

Owl Cr. Props., LLC v Timmons
2024 NY Slip Op 35527(U)
May 10, 2024
Civil Court of the City of New York, Bronx County
Docket Number: Index No. L&T 302566/21
Judge: Kisha L. Miller
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART O

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OWL CREEK PROPERTIES, LLC,
Petitioner,

Index No. L&T 302566/21

-against-

DECISION/ORDER
AFTER TRIAL

MONIQUE TIMMONS,
STEVEROY K. JEFFERS,
AWARIE JAMAL BROWNE,
DEBRA C. LIGHTFOOT, JAY LEE,
JOHN DOE, JANE DOE,
Respondents.

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HON. KISHA L. MILLER:

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Petitioner.
Mobilization for Justice, Inc., for Respondents Monique Timmons and Steveroy K. Jeffers.

Petitioner commenced this summary eviction proceeding seeking possession of the premises located at 307 East 188th St, Apt 3W, Bronx, New York, on the basis that Respondent Timmons does not maintain the premises as her primary residence. The “Notice to Tenant of Non-Renewal of Lease,” incorporated by the petition, alleges, *inter alia*, that Timmons is primarily residing in Covington, Georgia and has subleased the premises to Respondents Jeffers, Browne, Lightfoot, Lee, and other unauthorized occupants. Respondent Timmons and Jeffers filed an answer, by counsel, admitting that Timmons resides in Georgia and asserting a succession claim on behalf of Jeffers.

Respondents Browne, Lightfoot, Lee, John Doe, and Jane Doe have not appeared in this proceeding. In their answer, Timmons and Jeffers deny that other adults reside in the premises.

The court conducted a three-day trial where Temenoujka Pervizaj, one of Petitioner’s members, Timmons, and Jeffers testified.¹

¹ Documentary evidence admitted during trial: Petitioner’s Exhibits 1-11; Respondents’ Exhibits A-J.

Findings of Facts

In 2004, Timmons moved into the three-bedroom, rent stabilized apartment along with her husband, Michael Brooks, and their minor daughter. While residing in the premises, Timmons gave birth to three additional children in 2005, 2010, and 2013. In 2016, Petitioner purchased the property with Pervizaj as one of its members and her husband Benny as the managing agent. In 2016, Timmons signed a one-year lease renewal with Petitioner commencing January 1, 2017 and terminating December 31, 2017. As part of the lease renewal, Timmons signed a form entitled Affidavit of Occupancy (“Affidavit”), where she listed three of her children, Mr. Brooks, and “brother” Jeffers as individuals designated to occupy the premises during the term of the lease renewal.

In 2017, Timmons signed a two-year lease renewal commencing January 1, 2018 and terminating December 31, 2019. On the Affidavit accompanying the lease renewal, Timmons listed her four children only. During the period of this lease renewal, Timmons and Mr. Brooks purchased a home in Lexington, Georgia in July 2019. In August 2019, Timmons, Mr. Brooks, and their children moved out of the apartment. On January 15, 2020, Timmons signed a one-year lease renewal for the apartment commencing January 1, 2020 and terminating December 31, 2020. On the Affidavit accompanying the lease renewal, Timmons listed her four children and “brother” Jeffers as authorized occupants. The rent continued to be paid in Timmons’ name.

After commencement of this proceeding, Timmons submitted a notarized letter to Petitioner indicating that she permanently vacated the apartment; that she surrendered possession of the premises; and that Jeffers remains in the apartment. Timmons currently resides in Covington, Georgia.

Conclusions of Law

It is undisputed that at the commencement of this proceeding, Timmons was (and still is) residing in Georgia and does not maintain the apartment as her primary residence. The crux of the dispute between the parties is whether Jeffers, who alleges he is Timmons' brother and has resided in the apartment since 2015, is entitled to succeed to the apartment. A determination on the merits of Jeffers' succession claim is proper in the context of this nonprimary residence holdover proceeding (see *Morris Asset Mgmt, LLC v Hammel*, 34 Misc 3d 148[A], 2012 NY Slip Op 50228[U] [App Term, 1st Dept 2012]).

A claimant must meet his affirmative obligation to prove succession by demonstrating he is a family member who primarily resided in the subject premises with the tenant of record for at least two years prior to the tenant's permanent vacatur of the premises, or one year if the claimant is disabled or a senior citizen (Rent Stabilization Code [9 NYCRR] §2523.5[b][1]).

The first question is whether Jeffers is a family member of Timmons.

Rent Stabilization Code (9 NYCRR) §2520.6(o)(1) contains an exhaustive list of family members which includes brother and sister. Timmons and Jeffers testified credibly that they are siblings who share the same mother but different fathers. Timmons testified that her mother's name is Beverly Willock and that she has two sisters, one named Francine Chiddick, and two brothers. Jeffers' birth certificate, indicating he was born in Antigua in 1972, lists his mother as "Beverley" Willock. He testified that he has three sisters, one named Francine, and a brother named Denroy Davis, Jr. The obituary of Beverly Willock lists her four children as Francine Chiddick, Steveroy Jeffers, Denroy Davis, Jr., and Monique Brooks. Timmons, who now uses the last name Brooks, testified that Joseph is her maiden name, and that Timmons is the name she used from a previous marriage.

Jeffers established by competent evidence that he is an immediate family member of Timmons as defined by the statute. Petitioner offered no evidence contesting the familial relationship between Timmons and Jeffers.

The remaining question is whether Jeffers established that he resided with Timmons at least two years prior to her permanent vacatur of the apartment.

After Timmons purchased a home in Georgia in July 2019 and moved out of the apartment in August 2019, she signed a renewal lease in January 2020, testifying that since Jeffers was residing in the apartment, it was easier for her to sign the lease with Jeffers continuing to pay the rent. Jeffers testified that after Timmons moved out, she instructed him to purchase money orders, sign her name, and give the rental payments to Benny or the superintendent.

In *Third Lenox Terrace Assoc. v Edwards*, 91 AD3d 532 (1st Dept 2012), the Appellate Division, First Department, determined that a tenant who vacated her rent-stabilized apartment but continued to sign renewal leases and issue rental payments to the landlord in her name for several years, did not permanently vacate the apartment at any time prior to expiration of the last lease renewal. In holding that permanent vacatur occurs at the expiration of the last renewal lease, *Third Lenox* and its progeny denied succession claims based on proposed successor-tenants' failure to satisfy the statutory co-residency requirement with tenants of record who admittedly were residing elsewhere (*Third Lenox Terrace Assoc. v Edwards*, *id.*; see *Matter of Well Done Realty, LLC v Epps*, 177 AD3d 427 [1st Dept 2019]; *186 Norfolk LLC v Euvin*, 63 Misc 3d 160[A], 2019 NY Slip Op 50890[U] [App Term, 1st Dept 2019]; *Diagonal Realty LLC v Arias*, 66 Misc 3d 150[A], 2020 NY Slip Op 50283[U] [App Term, 1st Dept 2020]).

Recognizing a split in authority with the Appellate Division, Second Department, which defined permanent vacatur as the time a tenant permanently ceased residing in the apartment regardless of whether the tenant signed renewal leases and continued to pay rent (*Matter of*

Jourdain v New York State Div. of Hous. & Community Renewal, 159 AD3d 41 [2d Dept 2019]; *EB Bedford, LLC v Lee*, 64 Misc 3d 39, 2019 NY Slip Op 29153 [App Term, 2d Dept 2019]), courts in the First Department concluded they were bound by the ruling in *Third Lenox* until the Court of Appeals ruled on the issue (see *Diagonal Realty LLC v Arias*, supra; West 48th Holdings LLC v Herrera, 66 Misc 3d 150[A], 2020 NY Slip Op 50284[U] [App Term, 1st Dept 2020]; *Park Central 1 LLC v Williams*, 67 Misc 3d 144[A], 2020 NY Slip Op 50765[U] [App Term, 1st Dept 2020]).

Recently, the New York State Legislature addressed the issue. In 2023, Public Housing Law §14(4), which provides for succession rights of family members under certain circumstances, was amended as follows:

For purposes of this paragraph, “permanently vacated” shall mean the date when the tenant of record stops residing in the housing accommodation regardless of subsequent contacts with the unit or the signing of renewal leases or continuation of rent payments. (L 2023, ch 760, Part A, §3).

This provision took effect immediately and applied to all pending actions (L 2023, ch 760, Part A, §6).

Rent Stabilization Code (9 NYCRR) §2523.5(b)(2) was also amended, providing in relevant part:

A tenant shall be considered to have permanently vacated the subject housing accommodation when the tenant has permanently ceased residing in the housing accommodation. The continued payment of rent by the tenant or the signing of renewal leases shall not preclude a claim by a family member as defined in section 2520.6(o) of this Title in seeking tenancy.

Applying this definition of permanent vacatur, Timmons ceased residing in the apartment when she moved out with Mr. Brooks and her children in August 2019. The continued rental payments by Jeffers in Timmons’ name and the 2020 lease renewal Timmons signed after she vacated the premises no longer constitute determining factors in Jeffers’ succession claim.

Although Timmons provided a letter of surrender during the pendency of this proceeding, the record indicates she permanently vacated the apartment long before submitting the notice.

As such, the relevant period of Jeffers' succession claim is from August 2017 through August 2019 ("requisite period"), two years prior to Timmons' permanent vacatur from the apartment in August 2019.

Jeffers testified as follows: During the summer of 1989, he moved from Antigua to the United States, residing with his mother in the Bronx then living with his child's mother in the Bronx. He wanted to find an apartment, asked Timmons for assistance, and Timmons told Jeffers he could live with her. He moved into the apartment in 2015, occupying the bedroom of Timmons' daughter who was attending college. He paid Timmons \$600 in cash toward the rent. In or around 2015 or 2016, Benny knocked on the door and introduced himself as the new owner. Timmons, Mr. Brooks, or Jeffers would give the monthly rental payments to Benny or the superintendent at the apartment. After Timmons moved out, Jeffers testified that he continued to pay the rent in Timmons' name until 2020 due to lack of repairs, including mildew, broken tiles, peeling paint, and a leak in the kitchen. Jeffers further testified that Benny knows him and that since 2015, he has not resided at another residence or listed another apartment as his primary address.

Timmons provided similar testimony, stating that Jeffers moved into the apartment in July 2015 after "having issues" with his daughter's mother; that in the three-bedroom apartment, one bedroom was for Jeffers, one bedroom was for her children, and one bedroom was for her; and that Jeffers initially paid \$500 toward the rent then increased the monthly amount to \$600. She testified that Benny would sometimes receive the rent from Jeffers, and that prior to the requisite period, Benny saw who was living in the apartment when he came to address painting and the cabinets. Timmons testified that Benny is aware Jeffers is her brother.

Jeffers did not produce a significant paper trail establishing his occupancy during the requisite period. Generally, traditional indicia of primary residence include driver's license, voter's registration, tax returns, telephone records, bank statements, and mail addressed to the premises (*Lesser v Park 65 Realty Corp.*, 140 AD2d 169 [1st Dept 1988]). In support of his testimony, Jeffers provided some documents consisting of bills from an Optimum cable account, statements from a checking account, and statements from a credit card account.

Documentary evidence, or the absence thereof, may be a significant factor in evaluating primary residence but is not a dispositive factor where there is a preponderance of credible testimony (*300 E. 34th St. Co. v Habeeb*, 248 AD2d 50 [1st Dept 1997]; *23 Jones St Assoc v Keebler-Beretta*, 284 AD2d 109 [1st Dept 2001]). A paucity of competent evidence establishing residency is not necessarily fatal to a succession claim where credible testimonial evidence is presented (*Shuk Ying Sy v Doe*, 4 Mics 3d 139[A], 2004 NY Slip Op 50951[U] [App Term, 1st Dept 2004]; *Lenoxville Associates, L.P. v Downs*, 40 Misc 3d 138[A], 2013 NY Slip Op 51399[U] [App Term, 1st Dept 2013]).

Jeffers overcame the paucity of documentation by providing credible and convincing testimony that he has primarily resided in the apartment since 2015 and, more specifically, during the requisite period (*Caputo v Assante*, 42 Misc 3d 133[A], 2014 NY Slip Op 50054[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014] [the credibility of the witnesses, the reconciliation of conflicting statements, a determination of which should be accepted and which rejected, the truthfulness and accuracy of the testimony, whether contradictory or not, are issues for the trier of fact]; see *Matter of Carota Enterprises Ltd v Jackson*, 241 AD2d 667 [3d Dept 1997] [the trier of fact is in the best position to assess credibility and the probative value of respective testimonies]). Moreover, Jeffers explained his lack of substantial documentary proof.

He did not file tax returns in 2017, 2018, 2019, or 2020, stating that he is a handyman who performs "odd and end jobs" receiving payments in cash or sometimes by check. He did not

possess a driver's license during the requisite period and used his passport for identification. He had a Florida driver's license but admitted that he never lived in Florida and utilized the license to get around while visiting his sister in Florida in 2008 and 2010. He also explained that he did not open the Optimum account until 2018 because Timmons "cut off" the cable to lower her bills and he wanted to continue watching his shows and basketball games.

Timmons' failure to include Jeffers on the Affidavit covering the lease renewal period from January 2018 through December 2019 is not incompatible with Jeffers' credited testimony and his documentary proof of primary residence during the requisite period. The list of occupants on the Affidavit is not dispositive but is one factor to be considered on the issue of primary residence (see *Zevrone Realty Corp. v Irving*, 63 Misc 3d 141[A], 2019 NY Slip Op 50587[U] [App Term, 1st Dept 2019]).

In any event, Timmons provided a credible explanation for the omission. She testified that in 2018, she asked Benny to add Jeffers to the lease, but he refused. She testified that Mr. Brooks and Jeffers each had "run ins" with Benny, and that she did not make the same request in 2019, thinking it was better that Benny just deal with her. Timmons admitted adding Jeffers to the 2020 Affidavit after she had already vacated the premises, testifying that Jeffers was already living there and it was the only way she thought Jeffers could "have the apartment."

Petitioner did not offer evidence disputing Timmons' testimony that Jeffers and Benny had a fractured relationship or that she asked Benny to add Jeffers to the lease.

The testimony of Pervizaj, Petitioner's sole witness, who stated that Jeffers occupied the apartment briefly from 2016 through 2017 and then came back into possession only after Timmons vacated, did not preponderate over the credited testimonies of Timmons and Jeffers. Pervizaj testified that she learned in late 2019 or early 2020 that different individuals were in the apartment. But she acknowledged that the building's battery-operated cameras were not installed until 2020, after the requisite period, and that security cameras recorded for thirty days only.

Pervizaj testified that during access dates to conduct repairs in 2018 pursuant to a stipulation of settlement in a nonpayment proceeding against Timmons, she “confirmed” Jeffers was not living in the apartment. But she provided no facts to support of her conclusion. She was unable to provide the number of access dates and acknowledged that access usually occurred during working hours between 9 a.m. and 5 p.m. It was unclear from her testimony whether Pervizaj is involved in the day-to-day operations of the building and maintains a presence at the premises to determine who is residing in the building. Based upon her testimony, Pervizaj is familiar with Petitioner’s books and records, and Benny and the superintendent are at the property daily. Timmons and Jeffers described their interactions with Benny and the superintendent only. Referring to Pervizaj, Timmons testified that she has never spoken to “anyone by the name.”

Lastly, while not dispositive, there was no evidence connecting Jeffers to any other residence during the requisite period (*Shuk Ying Sy v Doe*, supra).

Accordingly, it is

ORDERED that the proceeding is hereby dismissed as Jeffers established his succession claim by a preponderance of the credible evidence.

This constitutes the decision and order of the court.

Both parties must retrieve its exhibits at 851 Grand Concourse, Room 409 **within 30 days** of the date of this decision/order, or the exhibits may be disposed of as per DRP-185.

Dated: May 10, 2024

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KISHA L. MILLER, J.H.C.