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Rosenblatt v. Kanakis

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : HOUSING PART F

-----X
SHARI ROSENBLATT,

Petitioner,
-against-

Index No.
L&T 72872/2019

REN KANAKIS,
Respondent.

DECISION AND ORDER

-----X
MARC FINKELSTEIN, J.:

Recitation, as required by CPLR 2219(a), of the papers considered in review of: Respondent's motion for summary judgment and Petitioner's cross-motion

	Papers Numbered
Motion for Summary Judgment	<u>1</u>
Respondent's Memorandum of Law.....	<u>2</u>
Petitioner's Cross-Motion.....	<u>3</u>
Respondent's Reply and Opposition.....	<u>4</u>

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DECISION AND ORDER

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MARC FINKELSTEIN, J.:

In this summary licensee holdover proceeding the 10 Day Notice to Quit states in relevant part: “. . . since you have reached the age of majority, you have occupied the above-described premises as a licensee of the undersigned, and have continued in possession as a licensee to the current date . . . the undersigned elects to revoke said license . . .” There is no dispute that petitioner is the prime-tenant/ lessee of the subject premises and the biological mother of the respondent, an adult who has lived in the subject premises with no interruption since birth. Thus the gravamen of petitioner-mother’s claim to be permitted to evict her adult son, who has lived in the subject apartment with her for his entire life, by way of this Housing Court proceeding, is that he is a mere licensee under RPAPL §713(7).

Petitioner seeks summary judgment based on the Appellate Term, First Department’s holding in Aloni v Oliver, in which the court found a respondent who claimed to be in a “family-like ‘romantic relationship’” with petitioner was a licensee. 70 Misc 3d 137(A) (AT, 1st Dept 2021). Petitioner relies on the court’s statement, “[t]he RPAPL contains no language exempting individuals with *some* familial relationship.” Id. (emphasis added). To the contrary, the court did not say “any” familial relationship and the facts on those and other post Aloni cases found by the court are distinguishable from the case at hand.

In its decision, the Aloni court noted that there had been a prior proceeding finding no legal marriage to have existed between the litigants. In fact, the “couple” in the Aloni case had “an order rendered in a related action between the parties [that] 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.”

Id., (citing Oliver v Aloni, (Sup Ct, NY County) 1/24/20, Index No 350001/19). The court concluded that as respondent did not raise an issue of fact as to whether he had any possessory interest in the premises or any right to continued occupancy, then even if he and petitooner resided together in a “romantic relationship” a licensee proceeding purusant to RPPAPL 713(7) was properly maintainable against respondent.

Petitioner further relies on Heckman v Heckman, 55 Misc 3d 86 (App Term, 2nd Dept 2017), where the court found no “family exception” applied in a licensee holdover for the daughter-in-law of the decedent owner of the subject premises. The facts in the cases relied on by petitioner are distinguishable from those of the instant case, most notably, in that the familial relationships were not as direct as parent-child (albeit an adult child) who have cohabitated for the child’s entire life.¹

In the instant case, respondent is the biological son of petitioner and moved into the subject premises upon being discharged from the hospital after birth. Respondent remained in this familial home after the separation and divorce of his parents, and has never left. While

¹Nor are the facts similar to the case at hand in the Appellate Term’s subsequent decisions of Readick v Green, 73 Misc 3d 123(A) (App Term, 1st Dept 2021), (at best, a failed attempt at alleging domestic partner status); or Great Jones St Realty Corp v. Chimsanthia, 74 Misc 3d 126(A) (App Term 1st Dept 2022), (wife of decedent employee, allegedly an occupant incidental to employment, claimed to be the in-law of the petitioner’s principals).

petitioner may have no legal obligation to support respondent now that he is an adult², the fact that respondent has never lived anywhere but the subject premises, his familial home, merits more than a summary proceeding.

This court does not find the Aloni decision to fully prevent **any** “family exception” to RPAPL §713 (7) as established in the long line of cases leading to and stemming from Rosenstiel v Rosenstiel, 20 AD2d 71 (1st Dept 1963). There are numerous cases which have held that occupancy due to familial relationship, such as that here, does not constitute a licensee agreement as intended by RPAPL §713(7). As best said by Judge Ukeiley, in The Bench Guide to Landlord & Tenant Disputes in New York (2011) quoted at page 39 in Kakwani v Kakwani, 40 Misc 3d 627, 635 (Nassau Dist Ct 2013) :

With limited exceptions, a family member may not evict another family member in a summary proceeding. **This is the case because were the occupancy of the subject premise arises out of the “familial relationship” such as an adult child who has lived in the family home since birth**, a summary proceeding may not be maintained. (Emphasis added).

See also, Morris v Morris, 63 Misc 3d 453 (Civ Ct, Bronx County 2019), (finding that Heckman did not stand for the ability to bring a licensee proceeding against an adult sibling who had lived in the subject premises for sixty years, having entered at the age of sixteen);³ Williams v Williams, 13 Misc 3d 395 (Civ Ct, New York County 2006) (adult grandchildren who entered

²Respondent further alleges that he has medical conditions for which he may be entitled to receive support from his mother. Given no such finding has been made, the court does not consider this possibility in deciding this motion.

³Cf, Beulah Sherland Chambers v Sherland, 67 Misc 3d 1239(A) (Civ Ct, Bronx County 2019) (denying a motion to dismiss a no grounds holdover proceeding in which respondent alleged a familial relationship but did not claim any “support or similar obligation”). The alleged relationship is unclear, but the parties did not claim obligations arising out of that relationship.

at the inception of the tenancy when children could not be licensees); Sirota v Sirota, 164 Misc 2d 966 (Civ Ct, Kings County 1995) (adult children were not licensees as they entered as children and lived in the subject premises, their familial residence, for over 25 years); and Black v Ramon, Index No. L&T 09154/13 (Civ Ct, NY Co, October 26, 2015) NOR (petitioner’s adult son was not a licensee who could be evicted through a summary proceeding because he had lived his entire life in the apartment “without paying rent or executing a lease”).

In the instant matter, respondent entered into occupancy of the subject premises solely as part of a family unit with his biological parents, including his mother, the tenant of record, and not by virtue of any license arrangement with his mother, and his occupancy has been uninterrupted since birth. This fact pattern is not appropriate for a licensee proceeding under RPAPL § 713 (7) in Housing Court. As indicated in Williams v Williams, *supra*, family relationships from spousal, parent and child and even nonmarried couples are unique and thus should not be terminated through summary proceedings in Housing Court but rather through ejectment actions or proceedings in Family Court. As respondent is not a licensee, the petitioner has failed to state a cause of action for which relief can be granted and this proceeding must be dismissed.

For these reasons, respondent’s motion for summary judgment is granted and this proceeding is dismissed. As a result, petitioner’s cross-motion is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
May 19, 2022


MARC FINKELSTEIN
JHC