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### 61ST STREET REALTY ASSOCIATES v. MORALES

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8/19/22

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: PART E

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61ST STREET REALTY ASSOCIATES,

L&T Index No. 312036/21

Mot. Seq. No. 1

Petitioner,

DECISION AND ORDER

-against-

DEBORAH MORALES et al.

Respondents

-----x  
HONORABLE DAVID A. HARRIS, J.H.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion for summary judgment, listed by NYSCEF Number:

11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26

After the expiration of a Ten (10) Day Notice of Termination dated November 11, 2021 (Termination Notice), petitioner commenced this summary proceeding seeking to recover possession of Apartment 2B (Apartment) in the building located at 445 61st Street, in Brooklyn (Building). The Termination Notice asserts that respondents are licensees, and that Emmanuel Mayhoub Mubaraz (Tenant of Record) died on or about June 21, 2021, with a rent-stabilized lease in effect and expiring on November 30, 2022. The Termination Notice further asserts that respondent Deborah Morales claimed to be a family member residing in the Apartment pursuant to a license.

The notice then asserts petitioner's belief that the Tenant of Record died intestate, with an estate valued at less than \$30,000, and that his estate passed to respondents, terminating the estate and its interest. The termination of the estate's interest, the Termination Notice asserts, terminated respondent's rights of possession.

Respondents, represented by counsel, interposed an answer setting forth admissions, denials, and denials of sufficient information to for a belief as to the truth or falsity of the allegations of the petition, and asserting an affirmative defense of succession. Respondents now move for summary judgment on the grounds that a valid unexpired lease for the premises exists.

Respondents argue that an unexpired lease must be terminated prior to the commencement of a proceeding to recover possession, and that here the lease remains in effect, requiring dismissal. In opposition, petitioner argues that respondents waived the right to make those assertions by failing to raise them in the answer, precluding relief either under CPLR 3212 or CPLR 3211. Petitioner urges that EPTL § 4-1.1, regulating the distribution of an intestate decedent's estate, is self-executing, resulting in the automatic distribution of the estate, including the Tenant of Record's leasehold interest in the Apartment, that upon its distribution, the estate of the Tenant of Record ceased to have any interest in the Apartment, and that the distribution entitled petitioner to seek possession. Petitioner argues that prior judicial determinations inconsistent with its assertions misconstrue the law and that this court should not follow them.

A party seeking summary judgment must "show that there is no defense to the

cause of action or that the cause of action or defense has no merit" (CPLR 3212). Respondents' answer, in addition to raising an affirmative defense that is not the subject of this motion, includes denials of various assertions in the petition. Specifically, the answer denies the assertion that respondents are licensees and no longer have the right to occupy the apartment as well as the assertion that respondents continue in occupancy after the expiration of their term. The instant motion, asserting that summary judgment is warranted because a lease remains in effect, granting them a right to occupy the Apartment flows directly from those denials. The motion for summary judgment is therefore properly before the court.

Summary judgment is a drastic remedy, one to be granted only when there is no doubt that no triable issue of material fact exists (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). The granting of summary judgment is the procedural equivalent of a trial (*Falk v Goodman*, 7 NY2d 87 [1959]), and the proponent of summary judgment is required to make a prima facie showing of entitlement to judgment as a matter of law (*Winegrad v. New York Univ. Med. Center*, 64 NY2d 851 [1985]). If the movant succeeds in doing so, the party opposing the motion must demonstrate, through the presentation of evidence in admissible form, the existence of a factual issue requiring trial, (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

The court notes that petitioner raises no issues of fact in opposition to summary judgment, having chosen to submit no affidavit. Instead, petitioner argues that as a matter of law, summary judgment is not warranted. It is undisputed that the term of the lease issued to the deceased Tenant of Record has not expired.

When a tenant dies, the tenant's "leasehold rights become the property of [the

tenant's] estate and the estate was a necessary party" (*Waterview Owners, Inc v Pacimeo*, 13 Misc 3d 130[A] [App Term 2d & 11th Jud Dists 2006]). There is thus no question that an extant leasehold interest passed to the estate of the Tenant of Record.

Petitioner, however, errs in asserting that distribution of the leasehold interest occurred automatically pursuant to EPTL §4-1.1. The statute provides, in pertinent part, that "The property of a decedent not disposed of by will shall be distributed as provided in this section" (EPTL 4-1.1), before listing distributees. The statute plainly designates the distributees but not the method of distribution. Indeed, it contemplates a process, providing that "[i]n computing said distribution, debts, administration expenses and reasonable funeral expenses shall be deducted but all estate taxes shall be disregarded." (*Id.*) The provisions of the EPTL address substance, rather than procedure. The state constitution provides that "'surrogate's court shall have jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto" (NY Const art. VI, § 12). The Surrogate's Court Procedure Act (SCPA) contemplates a summary procedure without judicial administration for the distribution of small estates, and potential voluntary administrators are required to file an affidavit with the court (SCPA §1304). The process is optional rather than mandated; the statute provides that "[t]he procedure prescribed in this article may be used after the decedent's death." (*Id.*)

Respondents deny that the lease has been distributed. Petitioner makes no showing whatsoever that any person qualified as voluntary administrator (SCPA 1303), that the Surrogate's Court assigned a number (SCPA 1304), or that a voluntary administrator or public

administrator has ever distributed the assets of the estate. Rather, petitioner's counsel erroneously asserts that the lease was automatically distributed without any procedure necessary.

The court declines, as petitioner urges, to ignore established precedent. At the death of the tenant, "the estate replaced the deceased tenant as a party to the lease by operation of law. In effect, the death of the tenant effected a substitution of the estate as the principal" (*Schnee v Jonas Equities*, 109 Misc 2d 221, 222 [App Term 2 & 11th Jud Dists 1981]; see *De Christoforo v Shore Ridge Assocs.*, 116 AD2d 123 [2d Dept 2986]).

There is no evidence adduced that a personal representative of the estate was appointed. There is no evidence that an administrator ever terminated respondents' license.

While petitioner argues that there is an issue of material fact as to whether the Tenant of Record had an estate, this court disagrees. Unquestionably, there was an unexpired lease and that leasehold interest passed into the Tenant of Record's estate as personal property (EPTL § 13-1.1; *Joint Properties Owners, Inc. v Deri*, 113 AD2d 691, 693 [1st Dept 1986]). Small estates include "the estate of a domiciliary or non-domiciliary who dies leaving personal property having a gross value of \$50,000 or less" (SCPA 1301). The statute provides no minimum value, and there is no question that the unexpired lease of the Tenant of Record had a value and became an asset of the estate.

Respondents deny that any termination occurred, and petitioner, without an affidavit, raises no issue of fact. Petitioner's misapprehension of the salient law leaves no issue. The essence of petitioner's assertion is that upon the death of the tenant, the lease, without any

process, automatically passed to the Tenant of Record's heirs, and notwithstanding the fact that the term of the lease had not concluded, their right to occupy the apartment did. Were the law governing intestate inheritance as petitioner asserts, the entire process of voluntary administration would be unnecessary because the property would be distributed pursuant to the EPTL automatically.

Respondents have demonstrated entitlement to relief, and petitioner has failed to raise any issue of material fact. Petitioner's arguments that law requires denial of this motion are unavailing. Respondents' motion is granted and the proceeding is dismissed.

This is the decision and order of the court.

Dated: Brooklyn, New York  
November 15, 2022



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David A. Harris, J.H.C.

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