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Abdulla v. Porras

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

SIRELKHATIM HAMZA SIRELKATIM ABDULLA

L&T Index # 300530/22

Petitioner-Landlord

-against-

ALICE PORRAS
85-08 Aspen Place
Jamaica, New York 11432

DECISION/ORDER

Respondent-Licensee

Hon. Clifton A. Nembhard

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent's motion.

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits (Cross-Motion)	2
Replying Affidavits	3
Exhibits	
Other	

Upon the foregoing cited papers, the decision/order on these motions is as follows:

Background

Petitioner commenced this licensee holdover proceeding by notice of petition and petition to recover possession of 85-08 Aspen Place, Jamaica. Respondent moves to dismiss the cause for lack of subject matter jurisdiction and defective petition. In the alternative, petitioner seeks to interpose an answer.

Discussion

The gravamen of respondent's argument is that she is the wife of Telal Marhoum who co-owner of the subject premises is. Respondent asserts that she and Marhoum were married in a religious ceremony in 2011. They purchased the subject house in 2018 and moved in in 2020 after renovating it. By that time, they had two children together. In November 2021, she received an order of protection following a domestic incident. She currently has a matrimonial action in Supreme Court and a custody case in Family Court pending. She now lives in the house with her children. In support of her claim, respondent produced an Islamic marriage certificate listing her and Marhoum as husband and wife. The certificate is signed by two witnesses but not by Marhoum or respondent.

Petitioner, in opposition argues that the petition satisfies the requirements of RPAPL § 741 and that there are no issues regarding possession of marital property or family disputes that would deprive the court of jurisdiction. Petitioner asserts that Marhoum intended to retain full possessory rights when he purchased the house. Respondent moved in in 2020 and Marhoum transferred the deed to himself and petitioner in 2021. The following month Marhoum and respondent's relationship ended.

RPAPL § 741(2) requires that a petition state the respondent's interest in the premises and his relationship to petitioner. Subsection (4) requires that the petition state the facts upon which the proceeding is based. The petition here alleges that respondent entered into possession of the premises under a licensee agreement and that petitioner terminated her license effective December 23, 2021. RPAPL § 713(7) provides that a summary proceeding may be maintained against a licensee whose license has been revoked by the licensor. However, as a general rule a spouse is deemed to be in possession based upon the marital relationship and thus cannot be evicted as a licensee. *Rosentiel v. Rosentiel*, 20 AD2d 71 [1st Dept 1963]. This is true even when the relationship breaks down, absent a court decree or agreement between the parties, because the duty of support continues. *Rosentiel v. Rosentiel, supra. Compare, Halaby v. Halaby*, 44 AD2d 495 [4th Dept 1974] [Summary proceeding was proper because issue of support and possession of premises had been resolved by court order and stipulation respectively].

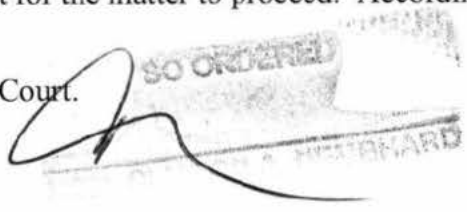
Petitioner argues that this general rule does not apply because respondent and Marhoum were never married. Petitioner aptly argues that the fact that they may have lived together as a family has no bearing on whether she is a licensee. *Heckman v. Heckman*, 55 Misc3d 86 [App Term 2nd Dept 2017]. The pending matrimonial action will resolve the issue of respondent and Marhoum's relationship. The Family Court case will settle the issue of child support. Until then, there is no dispute that Marhoum is the father of respondent's minor children. It is well settled that a father has an obligation to support his children, whether born in or out of wedlock. Family Ct Act §§ 413, 513; *Jimenez v. Weinberger*, 417 US 628 [US Sup Ct 1974]. Inherent in the duty to support is the obligation to provide shelter. It would therefore be inappropriate to allow a landlord to execute a warrant that will have the effect of evicting his own minor children. *Sears v. Okin*, 6 Misc3d 127(A) [App Term 2nd Dept 2004]. Although Marhoum is not a party to

this case, if petitioner is granted the relief he seeks it would still have the effect of evicting the children of the landlord.

Conclusion

Until the issue of respondent's relationship to the premises, and Marhoum's obligation to his children are resolved, it would be improvident for the matter to proceed. Accordingly, the motion is granted and the petition dismissed.

This constitutes the decision and order of the Court.



Date: January 24, 2023
Queens, New York

Hon. Clifton A. Nembhard, JHC