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2021-02-09

### CHOWDHURY v. SADIQ

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART HE

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Index No.: 10749/20

MOHOSIN CHOWDHURY  
35-35 72<sup>nd</sup> Street, 2<sup>nd</sup> floor - 1<sup>st</sup> Room on the Left  
Jackson Heights, New York 11372

Petitioner-Tenant

DECISION/ORDER

-against-

SABERA SADIQ

Respondent-Landlord

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Hon. Clifton A. Nembhard  
Judge Housing Court

Mohosin Chowdhury (“petitioner”) commenced the instant illegal lockout proceeding by order to show cause to be restored to the 1<sup>st</sup> room on the left on the 2<sup>nd</sup> floor of 35-35 72<sup>nd</sup> Street, Jackson Heights, New York (“subject premises”). Sabera Sadiq (“respondent”) filed written opposition to the order to show cause asserting that petitioner never resided in the subject premises. The parties could not reach a settlement therefore the Court conducted a remote trial by Microsoft Teams over the course of several months.

The following constitutes the Court’s findings of fact and conclusion of law after the trial.

*Hearing*

Petitioner testified that he has lived in the subject three story house for over fourteen years. He introduced his driver’s licence and asked the Court to take judicial notice of the building’s certificate of occupancy, I-cards and Department of Housing Preservation and Development (“HPD”) registration as of June 8, 2020. Petitioner further testified that when he moved into the house he lived in one of three rooms in the front of the second floor and initially paid \$525.00 a month rent. He’s always paid the rent in cash at respondent’s house across the street and has never gotten a receipt. The former tenant Hasina, her daughter and cousin moved out of the subject premises in August or September 2018 and respondent’s husband offered to rent it to him in October after the person he originally intended to rent it to did not move in. Petitioner accepted the offer because the premises was bigger and provided more light than his original room. He also negotiated the rent down to \$875.00 from \$900.00.

Petitioner testified that his new room, which faces the street, has a small window and a large one. He furnished it with a television, bed, armoire and two wardrobes. He also had a sofa,

refrigerator, two chairs, a small dining table, dressing table and exercise equipment in the room. After he moved in a couple from Burma moved into his old room and the third room was occupied by Kamal Hussein. On May 29, 2020, the couple from Burma moved out. Two days later respondent's husband told him to remove his things from the subject premises so that he could repair the bathroom. That day petitioner left the premises about 1:30 pm and came back about 7:00 pm to find that seventy five percent of his things had been moved back to his original room. The rest to his belongings, including his armoire, wardrobes and closet, were still in the subject premises. Petitioner called the police who asked him which room he wanted to stay in. When he told them the larger one they advised him to go to court. Petitioner then went to get something to eat. When he returned home the door to the subject premises was gone. This left him no choice but to stay in the smaller room. The following day petitioner went to Housing Court to file a complaint but the building was closed. When he got back to the house he saw workers breaking the walls in the subject premises. He again called the police who questioned respondent. Respondent denied moving his things and told the police that he lived in the smaller room. Petitioner stated that as a result of all this he has not been in the subject premises since May 31, 2020. However, since then the things that were in the subject premises were moved to the kitchen and corridor. Petitioner then introduced pictures and videos of the subject premises before and after May 31, 2020.

On cross-examination petitioner testified that he has always lived alone. He was working as a cab driver until March 8, 2020 when the company he worked for closed due to the Covid-19 pandemic. He last paid rent in April. He stated that he didn't pay May's rent because respondent changed his room without his permission. He still has the keys to the bigger room as well as keys to the room he currently occupies which he found on a dresser in the smaller room on May 31, 2020. Petitioner also repeated that he paid the rent across the street and that the couple who was living in the room he currently occupies left on May 29, 2020.

On re-direct petitioner testified that his wardrobe is made of steel and would be difficult for him to move by himself.

Mohammed Ziaul Khan then testified that he used to work with petitioner and has known him for about eleven years. Khan, who splits his time between New York and Arkansas, averred that he visited petitioner every day before he started going back and forth to Arkansas. He stated that petitioner used to live in the smaller room on the right hand side on the second floor however when he came to New York in July 2019 he was living the subject premises. Khan last saw petitioner when he came to New York and stayed with him in the subject premises from February 16, 2020 to March 10, 2020. Khan then described the layout of the premises and where petitioner's possessions were situated.

On cross-examination Khan testified that petitioner is a close friend. He also explained that he didn't stay with relatives during his last visit because they had visitors from Bangladesh. He then acknowledged that he does not have any physical evidence that he stayed with petitioner in the premises in February and March.

Petitioner then called Mohammed Miah who testified that he has known petitioner for about five

to seven years. During that time he visited him about once a month. Miah testified that petitioner's room is on the second floor of a private house and faces the street. He last went to the house on May 31, 2020. Earlier that day he, petitioner and two other friends paid their condolences to a friend whose mother had died. When Miah got home he received a call from petitioner who told him that the door to his room had been broken. Miah went to the premises at about 8:30 pm. The police arrived about five minutes later and told petitioner and him to come upstairs. The police then spoke to the petitioner and the respondent. When respondent showed them that petitioner's belongings were in the smaller room the police told him to go to court. The next day Miah went with petitioner to the court however it was closed. They then went to the police precinct and then to petitioner's house. Miah called the police after he saw that petitioner's room was in disarray and that his things were scattered between the subject premises, corridor and small room. He stayed for about thirty five minutes before leaving and has not been back to the house since.

Miah testified on cross-examination that the door to the subject premises was on its hinges when he went there on May 31, 2020. He also stated that he could not hear the rest of the conversation between the police, petitioner and the respondent.

Releha Ghosh then testified that she lived in the subject premises from 2006 to 2015. She noted that the room faces the main road and that when she moved in petitioner was living in the room to her left and someone else lived in the room to her right. Ghosh also testified that the house has three floors. There were two to three rooms on the first floor, two to three rooms on the front side of the third floor and two to three rooms in the back. She has not been back since she left however, she only moved two blocks away and has kept in touch with her former house mates. Ghosh also recalled that petitioner would tell her that someday he wanted to move into the subject premises. When he eventually did so she accompanied him to BJ's to buy new furniture for the room.

During cross-examination Ghosh averred that there were about ten people living on the second floor when she was there. The neighbor on her right moved before she did and a lady from Burma, possibly named Hasina, and her mother and daughter took his place. When Ghosh moved, Hasina and her family moved into her room. She also testified that all the tenants of the three rooms used the kitchen on the second floor. However, Mohammed Salim, who lived in the backroom with his wife and three daughters did not. When they left a gentleman by the same name replaced them. He used the kitchen before ultimately moving to the first floor. Unlike her neighbors on the second floor, Ghosh was not friends with the tenants on the first and third floors.

Respondent then called the tenant of room 3A Joseph Passerno to testify. During cross-examination petitioner moved to strike his testimony after Passerno adjusted his camera and revealed that respondent was seated directly across the table from him and he had type written notes in front of him.

Respondent's next witness was Khin Ohmar. Ohmar has lived in the room on the first floor directly below the subject premises since 2015. She testified that her room faces the street and

has the same layout as the subject premises. She also stated that she generally paid her rent in the room above which respondent uses as her office. She would hear respondent's footsteps when she was in the office. Ohmar doesn't know petitioner's name and has never spoken to him but she's known him by sight since 2015. She knows that he's lived in the room facing the driveway on the second floor since she moved in because she sometimes saw him when she went to pay the rent. She has never seen him in any other room. Ohmar testified that she usually pays the rent the first week of the month however she couldn't remember where she paid it in January 2020. She also recalled seeing construction workers and hearing noises daily above her bathroom from April 2020 to August 2020. As a result, she did not go upstairs to pay during this time. In addition, she remembered that the police came to the house twice in May and heard that petitioner claimed that respondent put him out. The allegation surprised her and she admitted to feeling sorry for respondent. Finally, she stated that she was not forced or otherwise coerced into testifying.

During cross-examination Ohmar testified that she moved into the house in November 2015 pursuant to a written lease. The last lease she signed however has no end date. She also stated that there is another apartment on the first floor and that she has never been on the third floor. She noted that respondent lives across the street and that she has been there a few times. The last time was when respondent's mother was ill but she could not remember the date. Ohmar further testified that she did not go to the second floor from March to August. However, she then stated that she paid March and August's rent in petitioner's office. In April she paid in the lobby, she couldn't recall how she paid in May and she called respondent in June to pick up the rent. She didn't go to the office in September, paid October's rent in the lobby and called the respondent to pick up the rent in November. In December she paid respondent the rent in the lobby.

On redirect Ohmar reiterated that respondent's office is right above her room and that she heard noises coming from above from April to August.

Respondent Sabera Sadiq then testified that she's owned the subject house since 2005. There are three apartments in the basement, four apartments on the first floor, two apartments on the second floor and four rooms on the third floor. Petitioner has been her tenant since 2007. He has always lived in the room on the second floor facing the driveway. Respondent also testified that she has occupied the subject premises since 2010. She uses it as an office where her tenants pay the rent and a place to meet with contractors. She also uses it to temporarily house her tenants when their rooms are being renovated. Prior to 2010 she used one of the basement apartments as her office.

Respondent averred that petitioner has never rented any other room from her. He's asked to rent the subject premises since 2014. However, she's always denied his requests because he doesn't follow the house rules, is always late with the rent and once got a notice from a lien collector. In February 2020 she needed to repair petitioner's bathroom so she let him stay in her office temporarily. The repairs were completed within a week to ten days and petitioner moved back to his room in the second week of February. When she started renovating her office in March petitioner started moving his belongings in. He then called the police and claimed that she had stolen his things from the office.

On cross-examination respondent testified that the second floor consists of apartments 5 and 6. Unit 6 is a vacant two bedroom with its own kitchen and bathroom. Unit 5 has three rooms including petitioner's room and her office. She used to rent out the subject premises monthly prior to making it her office. She didn't have much in the premises in March because she put her things in storage in preparation for the renovations. Respondent also stated that she was in the office on May 31, 2020 when the police came. Finally, she testified that she and her husband rent the house across the street.

Respondent was then asked about the affidavits submitted in support of her opposition to the order to show cause. Aye Ma provided an affidavit swearing that she resided on the "2F" floor of the subject building. Respondent explained that "2F" refers to a space on the first floor. She however could not recall what "2F" referred to in the affidavit of Hla Shwe Omarfarook. Respondent then testified that the "1A" in Ohmar's affidavit meant the first floor. Tenant Win Than submitted an affidavit stating that he has lived in "1R" since 2006. Respondent explained that she did not understand the designation and that Than lives in apartment 4A which is on the back side of the first floor.

Respondent then testified that she went to the office three to four times a week in May. The door was taken off its hinges in April to enable the workers to renovate the premises. From April through June she noticed that petitioner had started to put some of his things in the office including an exercise machine, bookshelf and a bag of clothing. She thought he had done so because he was replacing his furniture. When she reached out to him to ask about it he did not return her call. Respondent also testified that she did not know what apartment she used to register as the managing agent but remembered that the HPD application did not allow her to select Unit 5. She also stated that the pots and pans in petitioner's pictures belonged to all of the tenants.

On redirect respondent noted that the apartments listed on Ma, Than and Omarfarook's drivers' licenses matched those in their affidavits. She also repeated that Ma resides on the first floor and that Omarfarook lives in Unit 6. She then stated that the gas and electric bills for the house come to her office.

Respondent's next witness Win Than gave his address as apartment 1R at the subject house. Tan testified that he's lived in the house since January 2010 and has never lived in any other room. He's been to the second floor which he described as having three rooms to the left and three rooms to the right. The room to the left facing the street is respondent's office. He goes to there to pay the rent. Tan knows petitioner and believes that he has always lived in the room facing the driveway because he sees him when he pays the rent.

On cross-examination Than testified that "1R" stands for first floor rear. He also stated that there are two other rooms on his floor. When he moved in someone was living in one of the rooms. Now no one lives in either and he could not remember the last time someone did. He also testified that respondent's office was in the basement when he moved in however, she subsequently moved it to the second floor. There was a lock on the door leading to the second floor so respondent would open the door for him when he went to pay the rent. He went there in

March 2020 and hasn't been back since because of COVID. Respondent now comes to the side door to collect the rent however Than believes that she is still using the subject premises as her office. When questioned about the discrepancy between his affidavit and his testimony, Than asserted that he made a mistake and that he has actually been living in the house since 2006. He also averred that respondent was in the second floor office since then. He could not recall how the subject premises was being used from 2006 to 2008 but thought it was the respondent's office. Than also had no idea how many apartments were on the third floor but believed that there was one in the basement.

On re-direct Than testified that he does not know Khin Ohmar and that his apartment is at the side of the house and cannot be accessed through the front door. He also stated that the entrance hall is directly below respondent's office.

### *Discussion*

Petitioner argues that he has presented numerous exhibits, and offered consistent testimony to prove that he was unlawfully evicted by respondent. Conversely, he argues that respondents' witnesses lacked credibility. Moreover, she offered no direct proof that she used the subject premises as her office. Respondent counters that petitioner has merely proven that he is familiar with the layout of the premises. However, he has failed to prove that he ever lived in the premises and is merely relying on his friends who are self-serving witnesses to further his fraudulent claim.

A landlord may not oust a person who has occupied a dwelling for thirty consecutive days without resorting to proper legal process and providing legal notice. *Romanello v. Hirschfeld* 98 AD2d 657 [1<sup>st</sup> Dept 1983] *aff'd as mod*, 63 NY2d 613 [Ct App 1984]. An illegal eviction will be found where a landlord "engag[es] in any behavior which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including but not limited to, removing the occupant's possessions from the dwelling unit, removing the door at the entrance of the unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable, or changing the lock on such entrance door without supplying the occupant with a key." RPAPL § 768(1)(a)(iii). The burden of proof rests with the proponent of the claim to establish by a fair preponderance of the credible evidence that he or she was unlawfully evicted. *Lali Assoc., LLC v 875 Turnpike Realty, LLC*, 2014 NY Slip Op 31882(U) [Sup Ct Suff 2014]. Stated otherwise, in order to prevail the evidence supporting the claim must appeal to the fact-finder as more nearly representing what took place than the evidence opposed to it. If the evidence favoring the claim outweighs the evidence opposed to it, the proponent will prevail.

After careful consideration of the evidence presented, the testimony provided and demeanor of the respective witnesses the Court finds that petitioner has met this burden. Petitioner and the witnesses he called testified credibly that he was living in the subject premises for more than thirty days prior to May 31, 2020. Petitioner offered detailed testimony regarding the circumstances leading up to him renting the subject premises including the identities of the last

two tenants. He also introduced videos and pictures of himself and his possessions taken before May 31, 2020 and pictures of what was undisputedly the subject premises taken after May 31, 2020. The latter exhibits show the premises in the midst of being renovated. Tellingly, many of petitioner's belongings are visible in both sets of exhibits. Specifically, petitioner's metal wardrobe, a bookcase and curtains which petitioner testified he has been unable to find since being displaced can be seen amongst the construction materials. In addition, an exercise bike, two other pieces of exercise equipment and a folding chair which petitioner identified as his own are also present in the second set of pictures. Petitioner also introduced pictures and a video showing of his pots, dishes, spices and cooking utensils and food sitting on a metal shelve in the hallway. All of these exhibits lend credence to petitioner's claim that he was living in the subject room and that the majority of his things were removed without his permission.

Khan, Miah and Ghosh also supported petitioner's claim. All three convincingly testified that petitioner was occupying the subject premises prior to May 31, 2020. While Khan and Miah never lived in the house, they both spent substantial time with petitioner in the subject premises and described it accurately. In addition, Miah's version of the events of May 31, 2010 and June 1, 2020 was consistent with petitioner's testimony. Finally, although Gosh moved out, she maintained her connection with the house and clearly had knowledge of what has happening in it. So much so in fact that she went with petitioner buy furnishings when he moved into the subject premises.

In contrast respondent's witnesses offered inconsistent and unconvincing testimony. Ohmar contradicted herself when she testified that she paid the rent at the subject premises in March and August. While she intimated that she stopped paying at the office because of the ongoing construction, respondent testified that her office remained open during this time. Ohmar also stated that she did not feel pressured to testify. This claim however is belied by her body language and demeanor. During much of her testimony Ohmar dabbed her eyes and seemed to be holding back tears. The Court is also skeptical of Than who changed his testimony regarding how long he's lived in the house. He ultimately testified that he has resided there since 2006 as is asserted in his affidavit. However, in the affidavit Than also swears that petitioner has maintained her office in the subject premises since he moved in. If true, this claim contradicts respondent who testified that she started using the premises as her office in 2010.

Respondent's testimony was as unpersuasive as her witnesses'. Her claim that she's occupied the premises for the last ten years appears incredible in light of the adduced testimony. As an initial matter, respondent offered no explanation for moving her office from the basement. More significantly, respondent testified that she sometimes converted her office to short term rental or temporary housing for her tenants even though, according to her and her witness, there are at least three empty units in house. Than averred that two rooms on the first floor are unoccupied and respondent herself testified that Unit 5 is not rented. Equally unbelievable is respondent's assertion that petitioner was able to systematically move his belongings into the premises over the course of four months while she maintained it as her office. It is just as inconceivable that, aside from one phone call, respondent did nothing to stop this. In addition, respondent's reason for removing the door and leaving her office unsecured defies logic. Finally, the Court notes that, despite her contention that her office is located in Unit 5 on the second floor, on November



5, 2012 respondent listed her address as apartment 1 when she registered the house with HPD. Her explanation that HPD did not allow her to properly designate her address is contradicted by the fact that on October 30, 2020, four months after this case was commenced, petitioner registered the property and listed her address as 35-35 72<sup>nd</sup> Street, 2<sup>nd</sup> Floor, Jackson Heights, New York 11372.

*Conclusion*

Based on the foregoing, the Court finds that petitioner's assertion that he was living in the premises prior to being displaced on May 31, 2020 is more likely to be true than respondent's claim that, after fourteen years, petitioner moved himself into the subject premises without permission while it was occupied by his landlord. Accordingly, the Court finds that petitioner was unlawfully evicted from the subject premises. Respondent shall restore petitioner forthwith by providing him with a key and moving his possessions back into the premises. Upon default petitioner may restore for the appropriate relief. Petitioner's claim for damages resulting from the illegal eviction is hereby severed for a plenary action.

This constitutes the decision and order of the Court.

Date: February 9, 2021  
Queens, New York

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Hon. Clifton A. Nembhard, JHC