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Bascus v. Lake

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[*1]

Bascus v Lake
2020 NY Slip Op 50425(U) [67 Misc 3d 1206(A)]
Decided on April 14, 2020
Civil Court, Bronx County
Garland, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 April 14, 2020

Civil Court, Bronx County

SHOMARI LUMUMBA BASCUS JR., Petitioner,

against

EDMOND LAKE, Respondent.

801155/20

For Petitioner

Michelle Quinn, Esq.

The Legal Aid Society

260 East 161st Street, 8th Floor

Bronx, NY 10451

For Respondent

Edmond Lake

Christel F. Garland, J.

Petitioner filed this order to show cause ("OSC") in lieu of a notice of petition on or about March 31, 2020, seeking to be restored to possession of Apartment No.5G, a rent stabilized apartment located at 1892 Morris Avenue, Bronx, New York.

Upon signing the OSC, the Court directed that service be made personally. The OSC was initially made returnable on April 2, 2020. Both sides appeared and the OSC was adjourned to April 13, 2020 for adjudication. After conference with the parties and when no resolution could be reached, this Court held a hearing to determine if Petitioner should be restored to possession of the subject apartment.

The parties were sworn in. Both Petitioner and Akua Ambrose testified in support of Petitioner's claims. In addition, Petitioner submitted documentary evidence in support of his claims. Respondent testified in defense to the proceeding.

Based on the evidence adduced at the hearing, this Court makes the following findings of fact:

The tenant of record of the subject apartment was and continues to be Akua Ambrose who is Petitioner's mother. [\[EN1\]](#) Ms. Ambrose moved into the apartment sometime between 1995 and 1996 but left for Antigua sometime in 2009 to care for her mother and continues to return to the apartment with some frequency. Respondent, Edmond Lake, a family friend, moved into the apartment around the same time that Ms. Ambrose first took occupancy and has continuously occupied the apartment since then which he now occupies with his mother and sister who helps care for their mother. Following Ms. Ambrose's departure, Mr. Lake has paid rent for the [\[*2\]](#) apartment and paid all the bills without assistance from either Petitioner or his mother. Ms. Ambrose and her children all at some point occupied the apartment together with Mr. Lake and her intention was that her children would keep the apartment following her departure. Particularly, Petitioner, Mr. Bascus, Jr., lived in the apartment from the time of he was born as evidenced by the address on his birth certificate and his own testimony. However, at some point he moved to Antigua following his mother's wishes that he continue his education there. Mr. Bascus, Jr. came back to the apartment in 2012 on vacation. He later returned to the apartment in 2015 to complete his studies here. But Mr. Bascus Jr. then again went back to Antigua and left a few articles of clothing and mail at the apartment. He finally returned to the apartment sometime in 2019 but did not have a working

key to the apartment which Mr. Lake promised to give him but never did. In December 2019, both Mr. Bascus, Jr. and Mr. Lake got into an argument over Mr. Bascus, Jr. having his girlfriend stay over at the apartment. Mr. Lake called the police as a result of the disagreement, but Mr. Bascus Jr. left the apartment before the police arrived. Following the argument, Mr. Bascus Jr. having no place to go, stayed with friends and family in the area for a couple days and then went to stay with his uncle in Virginia where he stayed for a couple of months. When his uncle got sick, Mr. Bascus Jr. having nowhere else to go returned to the subject apartment. However, Mr. Lake refused to allow Mr. Bascus Jr. into the apartment citing the pandemic. This led Mr. Bascus Jr. to secure the apartment he currently occupies and has now booked for a month.

Petitioner commenced this proceeding pursuant § 713 (10) of the Real Property Actions and Proceedings Law ("RPAPL") which provides that a special proceeding may be maintained where the person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for the years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer.

In addition, pursuant to § 26-521 (a) of the New York City Administrative Code, it shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty days or longer except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order.

To succeed on such a claim, the petitioner must show that he or she "was in actual or constructive possession of the apartment premises at the time of the alleged lockout" ([*Goncalves v Soho Village Realty, Inc.*, 47 Misc 3d 76](#) [App Term, 1st Dept 2015]). Constructive possession was found to exist and restoration ordered in a case where the wife of the tenant of record who surrendered possession of the apartment was not privy to the surrender and previously asserted possessory rights ([*see Hui Zhen Wei v 259 East Broadway Associates LLC*, 57 Misc 3d 136\(A\)](#) [App Term, 1st Dept 2017]). Interestingly, it has been held that a "licensee does not have 'possession'" and "cannot maintain an unlawful entry and detainer proceeding" pursuant to RPAPL § 713 [10] ([*Padilla v Rodriguez*, 61 Misc 3d 133\(A\)](#) [App Term, 1st Dept 2018]). In *Rodriguez*, the petitioner had been the tenant of record of a different apartment and failed to show evidence that she had a possessory interest in the apartment she alleged to have been [*3]locked out of. The Appellate Term found that the

petition had been properly dismissed after trial because petitioner was a "mere licensee of the tenant" (*id*).

The Housing Stability and Tenant Protection Act of 2019 ("HSTPA") appears to have codified these well-known tenets of the law surrounding alleged lockouts. Section 768 was added to the RPAPL and provides that it is unlawful to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or governmental vacate order.

Notwithstanding the above, the Appellate Term, First Department, has previously held that "petitioner's right to maintain [a] forcible entry and detainer summary proceeding [is] not dependent upon the number of 'consecutive' days he may have resided in the apartment premises prior to the tenant's death". The Court explained that "although 'possession for thirty consecutive days or longer' is a relevant construct in determining whether a landlord-tenant relationship exists in connection with certain limited classes of occupants, it plays no part at all in determining whether a particular entry proceeding is maintainable" (*Soho Village*, 47 Misc 3d 76) (internal quotation marks and citation omitted). *Soho Village* involved the son of the deceased rent controlled tenant, and the Court found that the issue revolving around whether he was in actual or constructive possession of the apartment at the time of the alleged lockout could only be resolved following a plenary hearing.

The facts in this proceeding are fairly peculiar as the individual who is alleged to have locked Petitioner out of the apartment is not the tenant of record. Rather he is an individual who has essentially been the subtenant of the tenant of record for over twenty years, having obtained a license to occupy the apartment from Petitioner's mother. However, Petitioner also has had a license to occupy the subject apartment although his occupancy has not been as continuous as that of Petitioner.

After reviewing the evidence adduced at the hearing, including both the testimonial as well as the documentary evidence, this Court finds that Petitioner has established that although he may not have been in actual possession for thirty consecutive days prior to the date of the lockout, he has unmistakably been in constructive possession of the apartment.

Based on the foregoing, the petition is granted and the Clerk is directed to prepare a final judgment of possession in favor of Petitioner. The Clerk of the Court will email and mail copies of this Court's decision to the parties. Petitioner is directed to forward a copy of

the decision to Respondent upon receipt via text message. Respondent is directed to restore Petitioner upon receipt of a copy of this Court's decision and Petitioner may seek the assistance of the New York City Police Department in executing this order. In making this determination, the Court expresses no view as to both Petitioner's and Respondent's ultimate tenancy status.

In the event that Respondent fails to comply with this Court's order and fails to restore Petitioner to possession of the apartment, Petitioner may restore the proceeding to the Court's calendar for [*4]appropriate relief.

A copy of this order will be mailed/mailed to the parties.

This constitutes the decision and order of this Court.

DATED: April 14, 2020

Christel F. Garland, JHC

Footnotes

Footnote 1: Petitioner's Exhibits 1 and 2.

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