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### ENY Development LLC v. Youmans

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Civil Court of the City of New York  
County of Kings

Index # **LT-313694-22/KI**



ENY DEVELOPMENT LLC

Petitioner(s)

**Decision / Order**

-against-

Shariff Youmans; "John" "Doe"; "Jane" "Doe";  
"John" "Doe";  
"Jane" "Doe"

Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion sequence # 1:

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	<u>NYSCEF Docs #7-8</u>
Answering Affidavits/ Affirmations	<u>NYSCEF Doc #9</u>
Reply Affidavits/ Affirmations	<u>NYSCEF Doc #11</u>
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, the Decision/ Order on Respondent’s motion to dismiss is as follows:

This is a licensee holdover brought against “John Doe”- heir in-law and licensee, “John Doc” and “Jane Doc”-licensees, and “John Doe” and “Jane Doe”-occupants after the death of the tenant of record, Louis Youmans. A ten-day notice to vacate the premises dated May 19, 2022 was served upon the various John and Jane Does. Thereafter, the proceeding was commenced by service of a Notice of Petition and Petition on June 22, 2022. The petition acknowledges that Louis Youmans was the Tenant of Record of the subject premises pursuant to a rent-stabilized lease agreement, which was renewed and set to expire on December 31, 2022. However, Mr. Youmans died on or around November 15, 2021. The petition alleges Mr. Youmans died without a will and without a surviving spouse. The petition further alleges that “simultaneously with and upon voluntary distribution of the unexpired leasehold to ‘JOHN DOE’. ‘JOHN DOE’ and ‘JANE DOE,’ all interest of the Estate of Louis Youmans in the subject premises expired.

On September 26, 2022, Shariff Youmans (“Respondent”) appeared in the matter and the parties entered into a stipulation adjourning the matter to October 26, 2022. The parties amended the case caption to add Shariff Youmans as a Respondent-Occupant in place of John Doe 1(See NYSCEF Doc #5). Additionally, Respondent agreed to pay ongoing use and occupancy and to serve an Answer by October 21, 2022. On October 13, 2022, The Legal Aid Society (“LAS”)

filed a Notice of Appearance on behalf of Shariff Youmans. Thereafter, LAS filed the instant pre-answer motion to dismiss, which was fully briefed and submitted to this court.

Respondent moves to dismiss this proceeding pursuant to CPLR 3211(a)(7) for failure to state a cause of action because the petition admits that the lease held by Louis Youmans is still in effect and therefore Petitioner is not entitled to a possession and cannot maintain a licensee holdover proceeding. Additionally, Respondent seeks dismissal pursuant to CPLR § 3211(a)(11) for failure to name the estate of Louis Youmans, which is a necessary party.” It is undisputed that this licensee holdover proceeding was commenced prior to the expiration of the subject lease and after service of a Ten-Day Notice on the respondents. The petition does not name the Estate of Louis Youmans as a party to the action.

Respondent argues that Petitioner cannot maintain a licensee holdover proceeding as Louis Youmans had a valid renewal lease that was still in effect at his time of death. Respondent argues that the rent-stabilized lease does not terminate upon the death of the Tenant of Record, but instead the property passes to the decedent’s estate, where the estate has the right to occupy the premises for the remainder of the lease term to wind up the estate. As it is undisputed that a lease agreement was still in effect at the time of respondent’s demise, respondent asserts that Petitioner should have named the estate of Louis Youmans as a party to this proceeding. Respondent asserts that the estate of Louis Youmans is a necessary party to this proceeding and their failure to name the estate is a fatal defect that is not amendable.

Petitioner opposes this motion on the basis that although the tenant of record’s lease did not terminate upon his death, under intestate distribution the lease was automatically distributed, and that distribution terminated the lease, which provided petitioner with an immediate possessory interest in the subject premises. The petitioner argues that the Respondent has not asserted whether the tenant of record has a will and therefore, provided there is no will, distribution occurs automatically as a matter of law. The petitioner further argues that an estate of a party is not a necessary party, rather the executor of the estate would be the necessary party, but if an executor does not exist then that person cannot be a necessary party.

It is well established that upon the death of the tenant-of-record, the lease for a term of years does not terminate upon the tenant's death but becomes the personal property of the deceased tenant's estate. *Joint Properties Owners, Inc. v. Deri*, 113 A.D.2d 691, 497 N.Y.S.2d 658 (1st Dept.1986); *Schnee v. Jonas Equities, Inc.*, 109 Misc.2d 221, 442 N.Y.S.2d 342 (App.Term, 2nd Dept., 1981). Generally, a landlord seeking to evict a person in possession of the premises after the death of the tenant-of-record, should join the estate of the deceased tenant unless the lease has been terminated, cancelled, surrendered, or assigned. *Rosefan Const. Corp. v. Salazar*, 114 Misc.2d 956, 452 N.Y.S.2d 1016 (Civ.Ct., Queens County, 1982); *100 West 72nd St. Assocs. v. Murphy*, 144 Misc.2d 1036, 545 N.Y.S.2d 901 (Civ.Ct., N.Y. County, 1989).

It is well established that while a lease term is in effect, it is "mandatory" to join the decedent's estate as a necessary party in a licensee holdover proceeding. *See 135 PPW Owners LLC v. Schwartz*, 5 Misc.3d 1028(A), 799 N.Y.S.2d 165 (Table) 2004 WL 2903642 (Civil Ct of New York, Kings County 2004). "Absent a surrender of possession by the tenant...the lessor must obtain a judgment of possession against the lessee pursuant to RPAPL 711 and may not proceed directly against the undertenant, whether licensee, subtenant or occupant pursuant to PRPAL 713..." *170 West 85<sup>th</sup> Street Tenants Assoc v. Cruz*, 173 AD2d 338 at 339 (AD, 1st Dept. 1991). A landlord must prove that it first terminated the tenant of record's rent stabilized tenancy, or that the tenant of record surrendered his interest before proceeding against the licensees. Thus, a petition for possession of the apartment that fails to join the tenant of record's estate is fatally defective *ab initio*. *Westway Plaza Associates, Joint Properties Owners, Inc. v. Deri*, 113 A.D.2d 691 (1st Dept. 1986); *De Christoforo v Shore Ridge Associates*, 116 AD2d 123 (2d Dept 1986).

Petitioner argues that upon distribution of Louis Youmans' small estate pursuant to Estates, Powers and Trust Laws ("EPTL"), section 4-1.1, it automatically distributed the lease and gave Petitioner an immediate possessory interest in the premises. However, Petitioner fails to cite to any legal authority to support his contention that any EPTL circumvents the proceeding

set forth in RPAPL 711 and binding precedents. The cases cited by the Petitioner discuss real property where the decedent had ownership interest.

Pursuant to CPLR § 3211(a)(10), a proceeding may be dismissed for failure to join a necessary party. However, dismissal is an extreme remedy which shall only be appropriate to prevent inconsistent judgment in multiple litigations or to prevent a party from being adversely affected absent notice and an opportunity to be heard. *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801 (2003). A necessary party is one whose presence is indispensable to the according of complete relief as between the parties. *Triborough Bridge & Tunnel Auth v. Wimpfheimer*, 165 Misc.2d 584 (App Term 1st Dep't 1995). Absent surrender by the tenant of record, Petitioner must obtain a judgment of possession as against them, prior to seeking any remedy as against an alleged licensee. *Valley Dream Housing Co. Inc. v. Lupo*, 11 Misc.3d 130[A] (App Term, 2d Dept 2006); *Mitchell v. Thompson*, 21 Misc.3d 131(A) (App Term, 2d Dept 2008); *Starrett City, Inc v. Smith*, 25 Misc.3d 42 (App Term, 2d Dept 2009).

Here, there was no surrender of the premises, and the Petitioner was required to terminate the tenancy of the estate of Louis Youmans and bring this proceeding against the estate. Upon the death of the tenant of record, the lease in effect at that time, did not terminate, but rather became the personal property of the estate. Thus, the petitioner's petition is fatally defective in the absence of a recognized estate representative.

Accordingly, for the reasons set forth above, the Respondent's motion is granted, and the petition is dismissed without prejudice.

This constitutes the decision and order of the Court.

Date: May 7, 2024

Civ-GP-85



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Hon. Juliet P. Howard  
Housing Court Judge