

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2023-02-17

West 107 Partners L.P. v. Alduey

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"West 107 Partners L.P. v. Alduey" (2023). *All Decisions*. 783.
https://ir.lawnet.fordham.edu/housing_court_all/783

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

West 107 Partners L.P. v Alduey

2023 NY Slip Op 30550(U)

February 17, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. 67287/2018

Judge: Jack Stoller

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

----- X
WEST 107 PARTNERS L.P.,

Petitioner,

Index No. 67287/2018

- against -

DECISION/ORDER

ROBERTO ALDUEY,

Respondent.

----- X

Present: Hon. Jack Stoller
Judge, Housing Court

West 107 Partners L.P., the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Roberto Alduey, the respondent in this proceeding (“Respondent”), seeking possession of 18-20 West 107th Street, Apt. 6E, New York, New York (“the subject premises”) on the basis that Respondent is a licensee whose license has expired. Respondent interposed an answer with a defense that he is entitled to succeed to the most recent tenancy of the subject premises. Respondent appeared in this matter by counsel at one point but then counsel successfully moved to be relieved. Petitioner discontinued this proceeding against all respondents except for Respondent. The Court held a trial of this matter on September 7, 2022 and February 14, 2023.

The trial record

Petitioner proved that it is the proper party to commence this proceeding; that Petitioner complied with the certification requirements of MDL §325; and that Petitioner properly and timely served a predicate notice upon Respondent pursuant to RPAPL §713 on June 27, 2018.

John Holt (“the Director”) testified that he is the director of legal services for Project Guardianship; that his agency spun off from the Vera Institute Guardian Project in November 1,

2020; that his agency (“the Guardian”) was the Article 81 guardian for Hilda Angulo, who was the prior tenant of record for the subject premises (“the Prior Tenant”); that the Prior Tenant was the tenant of the subject premises; and that his agency became the Article 81 guardian on December 23, 2014 and the full guardian by August of 2015.

Petitioner submitted into evidence an order dated December 13, 2014 (“the December 2014 Order”) in the Matter of the Application for the Appointment of a Guardian of the Personal Needs and Property Management of Hilda Angulo, Index No. 500199/2014 (S. Ct. N.Y. Co.)(“the Guardianship Matter”), appointing the Guardian as an Article 81 guardian for the Prior Tenant. The December 2014 Order instructed the Guardian to make sure that the Prior Tenant was not at risk because of physical, emotional, and financial abuse she is said to have suffered at the hands of Respondent, who is the Prior Tenant’s son, with whom she resided; to exercise powers to investigate the financial management and allegations of misappropriation of the Prior Tenant’s assets by Respondent; to take any action necessary and appropriate to further secure the Prior Tenant’s assets and seek reimbursement, as required; to assess the Prior Tenant’s current residential arrangement and ensure that it is exclusively utilized for the Prior Tenant’s benefit; to terminate any illegal residences within the subject premises; and to seek prior court approval for any and all relatives who wish to reside in the subject premises.

The Director testified that the Prior Tenant was to be the sole occupant of the subject premises; that the Court required permission for anyone else to occupy the subject premises; and that there was no application to the Court to add someone else as an occupant of the subject premises.

Petitioner submitted into evidence an order dated June 25, 2015 of the Court in the Guardianship Matter (“the June 2015 Order”). The June 2015 Order memorialized the Court’s

concerns about emotional and financial abuse of the Prior Tenant by Respondent; about Respondent’s serial illegal subletting of a third bedroom in the subject premises; about the changing of locks on the subject premises that the Guardian had installed to prevent access by unauthorized individuals; about Respondent’s interference with the services of home health aides, one of whom left after being physically assaulted by Respondent; and about the Prior Tenant’s acknowledgement that Respondent’s actions have placed her at risk of losing home care services that enabled the Prior Tenant to safely reside in the community. The June 2015 Order provided that the Court will hold a hearing to determine whether she should be in a facility or stay at the subject premises.

Petitioner submitted into evidence an order in the Guardianship Matter dated August 13, 2015 (“the August 2015 Order”) appointing the Guardian for the Prior Tenant and permitting the Guardian to investigate the financial management allegations of misappropriation of the Prior Tenant’s assets by Respondent; take any action necessary and appropriate to further secure the Prior Tenant’s assets and seek reimbursement; terminate any illegal residencies; and seek prior court approval for any and all relatives who wish to reside in the subject premises.

The Director testified that he was the supervising attorney for the Guardian; that he made applications to the Court regarding the Prior Tenant’s residence; that several applications were made seeking court permission to temporarily have the Prior Tenant placed in a facility and relinquish possession of the subject premises; that the Guardian thought there was not a safe plan of discharge to the subject premises; and that the Guardian was unable to come up with a plan of home care for her.

Petitioner submitted into evidence an order dated July 22, 2015 in the Guardianship Matter that provided that the Prior Tenant refused to or was unable to ameliorate the abusive

circumstances in the subject premises that Respondent has created and ordered that the Prior Tenant be transported to an appropriate hospital for in-patient psychiatric and physical evaluation.

Petitioner submitted into evidence an ex parte order of protection in a matter with the index number 92/2015 (S. Ct. N.Y. Co.) dated September 4, 2015 that required Respondent to stay away from the Prior Tenant. Petitioner submitted into evidence another order from the same index number dated September 8, 2015 (“the September 2015 Order”) that provided that the Prior Tenant is intellectually disabled and blind and severely impaired; that there were serious allegations of physical, emotional, and financial abuse of the Prior Tenant by Respondent, who had moved into the subject premises with his wife and infant daughter; that there were allegations that Respondent assaulted one of the Prior Tenant’s home health aides and illegally sublet a bedroom in the subject premises; that Respondent left the Prior Tenant to sleep on a piece of cardboard in the living room; that Respondent caused the Prior Tenant to be at risk of eviction; that Respondent’s presence in the subject premises resulted in a reduction of the Prior Tenant’s home health care from twelve to six hours; that the Guardian had to take steps to have the illegal tenancy terminated; that Respondent was in Court and was admonished by the Court and instructed to make arrangements to move out immediately; that the Prior Tenant did not want Respondent out but the Court found that she did not have the capacity to make that judgment; that Respondent’s abusive conduct continued; that the Court directed that the Prior Tenant not be discharged from a facility given the continuance of the conduct; and that the Court ordered Respondent to vacate possession of the subject premises.

Petitioner submitted into evidence another order from the same index number dated September 9, 2015 directing Respondent to vacate the subject premises on or before November

4, 2015 and make restitution to the Prior Tenant and/or the Guardian, pending a further order, and further providing that the Prior Tenant shall not be discharged from a facility in the absence of a Court order approving a discharge plan deemed safe and appropriate for the Prior Tenant. Petitioner submitted into evidence another order dated September 24, 2015 from the same index number giving permission to discharge the Prior Tenant to an appropriate facility in the Bronx. Petitioner submitted into evidence another order dated November 18, 2015 from the same index number authorizing the Guardian to relinquish possession of the subject premises and to immediately cease rent payments. Petitioner submitted into evidence another order dated January 25, 2016 from the same index number noting the relocation of the Prior Tenant to a relative's home.

Petitioner submitted into evidence the Prior Tenant's recertification for the subject premises dated May 5, 2015 only including the Prior Tenant as a household member. The Director testified that the Prior Tenant left the subject premises after being hospitalized in July of 2015 and did not return before they got the Court order to relinquish possession of the subject premises. Petitioner submitted into evidence a stipulation dated April 26, 2017, settling West 107 Partners v. Angulo, Index # L/T 61904/2016 (Civ Ct. N.Y. Co.) according to which the Prior Tenant, by the Guardian, surrendered her rights to the subject premises and made Petitioner aware that Respondent has been residing in the subject premises.

The Director testified that the Prior Tenant is still alive and that the Prior Tenant resides elsewhere in a nursing facility in the Bronx.

The Director testified on cross-examination that the Court made a finding that the Prior Tenant needed help and his agency does that; that he is unaware of disabilities that Respondent may have had; and that he was not in communication with Petitioner.

The Director testified on redirect examination that there was a court hearing about the Prior Tenant’s capacity.

Jennell Howard (“the Senior Manager”) testified that she is the senior manager for the management company that manages the building in which the subject premises is located (“the Building”); that the Building is subsidized housing regulated by the Department of Housing and Urban Development (“HUD”); that they get a rent schedule from HUD that determines that fair market value; that if the person is subsidized they only count thirty percent of the income; that they have a waiting list; that once it is open people can apply; that if they apply they go on a waiting list; that they have a criminal and credit check; the waiting list now has about 1,000 people on it; that there are 61 units in the Building; and that the waiting list has applicants dating back twenty years.

The Senior Manager testified on cross-examination that she does not know if rent payments were demanded from the Prior Tenant after the Prior Tenant surrendered; that she has been in this field since 2008; that she has been in email communication with prior management; and that she has not inspected the subject premises.

Respondent testified that he is the son of the Prior Tenant; that he has lived in the subject premises since he was seven years old; that he knows everyone in the building in which the subject premises is located (“the Building”) and in the neighborhood; that the allegations against him are completely false; that there have been multiple home care aides and agencies that have caused disturbances and misappropriated funds that the Prior Tenant was given due to her disability; that many people had access to her account and to her checkbook; that the Prior Tenant was abused by the home care aides; that he helped the Prior Tenant pay her rent and get to her appointments; that he told his then-fiance to move into the subject premises to help with

his care of the Prior Tenant; that he also wanted his child to live with her grandmother; that people in the neighborhood and people in relation to the home health aides tried to separate him from the Prior Tenant to control her funds; that he is disabled as well; that he got income as best he could to help the Prior Tenant; and that the Guardianship Matter began after he was trying to help the Prior Tenant.

Respondent submitted into evidence the following documentation connecting him with the subject premises: a voters' registration showing Respondent at the subject premises as of September 23, 2008; a juror questionnaire; a bill from Mount Sinai Hospital dated September 22, 2016; and a Con Edison bill dated in February of 2017.

Respondent testified that there was no investigation done as to the circumstances of the Prior Tenant's ailments or of his ailments or illnesses.

Respondent testified on cross-examination that he assisted the Prior Tenant in paying the rent and utilities; that Respondent assisted the Prior Tenant with buying groceries and organizing her documents and appointments; that the Prior Tenant is blind and has cognitive impairments; that he was never arrested for abusing the Prior Tenant; and that there was an order of protection when he was very young.

Petitioner submitted into evidence orders of protection together with certificates of disposition in various proceedings in Criminal Court against Respondent. The orders of protection directed Respondent to stay away from the Prior Tenant's home. The multiple orders of protection cover a continuous time period from May 26, 2010 through March 26, 2017.

Respondent testified on cross-examination that he was arrested thirteen times for violating orders of protection; that he used a New Jersey address when he was arrested because he was told that he could not use the subject premises as his address; that he signed the 2015 recertification; that

the Prior Tenant would let him into the subject premises after he got out of school; that he set up a home attendant for the Prior Tenant; that Guardian did not do that; that the Guardian only put the Prior Tenant in a facility; that he never assaulted or pulled a gun on a home attendant; that he never sublet the subject premises; that the Guardian did not tell him that he could not be in the subject premises; that he never went to the Court in the Guardianship Matter; and that he intervened to get in-home care for the Prior Tenant.

Petitioner submitted into evidence a driver's license issued on May 4, 2016 for Respondent with an address in Queens. Respondent testified that he could not trust anything being shipped to the subject premises because multiple home attendants stole things from the Prior Tenant, so he used the address in Queens.

Discussion

If a family member resides with a tenant of a project-based Section 8 apartment for two years prior to the vacatur of the tenant of record, the family member can succeed to the tenancy. Los Tres Unidos Assocs., LP v. Colon, 45 Misc.3d 129(A)(App. Term 1st Dept. 2014), 2013 Amsterdam Ave. Hous. Assocs. v. Estate of Almeda Wells, 10 Misc.3d 142(A)(App. Term 1st Dept. 2006). The numerous records from the Guardian Matter and otherwise prove that Respondent is the Prior Tenant's son and therefore a family member. The Court must therefore determine whether Respondent co-resided with the Prior Tenant for two years before her vacatur.

The Prior Tenant was already living in a facility as per the Court's directives as of April 26, 2017, when the Guardian formally surrendered possession of the subject premises to Petitioner. Respondent must therefore prove that he co-resided with the Prior Tenant from April 26, 2015 to April 26, 2017 ("the Relevant Time Period").

As noted above, two orders of protection prohibited Respondent from co-residing with

the Prior Tenant for the entirety of the Relevant Time Period (however many times Respondent may have violated those orders), save for the month in between March 26, 2017 and April 26, 2017. These orders obviously have an effect on Respondent’s ability to prove that he resided with the Prior Tenant during the Relevant Time Period.

The subject premises is not subject to the Rent Stabilization Law. Nevertheless, the Rent Stabilization Code provides instructive guidance on this point. A potential successor can still prove that they lived with a tenant even if, during the two-year co-residency period, the potential successor “temporarily” relocated because, *inter alia*, of a court order not involving any term or provision of the lease, and not involving any grounds specified in the RPAPL. 9 N.Y.C.R.R. §2523.5(b)(2)(iii). The orders of protection that prevented Respondent from living at the subject premises did not involve a term or provision of the lease and did not involve any grounds specified in the RPAPL.

Even assuming *arguendo* that this provision of the Rent Stabilization Code applied to Respondent, however, the lengthy duration of the orders of protection – six years and ten months from May 26, 2010 through March 26, 2017 – show that Respondent’s absence from the subject premises, or at the very least the time that courts ordered Respondent absent from the subject premises, was not temporary. 528 W. 123rd St. LLC v. Baptiste, 59 Misc.3d 20, 21 (App. Term 1st Dept. 2018)(an eight-and-one-half year incarceration, rendering a potential successor unable to occupy the apartment for four years after the trial, would not serve the succession or nonprimary provisions of the Rent Stabilization Code).

Moreover, even assuming *arguendo* that the Court would not find that the findings in the Guardianship Matter are preclusive on Respondent, as he was not a party to those cases, the often and emphatically-expressed wishes of the Guardian that Respondent not live in the subject

premises further calls into question Respondent’s proof that he “resided with” the Prior Tenant. When the Court-authorized representative of a tenant takes action after action to exclude a family member from a dwelling, an argument that such a family member “resided with” a tenant drains the words “resided with” of meaning. Regulations providing for succession rights serve the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household. Matter of Murphy v. N.Y. State Div. of Hous. & Cmty. Renewal, 21 N.Y.3d 649, 653 (2013), Matter of Jourdain v. N.Y. State Div. of Hous. & Cmty. Renewal, 159 A.D.3d 41, 45 (2nd Dept. 2018). This record shows that a family member whose occupancy is as fraught and contested as Respondent’s has been did not “reside with” a tenant in a manner consistent with the purpose of succession regulations.

Accordingly, it is ordered that the Court dismisses Respondent’s defenses. It is further ordered that the Court awards Petitioner a final judgment of possession. Issuance of the warrant of eviction is permitted forthwith, execution stayed through March 31, 2023 for Respondent to vacate possession of the subject premises. If Respondent does not move out of the subject premises on or before March 31, 2023, the warrant may execute after service of a marshal’s notice of fourteen days of an eviction as required by law.

The parties are directed to pick up their exhibits within thirty days or they will either be

sent to the parties or destroyed at the Court's discretion in compliance with **DRP-185**.

This constitutes the decision and order of the Court.

Dated: New York, New York
February 17, 2023



HON. JACK STOLLER
J.H.C.

APPROVED
JSTOLLER, 2/17/2023, 5:16:46 PM