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2022-11-18

### 336 14th St., LLC v. Goffio-Mahabir

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#### Recommended Citation

"336 14th St., LLC v. Goffio-Mahabir" (2022). *All Decisions*. 737.  
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[\*1]

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| <b>336 14th St., LLC v Goffio-Mahabir</b>   |
| 2022 NY Slip Op 51237(U)  |
| Decided on November 18, 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| This opinion is uncorrected and will not be published in the printed Official Reports.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 November 18, 2022

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

PRESENT: : MICHELLE WESTON, J.P., WAVNY TOUSSAINT, CHEREÉ A. BUGGS, JJ  
2021-469 K C

**336 14th Street, LLC, Appellant-Respondent,**

**against**

**Amy Goffio-Mahabir, Respondent-Appellant, and "John Doe" and "Jane Doe," Respondents.**

SDK Heiberger, LLP (Jacqueline Handel-Harbour and Steven B. Sperber of counsel), for appellant-respondent. Levi Huebner & Associates, P.C. (Levi Huebner of counsel), for respondent-appellant.

Appeal and cross appeal from an order of the Civil Court of the City of New York, Kings County (David A. Harris, J.), entered June 24, 2021. The order, insofar as appealed from by landlord, denied the branch of landlord's motion seeking summary judgment in a summary proceeding brought pursuant to RPAPL 713 (7). The order, insofar as cross-appealed from by occupant and as limited by the brief, denied the branch of occupant's cross motion seeking summary judgment dismissing the petition.

ORDERED that the order, insofar as appealed and cross-appealed from, is affirmed, without costs.

In this licensee proceeding (RPAPL 713 [7]) to recover possession of a rent-controlled apartment, occupant defends on the ground that she is entitled to succeed to the tenancy of

her grandmother, the deceased tenant of record. Though occupant admits that she was absent from the subject apartment for certain periods in the two years preceding her grandmother's death, she claims that her absences were a temporary relocation, first, in order to obtain treatment for health issues at a facility and, following her release from the facility, to continue her recovery. Landlord appeals from so much of an order of the Civil Court entered July 6, 2021 as denied the branch of landlord's motion seeking summary judgment. Occupant cross-appeals, as limited by her brief, [\*2] from so much of the order as denied the branch of her cross motion seeking summary judgment dismissing the petition.

Summary judgment is a drastic remedy, and should not be granted when there is any doubt as to the existence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Because there is a triable issue of fact regarding the reasonableness of occupant's explanation for her absences from the subject apartment during the two-year period preceding her grandmother's death, the Civil Court correctly declined to grant summary judgment to either party (*see New York City Rent and Eviction Regulations* [9 NYCRR] § 2204.6 [d] [1]; [92 E. LLC v Lee](#), 65 Misc 3d 137[A], 2019 NY Slip Op 51678[U] [App Term, 1st Dept 2019]).

Accordingly, the order, insofar as appealed and cross-appealed from, is affirmed.

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

ENTER:

Paul Kenny

Chief Clerk

Decision Date: November 18, 2022

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