2021-01-29

Aloni v. Oliver

SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

January 2021 Term

Edmead, P.J., Higgitt, McShan, JJ.

Aviad Aloni,
Petitioner-Appellant,

NY County Clerk's No. 570214/20

-against-

Jeffrey Oliver,
Respondent-Respondent.

Calendar No. 21-005

Petitioner, as limited by his brief, appeals from that portion of an order of the Civil Court of the City of New York, New York County (J. Machelle Sweeting, J.), dated July 23, 2020, which, upon renewal, denied his motion for summary judgment of possession in a holdover summary proceeding.

Per Curiam.

Order (J. Machelle Sweeting, J.), dated July 23, 2020, insofar as appealed from, reversed, without costs, and petitioner's motion for summary judgment of possession granted. Execution of the warrant of eviction shall be stayed for 60 days.

Petitioner's motion for summary judgment of possession should have been granted. The summary judgment record conclusively establishes that respondent was a licensee whose license to occupy the cooperative apartment he shared with petitioner, the sole proprietary lessee, was revoked by petitioner (*see* RPAPL 713[7]). No issue of fact was raised by respondent as to whether he had any possessory interest in the premises or any right to continued occupancy.

Contrary to the conclusion below, no issue of fact was raised as to respondent's purported "status as a family member or . . . licensee." Even accepting respondent's contention that he and petitioner resided together in the apartment in a family-like "romantic relationship," a licensee proceeding pursuant to RPAPL 713(7) is properly maintainable against respondent. The RPAPL contains no language exempting individuals with some familial relationship to a petitioner from eviction as licensees (*see Heckman v Heckman*, 55 Misc 3d 86 [App Term, 2nd Dept, 9th & 10th Jud Dists 2017]*; see also Tausik v Tausik*, 11 AD2d 144 [1960], *affd* 9 NY2d 664 [1961] [interpreting Civil Practice Act § 1411(8)]), and courts should not engraft such an exception into the statute "where none exists" (McKinney's Cons Laws of NY, Book 1, Statutes, § 76, Comment at 168 [1971 ed]).

Rosenstiel v Rosenstiel (20 AD2d 71 [1963]), which involved a summary licensee proceeding by a husband to remove his wife from the marital home, does not warrant a contrary result. In that case, the court held that the wife was not a licensee, i.e. one whose rights exist "by virtue of the 'permission' of her husband or under a 'personal' and 'revocable privilege' extended by him" (20 AD2d at 76). Rather, the wife's rights "exist[] because of special rights incidental to the marriage contract and relationship" pursuant to which the husband has the obligation to maintain "a home or housing for the wife" (*id* at 77).

In the present case, however, although respondent initially claimed that he was

the spouse of petitioner, an order rendered in a related action between the parties held that there was no legal marriage between petitioner and respondent, and that respondent has no right to support, maintenance, equitable distribution or exclusive use of the subject apartment (*see Oliver v Aloni,* Sup Ct, NY County, January 24, 2020, Sattler, J., index No. 350001/19). Thus, *Rosenstiel* is distinguishable. Moreover, *Rosenstiel* does not otherwise compel or suggest that a licensee proceeding cannot be maintained against a family member other than a spouse "whose rights as such have not been annulled or modified by any court decree or special agreement" (*Rosenstiel* at 73; *see Young v Carruth*, 89 AD2d 466 [1982]; *Halaby v Halaby*, 44 AD2d 495 [1974]; *Tausik v Tausik*, 11 AD2d 144 [1960]; *Heckman v Heckman*, 55 Misc 3d 86).

Braschi v Stahl Assoc. Co. (74 NY2d 201 [1989]) is inapplicable to the particular facts of this case. *Braschi* extended statutory rights to succeed to rent regulated apartments, which were held by family members, to nontraditional family members (*see East 10th St. Assoc. v Estate of Goldstein*, 154 AD2d 142, 145 [1990]). Manifestly, *Braschi* applies to cases commenced by a landlord against a remaining family member of a rent regulated apartment who seeks succession rights, and not to cases between a lessee and another occupant of the apartment (*see Heckman v Heckman*, 55 Misc 3d 86). "The expansive definition of family set forth in *Braschi* . . . has no bearing on interpreting different statutes with different statutory purposes" (*Preferred Mut. Ins. Co. v Pine*, 44 AD3d 636, 640 [2007]; *see Raum v Restaurant Assoc.*, 252 AD2d 369, 370

[1998]), such as RPAPL 713(7).

Nor do we perceive any policy reason to deprive petitioner of the right to commence a statutory summary proceeding. The remedy provided by article 7 of the Real Property Actions and Proceedings Law was designed to be a "simple, expeditious and inexpensive means of regaining possession of his premises" (*Metropolitan Life Ins. Co. v Carroll*, 43 Misc 2d 639, 640 [App Term, 1st Dept 1964], quoting *Reich v Cochran*, 201 NY 450, 454 [1911]), with Civil Court as the preferred forum for resolution of such disputes (*see Waterside Plaza v Yasinskaya*, 306 AD2d 138 [2003]). These objectives are served by permitting petitioner to maintain "the modern and generally more satisfactory summary proceeding" (*Young v Carruth*, 89 AD2d at 469) to remove respondent from the premises, rather than relegating petitioner to the more cumbersome Supreme Court ejectment action. Summary proceedings "should not be so hypercritically restricted as to destroy the very remedy which they are designed to afford" (*Reich*, 201 NY 455).

All concur

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

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Clerk of the Court

January 29, 2021