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86 West Corp. v. Singh

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SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

February 2021 Term

Edmead, P.J., Higgitt, Brigantti, JJ.

86 West Corp.,
Petitioner-Landlord-Respondent, NY County Clerk's No.
570078/17

- against -

Harbinder Singh,
Respondent-Tenant, Calendar No. 21-016

- and -

"John Doe,"
Respondent-Undertenant-Appellant,

- and -

"John Roe," "Jane Roe,"
Respondents-Undertenants.

Respondent-undertenant "John Doe" appeals from an order of the Civil Court of the City of New York, New York County (Clifton A. Nembhard, J.), dated April 30, 2020, which granted petitioner's motion for summary judgment of possession against him and denied respondent-undertenant's cross motion for summary judgment dismissing the petition in a holdover summary proceeding.

Per Curiam.

Order (Clifton A. Nembhard, J.), dated April 30, 2020, modified to deny petitioner's motion for summary judgment against respondent-undertenant; as modified,

order affirmed, with \$10 costs.

Respondent-undertenant in this holdover summary proceeding asserts that he is entitled to succeed to the West 86th Street rent stabilized apartment previously occupied by his mother and step-father, Vincentine Cortese-Singh and Harbinder Singh, respectively. It is not disputed that the last lease renewal executed by said tenants was for the period November 1, 2013 through October 31, 2015. Vincentine died on December 31, 2014, which was during the renewal period. Harbinder relocated, although the exact date of such relocation is unclear. Nevertheless, following expiration of the last lease renewal in October 2015, petitioner served a notice of non-renewal upon Harbinder on nonprimary residence grounds, and this holdover proceeding ensued. Harbinder did not interpose an answer or defend the possessory claim against him.

With respect to respondent-undertenant, petitioner's motion for summary judgment should have been denied. The evidence submitted by petitioner in support of the motion failed to eliminate all triable issues of fact with respect to respondent's family member succession defense (*see* Rent Stabilization Code [9 NYCRR] § 2523.5[b]), including whether respondent primarily resided with the tenant(s) in the apartment for the requisite two year period prior to their permanent vacatur.

Third Lenox Terrace Assoc. v Edwards, 91 AD3d 532 (2012), relied upon by petitioner, does not dictate a contrary result. *Third Lenox* and its progeny involve succession claims where the stabilized tenant continues to execute lease renewals

despite having vacated the apartment and establishing a residence elsewhere. In those situations, courts within the First Department hold that the date of the “permanent vacating of the housing accommodation by the tenant,” for succession purposes (Rent Stabilization Code [9 NYCRR] § 2523.5[b][1]), occurs at the expiration of the last renewal lease. As a result, the proposed successor has the affirmative obligation to establish that he or she resided with the tenant in the apartment as their primary residence for a period of no less than two years prior to the expiration of that last renewal lease (*see Matter of Well Done Realty, LLC v Epps*, 177 AD3d 427 [2019]).

In this case, however, petitioner has not shown that tenants vacated the apartment and continued to execute renewal leases. Indeed, there is no dispute that Vincentine primarily resided in the apartment at the time of her death, which was during the last lease renewal, and that Harbinder, who may have already relocated, did not renew the lease after Vincentine died.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Clerk of the Court