

<b>Silverstein v Huebner</b>
2021 NY Slip Op 31992(U)
March 22, 2021
Civil Court of the City of New York, Kings County
Docket Number: 94101/2018
Judge: Jack Stoller
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART Q

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YEHUDA SILVERSTEIN,

Petitioner,

Index No. 94101/2018

-against-

LEVI HUEBNER and ELIE POLTORAK,

DECISION/ORDER

Respondents.

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Present: Hon. Jack Stoller  
Judge, Housing Court

Yehuda Silverstein, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Levi Huebner (“Respondent”), a respondent in this proceeding, and Elie Poltorak (“Co-Respondent”), another respondent in this proceeding, seeking possession of the subject premises. Respondent surrendered possession of the subject premises to Petitioner by a stipulation dated March 4, 2020, while Co-Respondent remained in possession of the subject premises. Shortly after the stipulation, the COVID-19 pandemic ensued, with stays of evictions that have prevented Petitioner from obtaining possession of the subject premises from Co-Respondent. The parties now dispute whether a stay pursuant to a statute applies to Co-Respondent.

On December 28, 2020, the Governor signed into law the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, L. 2020, c. 381 (“the Act”). The Chief Administrative Judge of the Office of Court Administration then promulgated Administrative Order 340/20 which implements aspects of the Act.<sup>1</sup> The Act, *inter alia*, stays all summary

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<sup>1</sup> The statute and administrative order can be found here: <http://nycourts.gov/whatsnew/pdf/AO-340-20.pdf>

proceedings through May 1, 2021 for certain occupants of real property who file a document called a “hardship declaration” with the Court pursuant to Part A, §6 of the Act. The parties do not dispute that Co-Respondent has filed a hardship declaration with the Court.

Petitioner argues that the Act does not protect Co-Respondent because Co-Respondent is not a tenant of the subject premises but rather an illegal subtenant of Respondent, who has since surrendered possession of the subject premises. The Act operates to stay evictions of “tenants,” although the Act broadly defines “tenants” beyond the commonly-understood definition, to wit, as a “residential tenant, lawful occupant of a dwelling unit, or any other person responsible for paying rent or use and occupancy ....” Part A, §3 of the Act.

While the proposition that Co-Respondent, as a purportedly illegal subtenant, is not a “lawful occupant” is an arguable one, significantly, the Act does not limit its definition of a “tenant” to a party to a lease or to a “lawful occupant.” The Act also defines a “tenant” as “any other person responsible for paying use and occupancy. *Id.* Privity of estate is not required for liability for use and occupancy. Rather, occupancy is all that gives rise to liability for use and occupancy as a matter of quantum meruit. *Eighteen Assocs., LLC v. Nanjim Leasing Corp.*, 257 A.D.2d 559, 559-560 (2nd Dept. 1999), *Carlyle, LLC v. Beekman Garage LLC*, 133 A.D.3d 510, 511 (1st Dept. 2015), *Minister, Elders & Deacons of the Reformed Protestant Dutch Church of the City of New York v. 198 Broadway Inc.*, 152 Misc.2d 936 (S. Ct. N.Y. Co.). See Also *72A Realty Assoc. v. Kutno*, 2007 N.Y. Slip Op. 27195, 2-3 (App. Term 1st Dept. 2007); *Simkowitz v. Kotler, Monteavaro and Sandoval*, N.Y.L.J. July 23, 1999 at 26:1 (App. Term 1st Dept.). As Co-Respondent has been occupying the subject premises, he has been incurring liability for payment of use and occupancy and, accordingly, is covered by the definition of “tenant” in the Act.

While the class of occupants protected by the Act would be expansive under this definition, the Legislature intended such an expansive protection. Section 3 of the Act, entitled “Legislative intent,” states that the pandemic currently raging throughout New York and the world poses a unique and historic threat to public health. Section 3 of the Act goes on to say that the Legislature intends to “avoid as many evictions ... as possible” for people experiencing pandemic-related hardships or who have difficulty moving. In matters of statutory interpretation, legislative intent is the “great and controlling principle.” Matter of Sedacca v. Mangano, 18 N.Y.3d 609, 615 (2012). As the Legislature expressly intended to minimize evictions to the greatest extent possible, the Court must give effect to the Legislature’s intention to protect occupants like Co-Respondent from eviction.

As Co-Respondent has been in occupancy of the subject premises, even, assuming *arguendo*, as an illegal subtenant, Co-Respondent incurs liability for use and occupancy and the Act therefore covers Co-Respondent in its protection. Co-Respondent having filed a hardship protection, this matter is stayed through May 1, 2021. The Court will calendar a date for this matter after May 1, 2021 in consultation with the parties.

This constitutes the decision and order of this Court.

Dated: New York, New York  
March 22, 2021

APPROVED  
JSTOLLER, 3/22/2021, 11:33:20 AM

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HON. JACK STOLLER  
J.H.C.