

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS : HOUSING PART O

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OCEANS 2, LLC,

Petitioner,

L&T Index No. 78619/11

-against-

DECISION/ORDER

ROY GRONDAL - Licensee/Squatter,

Respondent-Occupant.
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KEVIN C. McCLANAHAN, J.H.C.:

Petitioner commenced this holdover proceeding alleging that respondent, Roy Grondal, was granted a license by the deceased tenant of record, Maureen Sabol, which has been terminated by petitioner. In the alternative, the petition alleges that respondent is a squatter who entered into possession without the permission of petitioner and/or the deceased tenant of record. Respondent, through counsel, claims that he and Maureen Sabol had a non-traditional husband/wife relationship and, therefore, he is entitled to succeed to Maureen Sabol's tenancy.

PETITIONER'S PRIMA FACIE CASE

Petitioner relied on certified documents to establish its ownership of the subject premises and proper registration with DHCR and DHPD. In his Reply to Notice to Admit, respondent admitted that Maureen Sabol died on or about April 22, 2008, that Maureen Sabol was the tenant of record of apartment 6E at 2011 Ocean Avenue, Brooklyn, New York, pursuant to the Rent Stabilization Law of 1969 as amended until the time of her death, and that respondent is currently residing in apartment 6E at 2011 Ocean Avenue, Brooklyn, New York.

Based on the foregoing, the Court finds that petitioner established its prima facie entitlement to a judgment of possession and hereby denies respondent's motion to dismiss based on the failure to state a cause of action.

RESPONDENT'S CLAIM TO SUCCESSION

Respondent, Roy Grondal, testified that he moved into the apartment with Maureen Sabol in 2002. They dated six months prior to this date. Before moving into her apartment, he lived in a studio apartment located in the Rockaways. While they were dating, Ms. Sabol would visit him in his studio. Overtime, they became like husband and wife and he moved in with her since his apartment was too small. During the time of their relationship, he attended family weddings and anniversaries. He testified that sometime between 2002 and 2008, they held a commitment ceremony and exchanged rings. In 2002, Ms. Sabol became ill with cancer. When the cancer advanced, Ms. Sabol stayed with her mother and sister. He visited her daily. On April 28, 2008, he attended the funeral but did not speak and was listed on the program as "her friend."

Respondent admitted into evidence the following documents to support his claim of non-traditional family relationship. Federal Tax Return for years 2004, 2007, and 2008. W-2 Wage and Tax Statements for years 2004, 2007, and 2008. He filed his taxes as an individual and not jointly. Social Security Statements dated May 16, 2005 and 2006. Deferred Compensation Plan statements dated March 11, 2004 and October 1, 2007, which list Maureen Sabol as the primary beneficiary. New York City Employees' Retirement System statement dated 2007, which lists Maureen Sabol as "spouse" and primary beneficiary. Letter from New York City Employees' Retirement System dated April 5, 2004. Copies of checks to petitioner for rent dated April 5, 2006, May 7, 2006, July 5, 2006, February 2, 2008, May 3, 2008 and July 1, 2008. In the memo section of the check dated April 5, 2006, respondent indicated "Rent For M Sabol 6-E".

Respondent also admitted into evidence photographs that purported to reflect his attendance at family functions. Two sets of photographs date-stamped December 25, 2003 and December 25, 2004. One set of photographs date-stamped December 24, 2004. Three photographs that appear to have also been taken on December 24, 2004 based on the identical clothing worn by respondent and the deceased tenant of record. Based on his testimony, the remaining photographs of them together were taken in Maureen Sabol's aunt's house in 2005 or 2006, in Ms. Sabol's mother's house on Christmas, in Ms. Sabol's cousin's house, at a neighbor's 50th anniversary celebration, and at a dance event after her chemotherapy.

On cross-examination, respondent testified that Maureen Sabol elected to stay in her mother's house during her final days. She designated her sister in the health care proxy. He explained that she made that choice because her sister is a registered nurse and her family could provide around the clock care. He testified that he spoke generally to the doctors and nurses about her condition but was not involved in any decision-making regarding her end-of-life care. He testified that after her death the family took all of Maureen Sabol's property except for his photographs. Her sister also took the ring he gave her during the commitment ceremony and her mother now has the ring. Although other family members spoke at the wake and funeral, he was not asked to speak.

Respondent admitted that he and the deceased tenant of record maintained separate bank accounts. He was not sure if she had a pension and did not know if he was named as a beneficiary. Regarding daily expenses, he paid the cable bills and Ms. Sabol paid the Con Edison bill. He testified that she paid rent in the beginning of their relationship, but he took over almost immediately after he moved into the apartment. He also testified that he did not tell petitioner about her passing.

During his rebuttal testimony, respondent explained that Maureen Sabol elected to stay with her mother during her final days because the subject apartment is on the sixth floor while she stayed on the first floor of her mother's house. He also explained that he had no medical training and has severe arthritis. Thus, he was not physically able to provide for her care. He also worked from 5 am to 1 pm during that time.

Mitchell Rothken testified for petitioner. He is the managing agent since October of 2008. He testified that the rent goes to a lockbox at the bank. The bank codes the checks and issues automatic deposits to petitioner's account. He also testified that management was not made aware of the tenant of record's death. He did not have personal knowledge of who signed the renewal leases after the tenant of record's death.

THE LAW

Succession to a rent stabilized apartment is largely governed by Public Housing Law § 14[4] and NYC Rent Stabilization Law and Code § 2523.5[b][1]; *see also* 9 NYCRR 2520.6[o]. As amended, those provisions essentially codified the Court of Appeals' landmark holding in *Braschi v. Stahl Associates*, 74 NY2d 201 (1989). Current rent stabilization regulations reflect the broad definition of "family" which now includes both traditional and non-traditional family relationships. The definition ranges from varying degrees of relatives of the tenant of record to "any other person residing with the tenant...in the housing accommodation as a primary residence, who can prove emotional and financial commitment and interdependence between such person and the tenant...." 9 NYCRR § 2520.6[o]. However, "no single factor shall be solely determinative" in verifying a non-traditional family relationship. (*id.*). Protection from eviction should therefore:

...be based upon an objective examination of the relationship of the parties...including the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services [citations omitted]. These factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control. (id., at 74 NY2d at 206).

The person seeking to succeed to the rent stabilized tenancy bears the burden of proving that he established a "family-like" relationship with the tenant of record. *Pion Realty v. Parpas*, NYLJ, November 9, 1995, at p 26, col. 1 (App Trm 1st Dept).

In *GSL Enters., Inc. v. Lopez*, 239 AD2d 122 (1st Dept), the Appellate Division upheld the finding that respondent failed to meet his affirmative obligation to prove "emotional and financial commitment" in that

[a]ll that was offered was respondent's testimony that he and the deceased tenant shared expenses, held some credit cards jointly, and vacationed together on some five occasions over their 11 year relationship and that he helped to care for the tenant in his illness...[T]here was no testimony from friends, neighbors, or family members corroborating a family-type, as opposed to close-friend-and-roommate relationship (see *Seminole Realty Co v. Greenbaum*, 209 AD2d 345); no documentation corroborating the intermingling of finances, no proof that the two had ever held themselves out as a family unit, executed documents formalizing legal obligations...and it was significant that the tenant executed a power of attorney in favor of his sister and amended his will to include his desire that his sister "inherit" the apartment.

In *Stahl Assoc. v. Pitt*, 20 Misc3d 126 (App Trm 1st Dept), the Appellate Term reversed the trial court's decision granting succession rights, noting the lack of documentary evidence of intermingling of finances, formalizing legal obligations or jointly owned property. Specifically, the court noted that "it was significant that others, not respondent, provided day-to-day care to the tenant in the final year of his life."

APPLICATION TO THE FACTS

In the instant proceeding, the facts mitigate against succession rights.

The law envisions mutuality between the tenant of record and the occupant seeking to succeed to the rent stabilized apartment. While no one factor is dispositive, there should be some proof via documentation and other express acts that the tenant of record shared the same feelings as the occupant. Respondent's proof is all one-sided and does not provide a basis to find that his feelings were reciprocated in a public relationship of commitment and financial and emotional interdependence.

The Federal Tax returns provide proof of his residence during 2004-2007. However, they were individual returns and negate a finding of financial interdependence. Similarly with the W-2 statements, they provide evidence of residency but do not bear on the issue of financial interdependence. The Deferred Compensation Plan statements and the retirement plan statements list Maureen Sabol as the primary beneficiary and provide evidence of his emotional commitment and desire to provide for Ms. Sabol. However, in the absence of more, they do not establish financial interdependence or demonstrate that his feelings were reciprocated.

The photographs show that they attended certain family functions together. The weight the Court can accord them is limited. First, respondent had difficulty remembering dates and specific details about the locations and/or events. Second, the date-stamped photographs only reflected three family events: Christmas 2003, 2004 and 2005. Regarding the other photographs, respondent was unsure of what family events they depicted, but thought they showed his attendance at a neighbor's 50th anniversary celebration and dance event.

Finally, respondent submitted checks that again establish residency at the subject premises and corroborate his contention that he contributed to the household expenses by paying rent for

the subject unit. While respondent contends the rent payments created a landlord/tenant relationship, he failed to provide proof that the landlord had specific knowledge of his occupancy and did anything that tended to acknowledge him as a tenant in his own right. *Sullivan v. Brevard Assoc.*, 66 NY2d 489 (1985). Moreover, Mitchell Rothken testified regarding the petitioner's operating policies which includes a blind system where all checks are sent to a lockbox and the bank issues direct deposits to petitioner's account. *Coronet Properties Co. v. Greenberg*, NYLJ, November 8, 1984, at p 4, col 1 (App Trm 1st Dept).

Most compelling is what is absent.

Respondent did not call one family member who would or could corroborate a family-type relationship. There was no testimony from neighbors or friends that respondent and the deceased tenant of record held themselves out as a family unit. Respondent did not provide any proof that they intermingled finances and specifically testified they held separate bank accounts. He did not know whether the deceased tenant of record had an insurance policy or a pension. If she did, he was not named as a beneficiary. Absent was any documentation formalizing legal obligations. During her final days, she was primarily cared for by her mother and sister. He did not make any medical decisions and was not consulted concerning her care. The health care proxy was apparently in the sister's name. Upon her death, the tenant of record's sister exercised dominion and control over her personal belongings and removed all of her property including the ring he gave her during the alleged commitment ceremony.

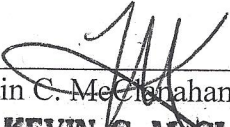
While respondent cites his election to name her as the beneficiary of his pension, this reflects his commitment to her. *Braschi v. Stahl Associates*, 74 NY2d 201 (1989) and the Rent Stabilization Law presume mutuality non-traditional relationships. The emotional and financial

commitment must be mutual and express. In the instant case, respondent fails to provide any evidence of the deceased tenant of record's public affirmation of a family-type relationship with respondent.

Based on the foregoing, the Court denies respondent's succession claim and grants to petitioner a final judgment of possession with issuance of the warrant forthwith but execution stayed through May 4, 2013, to allow respondent to vacate the subject premises.

The Court shall mail courtesy copies of its decision/order to counsel.

Dated: Brooklyn, New York
April 4, 2013



Kevin C. McClanahan, JHC
KEVIN C. McCLANAHAN
JUDGE, HOUSING COURT