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Ben-Benu v. Kandhorov

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Ben-Benu v Kandhorov
2022 NY Slip Op 50469(U)
Decided on June 6, 2022
Civil Court Of The City Of New York, Kings County
Stoller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 6, 2022

Civil Court of the City of New York, Kings County

Ismail Ben-Benu and Norma Brown-Ampey, Petitioners,

against

Michael Kandhorov, Mir E. Hasan, Majana Begum, Muhammad Jabaed, Adbus Salaam, Afroza Khanam, Maimona Begum, Abdul Aziz, and Shibbir Osmani, Respondents.

Index No. 10131/2021

For Petitioner: Soelma Shagdorova

For Respondent Kandhorov: Evan Layliev

For Respondent Hasan: David Stern

Jack Stoller, J.

Ismail Ben-Benu ("Petitioner") and Norma Brown Ampey ("Co-Petitioner"), the petitioners in this proceeding (collectively "Petitioners"), commenced this proceeding against Michael Kandhorov, a respondent in this proceeding ("Respondent") on the allegation that Respondent locked Petitioners out of 291 Lincoln Avenue, Brooklyn, New York, a single

family house ("the subject premises"), and against Mir E. Hasan ("Co-Respondent"), and Abdus Salam, Majana Begum, Muhammed Jabaed, Afroza Khanam, Maimona Begum, Abdul Aziz, and Shibbir Osmani (together with Co-Respondent, "the New Occupants") seeking possession of the subject premises on the ground that they took possession of the subject premises after Respondent locked Petitioners out of the subject premises. Respondent interposed an answer alleging, *inter alia*, that he is not in a position to restore Petitioners to possession of the subject premises. Co-Respondent interposed an answer. The Court held a trial of this matter on January 21, 2022, January 27, 2022, March 2, 2022, April 4, 2022, April 7, 2022, and May 24, 2022, and May 25, 2022.

The trial record

Petitioner testified that he lives at the subject premises; that he moved to the subject premises in summer of 2016; that he started this case in August 16, 2021; that he moved in with Co-Petitioner and his two children; that Respondent moved him in and someone named Michael whose last name he did not know; that he had previously contracted to work with Respondent; that Petitioners were the only family living in that home; that he started this case because a neighbor called; that he came back to New York on August 13, 2021; that he contacted Respondent first by sending Respondent a picture; that he had sent a text asking why Respondent [*2] changed the locks; and that Respondent said he did not know anything about that and then Respondent said that the subject premises was sold.

Petitioners submitted into evidence a text from Respondent saying that the subject premises had been sold that Respondent would give Petitioners contact information for the new owner so that Petitioners can pick up their personal property. The response was in all capital letters and expressed outrage.

Petitioner testified that he did not know about the sale of the subject premises; that he paid rent for the subject premises; that he spoke to Respondent about rent; that he was not up to date with rent; and that Respondent said the subject premises was sold the previous day and that Petitioner owed rent.

Petitioner submitted into evidence a text exchange between Petitioners and Respondent according to which Petitioners threaten to sue Respondent and Respondent mentions rent arrears.

Petitioner testified that he called the police; that police came eight hours later; that he

had no information on the New Occupants at the time that he started this case; that Respondent kicked the front door in at one point; that Respondent said that he wanted keys to the first floor apartment and he wanted the basement; that Respondent said that he could not sell the subject premises with a tenant in there; and that he knew that Respondent was trying to sell the subject premises because he advertised it. Petitioners submitted into evidence an ad for the sale of subject premises.

Petitioner testified that he saw the ad about a week before the lockout; that Respondent rented a truck and parked it in front and told him to move his stuff out; that only a fraction of his personal property would have fit on the truck; that Respondent said that he would get another property on 207th Street in Queens ("the Queens Property") and fix it up; that he did not move his personal property to the Queens Property because it was not livable; that the Queens Property is half done; that the Queens Property has no appliances and no heat; that Respondent had what was in the truck moved to the Queens Property and placed it there without Petitioner's permission; and that Respondent asked him why he did not move into the Queens Property and suggested that he move into an Airbnb. Petitioner submitted into evidence texts from Respondent dated August 9 and 10 saying that Petitioner should unload the truck.

Petitioner testified that when Respondent was trying to move his personal property at the Queens Property, he was still sleeping at the subject premises and still had extensive personal property at the subject premises; that Respondent said that the Queens Property was owned by something called "QV Holdings"; and that he knows the owner of the Queens Property is someone named "Outlaw." Petitioners submitted into evidence a deed for the Queens Property dated May 2, 1996, which shows that the grantees on the deed are named Clifton R. Outlaw Jr. and Stephanie L. Outlaw. Petitioner testified that this deed is the most recent deed; that he saw it right after the lockout; that the owners were standing in the kitchen of the Queens Property; that he did not sign any agreements with the owners of the Queens Property; that he had multiple interactions with the owners of the Queens Property; and that he got a letter from the owners saying that he had to vacate.

Petitioner testified that he signed a lease for the Queens Property with the person who [*3] Respondent referred him to, someone named "Kobov"; [\[FN1\]](#) that he signed that lease after the lockout when they had been forced out of the subject premises; that he signed the lease under duress because he was out of possession and on the street with his children; that the people on the deed have called police on him saying that he is trespassing; that Respondent arranged for him to sign a lease for the Queens Property; that on the date of the

lockout he still had keys and personal property at the subject premises; that Respondent did not notify him of the sale of the subject premises before the lockout; that the New Occupants did not notify him of buying the subject premises; that he did only had limited supervised access to the subject premises after starting this proceeding on August 17; that he saw what remained of his possessions, to wit, some clothes, some photos, and no furniture; that Co-Respondent did not show him proof of sale of the subject premises on that date; and that he recorded the entire thing.

Petitioner submitted into evidence a video recording of Petitioner obtaining limited supervised access of the subject premises pursuant to an order of this Court at the commencement of this proceeding. The video recording depicts a house with no furniture in it, with food in three refrigerators and freezers, and with photographs of Petitioner and Petitioner's family in the basement of the subject premises.

Petitioner testified that he has visited the subject premises almost every day since the access date and that he has seen that they were working on the subject premises. Petitioner submitted into evidence a video recording of someone sanding drywall in the subject premises. Petitioner testified that he asked for another walk-through after that in early September; that access happened on Sunday and that he went to the subject premises on that date. Petitioner submitted into evidence a bag of clothes in front of the subject premises. Petitioner testified that on September 4, 2021, he saw that the plastic on the windows was still there, like he left it and that he observed a moving truck with mattresses on it. Petitioner submitted into evidence a video recording of someone moving mattresses into the subject premises.

Petitioner testified on Co-Respondent's cross-examination that there was no furniture in any of the bedrooms in the subject premises; that he did not video-record those rooms; that he did not live in the first floor of the subject premises; that he lived in the second floor; that he kept food in the first floor; that he disputed that he owed the amount of rent that Respondent said he owed in part because he did work for Respondent and Respondent owed him money; that there was a truck that Respondent rented two weeks before the lockout and Respondent asked him to load the truck up; that on August 10 or August 11 a pool table from the basement, a couch from the basement, and a bar from the basement were dropped off at the yard of the Queens Property; that his tools and items from upstairs were not dropped off there; that he slept at the subject premises every day until he was locked out except when he took Co-Petitioner out of state; that on August 12, 2021 he was in Pennsylvania; that he returned from Pennsylvania on August 13, 2021; that on August 17, 2021, the first date after

August 13 he got into the subject premises, his bedroom furniture was not on the second floor of the subject premises; that he does not know how his furniture got removed; that he started living in the Queens Property after the lockout; that as of August 17, 2021 the Queens Property was not furnished; that he had one couch on a palette; that he started sleeping at the Queens Property after August 17, 2021; that he [*4]slept in his car on August 17, 2021; that his furniture was not moved to the Queens Property; that they sleep on air mattresses; that he does not know where his furniture is; that he bought new clothes; that Co-Petitioner and his two kids lived with him at the subject premises; that his oldest now does not live with him because she is in college; that he found a bag of clothes outside of the subject premises; that he did not see anyone put it outside of the subject premises; and that he took the video of the Trulia ad sometime in July of 2021.

Petitioner's testimony on Respondent's cross-examination that he lived at the subject premises about four-and-a-half to five years; that he entered the subject premises by leasing it at \$2600 including the basement and the yard; that he sometimes paid rent to Respondent; that he never made a check payable to Respondent in Respondent's name; that he made rent payments payable to a corporate name; that Respondent told him that Respondent was getting him a truck to move his personal property; that he told Respondent that he was not ready to move until the Queens Property was ready; that they did not make an arrangement for a date for the truck; that Respondent picked a date unilaterally; that he got keys to the Queens Property from a lock box; that the lock to the Queens Property was broken; and that he had to change the locks to the Queens Property after people who did not live there were standing there saying that they did not live there.

Respondent submitted into evidence the lease for the Queens Property commencing on September 1, 2021 with a rent of \$2,000, executed by someone purporting to sign on behalf of "QV Holdings Corp." and Petitioner. Petitioner testified that Respondent had sent the lease to him.

Petitioner testified on Respondent's cross-examination that he has some personal property in the Queens Property that he had to buy, like clothing and kitchen ware; that he does not know how his personal property went from the subject premises to the Queens Property; that Respondent brought it there; that he packed some things to be put into the truck; that he put things on the truck, but not to be sent to the Queens Property; that Respondent took that; that his stuff was packed but he never moved out; that he started packing when he bought the moving truck in the beginning of August or the end of July; that he started loading stuff on the truck at around that time; that he was not given any other

assistance in moving; that Respondent could start cleaning up the first floor because there was nothing there; that he kicked Respondent's cleaning people out that day; that he did not load the truck; and that his guys loaded the truck.

Petitioner testified on redirect examination that he moved into the subject premises in December of 2016; that he had had access to the entirety of the subject premises at the time of the lockout; that he had personal property at the subject premises at the time that locks were changed; that they slept in the car and with family and friends when they could not get into the subject premises; that Respondent and someone named "Rena" [\[EN2\]](#) offered the Queens Property to him; that they tried to put him in an Airbnb at first; that they wrote out a whole contract about how they were going to fix the Queens property; that the property was not in a move-in condition; that there was no heat; that Respondent threatened to take him to Court to evict him; that Respondent wanted him to relinquish the first floor; that Respondent harassed him and kicked the front door in; that he did not bring anything from the first two floors to the Queens Property; and that he did not voluntarily move his personal property out of the subject premises.

Co-Petitioner testified that she moved into the subject premises in May of 2016; that the subject premises is a two-family house with two floors and a basement and a backyard; that they had access of the entirety of the subject premises; that no one else was living at the subject premises; that she received mail at the subject premises all the time; that she lived in the subject premises with Petitioner and their two daughters, who are twenty-one and thirteen years old; that one of her daughters has graduated from school in June of 2019; that Respondent and someone else named "Mike" leased the subject premises to her; that she did not always know who her lessor was; that she did not receive anything written about the change in ownership of the subject premises; that she was not current on her rent in August of 2021; that Petitioner and she received a text saying that she owed twenty months of rent; that she does not have access to the subject premises currently; that she was not home when the locks were changed; that she discovered that the locks were changed when she returned to New York; that she had been in Pennsylvania; that she was not in Pennsylvania permanently; that they spent their nights in the car after the lockout; that was hard for her because she has heart problems; that they went to the Queens Property when they had no choice because it was cold and their daughter was starting school; that there was no heat in the Queens property; that she did not surrender her keys to the subject premises; that she did not give anyone permission to move her personal property from the subject premises; that she did not sign a lease for any other property; that all of her stuff was at the subject premises;

that there was food, clothing, furniture, and kitchenware in the subject premises; that those items were not taken to the Queens Property; that she receives home health care and she has a home attendant; that she has been receiving home care at the subject premises since 2020; that she cannot get home services once she was not at the subject premises anymore; that she chose to not move to the Queens Property because it does not have a stove, a refrigerator, heat, or a railing; that she had strokes in 2010, 2015, and June of 2020; and that her children are still residing with her.

Co-Petitioner testified on Co-Respondent's cross-examination that she received a text saying that she owed twenty months' rent in July or August of 2021; that she did not owe that rent; that she did not deal with Respondent; that she does not know about rent because Petitioner dealt with that; that she was a tenant at the subject premises; that she, Petitioner, and her children were tenants at the subject premises; that because of the lockout she and her family slept in the car and stayed at family member's houses; that they have a van; that her youngest daughter was with them in the van and her oldest daughter was sleeping in a friend's house; that they slept in the van until it got cold in September or October off and on; that her daughter is in seventh grade; that her daughter was going to school in person; that her personal property was at the subject premises before she went to Pennsylvania; that stuff had been packed but she does not know what was packed; that the stuff that was in the basement was on the truck; that she does not know what was placed on the truck because she was not there; that nothing had been moved before she went to Pennsylvania; that nothing was on the truck before she went to Pennsylvania; that she left for Pennsylvania in June or July; that she remained in Pennsylvania for about a month; that Petitioner was back and forth throughout that time; that she went to Pennsylvania with Petitioner; that she has family in Pennsylvania that she was visiting; that she was in Reading; that she did not ask her family if she could stay in Pennsylvania; that she discovered that the locks were changed when she came back on August 14; that she did not see a moving van; that Petitioner saw a moving van; that they occupied the top floor, the basement, and the backyard of the subject premises; that they stored stuff on the first floor, like food or clothing; [*5] and that she does not know if they rented the first floor.

Co-Petitioner testified on Respondent's cross-examination that they did not owe twenty months of rent; that Petitioner pays the bills; that she is not employed; that Petitioner is a contractor; that the Queens Property does not have heat; that they use electric heaters to keep warm at the Queens Property; that she first became aware of the Queens Property when she was locked out of the subject premises, which was either the middle or the end of August; that they did not move into the Queens Property until September of 2021 because the house

was not finished; that she has not begun receiving her home health aide services because that service is linked with the subject premises; that she had not made arrangements for services at the Queens Property because her home is still the subject premises; that she slept in the Queens Property with a heater on last night; that she does not know who packed belongings on the first floor; and that she stayed at houses of different family members a few times.

Co-Petitioner testified on redirect examination that she does not know how much back rent is owed; that she went to Pennsylvania to see a cardiologist and since she was there she saw her family; that she did not remove any of her belongings out of the subject premises; and that she still has her keys to the subject premises.

The Queens Landlord testified that he is involved with real estate management; that he knows Petitioner; that Petitioner has been his tenant at the Queens Property since April of 2021; that there is a lease in effect for the Queens property; that the lease commenced in September; that he signed the lease in August or September; that his association with "QV Holdings Corp" is that that is his corporation; that Petitioner began residing at the Queens Property around June; that Petitioner was coming in and out; that Petitioner had access; that Petitioner was renovating; that the whole time, the deal was for him to move in; that the Queens Property was open; that Petitioner had keys as of April; that the lease starts September 1 because the Queens Property was under renovation; that they signed the lease when the work was done; that they signed the lease sometime in August; that the majority of the renovations were complete by August of 2021; that there were other workers assisting him at the subject premises; that a jacuzzi was not done; that some appliances needed to be put together; that if Petitioner needed new appliances Petitioner just needed to call him; and that Petitioner's wife and two daughter live at the Queens Property, the same people who were there when the lease was signed. Respondent submitted into evidence a video recording of Petitioner and Petitioner's daughter entering the Queens Property on Labor Day with a key. The video depicts a house with a lot of personal property.

The Queens Landlord testified that he does not have the keys to the Queens Property; that Petitioner used the key to open the door to the Queens property; that he observed that the Queens property was furnished and fully occupied; that there was furniture in the rooms; that he observed kitchenware, including dirty dishes in the sink; that he inspected the entirety of the Queens Property; that televisions were set up; that he saw beds, one in the living room one in the upstairs room, but not a bed in the main bedroom; that there were couches in the living room and a television; and that there is a dining room with a lot of their stuff and a kitchen. The Queens Landlord testified on Co-Respondent's cross-examination that the foyer

is what you see when you enter the Queens Property; that he did not provide furniture or kitchenware to Petitioner; that the Queens Property is a two-bedroom house; that there is a living space with couches and a bed separate from the bedrooms; that he does not provide heat on Labor Day weekend; that Petitioner has full control of the heat; that he does not turn the heat; that Petitioner had the keys because Petitioner had changed the locks; that Petitioner was [*6]painting, fixing, plumbing, tiling, and doing a Jacuzzi installation and electrical work; that he went to the Queens Property more than one time from August and September; and that he observed that Petitioner was living there.

The Queens Landlord testified on Petitioner's cross-examination that he owns the lessor of the Queens property; that he has a contract and a deed but the deed is not recorded; that he purchased the Queens Property from Mr. and Mrs. Outlaw around 2018; that he does not have the deed in an electronic form; that he did not want to record the deed; that he is not aware that the Outlaws have served a predicate notice; that it does not concern him that someone else is trying to evict Petitioner; that Respondent has no interest in the Queens property; that Respondent had a tenant who needed to move and they moved Petitioner in; that he does not know about the subject premises; that Respondent was paying for the renovation of the Queens Property; that he was at the subject premises on Labor Day because of the Court order; that the purpose of the visit was to see what could be done to make the Queens Property likable for Petitioner; that there are times that tenants renovate their own homes and Petitioner had specific demands; that Petitioner is hostile; that he observed a refrigerator; that he did not purchase the refrigerator; that he does not remember but he does not think there is a stove there; that he went to the basement; that a boiler was there; that he does not remember if there was a leaky pipe; that Petitioner said that he fixed it; that he did not pay Petitioner for any work; that the utilities should be in Petitioner's name; that at no point were the utilities in his company's name; that the Queens Property was vacant before Petitioner moved in because it needed work; that Respondent introduced Petitioner to him; that Respondent did not pay him; that he does not have a mortgage on the Queens property; that he purchased the Queens property subject to the existing mortgage; that he does not pay the mortgage; that he does not know who pays the mortgage; that he had another tenant whose name he does not remember in the Queens Property a while back and the tenant left; that he does not remember how long the tenant was there; that he has to provide a stove; that Petitioner is responsible for creating this whole "circus"; that he has not collected any rent so far; that the lease says that Petitioner is the one responsible for repairs; that his understanding was that utilities were the responsibilities of Petitioner; that he signed a standard lease with Respondent; that he observed radiators; that either Petitioner or someone else installed

radiators; that he does not know who installed radiators; that Petitioner was not sleeping at the Queens property in April of 2021; that Respondent asked him to testify; that he was not subpoenaed; that he has business dealings with Respondent aside from the Queens Property; that Respondent did not ask him to lease the Queens Property to Petitioner; that he has called Petitioner from his phone number; and that the last time he called Petitioner was in September.

The Queens Landlord testified on redirect examination that the Queens Property is supplied with plumbing for heat and hot water; that utilities should be under Petitioner's name and that all meters are working; that the violations were issued on various dates in January of 2022; that Petitioner and Petitioner's family does not initiate contact with him; and that he locates distressed properties and works with the owners.

The Realtor testified that she is a self-employed real estate broker; that she was the listing brokerage for the subject premises; that the seller, an LLC owned by Respondent, engaged her to sell the subject premises; that the subject premises closed on or about August 12, 2021; that she had been to the subject premises roughly two weeks before the closing, in August; that she went to the subject premises because a co-listing agent called her and said that a man threatened the cleaning crew; that she came to the subject premises and called the seller; that when she got to [*7] the subject premises she saw the cleaning crew and their boss; that the seller also arrived; that Petitioner and Petitioner's cousin were there also; that she had made the arrangement for the cleaning crew; that the cleaning crew was supposed to clean the bathroom and kitchen; that Petitioner had emptied everything except for the basement; that Petitioner apologized to the cleaning crew and said that the cleaning crew could finish; that Petitioner's cousin left; that Petitioner surrendered his keys to the seller and said sorry about the confusion, I'm done, I just have a few items left in the basement; that the seller gave the keys to her and she put the keys in her car; that Petitioner did not go back into the subject premises at that point; that Petitioner said that he had moved everything; that there was a moving van that was parked there; that Petitioner said that the van was completely filled up and he was taking it to his new house; that she locked up the subject premises; that they shut the lights off; that they all departed from the subject premises; that she was in the subject premises to turn the lights out; that she went throughout the subject premises; that the subject premises was in great condition; that it was not clean; that there was no furniture and nothing there; that the basement was free of furniture; that everything was out; and that she does not remember if Petitioner was around but the truck was pulled up.

The Realtor testified on Co-Respondent's cross-examination that the cleaning crew did

not clean anything.

The Realtor testified on Petitioner's cross-examination that she did not take photos of the subject premises; that her firm has sold properties for Respondent and for other properties that Respondent has partnered with over the years; that they went into contract maybe forty-five days before closing; that a box of documents she saw at the subject premises belonged to the seller, which she knew because she had seen the document before; that she did not see the seller provide Petitioner with a receipt for the keys; that the seller was walking up from Atlantic Avenue when she pulled up to the subject premises; that they arrived at the same time; that her business relationship with Respondent started maybe seven or eight years ago; that she does not think that she owns any property with Respondent; that she has not managed any properties for Respondent; that she has not collected any rent on Respondent's behalf; that she has loaned money to Respondent or LLC's belonging to Respondent; that she has been his lender since 2015 or 2016; that she lent Respondent money for the subject premises; that Respondent has not satisfied his loan for the subject premises; that she observed a white moving truck that Petitioner rented outside the subject premises; that Petitioner told her that he rented the moving truck; that she observed what was inside the truck; that she saw that it was filled to capacity; that there were two refrigerators, maybe three, in the subject premises; that she did not open the refrigerator; that one of her staff members had keys to the subject premises; that she did not have keys until Petitioner surrendered the keys; that her agent arranged the cleaning crew; that they did not make an arrangement with Petitioner and the cleaning crew because Petitioner had taken his personal property out at that point; that she gave her key to her agent; that she obtained the key from the seller; that she does not have a copy of the key; that she gave the key surrendered to her to the purchase at the closing; that she does not remember how much the loan to Respondent was; and that it was maybe \$250,000.

The Realtor testified on redirect examination that she gets an interest payment whether a property sells or not; that Co-Respondent's lender's counsel scheduled the closing; that when Petitioner surrendered the keys the scene was calm; and that Petitioner was apologetic. Paddy Chrono ("the Real Estate Salesperson") testified that he is a real estate salesperson; that he works for the Realtor; that he worked with the subject premises, which closed on August 12, 2021; that [*8]Petitioner was a tenant at the subject premises; that he was working with Petitioner to move things to Petitioner's new home; that Petitioner moved from the subject premises; that he is the one who called the garbage removal company and the movers to move Petitioner's personal property out of the subject premises; that Petitioner moved voluntarily from the subject premises; that he was at the subject premises around August 1,

2021; and that Petitioner was giving him access to show the subject premises at the time.

Respondent submitted into evidence a video recording of the subject premises dated August 2, 2021, which Petitioner appears in, and which depicts a home with no furniture and with a lot of moving debris and garbage around. A garbage removal company also appears in the video recording. The Real Estate Salesperson testified that there was a lot of stuff that Petitioner was not going to be taking and that Petitioner was telling him and the garbage removal company what to throw away and what to keep. Respondent submitted into evidence a video recording dated August 1, 2021, which depicts a home in a similar state.

The Real Estate Salesperson testified that Petitioner at the time said that he was getting rid of the couches; that Petitioner did not want the things in the garbage bags to be touched because he was taking those with him; that the Real Estate Salesperson had to use a different company that Sunday because it was the weekend and dumpsters were closed; that the video was taken before the closing; that he was helping Petitioner with moving companies; that he was working with Petitioner to coordinate the moving; and that he does not remember the address where Petitioner was moving, but it might have been Ozone Park or Flushing.

The Real Estate Salesperson testified on cross-examination that Respondent, who is his client, paid for the moving companies; that he was at the subject premises on the dates in the videos until everything was done, which was six to seven hours; that he observed movers load items onto trucks; that on those days there were about three or four hours movers working; that Respondent paid the movers through Zelle; that he has worked for the Realtor for five years; that he is paid based on commission, not on salary; that he earned a commission on the sale of the subject premises; that the total commission was \$41,000 and his share was about \$16,000; that there was an open house for the subject premises on a Saturday; that the buyer, the broker, and his client were at the open house; that he was at the subject premises on August 3 to get the cleaning people to clean the subject premises; that he has shown another property for Respondent; that the subject premises was the first property he showed for Respondent; that he understood Respondent to be the Realtor's client; that the final walk-through was on August 12, 2021 at 9 a.m.; that he was there, the buyer, and the buyer's brother; that he had previously been to the subject premises to take photographs; that Petitioner still occupied the subject premises at the time of the open house; that Petitioner sprayed a disinfectant on his feet because of the pandemic; that Petitioner let him into the subject premises on the date of the open house; that Petitioner was not at the subject premises on the date of the closing; and that the offer was accepted on the same day as the open house.

The Real Estate Salesperson testified on redirect examination that he talked with Petitioner about the sale of the subject premises at the open house.

Respondent testified that he had been a managing member of an LLC that owned the subject premises; that the LLC no longer owns the subject premises; that the LLC sold the subject premises on August 12, 2021; that he was personally involved in the sale of the subject premises; that Petitioner had been working as a super/handyman for his companies for the last ten years; that Petitioner lived in the subject premises as a part of the benefit of his employment; [*9] that Petitioner moved into the subject premises in 2016; that they never had a lease; that his LLC never collected rent from Petitioner; that in 2019 Petitioner stopped working for him altogether; that in the beginning of 2020 they were talking about having Petitioner move from the subject premises; that he listed the subject premises for sale in March or April of 2021; that he got an offer right away; that he was working with Petitioner and a real estate broker to try to get another apartment for Petitioner but Petitioner had problems getting another apartment because of his suspended license; that Petitioner wanted to move to a one-family in Queens; that he was working with a lot of different investors and brokers and they were going to finance and find Petitioner a house but it was hard because of Petitioner's credit history; that one person who had lent Respondent money previously and had an empty property, which was the Queens Property; that he called Petitioner and told him the address; that Petitioner liked the location and the parking availability there; that he connected Petitioner to the Queens Property in March or April of 2021; that the Queens Property was not in a move-in condition in 2021; that Petitioner changed the locks and got a new mailbox on the Queens Property in March or April; that Petitioner was very involved with the Queens Property at this time; that Petitioner wanted to install new bathrooms, new kitchens, a new floor, new walls; that Petitioner added a new bathroom; that Petitioner was going to be involved in the construction; that Petitioner wanted to install a jacuzzi in the Queens Property; that "he" dropped the lease rate to \$2000; that after the work was done, Petitioner moved in; that Petitioner did not pay for these renovations; that vendors were paid directly; that Petitioner was using his card to get materials; that the Queens Property had electricity, water, and gas, and, in the basement, a hot water heater and a boiler; that Petitioner was supposed to set up the accounts; that Petitioner started living in the second floor of the Queens Property in June; that he got permission to fix up the Queens Property from the Queens Landlord; that there was a refrigerator at the Queens Property from the prior tenants; that there was no stove at the Queens Property; that he provided money for a stove at the Queens Property; that he found out that the stove was missing when he was in Court; that a lot of times he gave Petitioner cash or paid him through Zelle; that he got Petitioner a car;

that he paid plumbers; that he assisted Petitioner in moving to the Queens Property; that throughout July Petitioner was moving his clothes and his personal properties; that he had conversations with Petitioner; that Petitioner said that he wanted to move to Queens; that Petitioner said that he did not like the parking near the subject premises; that he paid for construction; that he paid for a moving truck from Penske; that he paid for garbage removal; that Petitioner was cooperating with the move; that Petitioner scared two housekeepers with a knife because Petitioner thought that they were breaking in; that he saw Petitioner removing his property from the subject premises and loading up a moving truck; that Petitioner was moving his stuff for two weeks; and that across the street from the subject premises, the Realtor saw Petitioner give the keys to the subject premises to him around the end of July and beginning of August around the time that the incident with the housekeepers occurred.

Respondent testified on Co-Respondent's cross-examination that Petitioner started living in the Queens Property in late June or early July of 2021; that Petitioner finished the bedroom in the Queens Property; that Petitioner did not want to bring personal property to the Queens Property without staying there; that he saw Petitioner staying at the Queens Property because he did not have access to the Queens Property without Petitioner giving him access; that he visited the Queens Property two to three times in July; that in 2019 Petitioner stopped working for him; that the arrangement was supposed to be \$2300 a month; and that they had a verbal agreement.

Respondent testified on cross-examination that he has been in the real estate business since 2011; that he typically renovates and sells or rents properties that he acquires; that he owns 15 LLCs; that he is familiar with the eviction process; that he has no familiarity with the eviction process in 2020 or 2021; that he was familiar with the eviction moratorium; that he did not start any eviction process against Petitioners in 2021; that in the beginning of 2021 he informed Petitioners that he was contemplating an eviction proceeding against them; that he was first involved with the Queens Property in April of 2021; that he made the arrangement with Petitioner to pay for the renovation because of his long-term work relationship with Petitioner; that he has receipts and invoices for the \$30,000 that he paid for the renovation of the Queens Property; that he knew the extent of the renovation needed at the Queens Property because Petitioner sent him a video recording of it; that he notified Petitioner when he listed the subject premises in March of April of 2021; that Petitioner cooperated with photographs that they took to show the subject premises; that renovations were completed in mid-July; that he knew that renovations were completed because Petitioner was sleeping at the Queens Property and the water was on; that he inspected the Queens Property in the last week of July; that everything, including a new bathroom, was

completed; that no city agency inspected the Queens Property; that he listed the subject premises for about \$825,000; that after the date of the incident with the housekeeper there was no further reason to contact Petitioner with regard to access to the subject premises; that he did not provide a key to the subject premises to the Realtor; that he was providing funds to Petitioner to renovate the Queens Property; that he told Petitioner that the owner of the Queens Property wanted to move forward and that they had to make a decision; and that he provided a key to the subject premises to the Realtor.

Petitioners submitted into evidence a text from Respondent to Petitioner dated July 8, stating that he wanted to discuss with Petitioner how long Petitioner would need to move out, that all stuff must come out of the basement, and that he wanted to bring Con Edison and National Grid to set up meters, and another text dated August 3, saying that Respondent needed keys to let the "cleaning people" in.

Respondent testified that he did not break the lock at the subject premises on August 3; that he wanted keys for Petitioner's apartment, not the subject premises; that they had been in the subject premises already; that the housekeepers were supposed to clean the entirety of the subject premises; that Petitioner on August 3 returned 2 or 3 keys to him at that time that he gave to the Realtor; that he and Petitioner returned the moving truck together, but he does not remember the date; that he came to the subject premises once between June and August; that Petitioner was upset that he was inside the House and Petitioner tried to fight him when he tried to enter the House; that Petitioner has been a super; that Petitioner did not have to pay rent; that their work relationship stopped in 2019 or the beginning of 2020, although he may have hired Petitioner to do small jobs; that Petitioner was not an employee of his, but a contractor; that Petitioner contacted him when Petitioner found that the locks were changed; that he has a business relationship with every one of his witnesses; and that the realtors were paid commissions.

Respondent testified on redirect examination that he has no interest in the Queens Property; that Petitioner had had a moving truck for two to three weeks when Respondent had sent Petitioner the texts; that Petitioner had a truck in July of 2021; that he did not start an eviction case after the July 8 text; that he saw Petitioner using the truck; that he believed that Petitioner was moving out from the subject premises; that his communications were typically by [*10]text and by phone; that Petitioner was supposed to stop by in the morning of August 3 but the subject premises was closed so they started the cleaning in other parts of the House; and that Petitioner released the keys on August 3.

Co-Respondent testified that he immigrated from Bangladesh 2014; that his in-laws and his family were all living together; that he wanted to buy a house so that they could all live together; that he is a cybersecurity engineer for a consultancy firm; that he knows the subject premises; that he first saw the subject premises in March; that he saw a listing for it; and that he entered into a contract of sale. Co-Respondent submitted into evidence a contract of sale for the subject premises from March of 2021, which says, *inter alia*, that the subject premises shall be delivered free of tenancies. Co-Respondent submitted into evidence his deed for the subject premises, which is dated August 12, 2021.

Co-Respondent testified that he looked at the subject premises in March of 2021; that he saw the subject premises on the morning of August 12, 2021 with the Realtor; that he looked at the first floor; that the first floor was empty; that no one was in possession of the subject premises; that he looked on the second floor; that the second floor and the basement were empty; that he does not know Petitioner; that on August 17, 2021, he was informed that someone wanted to get into the subject premises; that he called police and came to the subject premises himself; and that he, his sister, a police officer, and Petitioner were there.

Co-Respondent submitted into evidence a video recording dated August 17 which depicts a house that does not have furniture or belongings in it, although Petitioner, who appears at one point in the recording, opens a refrigerator, which has food in it, and says that the food is his.

Co-Respondent testified that his family was previously living at a rental property before; that Marjana Begum is his wife; that Mohamed Jabaed is a brother-in-law; that Abdus Salam is his father-in-law; that Afroza Khanam is his mother-in-law; that Maimona Begun is his sister-in-law; that Abdul Aziz is a brother-in-law; that Shibiri Osmani is a brother-in-law; that they all live at the subject premises; that they all moved in the first week of September, although at different times; that he does not have leases with his relatives; that the relatives do not pay rent; that he does not know about a bag of clothes; and that the only thing he removed from the subject premises was garbage from the subject premises after August 12, 2021.

Co-Respondent testified on cross-examination that he closed on August 12, 2021; that he did a walk-through in March of 2021; that the second floor of the subject premises was occupied in March of 2021; that he did a walk-through of the basement; that he does not remember if the basement was occupied; that he remembers seeing a door but he did not look too hard at that; that in March of 2021 he was talking to the Realtor; that he does not

remember talking to occupants; that on August 17, 2021 Petitioner showed him the order to show cause; that Petitioner checked the refrigerator in the video; that Petitioner stated that the food in the refrigerator was his; that there was expired food there; that it was not his food; that on a court date he said that he was in occupancy of the subject premises in August in the sense that he had a key; that he was not moved into the subject premises at the time; that he was in the process of moving in; that he moved into the subject premises in September of 2021; that he moved into the subject premises on the September 1, 2021 but he had been slowly moving in furniture before that; that police had contacted him; that he made his offer the same week in March that he looked at the House; that the Realtor said that there was an occupant on the second floor of the House; that he had no prior dealings with Respondent or the Realtor; that he lived in the same neighborhood as the subject premises before he bought the subject premises; that he had lived [*11]two blocks away previously since 2014; that his old address is his sister's house and she still lives there with her family; that his sister does not own that house; that his sister does not occupy that entire house; that before moving in he was doing some minor work at the subject premises like painting; that the first floor has three bedrooms and the second floor has four bedrooms; and that on August 17, 2021 he did not remember having previously seen Petitioners.

Co-Respondent testified on redirect examination that his sister's house was very congested; that his sister was on the second floor; that his brother-in-law was living in another side; that there were four bedrooms; that they were all sharing other rooms; that he and his wife were in another room; that he had two nephews who were there as well; that at the subject premises everyone has their own room; that he paid for the subject premises; that no one else at the subject premises is working now; and that he is supporting the family.

Petitioner testified in rebuttal that Respondent did not have a key to the subject premises; that he put the locks on the doors of the subject premises; that he was in the subject premises on August 3 when he had a text exchange with Respondent; that Respondent was not at the subject premises at that time; that Respondent asked him if Respondent could have the first floor cleaned; that there was a prior attempt to get the first floor cleaned; that he had previously not been there to let the cleaning personnel there; that Respondent was asking for permission to get access to the subject premises; that Respondent made a demand that if he was not there that Respondent would break the door down; that the day before Respondent asked him to meet Respondent at his house; that Respondent said he had a cash client who was about to walk away; that Respondent wanted him to take an Airbnb; that he did not want to move into an Airbnb; that Respondent asked him to discuss how to get into the subject premises because it would be the second attempt; that when he got there Respondent and the

Realtor were there; that they sat in Respondent's yard; that it got heated; that the Realtor said if Respondent doesn't want the Queens Property we'll let him stay there and we'll get rid of the Queens Property; that he said that he was not going to be at the subject premises; that about 5:30 a.m. for the next hour Respondent called him and texted him asking if he was going to be there; that Respondent said that Respondent would kick the door in if he was not there to let cleaning staff in; that Respondent asked him where his cousin was; that he said that his cousin was on his way and was running late; that Respondent texted him and said I already got in; that between 8:30 a.m. and 9 a.m. they got access for the cleaning people; that Respondent kicked the basement door to get access to the cleaning staff; that this was the second time that Respondent kicked in the door to the residence where he was staying; that his possessions were still in the subject premises on August 3; that his stuff was packed; that his personal property had not been taken out of the subject premises but was stacked against the wall; that some of his personal property was on a truck; and that on August 3 he did not turn in any keys.

Petitioner testified that Respondent asked him to move to the Queens Property in June or July after trying to get him into an Airbnb apartment; that Respondent said go look; that Respondent said that he needed the property because the buyers were going to walk away; that his understanding was that the Queens Property was a fixer-upper and was not livable and was full of garbage; that Respondent never said whether he was the owner but Respondent always puts everything into an LLC; that Respondent did a lot of things that only an owner can do; that Respondent said that he was going to sell the Queens Property; that Respondent let him know that by text, calling, and in-person communications; that in June of July 8 or 9 Respondent literally kicked the front door in; that Respondent said that Respondent would be there at 8 p.m., [*12] that ten minutes earlier he saw Respondent at the door; that he saw Respondent's foot and shoulder hit the door; that Respondent said that he can come in when he wants because he owns the subject premises; that Respondent has a truck of his own that he was using; that he was not moving until Respondent did what he was supposed to do; that the Queens property is still not finished as of May 24, 2022; that he does not have heat at the Queens Property; that he used electric heaters; that before August 13 he still had personal property in the subject premises; that after August 3, 2021 he was still staying at the subject premises; that he interacted with Co-Respondent before August 17, 2021; that Respondent kept him up to date on what Respondent was doing; that he knew that Respondent was trying to sell the House; that Co-Respondent came to the open house twice; that Co-Respondent and he had a conversation where Co-Respondent said that he did not want Petitioner to occupy the basement; that Co-Respondent wanted to make the basement a

living quarter; and that he recognized Co-Respondent's face, not his name. Petitioner testified on Co-Respondent's cross-examination that he still had personal property in the subject premises as of August 13, 2021; that all of his stuff was on the second floor plus stuff all over the house; that he had a couch, televisions, games, bedroom sets, dishes, food, and photos; that he could not get into the house on the August 13; that he was out of town; that he had slept at the subject premises on August 10 or 11; that his daughter slept in the subject premises on August 11; that Co-Petitioner's sister was in Pennsylvania with her on August 11; that he had a truckful of items removed on August 11; and that the only items in the truck which was fully packed were items from the basement.

Petitioner testified on Respondent's cross-examination that the Realtor once indicated on August 3 that they would sell the Queens property.

Petitioner testified on redirect examination that he would not have the moving truck moved because the Queens Property was not ready to be moved into; that he did not move the truck to the Queens Property; that he was still staying the subject premises after August 3; that he did not have access to the subject premises on August 13; that he went to Pennsylvania on August 11; that he was not there to see anything removed between August 11 and August 13; and that immediately after being locked out they stayed in a van.

Discussion

The second affirmative defense of Respondent's answer asserts that Respondent is not the owner of the subject premises and that Respondent does not have the authority to restore Petitioners to possession of the subject premises. The preponderance of the evidence indeed shows that Co-Respondent is a bona fide purchaser of the subject premises, Respondent having conveyed title to the subject premises to Co-Respondent in August of 2021, more than nine months before this writing, for Co-Respondent and the New Occupants to use as a single-family residence. A petitioner in a lockout proceeding cannot obtain a judgment of possession from a party who is no longer in a position to confer possession upon said petitioner. *See, e.g., Tow Ny Auto Body Corp. v. Schwickrath*, 2018 N.Y.L.J. LEXIS 2023 (Civ. Ct. Bronx Co.). Assuming *arguendo* that the Court would award Petitioner a judgment against Respondent, then, such a judgment could not have any immediate and practical consequences in terms of Petitioner's possession of the subject premises, thus rendering such a judgment nonjusticiable. *Portofino Realty Corp. v. NY State Div. of Hous. & Cmty. Renewal*, 193 AD3d 773, 775 (2nd Dept. 2021). The Court may not consider a question which, although once live, has become moot by passage of time or change in circumstances.

Matter of Weinman v. NY State Dep't of Motor Vehs. Traffic Violations Bureau, 203 AD3d 1050, 1051 (2nd Dept. 2022).

The Court notes that the Housing Court does not have the subject matter jurisdiction to entertain a cause of action for damages resulting from a lockout proceeding. *Eze v. Spring Cr. Gardens*, 85 AD3d 1102, 1103 (2nd Dept. 2011), *leave to appeal denied*, 18 NY3d 804 (2012), *Rostant v. Swersky*, 79 AD3d 456, 457 (1st Dept. 2010). To the extent that a judgment against Respondent would be of use to Petitioner in a subsequent action for damages, such a judgment would essentially be an advisory opinion, which the Court may not render, Portofino Realty Corp., *supra*, 193 AD3d at 775, or in the nature of declaratory relief, which the Civil Court does not have the subject matter jurisdiction to entertain. *Caffrey v. N. Arrow Abstract & Settlement Servs., Inc.*, 160 AD3d 121, 129 (2nd Dept. 2018), *Zuckermann v. Spector*, 287 AD2d 402 (1st Dept. 2002). As the transfer of title of the subject premises renders moot Petitioner's cause of action for possession against Respondent, then, the Court shall dismiss Petitioner's cause of action for possession against Respondent.

As Petitioner has joined the New Occupants as respondents to this proceeding, and as the New Occupants are in possession of the subject premises, a judgment against the New Occupants would in fact restore Petitioner to possession and is therefore not moot. When a tenant has been ousted from the tenant's leasehold, whether after a lawful eviction or an illegal lockout, and the tenant can only regain possession by obtaining possession from a new occupant, the Court balances the equities between the two claimants to possession.

An important factor weighing in favor of restoration of tenants who had been removed is when the tenants had been protected by a rent regulatory scheme, particularly when a new tenant is not so protected. *See, e.g.*, *Thamer Props. Corp. v. Nava*, 58 Misc 3d 149(A)(App. Term 1st Dept. 2018), *2425 Lorillard LLC v. Jewels*, 36 Misc 3d 144(A)(App. Term 1st Dept. 2012)(restoring to possession rent-stabilized tenants as against a new unregulated tenants), *Pomeroy Co. v. Thompson*, 5 Misc 3d 51, 52 (App. Term 1st Dept. 2004)(restoring to possession a rent-controlled tenant who had been evicted and awarding a judgment against a new tenant whose occupancy was transient in nature), *S.W.S. Realty Co. v. Geandomenico*, 126 Misc 2d 769, 772 (Civ. Ct. NY Co. 1984), *aff'd*, 130 Misc 2d 376 (App. Term 1st Dept. 1985)(restoring to possession a tenant protected by the Loft Law as against a new commercial tenant), *Walton Ave. Realty Assocs. LLC v. Soriano*, 54 Misc 3d 1213(A)(Civ. Ct. Bronx Co. 2017)(restoring to possession a rent-stabilized tenant as against a new tenant who was in default in appearing), *Gardner v. Smith*, 2005 NY Misc, LEXIS 3563 (Civ. Ct. Kings Co. 2005)(restoring to possession a thirty-eight-year rent-regulated tenant as against a

new tenant), *Ocean Realty Co. v. Molina*, 1994 N.Y.L.J. LEXIS 9396, *7 (Civ. Ct. Kings Co.) (restoring rent-stabilized tenants as against an unregulated subtenant of a proprietary leaseholder).

In contrast with the tenants whose regulatory status presented the Court with a compelling equitable factor in their favor, the subject premises is a dwelling with less than six units, rendering it unregulated. 9 N.Y.C.R.R. §2520.11(d). Petitioners have no lease in effect. Even without a new occupant, Courts have been wary to award judgment to tenants in similar situations. *See, e.g., Soukouna v. 365 Canal Corp.*, 48 AD3d 359 (1st Dept. 2008), 72-06 Austin Realty Corp. v. Cano Ventures Corp., 60 Misc 3d 128(A)(App. Term 2nd Dept. 2018), *Pied-A-Terre Networks Corp. v. Porto Resources, LLC*, 33 Misc 3d 126(A)(App. Term 1st Dept. 2011). Not only is there a new occupant in possession now, but the New Occupants have the protection of owning and personally using the subject premises as a single-family house, unlike the "transient" or otherwise unprotected nature of the tenancies that Courts have held had to yield to regulated tenancies. A balancing of the equities does not support the eviction of a family from [*13]the single-family house that they own and reside in to accommodate a tenant with no lease and no protection by rent regulation.

Accordingly, it is ordered that the Court dismisses this proceeding, without prejudice to plenary causes of action and defenses that the parties may have against one another. All stays are vacated.

This constitutes the decision and order of this Court.

Dated: June 6, 2022
Brooklyn, New York
HON. JACK STOLLER
J.H.C.

Footnotes

Footnote 1: A witness named "Arsan Yakubov" ("the Queens Landlord") later testified in relation to this allegation.

Footnote 2: A witness named "Rena Newman" ("the Realtor") testified later in the trial.