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

.....X

DIVERSIFIED EQUITIES LLC,

Index No. LT-304231-21/QU

Petitioner,

- against -

NOTICE OF ENTRY

BARBARA SWINT,
JOHN DOE, & JANE DOE,

Respondent.

.....X

PLEASE TAKE NOTICE, that the within is a true copy of the Decision/Order duly entered in the office of the clerk of the within named court on February 20, 2024.

DATE: February 26, 2024
Jamaica, New York



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

DIVERSIFIED EQUITIES LLC,
Petitioner,

Index No. LT-304231-21

against

**Decision/Order
After Trial**

BARBARA SWINT,
JOHN DOE, & JANE DOE,
Respondents.

HON. ENEDINA PILAR SANCHEZ,

This is a holdover proceeding predicated upon a 10-day notice to quit based upon an alleged licensee. Petitioner seeks to recover possession of the subject premises after the Rent Stabilized tenant of record, Anthony Stallings, passed away. The subject premises are described as 2308 Mott Avenue, Apt 5E, Far Rockaway, New York 11691.

Respondent Barbara Swint appeared by counsel, Queens Legal Services. Respondent filed an Answer asserting Affirmative Defenses and Counterclaims including succession rights, breach of the warranty of habitability, violations of the New York City Housing Maintenance Code (HMC) and attorneys fee pursuant to Real Property Law §234. NYSCEF Doc. No.17.

The parties engaged in motion practice and discovery materials were exchanged. Petitioner took the deposition of the respondent, and post deposition supplemental documents were exchanged.

After all the discovery was sought and agreed to, the parties were not able to resolve this matter. It was transferred to the trial part and the trial ensued over a period of seven months.

Testimony and Evidence Presented at Trial

The parties proceeded pursuant to a written Stipulation to petitioner’s documents and prima facie. NYSCEF Doc. No. 36. Respondent issued trial subpoenas.

Respondent Barbara Swint testified last. She called three witnesses on her behalf.

The first witness, Kimberly Walthall, is the funeral director and manager at Trinity Funeral Services, LLC. Ms. Walthall was sworn and testified that she completed the death certificate for decedent Anthony Stallings. The death certificate was admitted in evidence. Anthony Stallings passed away on July 4, 2020. The death certificate refers to Barbara Swint as a “friend.”

Ms. Walthall was cross-examined as to how she discerned Barbara Swint’s relationship with Mr. Stallings in preparing the death certificate. Her response was based upon her training and credentials recognized by New York State Law governing mortuary protocols. Although the witness was not the one who conducted the initial intake, she further elaborated that if she is not present to take the information, there are two other licensed persons at the Funeral Home to do

the intake. They are trained as funeral directors to provide intake services and would follow the same requirements in gathering information to complete the death certificate.

The second witness, Olalaunte Ayodele, was sworn and testified he is familiar with respondent. He is a Housing Coordinator. His responsibilities involve securing housing and assessing qualifications for the CityFHEPS program available to families in New York City. He testified that respondent would have a “voucher to stay” because finding another apartment would be very difficult. The voucher would cover the rent.

Mr. Ayodele was not cross-examined.

The third witness, Shaquya Hammond, was sworn in and testified that respondent is her mother. Ms. Hammond testified that she lived in the subject premises with her mother and Anthony Stallings, and that she lived with them as a family. Anthony Stallings is not her biological father, but he is the man who raised her. She called him Dad. Her mother and Anthony Stallings have been together since Ms. Hammond was about 2 months old and they all lived together until she moved out when she was 27 years old. She described her Dad as a “giver, kind, thoughtful and always there for her.”

Ms. Hammond described the relationship between respondent and Anthony Stallings, her Mom and Dad, as “very close, very tight and he would do everything for Mom.” He paid the bills and worked. Her earliest memory of her Dad was when she was about 6 years old, and he took her shopping. Ms. Hammond said they had also lived with her grandmother, Dorothy Stallings, the mother of Anthony Stallings. Ms. Hammond described Anthony Stallings’ sisters as her aunts. The children of these aunts are her cousins, and they grew up together.

Ms. Hammond testified that Anthony Stallings passed away on July 4, 2020. He was undergoing dialysis in the apartment three times a week. Her Mom would help with the home dialysis procedure for her Dad. Ms. Hammond expressed that she was feeling sad, because he, Anthony Stallings “kept things together.” She was crying as she testified.

At the funeral for Anthony Stallings, Ms. Hammond was present. The obituary document was admitted into evidence. Ms. Hammond testified that she keeps it on her refrigerator. She described each person pictured in the document and referred to Anthony Stallings by the nickname he had given himself: Shandu. Mr. Stallings is in the picture holding young children. The children are Ms. Hammond’s child and her cousin’s child. She stated that the children in the picture had a connection and relationship with Anthony Stallings. Her youngest child was very young when he passed away. The document describes Barbara Swint as his loving partner.

During cross-examination Ms. Hammond was asked when she moved out, whether respondent or Anthony Stallings lived at another location, and whether they had an automobile and bank account. Ms. Hammond stated that she believed Anthony Stallings had a bank account. That there was no Last Will and Testament, and she did not believe that there was a “Health Care” directive. While Anthony Stalling was in the hospital, during the time of COVID-19, Ms. Hammond did not go to the hospital. She did not remember the dialysis home training in detail but stated that a nurse trained Anthony Stallings and her Mom. On further cross-examination,

Ms. Hammond stated that Anthony Stallings always lived with her mother. Her Dad took care of everything, and her Mom stayed home all the time while she was growing up.

On re-direct, Ms. Hammond was asked about her Mom. She stated that her Mom did not work, and that Anthony Stallings had worked in maintenance with Time Square Alliance. She stated that at some point Anthony Stallings started receiving home care services, and then her Mom registered to become the home care provider as a family member.

Respondent Barbara Swint was sworn in and testified that while she was not married to Anthony Stallings, he was “her Man.” They met in 1987/1988 in Far Rockaway. They knew of each other as they had lived in the same building. In 1990 their relationship was official, as far as being a couple.

Ms. Swint had been married before and it was an abusive marriage. She did not get married to Anthony Stallings because she thought “if got married [it] would go bad.” After 7 years of being together, they were happy, and she believed he considered her his wife.

Respondent testified that before they moved into Apartment 5E in 2019, they had lived in Apartment 3M. They traded from 3M to 5E. Ms. Swint presented documents, which were admitted into evidence, that connected her to the subject premises. Personal ID card, voter registration card, bills for utilities, and tax returns for 2018, 2019, and 2020 and photographs. Some photographs were in their frames as hung up in the apartment. Ms. Swint testified that the Rockaways local newspaper, The Wave, had referred to Mr. Stallings as her partner. In January 2007 when her mother, Minni Swint, passed on, The Wave listed the surviving family members of Minni Swint in the obituary section, and Anthony Stallings was listed as her son-in law.

Admitted in evidence was the life insurance policy of Barbara Swint, dated December 12, 2012. The policy lists Anthony Stallings as the primary beneficiary. The document described Anthony Stallings as the “live in fiancé of 22 years.”

Ms. Swint testified that Anthony Stallings paid the rent. She cooked, cleaned, did all the food shopping, and they shared responsibility over the utilities. When they moved into Apartment 5E, she purchased the bedroom set. They took vacations together, mostly going to Atlantic City for 3 or 4 days. On these vacations they went to the beach, went for walks, went out to eat and stayed in the hotel. Other vacations were visiting North Carolina. When they travelled to North Carolina, Anthony would rent a car and take his mother, Dorothy Stallings. They travelled together as a family to visit relatives and attend funerals. Thanksgiving Day was spent at the home of Dorothy Stallings. All the family would gather to celebrate at 226 Quincy Street, and she was there at every family gathering with Anthony Stallings.

Dorothy Stallings passed away in March 2022. Respondent testified they called each other and supported each other every day.

Respondent Swint testified that she had lived at the home of Dorothy Stallings before they moved to 2308 Mott Avenue, Far Rockaway.

Respondent Swint testified that she believes that Anthony Stallings died of a blood infection. She would take him to the hospital all the time. If he had nausea, or if his eyes became blood shot, or any time that she thought he needed medical attention, she would take Anthony to St. John's Hospital on B19 Street. She was the emergency contact, and when Anthony passed away the hospital called her.

Ms. Swint knew how to do the home dialysis for Anthony Stallings because she took a course. She was trained to administer the treatments from home. She described the steps and how the home treatment required a special water hook up. She does not remember the medications he took, but she knew that there were about 5 different medications because "she ran for him."

Respondent testified that after Anthony Stallings passed, she could not eat or sleep. The home felt empty without him.

On cross-examination, respondent Swint was asked about Anthony Stallings' residence, car, employment, credit cards, cell phone, tax returns and the reason she was not married to him. Ms. Swint responded to the questions, and regarding the car insurance explained why Anthony had registered the car at his niece's home in Allentown, PA. She stated that he did not have a Last Will and Testament, that she was designated the health care proxy, that he paid the rent, and she bought the food. When asked if she had receipts for the food she purchased, she said no and asked, "who does that?"

On redirect, Ms. Swint was asked about the discharge papers from the hospital. She testified that when she would pick up Anthony from the hospital, the nurse would give her the discharge papers. The document was marked in evidence.

The parties rested.

Respondent moved for a directed verdict. After closing arguments, counsel agreed to submit post-trial memorandum in support of their positions.

Discussion and Conclusion

The testimony and evidence presented clearly established that Barbara Swint and Anthony Stallings lived together at the subject premises as a family. As a matter of law, respondent Barbara Swint is entitled to remain in the apartment and succeed to the Rent Stabilized Lease.

The detailed unrefuted testimony and her demeanor were both compelling and credible. Ms. Swint took care of Anthony Stallings in sickness and in health; she did not have to obtain a marriage certificate to know that she was for him, and he was for her. She had been married before and her experience was painful as she was subjected to domestic violence. The marriage had not provided her with a shield and protection against abuse; and she felt that this was a good reason why not to "get married" again.

Ms. Swint testified that since 1990, she and Anthony Stallings were a couple. "They were official," a couple committed to each other. They lived together and shared with their

respective families. Every gathering was at the home of Dorothy Stallings, Anthony's mother. Ms. Swint was there with Mr. Stallings and the children they were raising together. Ms. Swint's daughter called Anthony Stalling her Dad. In the eyes of their community, their family and friends treated and saw Ms. Swint and Mr. Stalling as a committed couple. Even the medical providers at the hospital where Anthony Stallings was treated during his last years of poor considered them a couple, giving her his discharged papers and making the last call to her.

At the conclusion of the trial, respondent's request for directed verdict was proper.

Couples who live together but are not married have the same protection from eviction as couples who are legally married. The Rent Stabilization Law and Code at RSC § 2325.5(b)(1) provide these protections which are available to Ms. Swint upon the death of Anthony Stallings.

The Appellate Division, Second Department wrote, "The purpose of the succession rule is to prevent displacement of family members who have been residing with tenants at housing accommodations for long periods of time." *Matter of Jourdain v. New York State Div. of Housing & Community Renewal*, 159 AD3d 41, 48 [2d Dept 2018]. See also, *Pacst 1244-46, 1356, LLC v Swinton*, 50 Misc 3d 143(A), 2016 NY Slip Op 50214(U) [App. Term 2d Dept 2d, 11th and 13th Judicial Dist 2016]; *Enterprise Group of N.Y. LLC v. Franklin*, 2023 NY Slip Op 32189(U) [Civ Ct, New York County 2023]; *River Park Residences, L.P. v Carter*, 62 Misc 3d 1223(A) 2019 NY Slip Op 50243(U)[Civ Ct, Bronx County 2019].

"It is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control." *Braschi v. Stahl Assocs. Co.*, 74 NY 2d 201, 213, [1989]

Respondent Swint is entitled to be named as tenant on the lease. The First Affirmative Defense and Counterclaim have been established and require the dismissal of this holdover proceeding with prejudice. There was no testimony regarding the Second and Third Affirmative Defenses and Counterclaims, these claims are not adjudicated and preserved between the litigants.

Petitioner's argument that respondent must show the decedent lived at the subject premises two years prior to his death is a claim that was not pled or supported by the law. Petitioner did not rebut the evidence. Ms. Swint established that she cohabited with Mr. Stallings for years.

Accordingly, it is,

ORDERED the petition is dismissed with prejudice and respondent is granted a judgment of possession as the prevailing party, and it is,

ORDERED that respondent is entitled to a lease in her own name as a remaining family member of the deceased tenant of record, Anthony Stallings.

The parties may retrieve their respective exhibits from the court.

This Decision/Order be filed to NYSCEF.

This constitutes the Decision/Order of the court.

Dated: February 23, 2024
Queens, New York

SO ORDERED,

APPROVED
psanchez , 2/23/2024, 2 35 46 pm

HON. ENEDINA PILAR SANCHEZ
J.H.C.

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