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### 700 Bklyn Realty, LLC v. Samuel

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[\*1]

<b>700 Bklyn Realty, LLC v Samuel</b>
2020 NY Slip Op 51115(U)
Decided on September 4, 2020
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This opinion is uncorrected and will not be published in the printed Official Reports.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 September 4, 2020

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

PRESENT: : THOMAS P. ALIOTTA, P.J., MICHELLE WESTON, WAVNY TOUSSAINT,  
JJ  
2019-705 K C

**700 Bklyn Realty, LLC, et al., Appellants,**

**against**

**Muriel Samuel, Tenant, and Cecelia DeSilva, Respondent, et al., Undertenants.**

Kaufman, Friedman, Plotnicki & Grun, LLP (Ari Grun of counsel), for appellant. Ellery Ireland, Esq., for respondent (no brief filed).

Appeal from an order of the Civil Court of the City of New York, Kings County (Marcia J. Sikowitz, J.), entered January 9, 2019. The order denied landlords' motion for summary judgment in a holdover summary proceeding.

ORDERED that the order is affirmed, without costs.

In this nonprimary-residence holdover proceeding, occupant Cecelia DeSilva, tenant Muriel Samuel's niece, asserts that she is entitled to succession rights. Landlords moved for summary judgment dismissing occupant's succession-rights affirmative defense and awarding landlords a final judgment of possession. In an order dated January 9, 2019, the Civil Court

denied landlords' motion and set the proceeding down for trial, finding that issues of fact prevented a grant of summary judgment to landlords as a matter of law.

As set forth in the decision of the Appellate Division, Second Department, in [\*Matter of Jourdain v New York State Div. of Hous. & Community Renewal\*](#) (159 AD3d 41, 46-47 [2018]), "the relevant one- or two-year period (depending on whether or not the family member is a senior citizen or disabled) in which the family member must 'reside with' the tenant is the one- or two-year period immediately prior to when the tenant ceases residing at the housing accommodation" (*see EB Bedford, LLC v Lee*, 64 Misc 3d 39 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]). In coming to that conclusion, the Appellate Division found that "[r]egulations providing for succession rights should be liberally construed to carry out the reform intended and spread its beneficial effects as widely as possible" (*Matter of Jourdain*, 159 AD3d at 45 [internal quotation marks omitted]; *see EB Bedford, LLC*, 64 Misc 3d at 41).

In opposition to landlords' motion, occupant submitted evidence of having lived in the premises since at least 1998, and landlords do not dispute that occupant has been living in the premises for decades, albeit perhaps not continuously. In support of their claim for summary [\*2] judgment, landlords relied heavily on the fact that tenant and occupant had "concealed" tenant's departure by continuing to sign renewal leases and pay the rent under tenant's name since 2000. Landlords, however, admitted that they and landlords' predecessor were informed of occupant's succession claim after tenant, her spouse, and occupant had attempted to have the lease transferred to occupant, and via a letter from tenant informing landlords' predecessor that she was granting succession rights to occupant. The transfer attempts are not consistent with fraud or deceptive acts, but, seemingly, a lack of knowledge of succession laws. Further, as this court held in another succession case, "[t]he uncertainty of the situation may in many cases make it impossible to identify a precise permanent vacatur date" (*EB Bedford, LLC*, 64 Misc 3d at 42). Here, it cannot be said, as a matter of law, that when tenant moved out of the apartment, tenant or occupant knew that it was permanent at the time, or that anything fraudulent had been done when tenant signed the renewal leases.

Landlords' assertion, that due to the delay and concealment by occupant asserting her claim they are prejudiced in investigating occupant's claim, is insufficient to establish as a matter of law that occupant is not entitled to succession rights. We note that the burden of proving that tenant and occupant co-resided in the premises rests upon occupant (*see Gottlieb*

*v Licursi*, 191 AD2d 256 [1993]; [\*Knoll v Cruz\*, 51 Misc 3d 146](#)[A], 2016 NY Slip Op 50743[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016]).

Accordingly, the order is affirmed.

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

ENTER:

Paul Kenny

Chief Clerk

Decision Date: September 4, 2020

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