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55 Misc.3d 86

Supreme Court, Appellate Term,

Second Dept., 9 and 10 Judicial Dist.

Heckman v. Heckman

Supreme Court, Appellate Term, Second Dept., 9 and 10 Judicial Dist. | April 13, 2017 | 55 Misc.3d 86 | 50 N.Y.S.3d 793 | 2017 N.Y. Slip Op. 27122

Erica HECKMAN, as Trustee of the Catherine Mary Ann Heckman Trust

-2014, Appellant,

v.

Danielle HECKMAN, Respondent.

April 13, 2017.

Synopsis

Background: Trustee of trust that currently owned premises, who was daughter of deceased former owner of premises, brought summary proceeding alleging that occupant, who was daughter-in-law of deceased former owner, was licensee whose license had been revoked. The District Court, Suffolk County, James F. Matthews, J., dismissed the petition. Trustee appealed.

Holding: The Supreme Court, Appellate Term, held that there was no familial exception barring summary proceeding in situations in which occupant was licensee.

Reversed and remitted.

West Headnotes (3)

Change View

- 1 **Landlord and Tenant** Summary proceedings
Landlord and Tenant Right to Maintain Action and Conditions Precedent
A summary proceeding may be maintained only where authorized by statute.
- 2 **Licenses** Operation and effect
In case where no landlord-tenant relationship exists, maintenance of a summary proceeding against persons who are in occupancy of real property pursuant to a license which has been revoked is permitted by statute. McKinney's RPAPL § 713 (7)(b).
- 3 **Licenses** Licenses Revocable
There was no familial exception barring maintenance of eviction summary proceeding in situations in which occupant of subject property was licensee. McKinney's RPAPL § 713(7).

Attorneys and Law Firms

**794 Carway & Flipse (Adrienne Flipse Hausch, Esq.), for appellant.

Sunshine & Fernstein, LLP, for respondent (no brief filed).

PRESENT: ANTHONY MARANO, P.J., ANGELA G. IANNACCI, JERRY GARGUILO, JJ.

Opinion

Appeal from a decision of the District Court of Suffolk County, Second District (James F. Matthews, J.), dated May 8, 2015, deemed from a final judgment of the same court entered

Re-entry and Recovery of Possession by Landlord

Landlord and Tenant Statute

Licenses

Access to Real Property
Licensing of Real Estate Brokers

Secondary Sources**APPENDIX IV GUIDANCE AND TECHNICAL ASSISTANCE MANUALS**

ADA Compliance Guide Appendix IV

...Under the Americans with Disabilities Act of 1990 (the "ADA"), an employer may ask disability-related questions and require medical examinations of an applicant only after the applicant has been given ...

Validity, construction, and application of statute or ordinance which precludes recovery of rent in case of occupancy of building which does not conform to building and health regulations, or where certificate of conformity has not been issued

144 A.L.R. 259 (Originally published in 1943)

...This annotation, as indicated by its title, is concerned only with statutes or ordinances which expressly preclude the recovery of rent either where the building occupied does not in fact conform to bu...

Validity and construction of statute or ordinance authorizing withholding or payment into escrow of rent for period during which premises are not properly maintained by landlord

40 A.L.R.3d 821 (Originally published in 1971)

...This annotation collects those cases dealing with the validity and construction of statutes or ordinances which expressly authorize the withholding of rent or the payment of rent into escrow for those ...

See More Secondary Sources

Briefs**Brief for the Teleprompter Appellees**

1982 WL 608697

Jean LORETTO, on behalf of herself and all others similarly situated, Appellant, v. TELEPROMPTER MANHATTAN CATV CORP., Teleprompter Corporation and City of New York, Appellees.
Supreme Court of the United States
Jan. 18, 1982

...The Opinion of the New York Court of Appeals is reported at 53 N.Y.2d 124, 423 N.E.2d 320, 440 N.Y.S.2d 843, and is set out in the Jurisdictional Statement at pp. A1-A99. The Decision of the New York C...

Brief for the Respondent

1946 WL 50548

Jack PARKER et al., Petitioners, v. Paul A. PORTER, Price Administrator.
Supreme Court of the United States
Nov. 29, 1946

...The majority, concurring, and dissenting opinions of the United States Emergency Court of Appeals (R. 63-82) are reported in 154 F. 2d 830. The judgment of the United States Emergency Court of Appeals ...

May 8, 2015 (see CPLR 5512[a]). The final judgment, after a nonjury trial, dismissed the petition in a summary proceeding brought pursuant to, among other provisions, RPAPL 713(7).

*87 ORDERED that the final judgment is reversed, without costs, and the matter is remitted to the District Court for the entry of a final judgment awarding possession to petitioner.

Petitioner, the daughter of the deceased former owner of the subject premises and the trustee of a trust which the former owner had established and which is the current owner of the subject premises, brought this summary proceeding in her capacity as trustee, pursuant to, among other provisions, RPAPL 713(7), alleging, insofar as relevant to this appeal, that occupant, the daughter-in-law of the deceased former owner, is a licensee whose license has been revoked. Following a nonjury trial, the District Court, finding that occupant is a licensee but that occupant had established the applicability of the so-called "familial exception" to eviction by summary proceeding, dismissed the petition.

1 2 A summary proceeding may be maintained only where authorized by statute (see *Dulberg v. Ebenhart*, 68 A.D.2d 323, 328, 417 N.Y.S.2d 71 [1979]). RPAPL 713 is the statutory source for summary proceedings where there is no landlord-tenant relationship between the parties (see *Federal Natl. Mtge. Assn. v. Simmons*, 48 Misc.3d 24, 26, 12 N.Y.S.3d 487 [App.Term, 1st Dept.2015]). Insofar as is relevant here, RPAPL 713(7)(b) permits the maintenance of a summary proceeding against persons who are in occupancy of *88 real property pursuant to a license which has been revoked. Here, the District Court, while finding that occupant is a licensee, nevertheless refused to allow petitioner, in her capacity as trustee, to avail herself of this statutory remedy, invoking the so-called "familial exception." However, the relevant appellate case law provides no basis for a court, upon determining that an individual falls within a category of respondents that are subject to eviction pursuant to RPAPL 713 (or for that matter RPAPL 711), to dismiss the petition because of a "familial exception." Consequently, and for the reasons stated below, we reverse and grant a final judgment of possession to petitioner.

Analysis of this issue begins with *Rosenstiel v. Rosenstiel*, 20 A.D.2d 71, 76, 245 N.Y.S.2d 395 (1963), in which the Appellate Division held that a summary proceeding by a husband against a wife did not lie in a situation where "possession of the premises exists because of special rights incidental to the marriage contract and relationship," *795 and not by virtue of a license or any other special arrangement with her husband. The court's determination that the respondent could not be found to be a licensee was based upon the existence of a support obligation (*id.* at 77, 245 N.Y.S.2d 395), which obligation is recognized to extend to either spouse and to minor children (see *generally* Family Ct. Act § 412). However, in situations in which such an obligation did not exist or had been fully satisfied, appellate courts have found the existence of a license and allowed the maintenance of summary proceedings by a husband against his wife (see *Halaby v. Halaby*, 44 A.D.2d 495, 355 N.Y.S.2d 671 [1974]; *Tausik v. Tausik*, 11 A.D.2d 144, 202 N.Y.S.2d 82 [1960], *affd.* 9 N.Y.2d 664, 212 N.Y.S.2d 76, 173 N.E.2d 51 [1961]) and by a decedent's estate against the decedent's cohabitant (see *Young v. Carruth*, 89 A.D.2d 466, 455 N.Y.S.2d 776 [1982]).

Despite these appellate cases, some lower courts began to rely on *Rosenstiel*, even in the absence of legal support obligations, to hold that a summary proceeding against an unmarried cohabitant did not lie because "unmarried occupants who reside together as husband and wife acquire some rights with respect to continued occupancy of the apartment they shared not unlike those acquired by a spouse" (*Minors v. Tyler*, 137 Misc.2d 505, 507, 521 N.Y.S.2d 380 [Civ.Ct., Bronx County 1987]; *but see Young*, 89 A.D.2d at 469, 455 N.Y.S.2d 776), thus creating what became known as the "familial exception" to the maintenance of a summary proceeding brought pursuant to RPAPL 713(7).

In *Braschi v. Stahl Assoc. Co.*, 74 N.Y.2d 201, 544 N.Y.S.2d 764, 543 N.E.2d 49 (1989), the Court of Appeals "interpreted a regulation [9 NYCRR 2204.6(d)] prohibiting a landlord of a rent-controlled building from evicting *89 a member of the deceased tenant's family" to include relationships which are not by blood or marriage" (*Preferred Mut. Ins. Co. v. Pine*, 44 A.D.3d 636, 640, 848 N.Y.S.2d 190 [2007]). Thereafter, some lower courts began to rely on *Braschi* to hold that individuals who fit within this expanded definition of "family" were protected, under *Rosenstiel*, from eviction by a "family" member via a summary proceeding (see e.g. *Kakwani v. Kakwani*, 40 Misc.3d 627, 967 N.Y.S.2d 827 [Nassau Dist.Ct. 2013]; *Robinson v. Holder*, 24 Misc.3d 1232[A], 2009 N.Y. Slip Op. 51706[U], 2009 WL 2413829 [Suffolk Dist.Ct.2009]; *Williams v. Williams*, 13 Misc.3d 395, 822 N.Y.S.2d 415 [Civ.Ct., N.Y. County 2006]; *DeJesus v. Rodriguez*, 196 Misc.2d 881, 768 N.Y.S.2d 126 [Civ.Ct., Richmond County 2003]; *but see Piotrowski v. Little*, 30 Misc.3d 609, 911 N.Y.S.2d 583

Joint Appendix

2013 WL 4714436
Township of Mount Holly, et al., Petitioners,
v. Mt. Holly Gardens Citizens in Action, Inc.
et al., Respondents.
Supreme Court of the United States
Aug. 26, 2013

...FN* Counsel of Record I, ANDREW A. BEVERIDGE, Ph.D. of full age, hereby certify as follows: 1) I, Andrew A. Beveridge, am Professor of Sociology at Queens College and the Graduate Center, City Universi...

See More Briefs

Trial Court Documents

In re Project Orange Associates, LLC

2010 WL 6982729
In re: PROJECT ORANGE ASSOCIATES, LLC, Debtor.
United States Bankruptcy Court, S.D. New York.
Apr. 29, 2010

...FN1. Subsequent to the hearing on this motion, the Court sustained the United States Trustee's Objection to the Debtor's application to retain DLA Piper LLP (US). In re Project Orange Assocs. LLC, No. ...

In re Ocean Place Development, LLC

2011 WL 2750869
In Re: OCEAN PLACE DEVELOPMENT, LLC, Debtor.
United States Bankruptcy Court, D. New Jersey.
Mar. 31, 2011

...CHAPTER 11 This matter comes before the Court by way of a Motion filed by Debtor, Ocean Place Development, LLC ("Debtor" and/or "Ocean Place") for a final order approving the use of cash collateral. AF...

In re Filene's Basement, LLC

2011 WL 8006801
In re: FILENE'S BASEMENT, LLC, et al., Debtors.
United States Bankruptcy Court, D. Delaware.
Dec. 30, 2011

...FN1. The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Adve...

See More Trial Court Documents

[Middletown City Ct.2010]; *Drost v. Hookey*, 25 Misc.3d 210, 881 N.Y.S.2d 839 [Suffolk Dist.Ct.2009]; *Lally v. Fasano*, 23 Misc.3d 938, 875 N.Y.S.2d 750 [Nassau Dist.Ct.2009]). However, since *Rosenstiel* does not provide a basis for the creation of a bar to the maintenance of summary proceedings in situations where there is no legal support obligation (see *Young*, 89 A.D.2d 466, 455 N.Y.S.2d 776; *Halaby*, 44 A.D.2d 495, 355 N.Y.S.2d 671; *Tausik*, 11 A.D.2d 144, 202 N.Y.S.2d 82, *affd.* 9 N.Y.2d 664, 212 N.Y.S.2d 76, 173 N.E.2d 51), there was no "familial exception" to expand pursuant to *Braschi*. In any event, *Braschi* merely expanded the statutory right to succeed to rent-controlled tenancies, which was already enjoyed by traditional family members, to individuals who were recognized as family members by society, and its holding has no bearing here (see *Preferred Mut. Ins. Co.*, 44 A.D.3d at 640, 848 N.Y.S.2d 190 ["The expansive definition of family set forth in *Braschi* has no bearing on interpreting different statutes with different statutory purposes" or on the interpretation of contractual provisions]).

3 **796 In view of the foregoing, and in conformity with the decisions of the Appellate Term for the Second, Eleventh and Thirteenth Judicial Districts (see *Pugliese v. Pugliese*, 51 Misc.3d 140[A], 2016 N.Y. Slip Op. 50614[U], 2016 WL 1590776 [App.Term, 2d Dept., 2d, 11th & 13th Jud.Dists.2016]; see also *Odekhiran v. Pearce*, 54 Misc.3d 126[A], 2016 N.Y. Slip Op. 51779[U], 2016 WL 7329712 [App.Term, 2d Dept., 2d, 11th & 13th Jud.Dists.2016]) and with this court's own prior decisions implicitly holding that there is no bar to the maintenance of a licensee proceeding in situations in which the occupant can properly be held to be a licensee (see *DiStasio v. Macaluso*, 47 Misc.3d 144 [A], 2015 N.Y. Slip Op. 50694[U], 2015 WL 2189821 [App.Term, 2d Dept., 9th & 10th Jud.Dists.2015]; *Rodriguez v. Greco*, 31 Misc.3d 136[A], 2011 N.Y. Slip Op. 50696[U], 2011 WL 1532124 [App.Term, 2d Dept., 9th & 10th Jud.Dists.2011]; cf. *Sears v. Okin*, 6 Misc.3d 127[A], 2004 N.Y. Slip Op. 51691[U], 2004 WL 2979721 [App.Term, 2d Dept., 9th & 10th Jud.Dists.2004] [holding that a nonpayment proceeding was maintainable against a former domestic partner where the record supported the trial court's ruling that there was a landlord-tenant relationship between the petitioner and his former domestic partner]), while recognizing that there are familial relationships that will often prevent an occupant from fitting into a category of respondent subject to eviction pursuant to RPAPL 713 (or for that matter RPAPL 711), we explicitly hold that, where, as here, it is clear that an occupant does fit into one of the RPAPL 711 or 713 categories, there is no "familial exception" bar to the maintenance of a summary proceeding.

Accordingly, the final judgment is reversed and the matter is remitted to the District Court for the entry of a final judgment awarding possession to petitioner.

All Citations

55 Misc.3d 86, 50 N.Y.S.3d 793, 2017 N.Y. Slip Op. 27122

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