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CON FE REALTY CORP. v. REYES

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

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CON FE REALTY CORP.,

Petitioner,

Index No. 51991/2016

- against -

CESAR REYES,

DECISION/ORDER

Respondent.

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Present: Hon. Jack Stoller
Judge, Housing Court

Con Fe Realty Corp., the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Cesar Reyes, the respondent in this proceeding (“Respondent”), seeking possession of 3856 10th Avenue, Apt. 43, New York, New York (“the subject premises”) on the ground that Respondent is a licensee of the prior tenant of record of the subject premises (“the prior tenant”) and that Respondent’s license terminated by the passing of the prior tenant. Respondent interposed a defense that the subject premises is subject to the Rent Stabilization Law and that Respondent is entitled to succeed to the prior tenant’s tenancy accordingly. The Court held a trial of this matter on May 31, 2017, July 10, 2017, August 9, 2017, February 26, 2018, and April 10, 2018.

At trial, Petitioner proved that it is the proper party to commence this proceeding; that the subject premises is subject to the Rent Stabilization Law; that the prior tenant was the tenant of record for the subject premises; that the prior tenant died; that Respondent remained in the subject premises after the death of the prior tenant; and that Petitioner timely and properly effectuated service of a notice to quit upon Respondent pursuant to RPAPL §713. Petitioner thus

proved its *prima facie* case against Respondent. See 85 Fourth Partners, L.P. v. Puckey, 16 Misc.3d 136(A)(App. Term 1st Dept. 2007), Starrett City, Inc. v. Smith, 25 Misc.3d 42, 46 (App. Term 2nd Dept. 2009)(an owner has a cause of action in a licensee holdover proceeding against occupant of a premises when the occupant remained in possession after a vacatur of a tenant of record therein).

The home attendant for the prior tenant (“the home attendant”) testified that she worked with the prior tenant for eight or nine years; that the prior tenant died on November 14, 2014 at about the age of eighty-nine; that she worked for the prior tenant seven days a week, from 1:30 p.m. to 5:30 p.m. during the week and from 10:00 a.m. to 2:00 p.m. on weekends; that Respondent had already been living in a room in the subject premises separate from the prior tenant’s bedroom from the first time she started working there; that the prior tenant was like a father to Respondent; that Respondent was so engaged with the prior tenant’s care that she hardly had to do anything except bathe the prior tenant, which she did; that Respondent would have already prepared food for the prior tenant, who was diabetic, by the time she got to the subject premises at 1:30 p.m.; that sometimes she and sometimes Respondent prepared dinner; that Respondent would take the prior tenant’s laundry to a laundromat from the subject premises, which is a fourth-floor walkup; that Respondent took care of dressing the prior tenant; that the prior tenant gave Respondent money to buy food with because the prior tenant did not leave the subject premises; that Respondent took the prior tenant to an ophthalmologist twice a month and walked with the prior tenant to appointments with the prior tenant’s primary care physician in the same neighborhood as the subject premises; that she had met the prior tenant’s daughter, but the prior tenant’s daughter did not visit the subject premises; and that Respondent and the prior

tenant celebrated holidays together.

The home attendant testified on cross-examination that Respondent and the prior tenant did not pay her, but that an agency paid her; that she never slept in the subject premises or spent more than four hours there; that she bathed the prior tenant daily the first thing when she got to the subject premises; that the prior tenant, and not Respondent, gave her money or food stamps to buy food for the subject premises with; that Respondent had to bathe the prior tenant once when the prior tenant suffered from diarrhea and she was not there; and that she knows that Respondent took care of the prior tenant because he was the only one who was in the subject premises.

A friend of Respondent's ("Respondent's friend")¹ testified that she lives in the same neighborhood as the subject premises; that she has known Respondent for fifteen years; that she met Respondent at a flea market at church; that she sees Respondent almost every day; that Respondent used to live at her husband's uncle's apartment; that her husband was a close friend of the prior tenant; that she visited the subject premises; that Respondent and the prior tenant were roommates; that Respondent treated the prior tenant like the prior tenant was his father; that the relationship between Respondent and the prior tenant was loving and very beautiful; and that Respondent would help the prior tenant go to church, get dressed, and go to medical appointments.

Respondent's friend testified on cross-examination that she visited the subject premises in the year that the prior tenant died two or three times a week; that she did not have an exact

¹ Respondent's friend has the same last name as Respondent. She testified that she is not related to Respondent.

schedule, but she would go to the subject premises at about 2:00 p.m.; that she saw the home attendant there and observed the home attendant bathing, dressing, and feeding the prior tenant and giving the prior tenant medication; that she did not help the home attendant in bathing the prior tenant; that the home attendant didn't ask her for help because Respondent helped a lot; that she had occasion to assist the prior tenant with injecting insulin because the home attendant had not arrived yet; that she never met Respondent's father, but that Respondent said that Respondent's father was tranquil and well; that Respondent moved out of his prior apartment and into the subject premises because his then-roommate was going to have her grandchild move in with her; that she recommended Respondent to the prior tenant because the prior tenant asked her if she knew someone who was serious and trustworthy; and that the prior tenant took Respondent in because they were friends.

Respondent testified that he has been living at the subject premises for more than ten years; that he went to a senior center and met the prior tenant there; that the prior tenant had told him that he had a room available in the subject premises; that he slept in the living room when he first moved in; that when he moved in, the prior tenant suffered from diabetes and had problems with his gums and swollen feet; that the prior tenant had a stroke after that and his ability to walk deteriorated; that Respondent's father died and that Respondent felt that what he couldn't have done for his father that he would do for the prior tenant; that his relationship with the prior tenant changed from being two roommates to being more like a relationship that a son would have with a father; that the New York City Housing Authority offered him an apartment, but he didn't want to leave the prior tenant alone, so he turned the offer down; that home attendants only worked four hours a day; and that he took the prior tenant to medical appointments, like appointments

with an eye doctor, that the prior tenant might have in mornings.

Respondent introduced into evidence documents memorializing appointments that the prior tenant had with an ophthalmologist dated January 3, 2011, December 27, 2011, December 10, 2012, February 25, 2013, May 20, 2013, and August 2, 2013 that identify Respondent as a “person to notify.”

Respondent testified that he doesn’t like to cook but that he made eggs for the prior tenant because the prior tenant was diabetic and had to eat early before the home attendant came; and that he sometimes went to pantries in the Bronx to get food and, if a home attendant wasn’t at the subject premises, he would come back to the subject premises fast so that the prior tenant wouldn’t be alone.

Respondent testified on cross-examination that the prior tenant went to church by himself because it was almost right across the street; that sometimes he would find people seeking used clothes and pots and he would buy them and take them home; that he contributed \$50 a week for the subject premises; that he didn’t share a bank account with the prior tenant; that he didn’t contribute to utilities for the subject premises; that a former wife of the prior tenant paid for funeral expenses, although Respondent wasn’t sure; that he never married the prior tenant or filed a domestic partnership with the prior tenant; that he never asked the prior tenant to be his godfather because he already had a godfather; that he and the prior tenant didn’t have powers of attorney for one another; that he did not know if the prior tenant had a will; that the prior tenant’s daughter was his health care proxy; and that he does not have photographs of him and the prior tenant.

Respondent testified on redirect examination that his source of income is Social Security;

that he does not have a pension; that he does not have a will; that he does not own property; and that the prior tenant did not own property.

A friend of Respondent's family ("the family friend") testified that she lives in the neighborhood in which the subject premises is located; that she met Respondent sixteen or seventeen years ago as a friend of the family; that Respondent is like an uncle to her; that she knew Respondent before he moved into the subject premises; that she didn't necessarily celebrate holidays with Respondent, although sometimes Respondent would come to their house; that her husband worked across the street from the subject premises, so she had occasions to visit there; that she has been visiting the subject premises about two or three times a week in afternoons, when she was taking lunch to her husband; that the relationship between Respondent and the prior tenant changed over the time that Respondent moved in; that the prior tenant and Respondent got along like two friends who lived together; that they would be talking when they ate together; that she saw, on a regular basis, Respondent bringing the prior tenant down the stairs, running errands together; that one time after Christmas she brought both Respondent and the prior tenant pajamas because she considered them to be in a family scenario; that everything seemed nice on that occasion, like she was visiting two of her uncles; that the prior tenant couldn't walk on his own in the six or seven months before he died; that Respondent carried the prior tenant downstairs so that the prior tenant could get some fresh air; and that Respondent helped the prior tenant walk down the street.

The family friend testified on cross-examination that she never cared for the prior tenant and that she did not take photographs or videos of them.

The tenant of an apartment on the same floor as the subject premises ("the neighbor")

testified that she has been living right across from the subject premises for thirty-eight years; that she first met Respondent about ten years ago at a senior center where they eat meals; that she met the prior tenant over twenty years ago; that she first became aware that Respondent moved in about eight or twelve years ago because she saw Respondent all the time; that she thought that they were brothers because after the prior tenant got sick, she saw them together; that one time, one of them referred to the other as his brother; that she thought someone else who stayed in the subject premises was a brother also; and that Respondent carried the prior tenant to the first floor to put the prior tenant in a taxi to go to the doctor.

The neighbor testified on cross-examination that Respondent and the prior tenant never came into her apartment; that, besides the senior center, she never engaged in social interaction with the prior tenant or Respondent; and that she had received a letter from Respondent's attorney telling her to come to Court.

Respondent introduced into evidence New York tax returns from 2012 through 2015 showing that Respondent filed his taxes using the subject premises as his address; letters sent to Respondent at the subject premises from the Social Security Administration from 2009 on; letters from 2012 and 2013 sent to Respondent at the subject premises from the United States Railroad retirement board; bank statements sent to Respondent at the subject premises on a monthly basis from December of 2011 through March of 2017; and records from the New York City Human Resources Administration ("HRA") showing Respondent at the subject premises. The HRA records show that Respondent's date of birth is September 14, 1943, that Respondent receives Medicaid and SNAP benefits, and a letter from the prior tenant dated June 10, 2009 stating that Respondent rents a room at the subject premises.

In order to prove that Respondent is entitled to succeed to the tenancy of the prior tenant, as Respondent was over sixty-two years of age² before he moved into the subject premises, Respondent bears the burden of proving that he resided with the prior tenant for at least one year before the prior tenant permanently vacated and that he is a family member of the prior tenant. 9 N.Y.C.R.R. §2523.5(b)(1).

The preponderance of evidence at trial, including credible testimony from the home attendant, shows that the prior tenant died on November 14, 2014. The preponderance of evidence at trial, including testimony from non-party witnesses, particularly the home attendant, but also the neighbor, further shows that the prior tenant was in very poor health before he died, such that he spent the substantial majority of his time in the subject premises and in fact needed the assistance of Respondent to physically carry him out of the subject premises. The Court therefore finds that the prior tenant not only resided in the subject premises for at least a year prior to his death, but that he resided there for a protracted period of time before that as well.

Respondent introduced into evidence a number of documents that are probative as to his residency at the subject premises, including tax returns, Glenbriar Co. v. Lipsman, 5 N.Y.3d 388, 392-393 (2005), correspondence from the Social Security Administration, and bank statements. 300 East 34th St. Co. v. Habeeb, 248 A.D.2d 50, 55 (1st Dept. 1997), Lesser v. Park 65 Realty Corp., 140 A.D.2d 169, 174 (1st Dept. 1988), Brg 321 LLC v. Hirschorn, 52 Misc.3d 131(A) (App. Term 1st Dept. 2016), RSP 86 Prop. LLC v. Sylvester, 47 Misc.3d 137(A)(App. Term 1st Dept. 2015). Moreover, New York State regulations require HRA to verify beneficiaries'

² A senior citizen for purposes of the Rent Stabilization Code is a person aged sixty-two or older. 9 N.Y.C.R.R. §2520.6(p).

residences, 18 N.Y.C.R.R. §351.2(b), so HRA's use of the subject premises as Respondent's address is probative as to his primary residence. The Court finds that these documents show that Respondent resided with the prior tenant at the subject premises for at least one year, and well before that, at the subject premises. What remains for Respondent to prove is that he and the prior tenant had a familial relationship.

A "family member," for purposes of succession, includes any person who can prove emotional and financial commitment, and interdependence between such person and the tenant according to a variety of factors. 9 N.Y.C.R.R. §2520.6(o)(2). The biggest weakness in Respondent's case is his failure to introduce evidence that he and the prior tenant formalized their relationship in any way, such as by a health care proxy. Respondent also did not introduce any evidence that he and the prior tenant owned any property jointly or intermingled their finances. 390 West End Assocs. v. Wildfoerster, 241 A.D.2d 402, 403 (1st Dept. 1997), WSC Riverside Drive Owners LLC v. Williams, N.Y.L.J. December 20, 2013 at 22:1 (App. Term 1st Dept.), Westprop Corp. v. Smythe, 24 Misc.3d 139(A) (App. Term 1st Dept. 2009), Stahl Assoc. v. Pitt, 20 Misc.3d 126(A) (App. Term 1st Dept. 2008), Matsia Props. Corp. v. Rodriguez, 11 Misc.3d 138(A) (App. Term 1st Dept. 2006), Pearlbud Realty Corp. v. White, 10 Misc.3d 141(A) (App. Term 1st Dept. 2006), Riverview Dev. Holding Corp. v. Doe, 8 Misc.3d 132(A) (App. Term 1st 2005), *leave to appeal denied*, 2005 N.Y. App. Div. LEXIS 13522 (1st Dept. 2005), *appeal dismissed*, 7 N.Y.3d 737 (2006).

However, the absence of documentary evidence does not undermine a succession rights claim if the totality of the testimonial evidence establishes the requisite emotional and financial commitment. Matter of 530 Second Ave. Co., LLC v. Zenker, 2018 N.Y. Slip Op. 02143 (App.

Div. 1st Dept.), RHM Estates v. Hampshire, 18 A.D.3d 326, 326-327 (1st Dept. 2005), *leave to appeal denied*, 2006 N.Y. App. Div. LEXIS 4429 (1st Dept. 2006), Arnie Realty Corp. v. Torres, 294 A.D.2d 193, 193-194 (1st Dept. 2002). This proposition is all the more relevant when the prior tenant and Respondent had limited income to share. Roberts Ave. Assocs. v. Sullivan, 2003 N.Y. Misc. LEXIS 901 (App. Term 1st Dept. 2003), *leave to appeal denied*, 2004 N.Y. App. Div. LEXIS 803 (1st Dept. 2004), 2025 Walton Assoc., LLC v. Jose Arroyo, 34 Misc.3d 1232(A)(Civ. Ct. Bronx Co. 2012), Fleishman Realty Corp. v. Garrison, 27 Misc.3d 1202(A) (Civ. Ct. Bronx 2010), *citing* 176 East 3rd St., LLC v. Wright, N.Y.L.J., January 19, 2001, at 26:5 (App Term 1st Dept.), *citing* Llorente v. Stackiewicz, N.Y.L.J., February 22, 1995, at 31:4 (App. Term 1st Dept.). The evidence at trial, showing that Respondent received public assistance benefits from HRA and was offered an apartment owned by the New York City Housing Authority, and that the prior tenant had food stamps, shows that Respondent and the prior tenant indeed had limited income such that they were eligible for such benefits.

In the absence of documentary evidence, credible witness testimony, and particularly credible testimony of disinterested witnesses, bear probative value with regard to a non-traditional family relationship. GSL Enters. v. Lopez, 239 A.D.2d 122 (1st Dept. 1997), 2-4 Realty Associates v. Pittman, 137 Misc.2d 898, 900-901 (Civ. Ct. N.Y. Co. 1987), *aff'd*, 144 Misc.2d 311 (App. Term 1st Dept. 1989)(finding a non-traditional family relationship at least in part based on the testimony of three disinterested witnesses). In this matter, the home attendant, who is not an interested witness and who has extensive, daily knowledge of the prior tenant's household, personally observed Respondent interacting with the prior tenant in a caring way, preparing food for the prior tenant, dressing him, taking him to medical appointments, and taking

his clothes to a laundromat. Respondent's friend testified that she observed Respondent dressing the prior tenant and taking him to medical appointments.

The neighbor did not know the prior tenant and Respondent as well as the other non-party witnesses. However, the neighbor's relative social distance from the prior tenant and Respondent underscores the extent of the neighbor's disinterested status, in contrast to, say, Respondent's friend, who appeared to want to help Respondent. The neighbor saw Respondent physically carry the prior tenant down the stairs and that she saw them together enough that she thought that they were brothers.

The Court found the testimony of the family friend particularly compelling. The family friend's demeanor was unrehearsed, matter-of-fact, and spontaneous. The family friend testified that visiting the prior tenant and Respondent was like visiting a couple of uncles, based on the way that they all interacted with each other. She also observed Respondent carrying the prior tenant down the stairs so the prior tenant could get fresh air. The location of the workplace of the family friend's husband, across the street from the subject premises, renders plausible her testimony that she had frequent occasions to visit the subject premises. Finally, the detail about the family friend buying pajamas for both Respondent and the prior tenant is consistent with the kind of thing someone does for people in a household that a gift-giver perceives to be in a caring and committed relationship.

The record also contains objective evidence that Respondent not only took the prior tenant to regular appointments with an ophthalmologist but that, over at least a two-year-and-seven-month span from January of 2011 through August of 2013, records from the ophthalmologists's office identified Respondent as a "person to notify" for the prior tenant. Such

a designation belies a mere roommate relationship.

While the Rent Stabilization Code states a number of criteria for the Court to consider in determining whether a successor-claimant has a nontraditional family relationship with a prior rent-stabilized tenant, the “totality of the circumstances” can show such a relationship. Matter of 530 Second Ave. Co., LLC, supra, 2018 N.Y. Slip Op. at 02143. Despite the absence of intermingling of finances and formalization of relationships, the totality of the circumstances adduced at trial shows that Respondent and the prior tenant were in a committed, years-long familial relationship with one another, characterized by personal interactions, interactions with people outside of their relationship, including a neighbor, a home attendant, a family friend, and a personal friend, and the type of daily assistance that family members give one another. The Court finds that Respondent has met his burden of proving that he was in a non-traditional family relationship with the prior tenant and that, therefore, Respondent prevails on his affirmative defense that he has the entitlement to succeed to the prior tenant’s tenancy. Accordingly, the Court dismisses this case on the merits and with prejudice.

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 this Court.

Dated: New York, New York
May 24, 2018



HON. JACK STOLLER
J.H.C.