

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CITY OF WILMINGTON
Plaintiff Below,
Appellee

VS

SID SIYA, INC.
JETAL DESAI
Defendant Below,
Appellant

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C.A. No. JP13-24-011671

TRIAL DE NOVO

Submitted: March 24, 2025
Decided: April 2, 2025

APPEARANCES:

City of Wilmington, Plaintiff, appeared represented by attorney John D Stant, II, Esquire
Sid Siya, Inc and Jetal Desai, Defendant, appeared represented by attorney Donald L Gouge, Jr, Esquire

Sean McCormick, Deputy Chief Magistrate
Peter Burcat, Justice of the Peace
Susan Goldsman, Justice of the Peace

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6CF14A3J (3/1/19)

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 13**

CIVIL ACTION NO: JP13-24-011671

CITY OF WILMINGTON V. SID SIYA, INC., ET AL

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural and Factual Background

On August 14, 2024, Plaintiff/Appellee CITY OF WILMINGTON, by and through its attorney, Laura T. Hay, Esquire, filed a Landlord-Tenant Complaint against Defendants/Appellants SID SIYA, INC. and JETAL DESAI. Plaintiff/Appellee sought a monetary recovery and summary possession of a commercial property occupied by Defendants/Appellants. On November 4, 2024, Plaintiff/Appellee filed an Alias Complaint seeking possession only. Trial was scheduled for December 23, 2024. Subsequent to hearing testimony and reviewing exhibits, on February 7, 2025, the Court issued a Judgment in favor of Plaintiff/Appellee and awarded possession of the commercial property to Plaintiff/Appellee. On February 13, 2025, Defendants/Appellants filed the present request for a *Trial de Novo*. A *Trial de Novo* was scheduled for March 24, 2025. On March 24, 2025, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Susan Goldsman, and Justice of the Peace Peter Burcat convened for the *Trial de Novo*. John D. Stant, II, Esquire, appeared on behalf of Plaintiff/Appellee. Donald L. Gouge, Jr., Esquire, with his clients, likewise appeared via Zoom. Counsel Laura T. Hay had submitted exhibits in advance of the *Trial de Novo*. Prior to the commencement of the *Trial de Novo*, the Parties stipulated to the admission into evidence of the seven (7) exhibits previously submitted by Ms. Hay.

Mr. Stant made a brief opening statement indicating this was a commercial repossession case. Mr. Gouge waived an opening statement. Mr. Stant call Tom Ford as Plaintiff/Appellee's only witness. Mr. Ford testified he was the Director of Compliance for the City of Wilmington's real estate department. He stated in June 2023 he was involved in the purchase of a commercial property located at 719 West 8th Street, Wilmington, Delaware. At the time of the purchase, there was a tenant occupying the commercial property and the City assumed the Lease Agreement from the seller. Mr. Ford was aware the tenant was Defendant/Appellant SID SIYA, INC. Mr. Ford was aware of the terms of the Lease Agreement and stated the lease was a yearly lease with provisions for extensions of the lease. The extensions were for 3 years or 5 years, with the lease term running from April to the following March. Mr. Stant asked Mr. Ford if he was familiar with of a number of sections in the Lease Agreement, including a provision that required a written "ninety (90) days" notice of intent to renew. (Section 19). Mr. Ford confirmed he was aware of this particular requirement, and that extensions were not automatic. Mr. Ford testified Defendants would have had to provide the City a written request by no later than December 2023 to extend the lease. He stated the City did not timely receive a written notice for an extension. Thereafter, the City sent Defendants a certified letter dated January 25, 2024, advising Defendants the lease was not renewed and Defendants had to vacate the property on or before April 1, 2024. (Exhibit "C"). Mr. Ford concluded his direct testimony by stating the City was seeking

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possession of the property for an alternate use. On Cross-examination, Mr. Ford acknowledged he had received a letter from Mr. Gouge (Exhibit "E") dated February 13, 2024, exercising the right to renew the Lease Agreement. However, Mr. Ford testified the City did not consider the letter to be valid because it was not received 90 days in advance of the end of the then current lease term. Mr. Ford acknowledged Section 19 of the Lease Agreement (Exhibit "A") did not specify when the 90 day notice requirement commenced. Mr. Ford testified he had met with Defendant DESAI, but he did not provide Mr. Desai copies of the Lease Agreement nor an assignment of the Lease Agreement from the prior owner, Mr. Patel, to the City of Wilmington. Mr. Gouge had no further questions for Mr. Ford. Plaintiff rested.

Mr. Gouge made an oral Motion for Dismissal. Mr. Gouge stated there had been no testimony regarding notices sent by Plaintiff/Appellee to Defendants/Appellants. Mr. Stant, in opposition to the Motion, stated Mr. Ford had testified a certified letter had been sent to Defendants/Appellants. The Panel reserved a decision on the Motion pending testimony from Defendants/Appellants.

Defendants/Appellants called Defendant JETAL DESAI as their first witness. Mr. Desai testified he owned a liquor store for 13 years located at 719 West 8th Street, Wilmington, Delaware. He stated his landlord was a "Mr. Patel." He further stated he had not done any formal requests for extensions of his lease and would just continue to pay rent, although there were rent increases over the years. Mr. Desai testified he had not been advised the City had purchased the property. Rather, Mr. Ford came to the business one day to collect rent. Mr. Desai stated the City had not provided him with any documents, but he continued thereafter to pay rent to the City. Mr. Desai further stated he did not have anything from the City advising him he had to inform the City of his intent to renew the lease. On cross-examination, Mr. Desai testified he did not have any discussions with Mr. Patel regarding the City assuming the Lease Agreement. Mr. Desai concluded by stating Mr. Ford had come to his business and handed him a notice of non-renewal. Defendants/Appellants rested. Plaintiff/Appellee did not have any rebuttal testimony.

Mr. Stant made a closing argument. He stated the City had purchased the property in June 2023. Mr. Stant directed the Panel's attention to Sections 18 and 19 of the Lease Agreement. Section 18 stated notices could be hand-delivered, and Section 19 stated renewal notices must be given in writing 90 days in advance. Mr. Stant concluded by arguing the City did not timely receive a notice of renewal and therefore, the City sought a *Writ of Possession*. Mr. Gouge made a closing argument. Mr. Gouge stated Defendants/Appellants had not been provided a copy of the Lease Agreement nor a copy of a lease assignment. Mr. Gouge argued Defendants/Appellants were not placed on notice, nor were they aware what type of notice was required for renewing the lease. Mr. Gouge further argued the Lease Agreement did not specifically state when the 90 day notice requirement commenced. Once placed on notice by the City's January 25, 2024 letter, Defendants/Appellants responded with their own letter stating they would be renewing the lease commencing April 2024. Mr. Gouge concluded by asking for credit for holdover rent that had been paid by Defendants/Appellants. Upon inquiry from the Panel, Mr. Gouge agreed he had not filed a counterclaim seeking credit for excess rent payments. Mr. Gouge responded, as per Court Rules, he was allowed to make a counterclaim during trial. Mr. Stant had no rebuttal closing argument.

Findings

A plaintiff has the burden of proving their case by a preponderance of the evidence. "Preponderance of the Evidence is a standard of proof that is met when a party's evidence indicates that the fact 'is more likely than not' what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not." 9 Del. Admin. Code 303-5.0. Plaintiff/Appellee's exhibits were admitted into evidence by stipulation between the Parties. Exhibit "A" is a copy of the original

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Lease Agreement between "Ashok Patel and Kokila Patel" and Defendants/Appellants, dated February 20, 2012. Exhibit "B" is a copy of the lease assignment from Ashok Patel and Kokila Patel to the City of Wilmington, dated June 26, 2023. At no time during the trial did Plaintiff/Appellee reference Exhibit B, nor on cross-examination ask Mr. Desai if he had seen Exhibit B or was aware of Exhibit B. Section 18 of the Lease Agreement (Exhibit "A"), "NOTICE" specifically states notices to the landlord must be in writing and sent to the "Landlord at: 27 Kapok Drive, Newark, DE 19702." There was nothing before the Panel indicating a different address was provided to Defendants/Appellants to send renewal notices, i.e. an address for the City. At no time did Mr. Stant ask Mr. Desai if a renewal notice had been sent to 27 Kapok Drive, as per the Lease Agreement. From the testimony presented, upon receipt of the notice of non-renewal, Defendants/Appellants timely sent a written notice to the City advising the City of Defendants/Appellants intention to renew the Lease Agreement.

The Panel finds Plaintiff/Appellee has not proved their case by a preponderance of the evidence to establish Defendants/Appellants did not comply with the provisions as contained in the Lease Agreement. As such, Defendants/Appellants' Motion to Dismiss is moot. The Panel further determines Defendants/Appellants presumed counterclaim for credit for holdover rent paid to Plaintiff/Appellee was not timely presented. Making reference to any such claim during a closing argument, without testimony or evidence to support any such potential claim, is not a proper time to assert such a counterclaim.

Order

Based upon the foregoing, the Panel enters herewith JUDGMENT FOR DEFENDANTS/APPELLANTS and possession of the commercial property located at 719 West 8th Street, Wilmington, Delaware shall remain with Defendants/Appellants.

IT IS SO ORDERED 02nd day of April, 2025

/s/ Sean McCormick

Deputy Chief Magistrate

On Behalf of Three Judge Panel



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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