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2023-11-22

### Grossman v. Ragoonath

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

-----X  
LEONARD GROSSMAN,

Index No. L&T 311631/22

Petitioners,

-against-

**DECISION/ORDER AFTER  
TRIAL**

KALIKA RAGOONATH,

Respondent.

-----X

Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

The Decision/Order after trial in this summary holdover proceeding is as follows.

PROCEDURAL HISTORY

This holdover proceeding based on a 90-day notice of termination was filed in August 2022. Respondent Kalika Ragoonath (hereinafter “respondent”) appeared through his attorneys, The Legal Aid Society, in January 2023. Respondent, through counsel, filed a motion to dismiss in February 2008. After the motion was fully briefed, it was decided by Judge Maria Ressos. In a Decision/Order dated March 6, 2023, Judge Ressos denied the motion, finding that issues of fact existed. Thereafter, respondent answered and the case was transferred to this trial Part. A trial was held on November 21, 2023 and decision was reserved upon the conclusion of the trial.

TRIAL

Petitioner Leonard Grossman was petitioner’s sole witness. A certified deed was admitted as petitioner’s Exhibit A and Mr. Grossman testified that he is the owner of the subject premises.

He further testified that the subject building is a 2-family house. He stated that it was not subject to rent regulation.

Mr. Grossman testified that he is familiar with respondent. He stated that he rented the “downstairs” (basement) to respondent 8 to 9 years before for \$700.00 per month. He denied that there was a lease or other written agreement. Mr. Grossman testified that respondent paid rent. After Mr. Grossman was questioned about certain documents purporting to be proof of rent payments, the court sustained an objection to the admission of the documents into evidence.

Mr. Grossman then testified about the preparation of the 90-day notice and the service of the notice of petition and petition. He stated that he was not seeking use and occupancy or rent but that he was seeking a judgment of possession.

On cross-examination, Mr. Grossman was asked if he rented to respondent. He replied, “correct.” He also confirmed that he met respondent in Fire Island, New York. He again reiterated that respondent moved in 8 to 9 years before. He could not recall which month he moved in. He reiterated that respondent moved into the basement. When asked what floors existed at the subject building, Mr. Grossman replied that there was a first floor, second floor, attic, and basement. He stated that he lived on the first floor and that respondent lived in the basement.

On redirect, Mr. Grossman was asked if he met respondent on vacation. He confirmed that he did. He testified that “he needed an apartment and I had an apartment.” He added that respondent “seemed safe.” When asked to specify the terms of his agreement with respondent, Mr. Grossman testified that respondent would possess the basement and that rent would be \$700.00 per month, paid on the first of the month. He testified that respondent did not live in any other apartment in the building. With regard to rent, he testified that respondent usually paid in cash. He

could not recall if he gave receipts.

Petitioner rested on the prima facie case after Mr. Grossman testified. Respondent’s attorney made an oral motion to dismiss, which was orally opposed. The court denied the motion upon the reasons stated on the record.

Respondent’s sole witness was Kalika Ragoonath. He testified that he had lived in the subject building for the past 12 years. He testified that he met petitioner in Fire Island and that they became friends and later started a relationship. He explained that he worked for petitioner as well. He testified that he cleaned petitioner’s office in Forest Hills and was a home caregiver for petitioner. He stated that he was paid \$15.00 per hour by petitioner, and that he was paid by check but has not been paid for four (4) years. Mr. Ragoonath testified that he stayed in the entire house when he first moved into the subject property, and that he lived there only with petitioner. He then stated that he moved to the basement a year and a half before, when petitioner tried to “evict” him from the rest of the house.

Mr. Ragoonath next testified about photographs, which were admitted as respondent’s Exhibits B, C, and D. He testified that the photographs depicted him and petitioner in petitioner’s living room. He stated that the photograph was taken in 2010. He also testified about receiving a card from petitioner, but the card was not admitted into evidence. Mr. Ragoonath denied ever agreeing to pay rent to petitioner. He explained that he moved to the basement a year and a half before, when petitioner started the eviction process.

Mr. Ragoonath testified that he was served with the 90-day notice herein. He stated that the notice called him a “tenant.” He stated that Mr. Grossman had “pleaded” with him to move in 12 years before and that he never paid Mr. Grossman rent.

On cross-examination, Mr. Ragoonath was asked about purported checks that did not come into evidence on petitioner’s case. He denied that the checks were his and denied that they contained his signature. He further testified that he did not have a Chase account. Mr. Ragoonath was then questioned about a petition submitted in an HP harassment case filed against petitioner in 2022 (Index No. 6142/22). He was asked to read from his petition, including a reference to his “monthly rent.”

On redirect, when asked to explain what he meant in the HP petition about “monthly rent,” Mr. Ragoonath testified that he was referring to contributions to his household with petitioner, including care for the property’s garden. Respondent rested at the conclusion of Mr. Ragoonath’s testimony.

DETERMINATION/CONCLUSION

Real Property Law (RPL) § 232-a permits termination of a monthly tenancy after service of an appropriate notice based on the length of the tenant’s occupancy (*see* RPL § 226-c). There is no dispute here that petitioner served a 90-day notice to terminate respondent’s alleged tenancy. The central dispute is whether respondent was a tenant, as alleged in the 90-day notice and the petition. Respondent’s answer disputes that a tenancy existed (*see* First and Third Affirmative Defenses [NYSCEF Doc. 16]). Where a tenancy is alleged to be made upon an oral rental agreement and the respondent denies the existence of such agreement at trial, petitioner must show proof of the agreement to prevail (*see Pugliese v. Pugliese*, 51 Misc 3d 140[A], 2016 NY Slip Op 50614[U], \*1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016] [Final judgment reversed and petition dismissed where “petitioner failed to introduce proof in support of his claim of an oral agreement and . . . occupant vigorously denied the existence of such agreement.”]; *see also 1692 Rockaway v.*

*Prashad*, 71 Misc 3d 1207[A], 2021 NY Slip Op 50305[U] [Civ Ct, Kings County 2021]).

Petitioner testified to terms of a rental agreement with respondent at trial. He testified that it was an oral agreement for the basement at a rate of \$700.00 per month. He testified that respondent had been a tenant for 8 to 9 years. He also denied that respondent occupied any part of the subject property except the basement. However, respondent testified that he moved into the entire property with petitioner 12 years ago, after he had an employment and personal relationship with petitioner. He denied throughout the trial that he made any rental agreement with petitioner for the basement. He also testified that he only moved to the basement a year and a half before the trial.

Petitioner was not called to rebut respondent’s testimony, including the material variances with his own prima facie testimony, namely as to the length of respondent’s occupancy, the circumstances by which he came to live in the subject property, and the asserted employment and personal relationship between the parties. Crucially, petitioner did not successfully introduce into evidence any tangible proof of an oral rental agreement with respondent, who consistently denied the existence of any such agreement (*Pugliese*, 2016 NY Slip Op 50614[U], \*1).

To the extent that respondent made reference to “monthly rent” in an HP harassment petition, the court takes judicial notice that the HP case in question was discontinued by order of the court on August 22, 2022. When a case is discontinued, “it is as if the proceeding has never begun ... [and] [e]verything done in the case . . . is annulled.” (*78/79 York Assoc. LLC v. Radetsky*, 76 Misc 3d 130[A], 2022 NY Slip Op 50865[U] [App Term, 1st Dept 2022] [internal citations omitted]). Therefore, the petition from a discontinued case is of scant preclusive value. In any event, respondent explained during his testimony that the reference to “rent” was to contributions to household upkeep. Petitioner did not rebut this, nor does the statement in the HP petition excuse

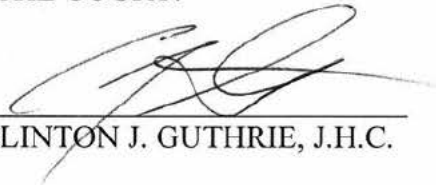
petitioner of his burden of proving a rental agreement in this holdover case.<sup>1</sup>

Consequently, as petitioner did not adequately substantiate an oral rental agreement with respondent for the subject premises at trial, the petition must be dismissed. Insofar as the 90-day notice referenced a tenancy held under monthly hiring, it is not subject to amendment (*Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786, 788 [1980]). Respondent's counterclaim is deemed severed without prejudice (*see* CPLR § 407). The clerk shall issue a judgment dismissing the petition (*see* CPLR § 411).

This Decision/Order will be filed to NYSCEF. The parties are directed to pick up their exhibits within 35 days or they may be destroyed at the court's discretion in compliance with DRP-185.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
November 22, 2023

  
HON. CLINTON J. GUTHRIE, J.H.C.

80 ORDERED - HON. CLINTON J. GUTHRIE

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<sup>1</sup> The court notes that the HP case was brought for the entirety of 45-14 39th Avenue, Sunnyside, NY 11104, rather than the basement, so the reference to "rent" in the petition there is not specifically tied to the subject apartment.