

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS-----X
JIMMY KING,

Index No: 712109/19 (efile)

AFFIDAVIT IN SUPPORT

Plaintiff,

-against-

BARBARA KING,

Defendant.
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Barbara King, being duly sworn, deposes and says the following:

1. I am the defendant named above and make this affidavit in support of dismissal of the complaint.
2. The plaintiff is my natural brother.
3. In September 2011, I was the owner of 35-17 214th Place, Bayside NY ("the subject property") having inherited said property from my late father's estate. See deed at **Exhibit A**.
4. In September 2011, I entered into contract to sell the subject property. See contract of sale at **Exhibit B**.
5. In September 2011, I informed plaintiff of said contract as plaintiff was living in the subject property. At that time, plaintiff assured me that if he were given time to move out, he would pay use and occupancy, taxes, water, and insurance for the subject property.
6. In November 2011, I drafted a letter stating I would give plaintiff \$50,000.00 in consideration of plaintiff vacating so I can close on the subject property and in consideration of plaintiff vacating the subject property without disruptions and without leaving me with liabilities with respect to the property. See November 15, 2011 agreement at **Exhibit C**.

paid no use and occupancy, and held up the sale of the subject property; he did not vacate the subject property until March 2013 after I sold the property.

8. In March 2012, because plaintiff failed to vacate the subject property, I amended the contract price of my property from \$500,000.00 to \$400,000.00 because the purchaser of the property would accept the property with existing tenancies and would not seek reimbursement from me to obtain vacancy of the premises. See contract addendum at **Exhibit D.**
9. In April 2012, plaintiff agreed to leave by August 31, 2012. See April 2012 so-ordered stipulation at **Exhibit E.**
10. In August 2012, plaintiff filed an Order to Show Cause in Housing Court for more time to vacate; in good faith reliance on plaintiff's assurance that he would vacate the subject property, I discontinued the holdover proceeding relying on plaintiff's assurance that he would leave by end of October 2012. See September 2012 stipulation made in Housing Court and case summary at **Exhibit F.**
11. Nonetheless, to my detriment, I relied on plaintiff's assurances that he would vacate the subject property as he did not move by end of October 2012.
12. Exhausted with plaintiff, I closed on the subject property in January 2013 and the buyer/assignee paid plaintiff \$15,000.00 to move out by March 2013. See March 2013 so-ordered stipulation at **Exhibit G.**
13. Under these circumstances, the plaintiff gave no consideration for his extensive, expense- free stay at the subject property for 2 ½ years where ; he never paid use and occupancy, property taxes, water bills, or property insurance and left me with these liabilities.
14. As plaintiff failed to give any consideration for the contract, no contract existed between me and plaintiff and plaintiff is due nothing from me.

15. I was not unjustly enriched to defendant's detriment as I paid property taxes and the

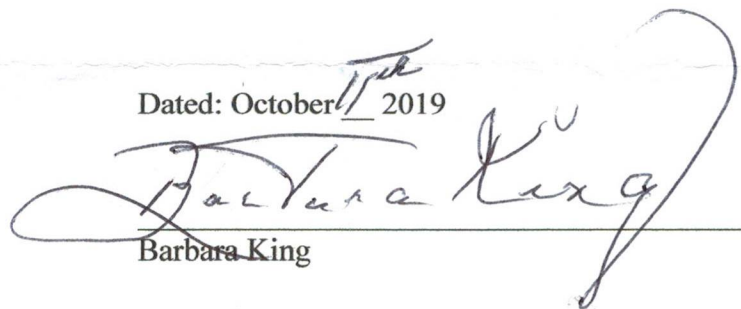
plaintiffs water bill at closing and paid legal fees to remove plaintiff; in contrast, I received no use and occupancy or arrears from plaintiff as he lived rent free on the subject property until March 2013 when he was bought out by the buyer/assignee of the contract to sell the subject property. See title bill at **Exhibit H. See March 2013 so-ordered stipulation at Exhibit G.**

16. No civil fraud was committed on my part; plaintiff cannot point to any intentional material false representation made by me with respect to plaintiff vacating without disruptions in the closing of the subject property and vacating without leaving me with liabilities; plaintiff refused to vacate, disrupted the closing of my property by \$100 thousand dollars by refusing to vacate, paid no arrears or use and occupancy, paid no property taxes, paid no water bills, and paid no property insurance.

17. Plaintiff lacks standing to seek an accounting in this action as he never filed objections to the Will of our late father in Queens Surrogate Court which left the subject property to me; plaintiff filed no objections to any proceedings in the Estate of our father in Queens Surrogate Court.

WHEREFORE, I ask the Court to dismiss the complaint with prejudice.

Dated: October 17th 2019


Barbara King

Sworn to before me on October 11 2019


Notary

