

<b>Clemente v Liberato</b>
2015 NY Slip Op 31396(U)
July 15, 2015
Civil Court, Bronx County
Docket Number: 11497/15
Judge: Marian C. Doherty
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2015. The respondent contends that this court misapprehended or overlooked certain facts in its consideration of the respondent's motion to dismiss. The motion to reargue is granted as this court's original holding was ambiguous, giving the appearance that the court had made a factual determination about the nature of the relationship between the parties. Now, upon re-argument, this court recalls its earlier decision on the respondent's motion to dismiss, and, upon reargument, hereby denies the motion to dismiss for the reasons given below.

The petitioner is the sole leaseholder for the subject premises. The respondent and her son moved in at some point, or points, in time, although the parties differ considerably as to when they each moved into the apartment. They are not listed on the lease. Also in dispute is the nature of the relations between the petitioner and the respondent. He says that any romantic involvement was of very brief duration and that theirs was not a family-style relationship. She states the contrary. Likewise the parties do not agree over the extent of the petitioner's manifestation of affection for the respondent's minor son. The petitioner and the respondent are not, nor were they ever, married. The respondent's child is not the offspring of the petitioner and no one has claimed that the petitioner held himself out to be the father of the child. There are no claims that the petitioner has financial obligations to the respondent or to her son.

Asserting that the law regarding this issue is well-settled, the respondent argues that the legal conception of "family" has changed to be more inclusive, with the result that jurisdiction over the parties to this dispute automatically divests from the Housing Court and shifts to the Family Court or the Supreme Court because the facts in this case describe a "familial" relationship that by its very nature immunize the respondent from being made subject to this summary licensee holdover proceeding in the Housing Court. Affirmation in Support dated

April 28, 2015, as contained in Notice of Motion dated April 28, 2015, ¶¶14-23. This court does not agree.

The respondent referred to two appellate-level decisions as supporting her argument. They are Braschi v. Stahl, 74 N.Y.2d 201 (1989) and Rosensteil v. Rosensteil, 20 A.D.2d 71 (First Dept. 1963). In examining the Rent Control Law, the Braschi court concluded that the legislature intended to extend succession protections, upon the death of a named tenant, to a non-traditional family member who resided with and shared emotional and financial commitments with the deceased.<sup>1</sup> It bears emphasis that Braschi addressed a succession issue. Perhaps more importantly, the outcome resulted from the court's analysis of legislative intent; it was not the imposition of a new rule that the court had come to view as being more consistent with changed societal mores.

Unlike the parties in this present case, those in Rosensteil v. Rosensteil, 20 A.D.2d 71 (First Dept. 1963), were married. Today Rosensteil seems almost quaint in its chivalric notions of the duties of husbands to their wives. It involved a husband's attempt to evict his wife as a licensee. The court reversed the Special Term, which had upheld the use of a special proceeding to oust a spouse from possession. Significantly, the Rosensteil court grounded its determination that a wife does not derive the right to occupy the marital home by permission from the husband, but rather from the husband's legal duty to support his wife. In other words, the court held that a legal duty that arose from the actual state of marriage cancelled out the wife's status as a

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<sup>1</sup> It is noteworthy that when Braschi was decided, persons of the same gender were not permitted to marry. After the difficult struggles of so many have finally and recently achieved the ability of those previously denied to partake of the rights and obligations of marriage, there are some who might reject the notion that a marital relationship and a "familial-type" relationship are nothing more than a distinction without a difference.

licensee. The court also noted that the status was not immutable. It can be qualified by a court order or an agreement between the parties to the effect that a spouse could be ousted as a licensee in a special proceeding. Id. At 73.

Aside from the two appellate cases, the respondent finds support in seven trial level cases - six from the Civil Court of the City of New York, and one from the Nassau County District Court. While a number of the seven cases cited by the respondent eloquently addressed the evolution of the concept of family, most nonetheless found that, at least potentially, the facts in each case suggested the existence of one or more additional legal obligations that, as in Rosensteil, served to remove the respondent from the status of mere licensee or prevent the controversy from being fully resolved within the limited confines of the Housing Court.

In Landry v. Harris, 12 Misc.3d 1123(A) (Civ. Ct. NY Co. 2008), the petitioner, as sole proprietor and lessee of a cooperative apartment, attempted under RPAPL 713(7) to evict his girlfriend, as well as their minor child, and the respondent's child by another relationship. The court specifically held that it had subject-matter jurisdiction and declined to dismiss the proceeding against the respondent girlfriend and her minor son from another marriage, dismissing only against his own biological child due to the petitioner's legal obligation to support and to house the child.

DeJesus v. Rodriguez, 196 Misc.2d 88 (Civ. Ct. Richmond Co. 2003) involved the rights of the petitioner's two, minor biological children and potential ownership rights of their mother. In DeJesus, the petitioner, whose name was on the deed as sole owner of the home, and who lived in the house with his girlfriend and their two minor children, sought to evict the girlfriend as a licensee. They had moved into the house together at the time of its purchase. The

respondent claimed she paid half the down payment and contributed toward the mortgage. There was also a pending petition for a family offense as well as a child support proceeding in the Family Court. With respect to the minor children, the DeJesus court pointed out, “[i]nherent to child support is the obligation to provide shelter . . . . Petitioner should not be permitted to circumvent or ignore this obligation by evicting his children in this proceeding.” Id. At 885-86. Thus, a tangle of issues required adjudication elsewhere.

Minors v. Tyler, 137 Misc.2d 380 (Civ. Ct Bronx Co. 1987), was another case where a claim of ownership served to remove the dispute from the jurisdiction of the court. In Minors, the petitioner sought, as titleholder to the one-family home, to evict his former “paramour” as a licensee. The respondent claimed constructive trust that gave her an equitable interest in the property and that precluded the petitioner from treating her as a licensee. The court rejected the notion that the respondent was a licensee, finding her to be a co-occupant with a claim of ownership. The court transferred the case to the Supreme Court where there could be a global resolution of all issues.<sup>2</sup>

Three others of the seven trial-level cases cited by the respondent, unlike the case presently before this court, involved, either directly or indirectly, legal obligations derived from marriage, while some contained issues pertaining to the rights of biological children. In Nagle v. DiPaola, 134 Mic.2d 761 (Dist. Ct. Nassau Co. 1987), the petitioner, who was the pre-marital owner of the home, sought to evict his wife’s two minor children from a previous marriage on the ground that they were licensees. Citing Rosensteil v. Rosensteil, 20 A.D.2d 71 (First Dept.

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<sup>2</sup> In DeJesus v. Rodriguez, 196 Misc,2d 881, 885 (Civ. Ct. Richmond Co. 2003), the court erroneously reported that the Minors court “dismissed” that proceeding.

1963), the court ruled that it lacked subject-matter jurisdiction because the respondent-stepchildren did not derive their right to occupy the premises from a license but rather from the marital relationship of the husband and wife.

In Sirota v. Sirota, 164 Misc.2d 966 (Civ. Court, Kings Co. 1995) the petitioner sought to evict his and his deceased wife's two, adult, biological children. Citing Rosensteil v. Rosensteil, 20 A.D.2d 71 (First Dept. 1963), and alluding to an implied privilege derived from the use of the marital residence, as well as an issue of fraud that had been raised by the respondents, the court transferred the case to the Supreme Court, which had jurisdiction to determine all issues "in one fell swoop." Id. at 968.

Billips v. Billips, 189 Misc.2d 144 (Civ. Ct. NY Co. 2001) was an illegal lockout proceeding rather than a licensee holdover proceeding that was brought by a husband against his wife. Also, there were minor, biological children involved, with divorce and separation issues pending resolution. Basing its decision on cases that held one spouse may not evict the other, the Billips court surprisingly held that it did not have jurisdiction to restore a spouse to possession when he had been ousted by a spouse who had illegally used self-help to evict him.

Williams v. Williams, 13 Misc.3d 395 (Civ. Ct. NY Co. 2006) is the only cited trial-level case that relied exclusively on the relationship of the parties to justify the outcome, although the parties to the proceeding - a grandmother and her two adult grandsons - were related by blood. In Williams, the court held that the grandmother could not evict her two adult grandsons by summary proceeding under the RPAPL § 713(7). The court explained that family members cannot be licensees. Therefore the Williams court relegated the grandmother to initiating an ejectment action or a Family Court proceeding, although the court did not specify the particular

kind of Family Court proceeding that would be appropriate.<sup>3</sup> Although the case involved a dispute between blood-relations, more significantly the court did not enunciate a mutual legal obligation or privilege created by the relationship that served to preserve the respondents from licensee status, thus forcing the grandmother to pursue her goal of evicting her grandsons so that she could transfer to a smaller, more affordable apartment by means of a longer, more complicated, and more expensive proceeding. This court respectfully declines to follow Williams.

There are trial-level cases that reject the claim that a familial relationship, in and of itself, removes a person from having licensee status. See e.g. Drost v. Hookey, 25 Misc.3d 219 (Dist. Ct. Suffolk Co. 2009); see also Landry v. Harris, 12 Misc.3d 1123(A) (Civ. Ct. NY Co. 2008) (discussed above). The point of this analysis is not to engage in a caselaw duel, but simply to point out that the issue is not at all well settled. This court sees no inherent reason why a family member could not simultaneously have licensee status. A licensee relationship, by its very nature, implies, and often involves, a relationship that is based on personal, rather than financial, considerations. Without an additional legal basis to supercede a party's status as a licensee, or a mandate from an appellate level court or from the legislature directing the lower courts to exclude those in family-type relationships from being subject to a licensee proceeding under RPAPL § 713(7), this court declines to follow a rule that says a familial relationship, in and of

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<sup>3</sup> On the same day as one of the recent appearance dates for this present case, a conference was held in the courtroom with the parties to a dispute who raised issues similar to those in Williams, wherein the mother of an adult son sought to remove him from her apartment. When it was suggested to the petitioner-mother that she might do well, as an alternative, to commence a case in the Family Court against her adult son, she informed the court that she had tried to do so but was told bring her claim in the Housing Court.

