

Justo-Aponte v Eschol

2025 NY Slip Op 31703(U)

May 12, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-309908-25

Judge: Tashanna B. Golden

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS, HOUSING PART O

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Francisco Eduardo Justo-Aponte

Index No. LT-309908-25

Petitioner-Landlord

DECISION/ORDER

-against-

Levy Eschol, 32 P LLC, Roy Rave,

Respondent-Tenant(s)

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Present: Hon. Tashanna B. Golden

Francisco Eduardo Justo-Aponte, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against Levy Eschol, 32 P LLC, and Roy Rave, the respondents in this proceeding ("Respondent" or collectively "Respondents"), seeking possession of the subject premises, 32 Patchen Ave, #5, Brooklyn, NY 11221 on an allegation that Respondents' locked Petitioner out thereof. Respondent interposed an answer asserting that the petition is futile on the basis that Petitioner is a licensee and therefore the matter should be dismissed. The Court held a trial of this matter on May 2 and May 5, 2025.

Facts and Testimony:

Petitioner's Direct Testimony:

Petitioner testified that he lived at the subject premises since 2017 with his brother and sister-in-law. He testified that he never saw the lease, but that he believed there was a written lease. That he would give his brother money towards the rent and his brother would pay the landlord. He testified the owner at the time was Mr. Syndey Wong. He testified that his brother passed away on January 9, 2022, and that his sister-in-law left the apartment soon thereafter. He testified that he remained in the apartment after the sister-in-law vacated, and that in January 2025 he went to the Dominican Republic ("DR"), returning on Feb 6, 2025, and found

the apartment had been “destroyed.” On this date, he encountered workers. He notified the workers that he lived there and asked why they were destroying his home. The workers notified him that there were new owners—32 P LLC, and that the owners ordered the work. He was then given a phone number for someone named “Levy” who he called immediately. “Levy” identified himself as the owner. Petitioner asked “Levy” why the apartment was being destroyed and was told that the prior owner told him the apartment was vacant. Petitioner notified Levy that this was not true and advised him of the court order from the previous housing case that was dismissed.

Petitioner testified that when he left for the Dominican Republic everything in the apartment was “normal” and when he returned it was destroyed. He testified that destroyed meant walls were removed, ceiling taken off, kitchen destroyed. He testified that after speaking to Mr. Levy he left the apartment and locked the door, adding a padlock to show that it was his space, and they should not violate it. He came back on February 12, 2025, and the pad lock was broken. The police were called, and a police report was made. Petitioner testified that Mr. Levy and Roy Rave came to the premises and asked him how much he would accept to just leave. He responded \$1 Million. He testified that he continued to go to the apartment after February 12 to clean, but at some point, he returned, and the door was removed. He again called the police who instructed Roy Rave to replace the door. Petitioner testified he remained until the door was restored and the lock was secured. He testified that on February 28, 2025, he went to the building and found the entrance door to the building was changed. He testified a neighbor granted him access to the building. Once again, the door was removed. He once again called the police who advised Roy Rave that the door needed to be replaced, to which Roy Rave stated the Petitioner was illegally trying to gain access. Petitioner testified that at this

point, he realized that Roy Rave had no intention of giving him a key and only to destroy the apartment, therefore he filed an HP (LT-000368-25).¹

Petitioner testified that he never told the prior landlord that he was vacating, that he never returned keys, never received a court order saying he had to leave, and never received a vacate order. He further testified that he does not have access to the apartment, and this is the hardest thing that happened to him since the death of his brother. He wants to return to the apartment and wants to be compensated for his lost items. He would like the persons who did this to be jailed.

Petitioner's Cross-examination:

On cross-examination, Petitioner testified that he moved in in 2017. The apartment was not "perfect" but livable. He testified that he was familiar with HPD by name but doesn't know exactly who they are. He testified that he has called 311 and made complaints in the past, specifically, in Summer 2022, because the electricity was out. He testified that he did not recall calling HPD in 2024, but that the electricity was eventually put in his name. He testified that he was in the DR from the beginning of January-Feb 6. He used suitcases, but not the ones pictured in the P4 and P5. He testified that he knew tenants Martha and Leo and that he did not know Noel Francis, but that he met him once. He testified that he knows he is the former owner and the believes he lived in the building because he saw him all the time, but he could not say if Noel Francis had another residence. He testified that he went to Roy Rave's office to pick up a check that was offered to him to leave the apartment after he came back in February, but that he was never given any money. He testified that he did not tell Roy that he lived in Williamsburg for 6 months, but that he was staying with a friend since the apartment was destroyed and he was locked out. He testified that he named the former owner on the HP action because that was in the system and the clerk told him he had to. He testified that Angela Garcia is his sister-

¹ NYSCEF Doc 22 (P6)

in-law, as far he knows she's still alive, that she left and never came back, and that he does not think she gave keys or surrendered the apartment. He testified that though he has never seen a lease, the first housing court case had his brother's name on it.

Respondent's Direct Testimony:

Roy Rave appeared as witness, testified that he is a partner of 32 P LLC and that 32 Patchen, the building where the subject premises is, was purchased in early 2025. He testified that when the building was purchased apartments 1 and 2 were occupied by tenants, apartment 3 was occupied by the owner's nephew, and apartments 4, 5 (the subject premises), and 6 were vacant. Testified that he recalled going into apartment 5 before February 6 and that it looked abandoned. He said it had old appliances, no utilities, no gas and electricity, and that nothing indicated anyone lived there. He testified that he spoke to the Petitioner on Feb 6 and offered him \$30K to leave. This number was negotiated between the parties after the Petitioner asked for more and Roy Rave countered with \$10K. He testified that the money was never exchanged because Petitioner did not have a bank account and wanted cash, also partner Levy got sick. Roy Rave testified that during the negotiations Petitioner told him that he lived in Williamsburg with a friend for the last 6 months.

Respondent's Cross-examination:

Roy Rave testified that he was at the closing of the building and that he was told by the broker and the former owner's nephew that only two units were occupied. He testified that he did not conduct any additional due diligence. He testified that in July 2024, he went to building and saw one gutted apartment, and that one apartment was vacant after the death of the tenant and a return of the keys. He never reviewed housing court cases because the title was clean. He testified that he was unaware of any prior housing court cases and that it never came up. He testified that he personally walked the property four times and that when he walked apartment 5, it looked abandoned. He also testified that the neighbors said it was empty. He testified that he did not recall when he was there last but that he thinks it was in December or

January. He testified that he believed the keys were returned. He testified that he did not test the appliances, but that there was no electricity and no utilities. He testified that he took videos but does not recall the dates off the top of his head. He testified that when he learned that Mr. Aponte was claiming to live in the apartment, he did not conduct additional due diligence because he was going to enter into a payout agreement or rent him another apartment.

He testified that he was willing to pay Petitioner because he did not want a fuss, and he wanted to move the project along. He testified that he changed the front door lock on Feb 15, 2025, and that everyone who lived in the building was given a key. He testified that he "didn't have time to play games..[Petitioner] had mail, I know how it goes." He testified that he removed the door and changed the lock and that prior to this case he was never in housing court with the Petitioner and that he never received an order from a court granting him the authority to evict him. On redirect he testified that when the front door lock was changed the two tenants did not complain and that when the Petitioner initially approached him he was skeptical.

Evidence:

Petitioner admitted the following evidence: Exhibit 1A, photo displaying living room debris of Apt 5, the subject premises, taken Feb 6, 2025; Exhibit 1B, photo displaying the destroyed kitchen in subject premises, taken Feb 6, 2025; Exhibit 1C, photo displaying the bedroom in subject premises with bags, refrigerator, stove, and sink, taken Feb 6, 2025; Exhibit 1D, photo displaying two other apartment doors in the subject building, taken on Feb 6, 2025; Exhibit 1E, photo displaying the bathroom in the subject premises; Exhibit 2, NYSCEF doc 21, Court file for LT-305069-24; Exhibit 3 photo of the subject premises front door with a broken pad lock and no door lock, taken Feb 12, 2025; Exhibit 4 photo displaying subject premises with missing entrance door, taken Feb 19, 2025; Exhibit 5, photo displaying subject premises with missing door, suitcases and garbage bags, taken Feb 26, 2025; Exhibit 6, Court file LT-000368-25/ki;

Exhibit 7 Deed to subject premises; Exhibits 8A-8E photos displaying an empty apartment, taken April 11, 2025; Exhibit 9 Mortgage for the subject premises.

Respondent admitted the following evidence: R1, Petitioner's 6—LT-000368-25

Discussion

An action under RPAPL §713(10) must be based on a showing that the party was peaceably in actual or constructive possession at the time of the forcible or unlawful entry. Simply put, a lockout proceeding essentially has two elements: that an occupant was in possession of the premises, *Zhu v. Li*, 70 Misc.3d 139(A)(App. Term 2ndDept, 2021), *Chappuis v. CUCS -Kelly*, 60 Misc.3d 137(A)(App. Term 1stDept. 2018), and that the occupant was forcibly removed from the premises. *Truglio v. VNO 11 E. 68thSt. LLC*, 35 Misc.3d 1227(A)(Civ. Ct. N.Y. Co. 2012). The right of possession includes the right to exclude others from occupying or using the space, *Seawall Assocs. v. New York*, 74 N.Y.2d 92, 103 (1989).

To an extent at least, licensees do not have the requisite "possession" that tenants have to obtain relief on a lockout. *Zhu v. Li*, 70 Misc.3d 139[A], 138 N.Y.S.3d 792, 2021 NY Slip Op 50089[U] (App. Term 2nd Dept. 2021). However, where a movant shows a colorable claim of succession to an apartment subject to Rent Stabilization, RPAPL § 713 applies. *Rostant v. 790 RSD Acquisition LLC*, 21 Misc.3d 138(A), 873 N.Y.S.2d 515(App. Term 1st Dept. 2008) (stepdaughter of deceased Rent Controlled tenant of record restored to possession where evidence established that she was in constructive possession of the premises), *Banks v. 508 Columbus Props.*, 8 Misc.3d 135(A), 803 N.Y.S.2d 17(App. Term 1st Dept. 2005) (husband of deceased Rent Stabilized TOR restored to possession where evidence established that he tendered and landlord accepted at least two rent checks prior to lockout and landlord "was well aware of petitioner's stated interest in a renewal lease in his name"), *Dixon v. Fanny Grunberg & Assoc., LLC*, 4 Misc.3d 139(A), 798 N.Y.S.2d 344(App. Term 1st Dept. 2004) (son of deceased TOR restored to possession where evidence established he had given landlord written notice that he was asserting possessory rights). If an occupant with a colorable claim to

a tenancy satisfies the standard of proving the possession necessary for standing to commence a lockout proceeding, then a similarly colorable claim satisfies the lesser burden of proving a "lawful occupancy."

The Petitioner has credibly testified that he moved into the subject premises in 2017 with his brother and sister-in-law, and that his brother died in January 2022. Petitioner credibly testified that he paid rent to his brother and that utilities were put on his name after his brother passed away and his sister-in-law left the apartment. He credibly testified as to the tenants in the building, as well as to knowledge of the former owner. The court finds that the Petitioner has proven a colorable claim of succession and, therefore, has met the standard of RPAPL 713 (10). Though the Respondent asserts that the lease was in the sister-in-law's name, and not the Petitioner's brother, no lease was provided. However, even if it were, the merits of the succession claim need not be determined for the Petitioner to prevail. See *Otero v Hope Founders HDFC*, 2021 NY Slip Op 32001[U] (Civ Ct, New York County 2021) (restoring licensee Petitioner after a finding of a colorable claim of succession).

The Court finds that Respondent's witness was credible with respect to his lack of knowledge of the Petitioner's residency when he purchased the building, but did not find him credible with respect to the inspection of the subject premises and the communications between himself and the Petitioner regarding Petitioner's tenancy.

Therefore, it is ordered that the Court awards Petitioner a final judgment. The Court directs Respondent to restore Petitioner to possession of the subject premises forthwith. On default, Petitioner may move the Court for any appropriate relief. The Court further permits issuance of a warrant of eviction forthwith with no stay on execution.

This is the Decision/Order of this court.

Dated: Brooklyn, New York
May 12, 2025



SO ORDERED
HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT

Hon. Tashanna B. Golden
Judge, Housing Court