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2020-02-10

### 715 ST. JOHNS PLACE L.P v. GRAHAM

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"715 ST. JOHNS PLACE L.P v. GRAHAM" (2020). *All Decisions*. 1075.  
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART F

-----X  
715 ST. JOHNS PLACE L.P

Petitioner

Index No. LT#64148/19

-against-

**DECISION**

CLIFTON GRAHAM, KAESHAUN GRAHAM,  
"JOHN DOE"/"JANE DOE"

Respondents.

-----X

HON. HANNAH COHEN:

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion seeking summary judgment and dismissal and petitioner's cross motion for summary judgment and use and occupancy and respondents cross motion seeking dismissal for failure to state the regulatory status of the premises and or leave to amend the answer.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Notice of Cross Motion	2
Notice of Cross Motion	3
Opposition	4
Reply	5

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Upon the foregoing cited papers, the Decision and Order on these motions are as follows:

Petitioner, 715 St. Johns Place L.P. commenced this holdover proceedings seeking possession of the premises. Petitioner alleges that respondent's licensee expired upon the death of the tenant of record, Luverda Gadson on March 31, 2018. Petitioner as noted in the petition, admits the premise are subject to Rent Stabilization and the property received a real estate tax abatement under Section 421(a) of the Real Property Tax Law and is subject to the Federal Low Income Housing Credit Program pursuant to 26 CFR 1.42 et. seq.

Respondent Clifton Graham appeared with counsel and asserted the following affirmation defenses and counterclaims: (1) succession and (2) attorney fees pursuant to RPL section 234.

Respondent by motion seeks summary judgment on the counterclaim that respondent is entitled to succession rights pursuant to 9 NYCRR section 2520.6(o)(1) and 2523.5(b)(1). Respondent also cross moves for dismissal pursuant to CPLR 3211(a)(7) in that the petition fails to state a cause of action in that the petition did not plead the complete regulatory status of the building as required by RPAPL 741 or in the alternative leave to amend the answer. Petitioner cross moves and seeks summary judgment pursuant to CPLR 3212 as respondent fails to prove that he is entitled to succession and that even if he could prove such, the regulatory agreement mandates that the premises are reserved for low income seniors only and respondent is thus barred from asserting any succession claim as he is not a senior.

The court will first address respondent's cross motion seeking dismissal based upon petitioners fails to assert the complete regulatory status of the premises pursuant to RPAPL 741. In summary proceedings, the petition is required to (1) State the interest of the petition in the premises from which removal is sought (2) State the respondent's interest in the premises and his relationship to the petitioner with regard thereto (3) Describe the premises from which removal is sought (4) State the facts upon which the special proceeding is based (5) State the relief sought.

As such, petitioner was required, where the tenancy was subject to a specific type of regulation to plead in the petition the complete regulatory status, as it may determine the scope of the parties rights and defenses (See *MSG Pomp Corp v Jane Doe*, 185 AD2d 798 [1<sup>st</sup> Dept 1992]). A petition which fails to satisfy this requirement may be subject to dismissal, as failure to plead the specific type of regulation may have deprived the tenant of potential defenses (*Volunteers of Am.-*

*Greater New York Inc. v Almonte*, 65 AD3d 1155 [2<sup>nd</sup> Dept 2005]; (*Cintron v Pandis*, 34 Misc3d 152[A] 2012 NY Slip Op 50309[U] [App Term, 2d Dept 9<sup>th</sup> & 10<sup>th</sup> Jud Dists 2012]). Court have dismissed petitions where the omission involve respondents who “may have defenses arising from the relevant contract.” (See *Jasper L.P. v John Doe and Jane Doe*, 63 Misc3d 1209(a) [Civ Ct Bronx Co 2019]; *PCMH Crotona L.P. v Taylor*, 57 Misc3d 1212(a) [Civil Ct Bronx Co 2017]; *Park Props Assoc. LP. v Williams*, 38 Misc3d 35 (App Term 1<sup>st</sup> Dept 2012)).

However, where the defect of this nature results in no prejudice to the tenant, this defect may be overlooked (*17<sup>th</sup> Holding v Rivera*, 195 Misc 2d 531 [App Term, 2d Dept , 2d & 11<sup>th</sup> Jud Dists 2002]; See also *Coalition Houses L.P. v Bonano*, 12 Misc 3d 146[A], 2006 NY Slip Op 51516 [U] [App Term, 1<sup>st</sup> Dept 2006]).

Here, petitioner was required to allege not only the rent stabilization status and the low income tax credit 421 status, which it did, but also the regulatory agreement in place with DHCR which designates the premises for low income seniors only. However, petitioner’s failure to plead the complete regulatory agreement did not prejudice the respondent as respondent, now aware of the complete status, still does not qualify as he is not a senior and was not deprived of any additional defenses as a result of the petitioner’s failure in stating the complete regulatory status (See *OLR ECW. L.P. v Myers*, 59 misc.3d 650 [Civ Ct. Bronx Co. 2018]).

Respondent’s cross motion to dismiss for failure to state a cause of action and plead the complete regulatory agreement pursuant to RPAPL 741(4) is denied as respondent has failed to show any prejudice or new potential defenses.

Respondent also seeks summary judgment on its counterclaim that respondent is entitled to succession rights pursuant to 9 NYCRR section 2520.6(o)(1) and 2523.5(b)(1). In support of the

motion, respondent attaches the following documents not in evidentiary form: (1) death certificate for Luverda Gadson who died on March 31, 2018 which lists the informant as Lorraine Brown, daughter who resides in Washington D.C.; (2) copy of deed between 715 St. Johns Place and NYS DHCR and copy of Low Income Housing Credit Regulatory Agreement between 715 Saint Johns Place, Limited Partnership and Monastery Senior Housing Development Fund Corporation and NYS DHCR; (3) copy of a pay stub for respondent for 11/8/2013 - 11/21/2013, issued November 29, 2013; (4) notice of past child support bill dated 11/27/2015;(5) final notice for re certification dated December 1, 2015 indicating they have been unable to locate him; (5) two notices of past child support bills dated December 31, 2015;(6) NYC Board of Elections mailing and poll cite for 2016, undated; (7) New York State Medicaid letter dated January 20, 2016 indicating respondent was enrolled in a plan because he failed to join a health plan during enrollment or when he applied for medicaid; (8) Unemployment Insurance (UI) Benefits Debt Reminder letter dated July 13, 2016; (9) Mail Renewal Reminder letter from NYC Medical Assistance Program dated August 19, 2016;(10) TD bank statement for August 11, 2016 to September 10, 2016 indicating a beginning and ending zero balance and (11) a bill for Mr. Graham's birth certificate request from the NYC Department of Health and Mental Hygiene dated August 27, 2019.

Summary judgment will be granted "if upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR 3212[b]). The moving party must make a prima facie showing of entitlement to a judgment as a matter of law, giving sufficient evidence to eliminate any material issues of fact from the case. See (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). The proponent of a motion for summary judgment must tender sufficient

evidence to demonstrate the absence of any material issues of fact” (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). In considering a summary judgment motion, the courts function is to determine whether a material issue of fact exists, not to determine said issues (*Esteve v Abad*, 271 AD 725 [1<sup>st</sup> Dept 1947]).

Here, respondent’s scant documentation which does not even prove the alleged familial relationship to the tenant of record or any relevant indicia of continuous co-residency during the relevant time period, is wholly without merit and lacks a good faith basis. (See *PCV ST Owner LP v Shelly*, 20 Misc3d 1125[A] [Civ Ct 2008]; *England v Gradowitz Bros. Realty Corp.*, 137 Misc.2d 21 [Civil Ct Bronx Co 1987]) As such, respondent’s motion for summary judgment with regard to succession rights is denied.

Petitioner’s cross motion for summary judgement seeking possession of the premises against both respondents and use and occupancy is granted. As noted above, the premises is operated under the name “Mount Carmel Monastery Senior Housing” and is operated exclusively for the benefit of low income seniors who are 62 or older. Respondent was never listed on Luverda Gadson’s re certifications leases and was never given permission to reside at the premises.

The court may take judicial notice of reliable data maintained on internet web sites, under common law principles as well as CPLR Rules 4511 and 4539 and New York State Technology Law § 306. (See *Scarsini Interiors Inc v Just in Time Furniture Warehouse Inc.* (2009 NY Misc LEXIS 5373, NY Slip Op 31702[U][Sup Ct NY Co 2009]; *Tener Consulting Servs v FSA Main St*, 23 Misc3d 1120(A) [Sup Ct NY Co 2009]; The court upon reviewing the deed for the premises on ACRIS also takes judicial notice of the recorded amendment between Mount Carmel Senior Housing Development Fund Corporation and the United States of America, Secretary of Housing and Urban

Development (hereinafter "HUD") regarding the property located at 715 St. Johns Place, Brooklyn, New York recorded May 3, 2002 . The Amendment of Development states the agreement shall remain in effect for not less than 40 years and states

"Whereas the Owner and HUD entered into that Capital Advance Program Use Agreement (form HUD-90163-CA) dated as of December 13, 2001 (the "Agreement") pursuant to which the Owner shall perform certain services more particularly described therein in connection with the operation of a rental housing project to house elderly persons, in accordance with Section 202 of the Housing Act of 1959..."

The Court notes that the purpose of a section 202 program is to "accommodate the special needs of elderly persons" (12 USC 1701q[a] and provide housing for the "very low income elderly." (12 USC 1701q[d](1). Thus, "all units assisted under [that] section shall be made available for occupancy by very low-income elderly persons." (12 USC section 1701q[d](1). An elderly person is a person or individual who is at least 62 years of age (12 USC section 1701q[k](1); 24 CFR 5.214; 24 CFR section 891.205.) In order to ensure that this class of individuals alone received the benefit from the statute, most premises as the one herein, are also covered by a regulatory agreement between HUD and the owner for which the owner agreed to limit occupancy to low income seniors. Attached to the deed pursuant to an ACRIS search is a conveyance from 715 Saint Johns Place Limited Partnership to New York State Division of Housing and Community and Monastery Senior Housing Development is the regulatory agreement with DHCR which states that an application has been submitted to DHCR for a Low Income Housing Credits "for certain projects as more fully described in Exhibit A attached herein (the "Project"). Exhibit A states the project is developed by

Catholic Charities to renovate and house “low income seniors.”

Despite the clear intent and purpose of this agreement, respondent contends that although he is not elderly, he is nonetheless entitled to succeed to the apartment because he alleges he had lived with the tenant of record for at least two years before her death and the premises is subject to rent stabilization. In order for respondent to seek succession rights to this particular unit, he would have to be a senior. Failing this, he is categorically barred from succeeding to the apartment (See *607 Concord Senior Hous. v Morales*, 16 Misc3d 1121(A) [Civ Ct Bronx Co 2006]). The court concludes that the regulatory agreement must be read in conjunction with the Low Income Housing Credit Regulatory Agreement, to not do so, would ignore the statutory purpose of a Section 202 project. As the regulatory agreement provides for housing for low income seniors only, in order for any member to succeed, the family member would also have to be a senior. (See *St. Phillips Church Housing Corp. v George*, (NYLJ 1/26/05 at 19, col. 1 [2005]).

Taking the above into consideration, petitioner has sustained its burden of proof in its summary judgment motion. Respondent has utterly failed to prove succession rights and even if he had, based upon the undisputed fact that he is not a senior and was never listed on the re certification documents, he is categorically barred from being eligible for the premises. Petitioner is awarded a final judgment of possession, warrant to issue forthwith, against Clifton Graham execution stayed 10 days. Petitioner is also awarded a money judgment in the amount of \$15,329.72 as all the use and occupancy owed through February 2020 at \$733.81 per month against Clifton Graham. The case is adjourned for inquest versus Kaeshaun Graham, John Doe and Jane Doe to February 28, 2020 at 9:30 am, rm 612, part F.



This constitutes the decision and order of the court.

Dated: February 10, 2020  
Brooklyn, New York

  
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HANNAH COHEN, J.H.C.

HANNAH COHEN  
JUDGE, SUPREME COURT