

<b>PB 165 William St. Holdings LLC v Sero-Boim</b>
2016 NY Slip Op 32065(U)
July 11, 2016
Civil Court of the City of New York, New York County
Docket Number: 52496/2016
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART F

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PB 165 WILLIAM STREET HOLDINGS LLC, X

Petitioner-Landlord

**HON. SABRINA B. KRAUS**

-against-

**DECISION & ORDER**

**Index No.: L&T 52496/2016**

DAN SERO-BOIM a/k/a DAN SERO-BOIN  
165 William Street - Apt. 8  
New York, New York 10038

Respondent- Tenant

ANASTACIA KURYLO, MICHAEL KURYLO  
and "John Doe" & "Jane Doe"

Respondents-Undertenants

\_\_\_\_\_  
X

**BACKGROUND**

This summary holdover proceeding was commenced by **PB 165 WILLIAM STREET HOLDINGS LLC** (Petitioner) against **DAN SERO-BOIM a/k/a DAN SERO-BOIN** (Tenant), the rent stabilized tenant of record, (Respondent), and **ANASTACIA KURYLO** (AK) and **MICHAEL KURYLO** (collectively "Respondents") seeking to recover possession of 165 William Street - Apt. 8, New York, New York 10038 (Subject Premises) based on the allegation that Tenant was not primarily residing in the Subject Premises. Respondents, the daughter and son-in-law of Tenant, have appeared and asserted defenses including illusory tenancy, and that Petitioner and its predecessors had recognized Respondents as tenants or co-tenants.

## **THE PENDING MOTIONS**

On May 10, 2016, Petitioner moved for summary judgment and related relief. On May 27, 2016, Respondents cross-moved for summary judgment. On July 8, 2016, the court heard oral argument and reserved decision. The motions are consolidated herein for determination and granted to the extent provided below.

## **SUMMARY OF FACTS ALLEGED**

AK asserts that she has lived in the Subject Premises for most of her life, and that she has continuously resided there since 1996. AK states that Tenant moved out many years ago but does not state when. There is some allegation that there was co-occupancy after 1996 date, but no specific details are provided. There is a general statement that Respondents worked in some capacity with Tenant shortly after 1996.

AK made payments directly to Petitioner for certain periods, and was billed as a tenant or co-tenant by Petitioner. AK wanted to be added as a tenant of record to the lease, but as late as 2014, Tenant would not agree to same. Tenant continued to execute and return renewals through December 2013, for a term through December 2015. Tenant has not appeared in this proceeding. Petitioner asserts that tenant is residing in Florida.

## **DISCUSSION**

Petitioner's motion for summary judgment as to Tenant is denied. The court notes that Tenant was not served with the motion papers at the alleged address where he resides. There are other issues herein which will require a trial, and Tenant asserted in writing to AK, as late as 2014, that they were occupying the Subject Premises together. Petitioner's request for a judgment as to Tenant should be made at the trial.

Petitioner's motion to dismiss Respondent's first affirmative defense is granted. A rent-stabilized tenancy can not be created by waiver or estoppel (*Gregory v Colonial DPC Corp III* 234 AD2d 419; *Riverside Holdings LLC v Murray* 2002 NY Slip Op 50176(U)). The fact that Petitioner was aware that the Subject Premises were occupied by the immediate family members of the tenant of record does not warrant a different result (*Riverside Holdings LLC v Thomas* NYLJ May 1, 2002). This finding is further supported by Tenant's express refusal to agree to allow Respondent to be added as a co-tenant on the lease. Moreover, Petitioner could not have created a new tenancy with Respondents prior to surrender or termination of Tenant's tenancy, neither one of which occurred. For the same reasons, Respondents' motion for summary judgment on this defense is denied.

Petitioner's motion to dismiss Respondent's first objection in point of law which asserts failure to state a cause of action is denied, as such defense is not subject to dismissal on a pre-trial motion as it may be asserted at any time even if not pled (*Riland v Frederick Todman & Co.* 56 AD2d 350).

Petitioner's motion to dismiss Respondents' second objection in point of law is granted and there is no requirement to serve undertenants with the underlying notice of non-renewal [*West End Assoc. v. McGlone* 32 Misc.3d 145(A)].

The court finds that there are questions of fact requiring a trial as pertains to Respondents' illusory defense. Petitioner has failed to establish a right to summary dismissal of said defense. It appears that Tenant may have intentionally prevented his daughter from being in a position to assert succession or become a co-tenant in order to exclusively preserve his own rights. However, the details as to these issues are not clear. There is no date as to when Tenant

permanently vacated and it is unclear what if any period Respondents and Tenant lived together in the Subject Premises.

Petitioner's motion for discovery is denied to the extent of requiring Respondents to produce the documents requested. Petitioner has failed to establish ample need for the production of said documents, none of which are in Respondents' exclusive custody and control. Petitioner's request to depose Respondents is granted. Respondents shall appear for a deposition within 45 days. Respondents to pay use and occupancy at the last lease rate *pendente lite* from August 2016 forward by the 10<sup>th</sup> of each month, without prejudice to either parties' rights and claims.

The proceeding is marked off calendar pending completion of discovery. The proceeding may be restored by stipulation or motion on completion of discovery.

This constitutes the decision and order of the Court.

Dated: New York, New York  
July 11, 2016

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Sabrina B. Kraus, JHC

TO: BELKIN BURDEN WENIG & GOLDMAN, LLP  
Attorneys for Petitioner  
By: William E. Baney, Esq.  
270 Madison Avenue  
New York, New York 10016  
212.867.0709

WEEN & KOZEK, PLLC  
Attorneys for Respondent  
By: Michael Kozek, Esq.  
150 Broadway, 19<sup>th</sup> Floor  
New York, New York 10038  
212.964.1822

