

WSC Riverside Dr. Owners LLC v Williams
2012 NY Slip Op 31429(U)
May 30, 2012
Civil Court of City of New York, New York County
Docket Number: 55954/2011
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
 COUNTY OF NEW YORK: HOUSING PART R

 WSC RIVERSIDE DRIVE OWNERS LLC,

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 55954/2011

OLIVER WILLIAMS
 190 Riverside Drive
 Apartment 8-B
 New York, New York 10024

Respondent-Tenant

 X

BACKGROUND

This summary holdover proceeding was commenced by **WSC RIVERSIDE DRIVE OWNERS LLC** (Petitioner) against **OLIVER WILLIAMS** (Respondent), seeking to recover possession of Apartment 8-B at 190 Riverside Drive, New York, NY 10024 (Subject Premises) that based on the allegation that Respondent is a licensee of Judy Singer (Judy), the last tenant of record, whose right to occupy terminated with Judy's death on November 4, 2010. Respondent has asserted that the Subject Premises is governed by Rent Control, and that he has the right to succeed to Judy's regulated tenancy as a non-traditional family member.

PROCEDURAL HISTORY

This proceeding was commenced by service of a Notice to Quit on or about January 20, 2011. The Notice of Petition and Petition issued on or about February 10, 2011, and the proceeding was originally returnable on February 23, 2011. Respondent appeared through counsel on the initial return date, and filed an answer March 16, 2011.

On May 3, 2011, Petitioner moved to amend the petition, dismiss certain defenses and conduct discovery. The parties' stipulated that the petition would be amended to assert that the Subject Premises is subject to Rent Control, traverse was waived, and Respondent would appear for a deposition. Respondent's deposition took place on August 17, 2011.

On February 28, 2012, the proceeding was assigned to Part R for trial. The trial commenced on February 28, and continued on March 16, March 19, and concluded on April 25, 2012. The Court heard closing arguments on May 3, 2012, and reserved decision. The parties stipulated that the sole issue for the Court to determine was whether Respondent was entitled to succeed to Judy's Rent Control tenancy, pursuant to §2204.6(d)(3) of the Rent Control Laws.

FINDINGS OF FACT

Judy was the tenant of record for the Subject Premises, pursuant to a written lease agreement dated May 1, 1967, for a term through and including April 30, 1970. Judy lived at the Subject Premises through the date of her death, November 4, 2010. Respondent and Judy started dating in 1979, and by the early 1980s Respondent started living with Judy at the Subject Premises. Respondent and Judy were a couple through most of the 1980s but, towards the end of that decade, their relationship became strained. Respondent testified on direct examination that he and Judy did not break up until 1991, and that in 1991 he decided to leave Judy and moved into an apartment on Lafayette Street. Respondent's decision to end the relationship was in large part due to the fact that Respondent wished to have children and Judy did not want children.

The record has conflicting evidence as to where Respondent lived between 1988 and 1993. On direct examination at trial, Respondent testified he moved out in the early 1990s, and

stayed first at a loft on Lafayette Street, and then at Horatio Street. On cross-examination, Respondent testified he lived at 66 Madison Avenue for 18 months between 1988 and 1990. At his deposition, Respondent initially testified he lived at Madison Avenue from 1988 to 1993, but then immediately said that was an error because he was living with Judy during that period. The Court did not find Respondent's testimony regarding where he lived from 1988 through 1993 to be credible, nor was it corroborated by any evidence other than his own testimony.

By 1993, Respondent moved to Apartment 809 at 114 Horatio Street, New York, New York (Horatio Street), and had become romantically involved with another woman named Jacqueline. On August 20, 1994, Respondent and Jacqueline had a baby boy named Keith, who was born in Los Angeles. After the birth of their son, Respondent went to LA to be with Jacqueline and the baby. Soon thereafter, Respondent and Jacqueline were married. Shortly after their marriage, and the birth of their son, Respondent and Jacqueline went to Kenya. Jacqueline is originally from Kenya. Respondent testified that once in Kenya, he realized there was no room for him in Jacqueline and Keith's daily lives and that "he had served his purpose." Respondent left Kenya and returned to England. Respondent also testified that he and Jacqueline got married because she wanted to immigrate to Australia and marrying an English Citizen would improve her chances of doing so. Respondent's testimony regarding the reason for his marriage to Jacqueline, and the reason their relationship ended was not very credible.

After England, Respondent returned to New York, and in 1996 he became an American Citizen. The prior year, in 1995, Respondent met and became romantically involved with Elisa Adams (Elisa), a German national. Respondent and Elisa started dating in July 1995. At the time they started dating they were both married to other people. They both decided to start

divorce proceedings so they could be together. After Respondent's divorce from Jacqueline, in February 1996, Respondent and Elisa started trying to conceive. Respondent was looking to establish a relationship with Elisa that would sustain a family, and that was their agreement from the beginning.

In 1996 Elisa became pregnant with Respondent's child. Respondent's second son, Christian, was born in late December 1996 or early 1997, in Germany. Respondent was with Elisa in Germany for the birth of their son. Respondent had traveled to Southern Germany earlier in the year to look for a home for himself, Elisa and their new baby. In July 1997, Elisa lived with Respondent and Christian in the Horatio Street Apartment. Respondent testified that establishing a home for his new family in Germany proved "impossible," so he found a home for them in England instead. Respondent testified that he lived with Elisa and his son for less than one year in England, and that Elisa did not like living in England. Respondent testified that at the end of this period, Elisa went back to Germany with their son, and he returned to Horatio Street in New York.

By the summer of 1998, Respondent testified he had started dating Judy again and had moved back to the Subject Premises. There is no evidence in the record, either testimonial or documentary that corroborates Respondent's testimony that he resided at the Subject Premises from 1998 through 2002.

Between 2002 and 2011, Respondent no longer used Horatio Street for living purposes. Respondent sublet Horatio Street to Jeffrey Sheridan, a witness at the trial. Mr. Sheridan testified very credibly that from 2002 through 2011 he sublet Horatio Street from Respondent. Their agreement was that Respondent could use Horatio Street during the day to work, but not

after 5pm. Mr. Sheridan paid Respondent \$2200.00 per month rental for Horatio Street, pursuant to an oral agreement. Horatio Street is a studio apartment, with four closets. Respondent used half the closets, and Mr. Sheridan used the other half. While living at Horatio Street, Mr. Sheridan would see Respondent once or twice a week, but Respondent never slept at Horatio Street during this period. During this period Respondent was regularly at Horatio Street during weekdays for work and to pay bills. Respondent testified that he spent less than ten hours a day at Horatio Street.

On September 29, 2010 Respondent signed a one year lease renewal with his landlord for Horatio Street for a term through and including October 31, 2011, at a rent of \$2675 per month (Notice to Admit Ex 5-C). Respondent maintained his tenancy at Horatio Street through October 2011, and only decided to give up Horatio Street after Judy died.

From 2002 through 2008, life passed fairly uneventfully for Respondent and Judy. They spent time together in New York, they summered in a cottage in Amagansett and they pursued their own professional interests. During this period, Respondent traveled to abroad to see his Aunt and children several times a year, generally without Judy. Respondent and Judy shared holidays and celebrations together and with friends over the course of this period. Judy never met Christian and she met Respondent's first son only once. During this period Respondent and Judy never discussed or contemplated marriage to each other.

Respondent, and other witnesses, testified that Judy suffered from depression. Respondent testified Judy suffered from depression since her teenage years, and that she suffered a bad depression after her divorce in 1978. At one point Judy was taking medication for depression, but she had discontinued meds by 2010. In 2009 and 2010 Judy's depression was

debilitating. Judy rarely left the house or worked during this period. By October of 2010, Judy's prolonged depression had taken a toll on Respondent and on their relationship.

After returning from a trip abroad in October 2010, Respondent testified that he was exhausted, and implied that he could no longer continue in the relationship with Judy in a depressed state. Respondent testified that he felt helpless and could not "see the light at the end of the tunnel." Respondent encouraged Judy to voluntarily admit herself to Lenox Hill Hospital to undergo electroconvulsive therapy (ECT) as treatment for her depression. Judy was admitted to Lenox Hill Hospital for treatment on November 2, 2010 (Exhibit M). The hospital records indicate she was admitted in the emergency room as a walk in patient. On page 5 of 25 of Judy's medical chart the following note appears:

Chief complaint: 66 yo brought in by her significant other due to immense concern over her declining functional status. She has had a long time history of severe depression worsening over the last two years. She frequently stays in bed throughout the day and has gotten to the point where Oliver her significant other has to prepare her every meal and even bath her.

(Exhibit M).

The hospital records indicate that Judy was referred for ECT because she was suicidal.

The admission history provides in pertinent part:

(Pt has a lot of GUILT)... "I think they are afraid I will kill myself. I just want it to be over. I am afraid to do it. I have scratched myself, arm chest & thigh. The pain on the outside feels better than on the inside." Partner reports she is frightened all the time. This depression started two years ago when PT became fearful, not able to get out of bed, doesn't shower, feed herself or leave apt & her partner has cared for her & can't do it anymore. He has gotten angry at her & begins to cry as he relates the story. ... No suicide plan but wants to be dead.

(Exhibit M, 11/2/10 Admission History).

Throughout the medical records it is repeatedly noted that Judy felt extreme guilt for the burden her illness placed on Respondent who is defined throughout the records as her partner, significant other, husband or boyfriend.

Once admitted, Judy was given an EKG and had blood tests, both of which had abnormal results. Based on the abnormal tests it was determined that Judy should have an angiogram. The procedure took place on November 4, 2010. At the conclusion of the procedure, Judy was in stable condition, but while in recovery a cap on a vein had come undone causing Judy to bleed and have a heart attack. Judy died in the hospital on November 4, 2010.

An autopsy was done, and the death was ruled accidental (Exhibit N). The records from the medical examiner's office indicate that at first, Respondent objected to an autopsy because Judy was Jewish, but later decided that it would be good to determine the cause of death, and that since Judy was not observant it would be in accordance with her wishes. The medical examiner (ME) records indicate that Judy's closest relative was her brother Kenneth Haas. Respondent filled out and signed a form for the ME which stated he resided with Judy as her spouse. The ME records also refer to Respondent as Judy's boyfriend and common law husband.

Judy is also referenced as Respondent's spouse in the South Hampton Hospital records for Respondent (Exhibit Q).

Respondent paid approximately \$1100 for Judy's cremation and burial (Exhibit B, Nov 4, 2010 statement).

PRIMARY RESIDENCE

The Court finds that Respondent lived with Judy in the Subject Premises as his primary residence for at least eight years prior to Judy's death. In addition to the credible testimony of friends and neighbors, that Respondent lived there during this period, there is documentary evidence to support this conclusion. Respondent listed the Subject Premises as his residence on his tax returns from 2008 through 2010 (Exhibits 7 & 8). When admitted to the hospital in South Hampton in 2007, Respondent listed his address as the Subject Premises (Exhibit Q).

However, it is evident that most of Respondent's financial documents, such as credit cards and bank accounts list Horatio Street as Respondent's residence. Upon becoming a citizen in 1996, Respondent registered to vote. Respondent had voted in several elections since. Respondent's voter registration lists his residence at Horatio Street .

Although the documentary evidence tying Respondent to the Subject Premises is minimal, and the overwhelming majority of documents list Horatio Street as Respondent's address, the Court finds absolutely credible, as noted above, Mr. Sheridan's testimony that Respondent never slept at Horatio Street, from 2002 through 2010. This testimony, combined with the testimony of other neighbors and friends on behalf of Respondent, leads the Court to conclude that the Subject Premises was Respondent's primary residence for the eight years prior to Judy's death, and that Respondent lived with her during that period.

INTERMINGLING OF FINANCES

For the most part Respondent and Judy kept their finances separate. Respondent and Judy had separate bank accounts and separate credit cards. Judy paid for all expenses associated with the Subject Premises, such as rent, cable, electric and the phone bill.

In July 1988, Respondent and Judy purchased a coop apartment together. Apartment 11J located at 66 Madison Avenue, in Manhattan (Madison Avenue). In the purchase documents both Judy and Respondent are listed as residing at Horatio Street. Respondent testified that both he and Judy contributed to the \$12,000 down payment, although Judy contributed approximately \$9000 and Respondent contributed \$3000. The stock certificate and proprietary lease were put into the names of Respondent and Judy and the stock certificate lists them as joint tenants (Exhibit C).

Respondent testified that his agreement with Judy was that he would handle the rental of the Madison Avenue and he would keep all proceeds from the rental, and pay bills associated with the apartment. This arrangement did not change after Respondent and Judy broke up, and while they remained apart. Respondent earned money from the rental of Madison Avenue. All such income was deposited into Respondent's account. Respondent implied that this was his compensation for managing the apartment. Respondent testified that the agreement that he should keep all profits from the rental of the Madison Avenue was a matter of "fairness" because he had to pay rent for Horatio Street, so he would have a studio where he could work. Respondent testified that he used the Madison Avenue for an eighteen month period between 1988 and 1990 for work purposes. Respondent never specified where he worked from 1990 to 1993, while he alleged he continued to live with Judy.

Respondent inherited substantial funds from his family. Respondent kept these monies in a bank account in England. Respondent did not share any part of this inheritance with Judy. Respondent consistently wired money from his accounts in England to his own bank account in the United States. Respondent transferred funds from England into his Chase Bank Account.

For example from December 2007 through August 2009, Respondent transferred in funds totaling \$35,126.95 (Exhibit B). None of these funds were shared with Judy, who was not working from 2008 through the end of her life, and throughout that period Judy continued to pay the entire costs associated for living in the Subject Premises.

Respondent testified that he used monies he inherited to travel abroad and spend time with his family. Respondent felt it was appropriate that he not share his inheritance with Judy, because in 1993, when Judy's mother passed away, Judy inherited funds that were not shared with him. Respondent testified that Judy did not have access to his bank accounts and credit cards and she did not have access to his, because they lived financially separate lives.

Respondent and Judy did not have any joint credit cards, joint bank accounts, and did not have wills naming each other, nor did they take any other steps to formalize their relationship such as through the execution of a power of attorney or health care proxy. At the time of her death, Judy's estate was estimated to be valued at between one to two hundred thousand dollars, and her estranged brother was administrator of the estate (surrogates Court documents in evidence as Exhibits O & P).

LEGAL ANALYSIS

§2204.6(d)(1) of the New York City Rent Control Laws provides in pertinent part:

.... any member of the tenant's family, as defined in paragraph (3) of this subdivision, shall not be evicted under this section where the tenant has permanently vacated the housing accommodation and such family member has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years ...

§2204.6(d)(3) defines family member to include:

... any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment and interdependence

between such person and the tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below

- (a) longevity of the relationship;
- (b) sharing of or relying upon each other for the payment of household or family expenses, and/or other common necessities of life;
- (c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations ...
- (d) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities ...
- (e) formalizing of legal obligations, intentions and responsibilities to each other by such means as executing wills naming each other executor and/or beneficiary, conferring upon each other a power of attorney and/or authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration
- (f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;
- (g) regularly performing family functions, such as caring for each other, or each other's extended family members, and/or relying upon each other for daily family services;
- (h) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long term, emotionally committed relationship;

It is clear to the Court that, at the time of her death, Judy and Respondent considered each other to be life partner's or spouses. Though they had other married other individuals, and never committed to marrying each other, they regarded each other as spouses. This fact is reflected in the medical records for both Respondent and Judy, and is further corroborated by the testimony of the witnesses presented by Respondent at trial. Respondent cared for Judy during a severe depression that occurred during the last two years of her life.

Petitioner attempted to focus on Respondent's failings as a partner, emphasizing that Respondent left Judy, married another, and did not share his money with Judy. Petitioner also focused on the amount that Respondent traveled during the last two years of Judy's life when she was critically ill.

However the issue for the Court is whether Respondent and Judy were family to each other, not necessarily whether Respondent was a good partner or a generous partner, but were they each other's life partners. The determination must be based on an overall evaluation. While the statute provides the Court with guidelines, they are just that, guidelines in reaching an ultimate determination on the issue of whether Respondent and Judy were family. "These factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by dedication, caring and self-sacrifice of the parties which should in the final analysis control (*Braschi v Stahl Assoc. Co* 74 NY2d 201, at 213)."

The fact that Respondent and Judy maintained separate finances does not warrant a different conclusion (*RHM Estates v Hampshire* 18 AD3d 326; *Arnie Realty Corp. v. Torres* 294 AD2d 193). The authority relied upon by Petitioner is readily distinguishable from the facts in the case at bar. For example, in *GSL Enterprises v Lopez* 239 AD2d 122, the Appellate Division in affirming a denial of succession held "... there was no testimony from friends, neighbors, or family members corroborating a family-type ... relationship (*Id.*)" In this case Respondent produced numerous witnesses who were friends and neighbors who corroborated that such a relationship existed.

Respondent and Judy had a long term relationship and lived together from at least 2002 through 2010 in the Subject Premises. They regularly engaged in family type activities, social and recreational activities and shared holidays and celebrations (see eg photographs in evidence as Exhibits J1 - J8). They held themselves out as family to society, and Respondent cared for Judy during a severe depression in the last two years of her life.

CONCLUSION

Based on the foregoing, the Court finds Respondent is entitled to succeed to Judy's tenancy as the Rent Control tenant of record, and the petition is dismissed.

This constitutes the decision and order of this Court.

Dated: New York, New York
May 30, 2012

Sabrina B. Kraus, JHC

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