

**720 Riverside Owners Corp. v Long**

2013 NY Slip Op 31266(U)

June 17, 2013

HCIV, New York County

Docket Number: 58707/12

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK  
 COUNTY OF NEW YORK: HOUSING PART C

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 720 RIVERSIDE OWNERS CORP.,

X

Petitioner-Landlord

-against-

**DECISION & ORDER**

Index No.: L&T 58707/12

**HON. SABRINA B. KRAUS**

ANGELA M. LONG, a/k/a  
 ANGELA M. ARMAND BLOW,  
 JOHN & JANE DOE  
 720 RIVERSIDE DRIVE, APT 2C  
 NEW YORK, NY 10031

Respondent-Tenant

\_\_\_\_\_  
 X

**BACKGROUND**

This summary holdover proceeding was commenced by **720 RIVERSIDE OWNERS CORP** (Petitioner) and seeks to recover possession of **Apartment 2C** at **720 RIVERSIDE DRIVE, NEW YORK , NY 10031** ( Subject Premises), a rent controlled apartment, based on allegations that **ANGELA M. LONG, a/k/a ANGELA M. ARMAND BLOW** was a licensee of the tenant of record, Maria Harris (Harris), who passed away in November 2011.

**PROCEDURAL HISTORY**

Petitioner issued notice to quit on February 2012, which was followed by the service of the Petition and Notice of Petition on or about March 17, 2012. The proceeding was originally returnable in Part F on March 26, 2012.

The proceeding was twice adjourned for Respondent to seek counsel. On May 24, 2012, counsel for Respondent appeared through a stipulation, which adjourned the proceeding to June

28, 2012, and the proceeding was transferred to Part C, because the underlying premises is a cooperative apartment.

On June 28, 2012, Petitioner's motion for discovery was granted by the court, pursuant to an order, directing Respondent to produce documents from November 2009 forward and directing the payment of use and occupancy at the rate of \$733.70 per month. The proceeding was marked off calendar, pending the completion of discovery. Although the moving papers were based on the claim that Respondent had asserted succession, no answer has been filed by Respondent asserting any affirmative defenses.

On May 14, 2013, Petitioner moved for summary judgment. The motion was adjourned to June 11, 2013. On May 29, 2013, Respondent's counsel filed an Order to Show Cause application, seeking to be relieved, however, the court declined to sign the Order to Show Cause. On June 11, 2013, Respondent appeared *pro se*, advised the court that she had elected to fire her attorney and wished to proceed *pro se* and the Court reserved decision on Petitioner's summary judgment motion.

### **DISCUSSION**

On or about April 2012, Respondent filed a claim with DHCR asserting the right to succession of the Subject Premises. Respondent asserted that Harris was her aunt and that she lived with Harris in the Subject Premises from September 2009 forward. Respondent asserted that Harris had given her a power of attorney and that she moved into the Subject Premises at Harris' request because her aunt could no longer live alone. The initial papers filed by Respondent with DHCR are annexed to the moving papers.

DHCR issued an order denying Respondent's application and terminating the administrative proceeding on November 30, 2012. The order provided:

(Respondent) failed to submit information/evidence necessary to process the case, as requested on May 9, 2012. Specifically, Angela Long failed to submit proof of her relationship to Maria B. Harris, the rent controlled tenant of record (Ex I).

Petitioner asserts that Respondent has never filed a written answer to this proceeding, but that Respondent asserted on the record on April 30, 2012 that she was entitled to succeed to Harris' tenancy.

Petitioner asserts that Respondent has failed to file a par regarding the DHCR order and that her time to do so has passed.

Petitioner argues that absent the succession claim, there are no issues of fact requiring a trial and that Respondent is bound by the DHCR order denying her succession claim.

Respondent has submitted no written opposition to the motion, but asserted at argument that she did not pursue the claim filed at DHCR, after she retained counsel, because the Judge told her in open court that the court would retain jurisdiction over the succession claim, and that the court not DHCR would decide the issue.

Based on Respondent's claim, this Court reviewed the recording for the appearance on the record on June 28, 2012, when order granting Petitioner's discovery motion was issued.

#### **THE JUNE 28, 2012 COURT APPEARANCE**

The court<sup>1</sup> conferenced this proceeding on the record with counsel and the parties on June 28, 2013 from approximately 10:34 am to 11:02 am. This was the first date the proceeding had been assigned to Part C. Respondent's counsel noted on the record that Respondent was asserting a claim to succession. The parties agreed that no answer had been filed and Petitioner had made a pre-answer motion for discovery.

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<sup>1</sup> The June 28, 2012 order was issued by Judge Stanley who also conducted the conference on the record on said date.

Respondent's counsel made an oral application for a stay pending the DHCR determination of Respondent's succession claim, which application the court denied on the record. The court stated that because Respondent had filed her succession claim with DHCR after the commencement of this proceeding, there was concurrent jurisdiction, and the court, **not** DHCR, would determine Respondent's succession claim. Petitioner's counsel stated on the record that Petitioner would prefer to have the court make the determination on the succession claim, rather than DHCR. The court noted that Petitioner's opposition to a stay was due to the fact that DHCR usually took longer to make such a determination than the courts. The court then stated that Respondent's succession claim **had** to be litigated in Housing Court, and not at DHCR.

Respondent's counsel stated he would consent to discovery, but that he also wished to seek discovery from Petitioner on the issue of repairs and arrears. Respondent's counsel stated even prior to the commencement of the proceeding, Respondent had made several payments that had either been held or cashed by Petitioner. The court stated Respondent was not entitled to discovery.

Petitioner represented to the court that Harris had filed annual re-certifications in connection with her NYCHA Section 8 subsidy, and that these re-certifications did not list Respondent as a household member for the relevant period. Petitioner's counsel asserted that NYCHA Section 8 had been subpoenaed but had not appeared.

Respondent who was also present for the conference stated that she was listed on the income affidavits submitted to NYCHA.

The Court stated that either way Respondent ultimately had the right to a trial and to a determination on the merits by a Judge.

The parties discussed the issue of use and occupancy. The court stated that Respondent was required to pay all arrears from November 2011 forward and was not entitled to time to pay the arrears. The court also refused to address Respondent's counsel's claim that there were outstanding violations of record in the Subject Premises.

The court stated that it would need to provide for an answer to be filed, and that a deposition was always permitted under these circumstances, but the order issued by the court on that date provided for neither the filing of an answer, nor a deposition. The court issued an order granting Petitioner's motion for discovery, and holding that the relevant period of time for the production of documents would be November 2009 through November 2011. The order further directed the payment of use and occupancy, and marked the proceeding off calendar pending the completion of discovery. The court read the order into the record, and provided the attorneys with copies. The court then suggested that the parties further conference the proceeding to attempt to tailor Petitioner's document request, and referred them to a court attorney to assist with same. However, no further stipulation or order appears in the court file regarding discovery or the answer.

### CONCLUSION

Based on the foregoing, Petitioner's motion for summary judgment is denied. The court clearly stated during the course of the half hour conference that the court would determine the issue of succession, and **not** DHCR. While Respondent had counsel at the time in this proceeding, Respondent filed her claim *pro se* at DHCR, and relied on the court's statement when she stopped responding to DHCR's requests for additional documentation. Moreover, during the course of the conference the court made reference on more than one occasion to the

fact that Petitioner's counsel was experienced in the field of summary proceedings and appeared before the court regularly, and Respondent's counsel did not. Thus, Respondent may have accorded greater weight to the court's statement that succession had to be determined in this proceeding and would not be determined at DHCR.

Based on the foregoing it would be unfair to now hold that Respondent is precluded from asserting a claim to succession in this proceeding.

The proceeding is restored to the calendar for a conference on July 17, 2013, at 9:30 am. In Part C, room 844.

This constitutes the decision and order of this court.

Dated: June 17, 2013  
New York, NY

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

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