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[*1]

Sino Realty Inc. v Wai Wah Yung
2022 NY Slip Op 22162
Decided on May 20, 2022
Civil Court Of The City Of New York, New York County
Bacdayan, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
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Decided on May 20, 2022

Civil Court of the City of New York, New York County

<p>Sino Realty Inc., Petitioner</p> <p>against</p> <p>Wai Wah Yung, Respondent-Tenant, YEE LING LAW, YEE LING YUNG, KAM SAU YUNG, KING YIM YUNG, SIU LAN LUNG Respondents-Undertenants.</p>

L & T Index No. 79704/2012

Kolodny, P.C. (Peter Kolodny, Esq.) for the petitioner

Take Root Justice (Claribel Morales, Esq.), for the proposed intervenor, Shuet Lan Yung

Karen May Bacdayan, J.

Recitation, as required by CPLR 2219 (a), [\[EN1\]](#) of the papers considered in review of this motion:

Papers

Numbered

Order to Show Cause, annexed Affidavits, and Exhibits (A - C) 1

Opposition to Motion, and Exhibits (A - I) 2
Affirmation in Reply, and Exhibits (A - G) 3

After oral argument on the record the decision and order on this motion to intervene Shuet Lan Yung in this proceeding is as follows:

PROCEDURAL HISTORY AND ARGUMENTS

This nonprimary residence holdover proceeding was commenced in 2012 by Sino Realty Inc. ("petitioner") against Wai Wah Yung, the rent stabilized respondent-tenant, and Yee Ling Law, Yee Ling Yung, Kam Sau Yung, and King Yim Yung, respondents-undertenants. [\[FN2\]](#)

The parties stipulated to a final judgment of possession as against the respondent and respondent-undertenants in February 2013, and the warrant issued forthwith. Execution of the warrant was stayed until respondent, Kam Sau Yung, the family's matriarch, either vacated or passed away, whichever event occurred first. In 2018, petitioner brought an order to show cause seeking access to the premises for extermination and elimination of noxious odors, a determination that Kam Sau Yung had vacated the premises, or, in the alternative setting the matter down for a hearing on whether Kam Sau Yung was deceased, and vacating the stay on the execution of the warrant.

By decision and order dated October 31, 2018, the Hon. Daniele China granted petitioner's motion to execute the warrant of eviction, but stayed execution through November 30, 2018 to allow for the remaining respondent in possession "Siu Lan Yung [who had been substituted the "Doe" herein] and her sister [Shuet Lan Yung] who is not a party to this action and took possession after entry of the stipulation of settlement dated February 1, 2013 [to vacate]."

Shuet Lan Yung ("movant" or "Yung") who first appeared in this proceeding in 2018 as an unnamed occupant seeking additional time to vacate the premises, obtained two more stays of execution of the warrant by stipulations dated December 12, 2018 and March 1, 2019 resolving orders to show cause. [\[FN3\]](#) In a "so ordered" stipulation dated March 1, 2019, executed by movant and Siu Yan Yung, the parties agreed that "[m]ovants shall vacate the premises on or before March 30, 2019 TIME BEING OF THE ESSENCE." (Petitioner's opposition, exhibit G.) The stipulation further provided, "[m]ovants shall not and may not make any further applications to the [c]ourt by order to show cause or otherwise for any

further stay of execution of the warrant." Despite this restriction to which movant agreed, the Hon. Michelle Schreiber signed the order to show cause seeking to stay execution of the warrant. However, on April 15, 2019, the same judge denied the request for a stay "for the reasons stated on the record [t]here is no basis to extend the time for respondents to vacate and time has been extended several times already." The April 15, 2019 decision and order was appealed to the Appellate Term and denied on June 6, 2019. (petitioner's attorney's affirmation in opposition at 18; exhibit I of opposition.)

Thereafter, Shuet Lan Yung obtained counsel and moved by order to show cause to intervene in [*2]this proceeding, [\[FN4\]](#) for time to answer to assert a colorable claim of succession rights as she had resided in the apartment for two years prior to her brothers vacatur in 1995 or 1996, or further staying execution of the warrant for good cause. [\[FN5\]](#)

Yung sets forth her case in two untranslated affidavits. [\[FN6\]](#) Yung is 69 years old, single, and has a limited income. (Yung affidavit in support of June 18, 2019 order to show cause at 1.) Yung states that, upon information and belief, her brother, Wai Wah Yung, the tenant of record, signed a vacancy lease in 1982. (*Id.* at 12.) She has lived in the subject premises since 1986. (*Id.* at 10.) Her brother moved out of the premises in 1995 or 1996. (*Id.* at 13.) Yung and her mother continued to reside in the premises after the tenant of record's vacatur. (*Id.* at 14.) While movant states that she was aware of the February 13, 2013 stipulation, she did not sign it because she "knew the contents were untrue." (*Id.* at 18.) Her attorney reiterates this in his reply affirmation, but goes one step further: "Although she was aware [that] the stipulation contained untrue statements and would result in a loss of rights, Ms. Yung did not feel compelled to sign the stipulation as she was not a named party in the proceeding, [and] was not required to do so."

Attached to Yung's reply papers are several exhibits purporting to demonstrate a colorable claim of succession rights to the apartment based on receipt of documents at the subject premises. Exhibit A is a lease signed by Wai Wah Yung on September 7, 2007 (despite the uncontroverted fact that he vacated that premises in 1995 or 1996). Exhibit B is a 1040EZ signed on March 22, 2013, and another 1040EZ signed on April 8, 2015 (both post-dating the February 13, 2013 stipulation of settlement). Exhibit C is a single Chase Bank statement for the period of January 12, 2012 — February 9, 2012, just one month prior to execution of the February 13, 2013 stipulation. Exhibit D is a document from the Social Security Administration dated December 22, 2014. All other Exhibits likewise post-date the February 2013 agreement.

Petitioner opposes the motion on the basis that it is untimely, the movant having known about this proceeding for years. Petitioner further argues that Yung should not now be allowed to raise a succession claim, citing to [Third Lenox Terrace Associates v Edwards, 91 AD3d 532](#) (1st Dep't 2012).

In reply, movant reiterates her arguments and attaches exhibits as set forth above. The reply papers studiously disregard petitioner's *Third Lenox* argument.

[*3]DISCUSSION

CPLR 1013 provides in whole:

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or *prejudice the substantial rights of any party*.

"Consideration of any motion to intervene begins with the question of whether the motion is timely. In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party." ([Yuppie Puppy Pet Prod., Inc. v St. Smart Realty, LLC, 77 AD3d 197](#), 201 [1st Dep't 2018].)

The instant motion was filed six and a half years after the February 13, 2013 stipulation providing for a final judgment and warrant of eviction. Shuet Lan Yung, by her own admission knew about the eviction proceeding and agreement to vacate upon her mother's death. (Yung affidavit in support of order to show cause at 15-19.) Due to the COVID-19 pandemic and resultant modification of court procedures, it has been another three years since the instant motion to intervene was filed.

Movant certainly stands to benefit from intervention and the opportunity to assert her succession rights. However, she does not demonstrate a colorable claim. In contrast to Second Department authority, which defines that date of permanent vacatur as the date of actual vacatur, [Jourdain v NY St. Div. of Hous. & Community Renewal, 159 AD3d 41](#) (2d Dept. 2018), in the First Department, [Third Lenox Terrace Associates v Edwards, 91 AD3d 532](#) (1st Dep't 2012) is the controlling law. In *Third Lenox* the tenant of record vacated the apartment in 1998 and established a residence elsewhere. However, she continued to execute

renewal leases for the apartment extending through November 2005. The Appellate Division found that the tenant of record "having continued to pay the rent and execute renewal leases extending through November 2005 cannot be found to have permanently vacated the apartment at any time prior to the expiration of the last lease renewal on November 30, 2005. Accordingly, the relevant two-year period during which respondent . . . must show that she co-occupied the subject apartment with [the tenant of record] is 2003 to 2005." (*Id.* at 533.) It was immaterial to the Court that the occupant seeking succession was able to establish that she lived in the apartment between 2003 and 2005. What is paramount in the First Department is that the purported successor is able to demonstrate co-residency with the tenant of record for two years prior to the expiration of the most recent renewal lease.

The facts of this case are strikingly similar. Yung's brother, the tenant of record, undisputedly vacated in 1995 or 1996, and continued to sign renewal leases at least until 2007 at which time the rent was \$443.08. (Yung reply affidavit, exhibit A.) According to the petition, [*4] the original lease "was most recently renewed and extended by Renewal Lease, dated August 5, 2010 between Sino Realty Inc., as owner/landlord, and Wai Wah Yung, as tenant for a term commencing September 1, 2010 and ending August 31, 2012." (petition at paragraph 2.) Viewing the allegations in the petition in the most favorable light, the relevant time period pursuant to the *Third Lenox* standard is September 1, 2010 to August 31, 2012. Yung has offered no evidence that she lived with her brother, the tenant of record during that time-period, or even during the two-year time period in the 1990's that she incorrectly believes to be the relevant period of co-residency in the First Department.

Shuet Lan Yung has not established a colorable claim to succession, thus she has not demonstrated that she has a substantial right that will be prejudiced if she is not allowed to now intervene. Moreover, by her own account, she has enjoyed the benefit of continued occupancy after issuance of the warrant for almost one decade. Further litigation in this proceeding, when it concluded with the entry of a final judgment against the named parties over nine years ago, would cause unreasonable delay and prejudice to petitioner.

Thus, the motion to intervene is denied, and petitioner may execute on the warrant forthwith. [\[FN7\]](#)

CONCLUSION

Accordingly, it is hereby:

ORDERED that Shuet Lan Yung's motion to intervene is DENIED; and it is further

ORDEERED that petitioner shall serve a copy of this decision order within five (5) days of its appearance on NYSCEF on both the proposed intervenor and her attorney. The parties will also receive copies by email.

ORDERED that the warrant may be executed after service and expiration of a Marshal's notice as required by law; and it is further

ORDERED that ADULT PROTECTIVE SERVICES must be notified prior to any eviction.

This constitutes the decision and order of this court.

Dated: New York New York
May 20, 2022

HON. KAREN MAY BACDAYAN
Judge, Housing Part

Footnotes

Footnote 1: This file is not currently on NYSCEF.

Footnote 2: The original caption of this proceeding included the following respondents: Wai Wah Yung, Yee Ling Law, Yee Ling Yung, Kam Sau Yung, and "John Doe." The caption was later amended to substitute Siu Yan Yung for "John Doe." No other parties are named in this proceeding.

Footnote 3: Yung is limited English proficient. (Affirmation in reply of Yung's counsel at 7.) Both the stipulations were signed by a Cantonese interpreter provided by the court. An interpreter was also present at the oral argument of this motion.

Footnote 4: Respondent moves pursuant to CPLR 7802. This is not an Article 78 proceeding. However, the court will consider this motion as one made pursuant to CPLR 1013 for intervention by permission.

Footnote 5: The original order to show cause sought vacatur of the October 31, 2018 decision and order, but the signing judge struck this request for relief.

Footnote 6: The notes that "[w]here an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate." *See* CPLR 2101

(b); [see also Sylla v Condo. Bd. of Kips Bay Towers Condo., Inc., 159 AD3d 430](#) (1st Dep't 2108)

Footnote 7: Before the passage of the Housing Stability and Tenant Protection Act of 2019, RPAPL 749 required the court to issue a warrant upon rendering a final judgment for petitioner "commanding the [marshal] to remove *all persons . . . and put the petitioner into full possession*" (emphasis added). RPAPL 749 now requires that the warrant "command[] the [marshal] to remove all persons *named in the proceeding.*" RPAPL 749, as amended by L 2019, ch 36, part M, § 19 (June 2019) (emphasis added). Were that amendment applicable here, petitioner would be constrained to commence a summary holdover proceeding against the unnamed movant herein.

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