

BK-8B Partners, L.P. v Doe

2007 NY Slip Op 32763(U)

July 25, 2007

Civil Court of the City of New York, Kings County

Docket Number: 0073479/2006

Judge: Sabrina B. Kraus

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

BK-8B PARTNERS, L.P.,

X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 73479/06

HON. SABRINA B. KRAUS

“John Doe” and India Foxworth
680 Monroe Street, Apt. 1A
Brooklyn, New York 11221

Respondents

X

BACKGROUND

This summary holdover proceeding was commenced by the landlord seeking to recover possession of Apartment 1-A at 680 Monroe Street, Brooklyn, New York, 11221 (hereinafter “subject premises”) based on the allegation that the tenant of record had died and that the occupant(s) were licensee(s) whose license had terminated with the death of the tenant of record. The petition alleges that the premises are subject to rent stabilization.

PROCEDURAL HISTORY

The proceeding was first on the Court’s calendar in January 2007.

Respondent, India Foxworth (hereinafter “Respondent”) was sued herein as “Jane Doe” and substituted herein as a named party to this proceeding pursuant to a so-ordered stipulation dated January 5, 2007. Respondent is the daughter of the last tenant of record Margaret Anthony, who died on October 26, 2006.

Respondent was essentially deemed to have interposed a succession claim and the

January 5, 2007 stipulation further provided *inter alia* for discovery to be conducted including a deposition and the production of certain documents.

After the completion of discovery, the matter was scheduled for a trial on July 18th, 2007 and on said date both parties appeared in the Part and a settlement conference was conducted by the Court. At the conclusion of the conference, the parties agreed to settle the case pursuant to a stipulation, which was to provide for the entry of a judgment of possession, forthwith issuance of the warrant of eviction, with execution stayed through September 30, 2007 provided that respondent paid use and occupancy for August and September at an agreed amount. The parties had agreed that all prior use and occupancy would be waived. It was agreed that petitioner's counsel would draft a proposed stipulation in accordance with the terms agreed upon and that the parties would then submit the stipulation to the Court for the allocation of the Respondent.

However, later that morning, when the case was recalled, Petitioner's counsel alleged on the record that Respondent had rejected the proposed written stipulation and left the court house. Indeed, Respondent did not reappear in the Part at any point that morning or later in the day.

As the matter had been scheduled for trial, and Petitioner was in Court with its Witness and documents ready to proceed, the Court conducted an inquest in the afternoon of July 18, 2007, based upon what had developed into Respondent's intentional default.

THE INQUEST

At inquest, Petitioner established its *prima facie* case and further

established that there was no merit to respondent's succession claim. Petitioner put into evidence a certified deed for the subject building, a certified copy of the Multiple Dwelling Registration for the subject building , certified DHCR records for the subject premises, as well as the original lease agreement and last lease renewal executed between petitioner and the deceased tenant of record..

Petitioner also put into evidence a Notice to Admit with attached exhibits which established that respondents residence at the time of her mother's death was 194 Park Avenue, East Orange, New Jersey. The documents establishing this included Respondent's drivers license, the lease for her apartment at that address, as well as papers from an eviction proceeding in New Jersey where she submitted an affidavit swearing that said premises was her residence.

The most recent renewal lease for the subject premises was executed by the tenant of record on April 26, 2006 for a term commencing May 1, 2006 through and including April 30, 2008.

After inquest the Court found that the sole issue preventing the Court from issuing a judgment of possession was the failure of Petitioner to name and serve the Estate of the deceased tenant of record given that at the time of the tenant's death there was an unexpired lease for the subject premises. Petitioner argued that the estate was not a necessary party to the litigation, and requested an opportunity to submit legal authority supporting its position, which request was granted.

In support of its position Petitioner submitted two unreported decisions in support of its position Mandalay Leasing L.P. v. Gibson, 2003 WL 1085914 (N.Y. City. Civ. Ct.), 2003 N.Y. Slip Op. 50599(U), and Carnegie Management Co. v.

Oppenheimer, 2001 WL 1673567 (N.Y. Sup. App. Term), 2001 N.Y. Slip Op. 50070 (U). Neither of these cases provides authority for the position that the estate is not a necessary party in this proceeding.

In Carnegie Management, *supra* the Appellate Term, First Department, held that where a a tenant executed a lease renewal prior to her death for a term which commenced after her death, the estate of the deceased tenant was not a necessary party in a holdover proceeding “as any possessory claim it had must be reasonably deemed to have terminated upon the expiration of the last lease in effect during the lifetime of the tenant of record.” Id. Carnegie Management is thus inapplicable to this proceeding where the lease renewal was for a term commencing May 2006, some months prior to the death of the tenant, in October 2006. Similarly, Mandalay Leasing, *supra*, addressed RPAPL § 711(2) and the estate as a party in the context of a non-payment proceeding, and thus is not applicable to the case at bar.¹

There appears to be a split in authority on the issue of whether the estate of the deceased tenant of record is a necessary party to a holdover proceeding brought under these circumstances.

It is well established that upon the death of the tenant of record the lease does not terminate but becomes the property of the estate of the tenant. Joint Properties Owners, Inc. v. Deri, 113 A.D. 2d 691. In the First Department, there is ample authority that the estate of the deceased tenant of record is a necessary

¹ In fact, the Court in Mandalay noted in its decision that both parties to that proceeding conceded that the estate would be a necessary party in a holdover proceeding.

party, in a holdover proceeding where the landlord seeks to take possession as a
against the licensee of said tenant and there is an unexpired lease. Westway Plaza
Associates v. "Doe", 179 A.D.2d 408 (1st Dept., 1992).

However, in the Second Department, Appellate Authority provides that the
estate is a proper party, but not a necessary party to such a proceeding. Ryerson
Towers, Inc. v. Estate of Brown, 160 Misc.2d 107 (App. Term, 2nd Dept., 1994).
In Ryerson Towers, the Housing Court had dismissed a holdover proceeding on a
pre-trial motion, on the ground that the tenant's estate was a necessary party to the
proceeding and had not been properly named or served. The Appellate Term
reversed and held in pertinent part:

In our view, it was not necessary for landlord to join
tenant's estate in order to maintain a proceeding to recover
possession of the apartment . Tenant's son is in sole possession of
the apartment in his individual capacity and not as a representative
of his mother's estate. 'A tenant not in possession is not a
necessary or indispensable, although he is of course a proper,
party' (*Reichman v. Crane*, 3 Misc.2d 731, 733, 157 N.Y.S.2d 254)

Id at 108.

In this proceeding the only occupant of the apartment appears to be Ms.
India Foxworth who has made no claims on behalf of the estate and has only
occupied in her individual capacity. Therefor based on Ryerson Towers the Court
finds that the estate is not a necessary party to this proceeding, and after inquest
Petitioner is entitled to a final judgment of possession as against India Foxworth.
The proceeding is dismissed without prejudice as against "John Doe". The
warrant of eviction shall issue forthwith.

This constitutes the decision and order of this Court.

Dated: July 25, 2007
Brooklyn, New York

Hon. Sabrina B. Kraus
J.H.C.

TO: Sperber Denenberg & Kahan, P.C.
Attorneys for Petitioner
48 West 37th Street, 16th Floor
New York, New York 10018
(917) 351-1335

India Foxworth
Pro Se Respondent
680 Monroe Street, Apt. 1A
Brooklyn, New York 11221