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### 390 EASTCO LLC. v. ROSADO

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART S

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390 EASTCO LLC.,

Petitioner,

Index No. L&T 001173/19

**DECISION/ORDER**

-against-

EDWINA ROSADO,

“JOHN DOE,”

“JANE DOE,”

Respondents-Occupants.

-----X

**Bernadette G. Black, J.:**

**BACKGROUND**

Petitioner commenced this licensee holdover proceeding against Edwina Rosado and “John Doe” and “Jane Doe” on or about January 3, 2019, seeking a judgment of possession for the rent-stabilized premises, 390 East 153<sup>rd</sup> Street, Apartment 4E, Bronx, New York, following the death and the expiration of the lease of the tenant of record, Juanita Rivera. The proceeding was first calendared in a Resolution Part on January 22, 2019, and the matter was adjourned for Respondents to seek counsel. On February 14, 2019, Respondent Edwina Rosado appeared with counsel, and the proceeding was adjourned as the parties attempted to reach a settlement. On or about April 30, 2019, Ms. Rosado interposed an answer asserting that she was the granddaughter of the deceased tenant of record and that she was entitled to succeed to the tenancy. Ms. Rosado also asserted breach of the warranty of habitability as both a defense and a counterclaim.

On or about May 21, 2019, Alexandra Rosado interposed an answer by counsel, asserting the right to succeed to the tenancy because she was the daughter of the decedent tenant, had co-resided with her mother at the subject premises for more than two years prior to her death, and asserting breach of the warranty of habitability as a defense and counterclaim. In addition, Alexandra Rosado alleged that Petitioner had been aware that she resided at the premises prior to commencement of the proceeding and should have named her as a necessary and indispensable

party to the proceeding. On that same date, May 21, 2019, Grace Rosado also interposed an answer by counsel, asserting that petitioner should have properly named her in the proceeding as a necessary and indispensable party, claiming succession rights as the granddaughter of the deceased tenant of record, and alleging breach of the warranty of habitability as a defense and counterclaim. The proceeding was marked transferred out of the Resolution Part and adjourned for trial on July 9, 2019. Following trial and for the reasons stated below, the petition is dismissed with prejudice.

#### FACT FINDING

The parties stipulated to Petitioner's *prima facie* case, and that the only issue for trial was Respondents' succession claim. The parties further stipulated to the following facts: 1) Juanita Rivera, the decedent tenant, died on July 28, 2018; 2) Alexandra Rosado was the daughter of the decedent, and Edwina Rosado and Grace Rosado are Alexandra Rosado's children; 3) Respondents-Occupants had co-resided with Ms. Rivera from September 20, 2017 until her death on July 28, 2018. The sole issue for trial was whether Respondents had co-resided with the decedent tenant on or before July 28, 2016 through September 20, 2017. The parties also stipulated to the following exhibits:

- A) Juanita Rivera's Death Certificate;
- B) Alexandra Rosado's Birth Certificate;
- C) Edwina Rosado's Birth Certificate;
- D) Edwina Rosado's school records dated 7/25/2016 – 1/15/2019, stating the subject address;
- E) Edwina Rosado's tax records for the years 2016 through 2017, stating the subject address as Respondent's residence;
- F) Edwina Rosado's health insurance and medical billing documents dated 6/1/2016 – 6/3/2019, addressed to the subject premises;

- G) Edwina Rosado's New York State Identification and Social Security Administration notice dated 1/13/2017 – 5/31/2018, with the subject address;
- H) Edwina Rosado's Capital One Bank records dated 4/8/2018 – 4/30/2019, with the subject address;
- I) Edwina Rosado's employment letter and paystubs dated 6/5/2017 – 6/3/2019, with the subject address;
- J) Edwina Rosado's TCR Credit Corporation documents dated 2/15/2017 – 5/1/2018, with the subject address;
- K) Grace Rosado's New York State Identification Card issued 6/23/2015, with the subject address;
- L) Grace Rosado's health insurance documents dated 12/8/2015 – 11/30/2016, addressed to the subject address;
- M) Grace Rosado's Chase Bank account records from February 2015 through January 2017, stating 2254 Bassford Avenue as her address for February and March 2015, and the subject premises as Grace's address beginning in May 2015;
- N) Alexandra Rosado's W-2 forms and employee identification dated 3/29/2018, with the subject address;
- O) Alexandra Rosado's Section 8 termination appeal dated and sworn to on 7/8/2016, stating the subject address;
- P) Juanita Rivera's Healthcare Proxy naming Alexandra Rosado and Edwina Rosado dated 9/5/2017;

- Q) Contents of the court file for L&T Index Number 023153/2016, Boston Realty Holding LLC v. Alexandra Rosado, filed 4/13/2016 and last on the court's calendar on 4/28/2016; resolved by stipulation with a possessory judgment for the petitioner in that proceeding;
- R) Photographs taken at the subject premises;
- S) Edwina Rosado's online shopping order receipts;
- T) Edwina Rosado's W-2 forms and paystubs dated 4/28/2016 – 6/8/2017, addressed to the subject premises;
- U) HPD subpoena response.

Grace Rosado

Grace Rosado testified that in 2015 she moved into the subject premises to live with her grandmother, Juanita Rivera, after Ms. Rivera suffered a stroke. As a result of the stroke, Ms. Rivera's speech, mobility and coordination were impaired, as was her ability to carry out essential daily tasks. Following the 2014 stroke, Ms. Rivera was later hospitalized for pneumonia, and what seemed to be a second stroke. The family was concerned about Ms. Rivera falling in the apartment, especially at night. After moving into the apartment, Grace assisted her grandmother with cleaning, grocery shopping, banking, and other daily tasks. She also accompanied Ms. Rivera to her medical appointments. Grace recognized Cesar, petitioner's agent, and was able to identify him in court, but she did not recall ever having a conversation with him. Before moving into the subject premises in 2015, Grace resided at 2254 Bassford Avenue, Bronx, New York with her mother and other family members.

Florentina Serrano

Ms. Serrano testified that she had been employed as a home health aide for Juanita Rivera for eight or nine years, Monday through Friday, from 9AM to 1PM, until April 2018. Ms. Serrano

assisted Ms. Rivera with household chores, prepared meals, reminded Ms. Rivera to take her medications, and accompanied her to doctors' appointments. Ms. Serrano stated that she knew the Respondents through her employment at the premises, as members of the family of her former patient; that Grace Rosado moved in with her grandmother during 2015; that Alexandra Rosado and Edwina Rosado moved into the apartment to live with Ms. Rivera and Grace in 2016, and that Respondents continued to live in the apartment throughout the remainder of the period that she was employed as Ms. Rivera's home health aide. During cross-examination, Ms. Serrano, who testified through a Spanish language interpreter, appeared confused by questions pertaining to the dates when Respondents moved in to the subject premises. She first testified that Grace Rosado moved into the apartment in the year 2015, but later Ms. Serrano stated that Grace already lived with Ms. Rivera in 2010. However, Ms. Serrano was otherwise clear and credible in her testimony that in the year 2015, Grace Rosado lived at the subject premises with the decedent. Around that time Ms. Rivera's health significantly deteriorated and she sometimes had sudden "attacks" during the day which required more care and attention. Ms. Serrano asserted that Ms. Rivera required more assistance outside of the weekday, 9AM to 1PM, shifts that she was employed at the premises. She testified that Grace Rosado called 911 several times for emergency medical assistance when her grandmother had her attacks and that Grace was visibly upset and depressed when Ms. Rivera suffered setbacks. Ms. Serrano testified that overall, Grace Rosado was a caring granddaughter who frequently accompanied her grandmother to doctors' appointments and was very attentive to Ms. Rivera's needs. By April 2018, Ms. Serrano's employment agency determined that the live-in family assistance was sufficient to meet Ms. Rivera's needs and Ms. Serrano's assignment at the subject premises ended.

Alexandra Rosado

Alexandra Rosado testified that she moved to the subject premises in 2016 after she lost her apartment at 2254 Bassford Avenue as the result of an eviction proceeding, following termination of her Section 8 benefits. The court took judicial notice of a summary nonpayment proceeding, Index No. L&T 023153-16/BX, in which the petition sought to recover possession of 2254 Bassford Avenue, Apartment 6, Bronx, New York from then-tenant Alexandra Rosado. That summary nonpayment proceeding concluded on April 28, 2016 with a stipulation awarding the petitioner a judgment of possession and a warrant of eviction. The court records reflect that the marshal's warrant request in that proceeding was reviewed on May 13, 2016.

Alexandra Rosado stated that her daughter Edwina Rosado moved into the subject premises around the same time in June 2016, and that daughter Grace Rosado was already living at the apartment with Juanita Rivera when she and Edwina moved in. Ms. Rosado testified that her mother's health deteriorated during 2016, when Ms. Rivera was diagnosed with cancer, and that she became more involved with Ms. Rivera's care when Florentina Serrano, the home healthcare aide, was not working in the apartment.

Edwina Rosado

Edwina Rosado testified that she moved to the subject premises around June 2016 because her family could not afford the rent at 2254 Bassford Avenue. At that time, Respondent was employed at a Rite Aid store in Brooklyn. Initially, there was a delay in updating Edwina Rosado's home address with Rite Aid so that her paystubs did not reflect the subject address until August 2016. Ms. Rosado testified that whenever she approached the building superintendent about conditions in the apartment, he referred her to Cesar, the building manager, and that while she recognized the manager, she did not really know him.

Both Alexandra and Edwina Rosado testified that they did not notify the building management when they moved into the subject premises with Ms. Rivera, and that they brought no furniture or appliances with them when they moved into the apartment because it was already fully furnished and stocked with kitchenware. There was no room for more items.

Cesar Maldonado

Cesar Maldonado, the building manager for the subject premises, testified as Petitioner's sole rebuttal witness. Mr. Maldonado testified that he has been employed by Petitioner in his current title since 2009. He manages twenty buildings for Petitioner, comprising approximately 950 residential units. Mr. Maldonado was very familiar with the subject building as he resides there, on the first floor. He has been in the subject apartment approximately twice since 2016; once in 2017 and once in 2018. During his 2017 visit, Mr. Maldonado observed the decedent tenant, her home health aide, and "another lady" whom he was unable to identify. In March 2018, he received a letter from someone requesting repairs in the apartment. In response to the letter, Mr. Maldonado visited the apartment. During that visit he observed the tenant, "the granddaughter", who he recognized in court as Edwina Rosado, and three or four other females in the apartment. After the death of the tenant, at the landlord's request, he visited the apartment to ask the occupants when they were leaving. Mr. Maldonado acknowledged that although he lives in the building and is employed as the building manager, due to his busy work schedule he was unfamiliar with the comings and goings of people in the subject apartment and did not actually know the Respondents. Mr. Maldonado recalled having seen Respondents a handful of times throughout the years, and recalled seeing Ms. Serrano, Ms. Rivera's home health aide, only two to three times over the years.

APPLICABLE LAW AND ANALYSIS



Pursuant to the Rent Stabilization Code (hereinafter “RSC”) section 2523.5 (b)(1), in order to qualify as a successor to a rent stabilized tenancy, an occupant must establish that the tenant of record permanently vacated the subject premises, and that the occupant co-resided with the tenant of record, who must satisfy the Code definition of a family member, for two years prior to the date of vacatur (except where the potential successor is disabled or a senior citizen, in which case, a one year period of co-residency is required). RSC § 2523.5 (b)(1); RSC § 2520.6(o).

A succession claim is an affirmative defense, and the burden of proof rests on the party asserting the defense. Civil Practice Law and Rules section 3018 (b); RSC §2523.5(e); 53-63 Partners LP v Wright, 65 Misc. 3d 142(A) (App Term, 1<sup>st</sup> Dept 2019); 350-352 South 4<sup>th</sup> Street, HDFC v Torres, 56 Misc. 3d 90 (App Term, 2<sup>nd</sup> Dept 2017); Sendowsky v Pilzer, 47 Misc. 3d 142(A) (App Term, 1<sup>st</sup> Dept 2015); 339-347 E. 12<sup>th</sup> St. LLC v. Ling, 35 Misc. 3d 30 (App Term, 1<sup>st</sup> Dept 2012). RSC § 2520.6 (u) provides a list of factors which may be considered in the determination of whether an apartment functions as a person’s primary residence. Although no single factor is determinative, courts often consider whether the purported successor states another address as their residence on tax returns, driver’s license, motor vehicle registrations, voting records, employment, school, bank, and billing records. Second 82<sup>nd</sup> Corp. v Veiders 146 A.D.3d 696 (1<sup>st</sup> Dept 2017); Village Development Associates LLC v. Walker, 282 A.D.2d 369 (1<sup>st</sup> Dept 2001); Pendias v 3 East 69<sup>th</sup> Street Assoc., 119 A.D. 2d 467 (1st Dept 1986).

Courts routinely rely on credible testimony regarding co-residency in making succession determinations. Second 82<sup>nd</sup> Corp. v Veiders, *supra.*; WSC Riverside Dr. Owners LLC v. Williams, 125 A.D.3d 458 (1<sup>st</sup> Dept 2015); 53-63 Partners LP v Wright, *supra.*; A & K Sanford Corp. v. Galvez, 8 Misc. 3d 133(A) (App Term, 2<sup>nd</sup> Dept 2005) (citing 300 E. 34<sup>th</sup> St. Co. v.

Habeeb, 248 A.D.2d 50 (1<sup>st</sup> Dept 1997); Shuk Ying Sy v Doe, 4 Misc. 3d 139(A) (App Term, 1<sup>st</sup> Dept 2004).

Where a party provides sufficient proof of a *prima facie* succession claim, the burden shifts to the party opposing succession to rebut the *prima facie* showing with contrary evidence. See 585 West 204th LLC v. Peralta, 53 Misc. 3d 131(A) (App Term, 1<sup>st</sup> Dept 2016) (affirming trial court finding of succession based primarily on testimony that was “essentially un rebutted by any witness with factual knowledge”); Morton St. Assoc. v Volpe, 19 Misc. 3d 126(A) (App Term, 1<sup>st</sup> Dept 2008); Kelly Mgt. LLC v. Soltero, 27 Misc. 3d 984 (Civ Ct, Bronx County 2010).

Respondents’ familial relationship to the deceased tenant of record is undisputed. It is also undisputed that Respondents reside at the subject premises. Therefore, pursuant to RSC § 2523.5 (b), in order to establish their right to succeed to the tenancy of the subject premises Respondents must prove that they co-resided with Juanita Rivera for at least two years prior to her death on July 28, 2018. As Petitioner has already acknowledged that Respondents co-resided with Ms. Rivera from September 20, 2017 through July 28, 2018, the only remaining issue is whether Respondents co-resided with the decedent from July 28, 2016 through September 19, 2017.

The credible and uncontroverted testimony of Respondents is substantially the same. Based upon their familial relationship with the decedent, as well as financial hardship, Respondents moved into the subject premises starting in 2015. Although the now-deceased tenant, Juanita Rivera, had a home health aide to assist her on weekday mornings, her daughter and grandchildren were concerned that she could no longer manage on her own in the apartment. In 2015, after Ms. Rivera suffered a stroke, her granddaughter Grace Rosado moved out of her family’s home at 2254 Bassford Avenue in the Bronx, and into the subject premises. While living at the premises, Grace helped care for her grandmother, whose health continued to decline. In

April 2016, Alexandra Rosado's landlord commenced a nonpayment proceeding seeking rent arrears and possession of the Bassford Avenue apartment. Ms. Rosado's Section 8 rent subsidy had been terminated and she could not afford the unsubsidized rent for that apartment. In June 2016, Alexandra Rosado and her daughter Edwina Rosado moved into the subject premises to live with Juanita Rivera and Grace Rosado. Respondents testified that they brought only their clothes and papers and did not inform the building management when they moved into the apartment. Respondents' credible testimony was supported by substantial documentary evidence which indicated that they resided at the subject address during the relevant period, and was corroborated by the testimony of Florentina Serrano, Juanita Rivera's home healthcare aide for nearly a decade.

#### CONCLUSION

Based upon the credible evidence adduced at trial, the court finds that Respondents have sustained their burden of proving that they are successor-tenants of the subject premises. Accordingly, this licensee holdover is dismissed with prejudice.

This constitutes the decision and order of the court.

Dated: Bronx, New York  
May 12, 2020

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BERNADETTE G. BLACK, J.H.C.

For Petitioner:  
Novick, Edelstein, Pomerantz P.C.

For Respondent:  
Legal Services NYC - Bronx  
By Roland Nimis, Esq.