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2022-07-15

### Williams & Georgia Towers HDFC v. Green

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#### Recommended Citation

"Williams & Georgia Towers HDFC v. Green" (2022). *All Decisions*. 571.  
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[\*1]

<b>Williams &amp; Georgia Towers HDFC v Green</b>
2022 NY Slip Op 50773(U)
Decided on July 15, 2022
Appellate Term, Second Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 15, 2022

SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th  
JUDICIAL DISTRICTS

PRESENT: : MICHELLE WESTON, J.P., WAVNY TOUSSAINT, CHEREÉ A. BUGGS, JJ  
2021-254 K C

**Williams and Georgia Towers HDFC, Petitioner-Respondent,**

**against**

**Belinda Green, Respondent, Donell Green, Respondent-Appellant, and "Jane Doe,"  
Undertenant.**

The Legal Aid Society (Anna Wettstein of counsel), for respondent-appellant. Belinda Green, respondent pro se (no brief filed). SDK Heiberger, LLP (Eric H. Kahan of counsel), for petitioner-respondent.

Appeal from a decision of the Civil Court of the City of New York, Kings County (Heela D. Capell, J.), dated March 8, 2021, deemed from a final judgment of that court entered March 8, 2021 (see CPLR 5512 [a]). The final judgment, upon the decision, after a nonjury trial, awarded landlord possession against Donell Green in a licensee summary proceeding.

ORDERED that the final judgment is affirmed, without costs.

In this licensee proceeding (*see* RPAPL 713 [7]), landlord seeks to recover an apartment located in a project-based, Section 8 building which is financed by the United States Department of Housing and Urban Development. Landlord alleges that Donell Green

(occupant) entered into possession of the apartment as a licensee of his great-grandfather, who was the tenant of record, and that occupant is no longer entitled to possession after tenant died in May 2019. After a nonjury trial, the Civil Court found that occupant had not established, by a preponderance of the evidence, that he was entitled to succeed to the subsidized tenancy. We affirm.

In reviewing a determination made after a nonjury trial, this court gives substantial [\*2] deference to the determination of a trier of fact as to issues of credibility, as a trial court's opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to assess their credibility (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [1983]; [Hamilton v Blackwood](#), 85 AD3d 1116 [2011]; [Zeltser v Sacerdote](#), 52 AD3d 824, 826 [2008]).

Upon a review of the record, we find that the Civil Court properly concluded, based on its credibility determination of occupant's witnesses and the undisputed fact that occupant was listed on the project-based Section 8 family composition documentation for a different apartment in the building complex during a portion of the two years prior to tenant's death, that occupant failed to overcome the rebuttable presumption created by occupant's absence from the family composition documentation for the subject apartment (*see Los Tres Unidos Assoc., LP v Colon*, 45 Misc 3d 129[A], 2014 NY Slip Op 51566[U] [App Term, 1st Dept 2014]; *Marine Terrace Assoc. v Kesoglides*, 44 Misc 3d 141[A], 2014 NY Slip Op 51303[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014]; [2013 Amsterdam Ave. Hous. Assoc. v Estate of Wells](#), 10 Misc 3d 142[A], 2006 NY Slip Op 50084[U] [App Term, 1st Dept 2006]).

We note that we do not consider factual assertions and evidence which are de hors the record (*see Chimarios v Duhl*, 152 AD2d 508 [1989]).

Accordingly, the final judgment is affirmed.

WESTON, J.P., TOUSSAINT and BUGGS, JJ., concur.

ENTER:

Paul Kenny

Chief Clerk

Decision Date: July 15, 2022

