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As of: Dec 05, 2012

**Basharat Jamil, Respondent, v. Southridge Cooperative, Section No. 4, Inc.,
Appellant**

[NO NUMBER IN ORIGINAL]

Supreme Court of New York, Appellate Term, Second Department

102 Misc. 2d 404; 425 N.Y.S.2d 905; 1979 N.Y. Misc. LEXIS 2883

September 10, 1979

PRIOR HISTORY: [***1] Appeal from a judgment of the Civil Court of the City of New York, Queens County (Herbert A. Posner, J.), entered January 17, 1978 in favor of plaintiff for the return of a "waiver of option" fee. *Jamil v Southridge Coop., Section No. 4, 93 Misc 2d 383.*

DISPOSITION: Reversed.

CORE TERMS: co-operative, board of directors, by-laws, option to purchase, valid exercise, affording, dispose, tenant, stock

HEADNOTES

Landlord and Tenant -- Transfer of Shares in Co-operative Corporation -- "Waiver of Option" Fee

Since plaintiff tenant never informed defendant co-operative apartment corporation, in writing, of his intention to leave the co-operative as required by the co-operative's by-laws, he could not assign his lease and dispose of his stock in the co-operative without affording defendant the first option to purchase his shares and he is, therefore, not entitled to the return of a \$ 2,000 "waiver

of option" fee paid to defendant in return for defendant's waiver of its right to purchase plaintiff's shares; moreover, the "waiver of option" fee is a valid exercise of the power of defendant's board of directors (*Cooperative Corporations Law, § 5; Business Corporation Law, § 701*) and the complaint must, therefore, be dismissed.

COUNSEL: *Dreyer & Traub* (Seymour D. Reich and Thomas C. Lambert of counsel), for [***2] appellant.

Basharat Jamil, respondent pro se.

Yavner Gallet & Dreyer (Jeffrey H. Gallet, Stanley B. Dreyer and Ronald J. Gold of counsel), for Federation of 213's, Inc., *amicus curiae.*

JUDGES: Pino, P. J., and Hirsch, J., concur in a memorandum; Jones, J., dissents and votes to affirm the judgment in the following memorandum: I would affirm the judgment appealed from upon the opinion of Posner, J. in the court below.

OPINION

[*405] OPINION OF THE COURT

Memorandum.

[905]** Judgment of the court below (*93 Misc 2d 383*) reversed with \$ 30 costs and complaint dismissed.

Plaintiff instituted this action to recover the sum of \$ 2,000 paid by him to defendant. A full and complete statement of the facts is to be found in the opinion of the court below.

A careful review of the evidence reveals that plaintiff never informed defendant, in writing, of his intention to leave the co-operative as the by-laws require. Since

plaintiff did not comply with said notice provision, he could not dispose of his stock without affording defendant the first option to purchase same. Moreover, it is the opinion of this court that the "waiver of option" fee, was a valid exercise **[***3]** of the power of defendant's board of directors (see *Cooperative Corporations Law*, § 5; *Business Corporation Law*, § 701; By-Laws, art V, § 2, subds [b], [d]). In view of the holding herein, that the resolution of the board of directors was valid, the complaint must be dismissed. (See *Allen v Baltimore Tissue Corp.*, 2 NY2d 534, 542; *Reifman v Berkley Co-op. Towers*, Civ Ct, NY County, Jan. 31, 1975; see, also, *Fromer v Clearview Gardens Corps.*, NYLJ, Dec. 19, 1974, p 16, col 2.)