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**A.A. v. J.O.**

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## RELEVANT FACTS AND PROCEDURAL HISTORY

On February 15, 2019, Petitioner filed a holdover petition alleging that Respondent was a licensee who had been properly served a Notice to Quit, but had failed to vacate the premises. Subsequently, on May 31, 2019, Petitioner filed a motion seeking summary judgment. Respondent opposed, *inter alia*, on the grounds that he was more than a mere licensee, because the parties were married, thus entitling him to continued occupancy of the premises. Respondent also argued that there was a matrimonial action pending before the Supreme Court (Justice Sattler) and that the housing court proceedings should be stayed until a determination on the validity of the marriage had been made by the Supreme Court. The issue was fully briefed and heard before Judge James.

On August 6, 2019, Judge James issued a Decision and Order denying the summary judgment motion. It read, in part:

Respondent alleges that he and Petitioner are married pursuant to New York law, and as such, he is not a mere licensee that can be removed from the subject premises through summary proceedings. Respondent asserts that he commenced divorce proceedings in Supreme Court and that any issues pertaining to his continued occupancy in the apartment must be determined in that forum.

In a written decision issued on January 17, 2020, Justice Sattler unequivocally found that there was no valid marriage between the parties, and ordered Respondent to pay \$1,000 in counsel fees to Petitioner.

On February 12, 2020, Petitioner filed the instant motion, pursuant to CPLR §2221(e), seeking to renew his motion for summary judgment.

## CONCLUSIONS OF LAW

CPLR §2221(e) states that a motion for leave to renew shall “be based on new facts not offered on the prior motion *that would change the prior determination*” or shall demonstrate that there has been a change in the law that would change the prior determination, and shall contain reasonable justification for the failure to present such facts on the prior motion [emphasis added].

First, it is undisputed that the Supreme Court issued a decision that unequivocally held that the parties had no valid marriage. This meets the standard set forth in CPLR §2221(e) of “new facts not offered on the prior motion.”

Further, Respondent himself concedes that the decision of the Supreme Court decides this issue regarding whether or not a marriage exists, and that he is collaterally estopped from claiming that he is Petitioner’s legally married spouse. Hence, Petitioner’s motion to renew is granted for

the sole and limited purpose of the parties appropriately stipulating that this issue is no longer in dispute.

However, these new facts do not resolve Respondent's remaining claims, namely that even if he is not a spouse, he is a family member.

Section 713(7) of the RPAPL provides, in pertinent part, that a summary proceeding may be brought to recover possession of real property after notice has been made if the respondent "is a licensee of the person entitled to possession of the property at the time of the license, and [a] the license has expired, or [b] the license has been revoked, or [c] the licensor is no longer entitled to possession of the property."

It is also well-established that a licensee is "one who enters upon or occupies lands by permission, express or implied, of the owner, or under a personal, revocable, nonassignable privilege from the owner, without possessing any interest in the property, and who becomes a trespasser thereon upon revocation of the permission of the privilege" (Robinson v. Holder, 24 Misc. 3d 1232(A) (Dist. Ct. Suffolk Cnty. 2009).

Here, Petitioner's argument that if not a spouse, Respondent must necessarily be a licensee, ignores the existence of the remaining issues of fact, namely, whether Respondent, though not a spouse, may nevertheless be a "family member" (*see e.g.* Minors v. Tyler, 137 Misc.2d 505 (N.Y.C. Civ. Ct. 1987) (affording rights beyond that of licensee to family members in holdover proceedings and creating a family member exception such that paramour or partners may not be evicted even if the parties were not legally married, but there was evidence of a "marital relationship"); Dejesus v. Rodriguez, 196 Misc. 2d 881 (Civ. Ct. Richmond Cnty. 2003) (holding that ex-girlfriend was not mere licensee whose license had been revoked upon termination of parties' relationship, and thus owner could not employ summary proceedings to remove her from property); Xinyang Yu v. Shuwen Zhan, 62 Misc. 3d 1202(A) (N.Y. Dist. Ct. Nassau Cnty. 2018) (finding "Generally, and with limited exceptions, a family member may not evict another family member in a summary proceeding where the occupancy arises out of a familial relationship [...] In interpreting the definition of a 'family,' courts have traditionally considered whether the parties lived together 'in a family unit' with 'some indicia of permanence or continuity' [...] Whether the parties resided together has often been the 'critical factor' in determining whether they are to be considered a 'family' for legal purposes").

In the underlying decision, Judge James held:

Even in situations where the parties were not legally married as evidenced by a valid marriage certificate, courts have found a family member relationship (*see* Braschi v. Stahl Assoc. Co., 74 NY2d 201 [1989] [...]). The Braschi Court held that a gay lifetime partner was a family member eligible to succeed to an apartment after the death of his partner who was the lawful tenant. Petitioner argues that Respondent incorrectly relies on the holding in Braschi, as the apartment at issue there was an apartment subject to rent regulation, whereas here, Petitioner is a shareholder of the subject premises and the apartment is not subject to rent regulation. The Court is not persuaded by that argument. While there are differences in the facts of the cases and the regulatory status of the apartments at issue, the holding in Braschi and the definition of "family" set forth in the decision has been applied

in other cases similar to this one in which unmarried couples lived together long term in premises that were not always subject to rent regulation [...].

Accordingly, the Court finds that on this record Petitioner has not shown entitlement to judgment as a matter of law, **as triable issues of fact exist as to the nature of the relationship between the parties and as to Respondent's alleged status as a licensee.** Additionally, given that the parties do not have a legalized marriage, there is question as to whether or not the action filed by Respondent in Supreme Court will move forward. **Similarly, the Court cannot dismiss the underlying proceeding in its entirety, as the two pictures, proof of one credit account where Petitioner made Respondent an authorized user and copy of Petitioner's passport application where Respondent is referred to by Petitioner as his "partner," attached to Respondent's motion are insufficient for the Court to find that Respondent and Petitioner lived as a married couple, making Respondent more than a mere licensee** (emphasis added).

In her decision, Judge James did not find the issue of whether a marriage existed to be dispositive. Rather, she explicitly held out the possibility that Respondent could, nevertheless, based on the alleged facts of the case, be Petitioner's "family member," under the standard set forth in Braschi, regardless of whether the parties were married. Notably, Judge James concluded that regardless of whether the parties were married, the court could not dismiss the underlying proceeding in its entirety or determine, based on the pictures and other alleged documentary evidence, whether the Respondent was more than a mere licensee.

Importantly, in Braschi, the Court of Appeals stated:

[...] we conclude that the term family, as used in 9 NYCRR 2204.6 (d), should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence. This view comports both with our society's traditional concept of "family" and with the expectations of individuals who live in such nuclear units [...] Hence, it is reasonable to conclude that, in using the term "family," the Legislature intended to extend protection to those who reside in households having all of the normal familial characteristics. Appellant Braschi should therefore be afforded the opportunity to prove that he and Blanchard had such a household.

Because there remain triable issues of fact as to the nature of the relationship between the parties and Respondent's alleged status as a family member or mere licensee, Petitioner's motion for summary judgment and to renew on this ground is denied.

This is the Decision and Order of the court.

Dated: July 23, 2020  
New York, NY

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Hon. J. Mabelle Sweeting