

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
SCHOLES RESIDENCE LLC,

Index No. /24

Plaintiff,

Date of Filing:

-against-

SUMMONS

KATRINA SILANDER CLARK and
JOHN DOE 1-100,

Basis of Venue:
Based on CPLR §503,
Based upon Plaintiff's Residence:
1059 Fulton Street
Brooklyn, New York 11238

—and—

THE NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL and 13 SCHOLES
STREET HOUSING DEVELOPMENT FUND
CORPORATION,

Nominal Defendants.

-----X
To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the undersigned attorneys for the Plaintiff within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the accompanying complaint, together with the costs of this action.

Dated: New York, New York
May 13, 2024

KUCKER MARINO WINIARSKY & BITTENS, LLP

By: /s/Efrem Z. Fischer
Efrem Z. Fischer
Attorneys for Plaintiff
747 Third Avenue, 12th Floor
New York, New York 10017
(212) 869-5030

To: KATRINA SILANDER CLARK
13 Scholes Street
Brooklyn, New York 11206

JOHN DOE 1-100

THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
1 Empire State Plaza
The Capitol
Albany, New York 12224

13 SCHOLES STREET HOUSING DEVELOPMENT FUND CORPORATION
13 Scholes Street
Brooklyn, New York 11206

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

SCHOLES RESIDENCE LLC,

Plaintiff,

—against—

KATRINA SILANDER CLARK and
JOHN DOE 1-100,

Defendant.

—and—

THE NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL and 13 SCHOLES
STREET HOUSING DEVELOPMENT FUND
CORPORATION,

Nominal Defendants.

VERIFIED COMPLAINT

Index No. /2024

Plaintiff, SCHOLES RESIDENCE LLC (“Plaintiff”), by its undersigned attorneys, Kucker Marino Winiarsky & Bittens, LLP, as and for its verified complaint herein, alleges as follows:

THE PARTIES

1. Plaintiff is a New York limited liability company duly authorized to conduct business in New York, and maintaining its principal office at 1059 Fulton Street, Brooklyn, New York 11238.
2. Upon information and belief, Defendant KATRINA SILANDER CLARK (“Clark”) is an individual residing in the County of Kings and the State of New York.
3. Defendant JOHN DOE 1-100 (“John Doe”) is a fictitious person named in accordance with CPLR 1024 as a placeholder for persons, natural or otherwise, unknown to Plaintiff.¹
4. Upon information and belief, Nominal Defendant THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL (“OAG”) has a place of business located at 1 Empire State Plaza, The

¹ With respect to such unknown occupants/defendants, all allegations as hereinafter set forth against Clark are also alleged as against such occupants/defendants.

Capitol, Albany, New York 12224. The OAG is responsible for law enforcement and regulatory action in the State of New York.

5. Upon information and belief, Nominal Defendant 13 SCHOLLES STREET HOUSING DEVELOPMENT FUND CORPORATION (“13 Scholes Street HDFC”) is New York corporation duly authorized to conduct business in New York, and maintaining its principal office at 13 Scholes Street, Brooklyn, New York 11206.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants pursuant to section 301 and/or section 302 of New York’s Civil Practice Law and Rules. At all times relevant herein, Defendants transacted business and contracted to supply goods and services within the State of New York, and owned, used, or possessed real property situated within the State of New York. Jurisdiction in this Court is also proper pursuant to section 3001 of the Civil Practice Law and Rules because this action concerns, in part, a request for a declaratory judgment in connection with the Premises (as hereinafter defined) owned and/or used in the State of New York.

7. Venue is proper in Kings County because Plaintiff resides in Kings County.

8. Venue is also proper in Kings County because the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property situated in the County of Kings.

FACTS COMMON TO THE ALL CAUSES OF ACTION

A. Factual Background

9. 13 Scholes Street HDFC is a limited-equity cooperative organized as a Housing Development Fund Corporation cooperative (“HDFC coop”) and is the owner and landlord of the property located at and known as 13 Scholes Street, Brooklyn, New York 11206 (the “Premises”).

10. By deed, dated June 28, 1996, the New York City Department of Housing Preservation and Development (“HPD”) transferred the Premises, a three story/three-unit building, to 13 Scholes Street

HDFC, the Sponsor of the HDFC coop. (the "Deed"). [A copy of the Deed is annexed hereto at Exhibit "A"]

11. On or about January 25, 2017, by Agreement of Lease (the "Lease"), 13 Scholes Street HDFC, as landlord, leased the Premises to Plaintiff, as tenant, for a term of six (6) years, at a rental rate of \$6,500 per month.

12. The Lease was executed by Albert Rivera, the President of 13 Scholes Street HDFC, and by Yaniv Garbo, a member of Plaintiff. [A copy of the Lease is annexed hereto at Exhibit "B"]

13. Albert Rivera freely entered into the Lease with Plaintiff.

14. Plaintiff is thus the tenant of the Premises.

15. Pursuant to the terms of the Lease, Plaintiff was granted the option to extend the term of the Lease by a four (4) year extension term. On February 28, 2023, the initial term of the Lease expired and was renewed. [Id.]

16. At all relevant times, Plaintiff has honored and fulfilled its obligations under the Lease including, *inter alia*, making regular monthly rent payments to 13 Scholes Street HDFC in the amount of \$6,500 per month.

17. Pursuant to Paragraphs 4 and 5 of the Lease, 13 Scholes Street HDFC gave Plaintiff the right to "use and occupy the premises for any legal purpose." [Id.]

18. In accordance with the terms of the Lease, during its occupancy of the Premises, Plaintiff performed construction activities including having its contractors apply for permits with the New York City Department of Buildings ("DOB").

19. With regard to Plaintiff's construction activities at the Premises, the DOB Application Details, filed January 12, 2021, identified "Name: YANIV GARBO" and "Business Name: SCHOLES RESIDENCE LLC" under "Owner's Information." [A copy of the DOB Application Details filed January 12, 2021 is annexed hereto at Exhibit "C"]

20. The information contained in the DOB Application Details was inputted by a contractor, and moreover, there was no other available entry for Plaintiff, the lessee of the Premises, or any member of Plaintiff, to input their information.

21. The information contained in the DOB Application Details was not inputted at the direction of Plaintiff.

22. At no time did Plaintiff misrepresent itself as the owner of the Premises.

23. In accordance with the Lease, Plaintiff was also granted the option to purchase the Premises, according to the terms and conditions set forth in the Contract of Sale attached to the Lease at Exhibit "B." [Lease at Exhibit "B," annexed hereto]

24. The option to purchase the Premises was exercisable at any time during the initial six-year term of the Lease or the four (4) year extension term. [Id.]

25. The Contract of Sale was executed contemporaneously with the Lease. [A copy of the Contract of Sale is annexed hereto at Exhibit "D"]

26. The parties to the Contract of Sale were 13 Scholes Street HDFC, as seller, and GB Properties NYC LLC, as buyer.

27. Yaniv Garbo, as a member of GB Properties NYC LLC, signed the Contract of Sale on its behalf. [Id.]

28. The Contract of Sale was duly negotiated between the parties.

29. Albert Rivera freely entered into the Contract of Sale.

30. The Contract of Sale provided for a sale price of \$1,400,000 and required a deposit in the amount of \$20,000. [Id.]

31. Plaintiff made a deposit in the amount of \$50,000 toward the sale price.

32. Albert Rivera knowingly exercised his legal authority on behalf of 13 Scholes Street HDFC to lease the Premises to Plaintiff.

33. Albert Rivera knowingly exercised his legal authority on behalf of 13 Scholes Street HDFC to enter into the Contract of Sale.

34. In that regard, Albert Rivera and his wife, Frances Rivera, were the directors and shareholders of 13 Scholes Street HDFC. [A copy of the 13 Scholes Street HDFC Certificate of Minutes, dated July 27, 2009, is annexed hereto at Exhibit "E"]

35. On or about October 1, 2013, Frances Rivera died.

36. Upon her death, any shares or interest in shares became the property of Albert Rivera.

37. Subsequently, on or about June 10, 2018, Albert Rivera died.

38. As set forth in the 13 Scholes Street HDFC Certificate of Minutes and Resolutions from May 10, 2019, Albert Rivera "was the Sole Owner of all 750 Shares of 13 Scholes Street Housing Development Fund Corporation," and his 750 shares in 13 Scholes Street HDFC were transferred to the Estate of Albert Rivera, President, with Jessica Vargas as the Personal Representative of the Estate. [A copy of the Certificate of Minutes and Resolutions, dated May 10, 2019, is annexed hereto at Exhibit "F"]

39. Additionally, the Certificate of Minutes contained resolutions stating that "Jessica Vargas as Personal Representative to Administer of the Estate of Albert Rivera" was elected as Director, President, and Secretary/Treasurer. [Id.]

40. Accordingly, upon the death of Albert Rivera, Jessica Vargas was granted the authority to act on behalf of the Estate of Albert Rivera for all matters related to 13 Scholes Street HDFC including, but not limited to, the sale of the Premises from 13 Scholes Street HDFC to Plaintiff.

41. Significantly, Jessica Vargas, the personal representative of the Estate of Albert Rivera, never objected to or raised any issue regarding the Lease or Contract of Sale.

42. To the contrary, Jessica Vargas has been facilitating the prospective sale of the Premises to Plaintiff

43. To date, the closing of the sale of the Premises has not yet occurred.

44. The Contract of Sale was never recorded against the Premises.

45. In other words, the title to the Premises has not been changed or affected by virtue of the Lease or Contract of Sale.

46. While the Contract of Sale was signed in early 2017, there have been delays by virtue of, *inter alia*, Albert Rivera's illness and death, the appointment of Jessica Vargas as the Administrator for the Estate of Albert Rivera, and the Illegal Lockout Proceeding (as hereinafter defined) commenced in the New York City Civil Court, County of Kings.

B. The Illegal Lockout Proceeding

47. On or about December 1, 2023, it was discovered that Clark had entered the Premises without the permission of 13 Scholes Street HDFC or Plaintiff.

48. Clark also changed the locks on the front door of the Premises, preventing Plaintiff from entering the Premises.

49. Clark's illegal occupancy is preventing 13 Scholes Street HDFC from selling the Premises to Plaintiff.

50. Clark is also refusing to allow Plaintiff to enter the Premises to complete certain construction activities.

51. Consequently, Plaintiff commenced an illegal lockout proceeding, pursuant to RPAPL §713(10), to be restored to the Premises, entitled, Scholes Residence LLC v. Katrina Silander Clark, et al., and filed under Docket No. 300540/24-KI (the "Illegal Lockout Proceeding").

52. In response to the Illegal Lockout Proceeding, Clark has alleged, and continues to allege, *inter alia*, that Plaintiff engaged in fraud regarding the deed or title to the Premises in order to become the owner of the Premises, that 13 Scholes Street HDFC did not freely enter into the Lease in 2017, and that Plaintiff had no standing to commence the Illegal Lockout Proceeding.

53. Plaintiff has not engaged in fraud regarding the deed or title to the Premises.

54. 13 Scholes Street HDFC freely entered into the Lease with Plaintiff in 2017.

55. Plaintiff had and has standing to commence and maintain the Illegal Lockout Proceeding.

56. Neither the owner nor duly authorized representatives of the Premises, including 13 Scholes Street HDFC or Jessica Vargas, has raised any issue(s) or claims regarding the ownership, deed, or title to the Premises.

57. Likewise, HPD has never raised any issue(s) or claims regarding the ownership, deed, or title to the Premises.

58. Neither the owner nor duly authorized representatives of the Premises, including 13 Scholes Street HDFC or Jessica Vargas, have made any allegations against Plaintiff including, *inter alia*, any allegations of fraud including, *inter alia*, with respect to the ownership of or title to the Premises.

59. Likewise, HPD has never made any allegations against Plaintiff including, *inter alia*, any allegations of fraud with respect to the ownership of or title to the Premises.

60. To the contrary, Jessica Vargas, the personal representative of the Estate of Albert Rivera, has been facilitating the prospective sale of the Premises to Plaintiff.

61. Upon information and belief, as a result of the false allegations of fraud by Clark, the OAG has commenced an investigation into, *inter alia*, the legitimacy and enforceability of the Lease and the Contract of Sale, as is evidenced by a letter received by Plaintiff from the OAG.

62. There is no truth to Clark's allegations of fraud.

63. There has been no fraud whatsoever with respect to the Lease or Contract of Sale.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

64. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "63" of the Complaint with the same force and effect as though fully set forth herein.

65. Plaintiff is not engaging in any fraud with respect to the title to or financing of the Premises.

66. Clark is claiming that, *inter alia*, Plaintiff is engaging in fraud regarding the deed or title to the Premises in order to become the owner of the Premises, and that 13 Scholes Street HDFC did not freely enter into the Lease or Contract of Sale.

67. Based thereon, the OAG has commenced an investigation with respect to fraud regarding the deed or title to the Premises including, *inter alia*, the Lease and Contract of Sale.

68. A case of actual controversy within this Court's jurisdiction exists between the parties concerning alleged fraud with respect to the deed or title to the Premises including, *inter alia*, the Lease and Contract of Sale.

69. A case of actual controversy within this Court's jurisdiction exists between the parties concerning whether 13 Scholes Street HDFC freely entered into the Lease or Contract of Sale.

70. A case of actual controversy within this Court's jurisdiction exists between the parties concerning the Plaintiff's rights to use, occupy and purchase the Premises from 13 Scholes Street HDFC.

71. A case of actual controversy within this Court's jurisdiction exists between the parties concerning whether the Lease and Contract of Sale were valid.

72. A case of actual controversy within this Court's jurisdiction exists between the parties concerning whether 13 Scholes Street HDFC, Jessica Vargas, and/or any member of 13 Scholes Street HDFC has the legal authority to transfer the Premises to Plaintiff.

73. A declaratory judgment is necessary and appropriate to resolve these disputes and adjudicate the rights of the parties.

74. Plaintiff's actions in entering into the Lease and/or the Contract of Sale were not fraudulent.

75. There was no fraud in the consummation of the Lease or the Contract of Sale.

76. At all relevant times, 13 Scholes Street HDFC, Jessica Vargas, Albert Rivera, and members of 13 Scholes Street HDFC have had, and continue to have, the legal authority to transfer the Premises to Plaintiff.

77. 13 Scholes Street HDFC freely entered into the Lease or Contract of Sale.

78. The Lease and Contract of Sale are valid and enforceable.

79. Plaintiff has the legal right to use, occupy, and purchase the Premises from 13 Scholes Street HDFC.

80. There is no adequate remedy available at law.

81. Accordingly, Plaintiff is entitled to a declaratory judgment stating that (a) there has been no alleged fraud regarding the deed or title to the Premises including, *inter alia*, the Lease and Contract of Sale; (b) 13 Scholes Street HDFC freely entered into the Lease or Contract of Sale; (c) 13 Scholes Street HDFC, Jessica Vargas, Albert Rivera and/or any member of 13 Scholes Street HDFC, at all relevant times, have had and continue to have the legal authority to transfer the Premises to Plaintiff; (d) the Lease and Contract of Sale are valid, enforceable and not the product of fraud; and (e) Plaintiff has the right to use, occupy and purchase the Premises from 13 Scholes Street HDFC.

AS AND FOR A SECOND CAUSE OF ACTION
(Ejectment)

82. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “81” of the Complaint with the same force and effect as though fully set forth herein.

83. The Premises sought to be recovered is described as: 13 Scholes Street, Brooklyn, New York 11206.

84. The Premises is located in the County of Kings, within the territorial jurisdiction of this Court.

85. Upon information and belief, Clark is the current occupant of the Premises and remains in occupancy without the permission of the Plaintiff.²

86. Clark has no legal right to occupy the Premises.³

87. Clark is in possession of the Premises and withholds the Premises from Plaintiff.⁴

88. Plaintiff is entitled to the immediate possession of the Premises.

² See *supra* footnote 1.

³ See *id.*

⁴ See *id.*

89. By reason of the foregoing, Plaintiff is entitled to a judgement of ejectment against Clark⁵, together with all required ancillary relief, including, the issuance and execution of a writ of assistance to evict Clark, and all persons, entities, animals, and things from the Premises.

WHEREFORE, Plaintiff SCHOLES RESIDENCE LLC demands judgment:

- A. On the first cause of action, declaring and adjudging that: (a) there has been no alleged fraud regarding the deed or title to the Premises including, *inter alia*, the Lease and Contract of Sale; (b) 13 Scholes Street HDFC freely entered into the Lease or Contract of Sale; (c) 13 Scholes Street HDFC, Jessica Vargas, Albert Rivera and/or any member of 13 Scholes Street HDFC, at all relevant times, have had and continue to have the legal authority to transfer the Premises to Plaintiff; (d) the Lease and Contract of Sale are valid, enforceable and not the product of fraud; and (e) Plaintiff has the right to use, occupy and purchase the Premises from 13 Scholes Street HDFC;
- B. On the second cause of action, a judgment of ejectment against Defendant KATRINA SILANDER CLARK, together with all required ancillary relief, including, the issuance and execution of a writ of assistance to evict Clark, and all persons, entities, animals, and things from the Premises; and
- C. Together with such other and further relief as the Court deems just, proper and equitable.

Dated: New York, New York
May 13, 2024

KUCKER MARINO WINIARSKY & BITTENS, LLP
Attorneys for Plaintiff

By: S/Efrem Z. Fischer
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747 Third Avenue, 12th Floor
New York, New York 10017
Tel.: (212) 869-5030
Email: efischer@kuckermarino.com

⁵ See *id.*

VERIFICATION

STATE OF NEW YORK)
 New York) ss.:
COUNTY OF ~~KINGS~~)

YANIV GARBO, being duly sworn, deposes and says:

I am a Member of the Plaintiff, SCHOLES RESIDENCE LLC.

I have read the foregoing VERIFIED COMPLAINT and know the contents thereof; that the same are true to my knowledge, except as to those matters stated upon information and belief, and as to those matters I believe them to be true. The sources of my information and the grounds of my belief as to all matters not herein stated upon my knowledge are the books and records of such party.

YANIV GARBO

Sworn to before me this
13th day of May, 2024

Notary Public

ZHISHAN CHEN
Notary Public - State of New York
No. 01CH6437730
Qualified in Richmond County
My Commission Expires Aug. 01, 2026