in support of Plaintiff's Memorandum of Law in Support of Cross Motion and in Opposition to Defendant's Motion to Dismiss.
2. Plaintiff Furuya was the owner of Revere Condominium - Unit 22F, 400 East 54<sup>th</sup> Street, New York, NY (hereinafter the "Premises") and agreed to sell the Premises to defendant Michael Parry in December 2016. Plaintiff Furuya and Defendant Parry entered the Contract of Sale – Condominium Unit (hereinafter the "Contract") and Rider to Contract of Sale (hereinafter the "Rider") on or about December 22, 2016, pursuant to which Plaintiff Furuya agreed to sell her condominium unit known as the Revere Condominium - Unit 22F, 400 East 54<sup>th</sup> Street, New York, NY (hereinafter the "Premises") to Defendant Parry for an agreed sale price of \$1,304,000.00.

Annexed hereto as Exhibit "1" is a true copy of the Contract and Rider. At the same time, Plaintiff Furuya and Defendant Parry entered the Holdover Agreement pursuant to which Defendant Parry granted Plaintiff Furuya the right to remain in possession of the Premises from the date of Closing through December 31, 2018 (hereinafter the "Holdover Agreement"; the period from Closing through December 31, 2018, hereinafter the "Term"). Annexed hereto as Exhibit "2" is a true copy of the Holdover Agreement. My law firm represented Plaintiff Furuya on the transaction, and Defendant Parry was represented by defendant Frank Barnett, Esq. On signing the Contract and Rider, Defendant Parry paid the Downpayment (as defined in paragraph 3(a)(i) of the Contract) in the amount of \$130,400.00 to my firm as escrow agent. The Downpayment was held in escrow pending closing of title.

3. Closing of title under the Contract and Rider was held on March 16, 2017 (hereinafter "Closing"). At Closing, Defendant Parry paid Plaintiff Furuya \$1,184,019.77, the balance of the sale price due at Closing reflecting adjustments for real estate taxes, Common Charges, and credit under the Holdover Agreement, and Plaintiff Furuya transferred title to the Premises to Defendant Parry by duly executed Bargain and Sale Deed with Covenants against Grantor's Acts dated March 16, 2018 (hereinafter the "Deed"). Annexed hereto as Exhibit "3" is a true copy of the Deed. At Closing, I paid \$10,000.00 to Defendant Barnett pursuant to paragraph "4" of the Holdover Agreement. Plaintiff Furuya remained in possession of the Premises after Closing.

4. On or about March 26, 2018, I sent a letter to Defendant Parry on behalf of Plaintiff Furuya giving notice that she intended to vacate the Premises as of April 30, 2018. Annexed hereto as

Exhibit "4" is a true copy of my letter dated March 26, 2018. The written notice was sent by Federal Express and delivered to Defendant Parry on or about March 29, 2018. Plaintiff Furuya thereafter vacated the Premises and surrendered possession on or before April 30, 2018. Annexed hereto as Exhibit "5" is a true copy of the Amended Verified Complaint; *see* paragraph 13. Since Plaintiff Furuya vacated the Premises at least eight (8) full months before the end of the Term, she is entitled to receive a credit of \$32,000.00 from Defendant Parry (hereinafter the "Credit") and receive the Deposit held in escrow by Defendant Barnett.

5. I demanded payment of the Credit and release of the Deposit by letter addressed to Mr. Barnett on or about June 21, 2018. Annexed hereto as Exhibit "6" is a true copy of my letter sent on June 21, 2018. Defendant Parry replied directly to me by email on June 27, 2018, stating, "we are getting estimates to mare [*sic.*] necessary repairs, we will get back to you soon, thanks". Annexed hereto as Exhibit "7" is a true copy Defendant Parry's email dated June 27, 2018. Defendant Parry wrote to me by email on July 2, 2018, stating cryptically, "als [*sic.*] the apartment was not painted and there are appliances not functioning". The email appeared to forward an email to Defendant Parry from Christina Filotti, Defendant Parry's wife, with several images attached described as "loose & stained tiles (some taped to stay in place)." Annexed hereto as Exhibit "8" is a true copy of Defendant Parry's email dated July 2, 2018. On July 9, 2018, I sent a letter to Defendant Parry referring to the Contract, Rider and Holdover Agreement and reiterated demand for payment of the Credit and release of the Deposit. Annexed hereto as Exhibit "9" is a true copy of my letter dated July 9, 2018.

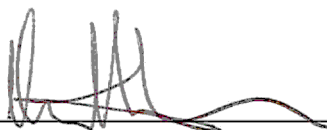
6. On or about September 21, 2018, we commenced the present action by filing the Summons and Verified Complaint. Annexed hereto as Exhibit "10" is a true copy of the Summons and Verified Complaint. The Summons and Verified Complaint and Notice of Electronic Filing was served on Defendant Barnett by delivering a true copy of said papers on a person of suitable age and discretion at Defendant Barnett's actual place of business on October 1, 2018, and then mailing a true copy of the same to him on or about October 2, 2018. Defendant Barnett filed a Verified Answer on or about October 9, 2018. Annexed hereto as Exhibit "11" is a true copy of Defendant Barnett's Answer to Verified Complaint. On or about October 18, 2018, on consent of Defendant Barnett, and before Defendant Parry had answered or appeared in the action, we filed the Amended Verified Complaint, along with a stipulation consenting to the Amended Verified Complaint, and the Affidavit of Service proving service on Defendant Barnett. Defendant Barnett filed his Answer to Amended Verified Complaint on or about October 24, 2018. Annexed hereto as Exhibit "12" is a true copy of the Affidavit of Service for service on Defendant Barnett. Annexed hereto as Exhibit "13" is a true copy of the Stipulation filed on October 18, 2018.

7. The Summons and Verified Complaint and Notice of Electronic Filing was served on Defendant Parry by affixing a true copy of the papers to the door of Defendant Parry's dwelling or usual place of abode at 3 Breezy Knoll, Westport, CT, on October 10, 2018, after the process server made four (4) attempts to serve the said papers personally or on a person of suitable age and discretion thereat, and then mailing a true copy of the same on or about October 10, 2018. The Affidavit of Service and Affidavit of Mailing showing that service on Defendant Parry was

completed was filed on November 30, 2018. Annexed hereto as Exhibit "14" is a true copy of the Affidavit of Service and Affidavit of Mailing for service on Defendant Parry.

8. I had intended to file the Affidavit of Service and Affidavit of Mailing proving service on Defendant Parry on October 18, 2018, along with the Amended Verified Complaint, Stipulation, and Affidavit of Service for service on Defendant Barnett. I cannot explain why the proof of service on Defendant Parry was not filed along with the other documents on October 18, 2018, except to surmise that I neglected to attach the document when e-filing. I filed the proof of service on Defendant Parry after I was alerted to the omission by Defendant Parry's instant Motion to Dismiss. I promptly filed the proof of service on November 30, 2018.

Dated: New York, New York  
December 14, 2018



Matthew Presseau



INDEX NUMBER 158800/2018  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

AKIYO FURUYA, Plaintiff,  
-against-  
MICHAEL J. PARRY and FRANK BARNETT, ESQ., Defendants.

AFFIRMATION IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO MOTION TO DISMISS

MIKI DIXON & PRESSEAU, PLLC  
Attorneys for AKIYO FURUYA  
122 East 42<sup>nd</sup> Street, Suite 2515  
New York, New York 10168  
Phone: (212) 661-1010  
Fax: (212) 661-6116

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of the State of New York, certifies that to the best of their knowledge, information and belief, formed after inquiry reasonable under the circumstances, (1) the contentions contained in the annexed document are not frivolous as defined in 22 NYCRR 130-1.1(c), and (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter of sharing in any fee earned therefrom, and (ii) the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: \_\_\_\_\_ Signature \_\_\_\_\_  
Print Signer's Name \_\_\_\_\_

Service of the within \_\_\_\_\_ is hereby  
admitted.

Dated: \_\_\_\_\_  
Attorney(s) for \_\_\_\_\_

PLEASE TAKE NOTICE

\_\_\_\_\_ that the within is a (certified) true copy of a  
Notice of Entry entered in the office of the clerk of the within-named Court on

\_\_\_\_\_ that an Order of which the within is a true copy will be presented for settlement to the  
Notice of Settlement at Hon. \_\_\_\_\_ one of the judges of the within named Court,  
on

Dated \_\_\_\_\_ Signature \_\_\_\_\_  
Print Signer's Name \_\_\_\_\_