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Extell Belnord LLC v Eldridge

2014 NY Slip Op 50258(U)

Decided on February 27, 2014

Appellate Term, First Department

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Decided on February 27, 2014

SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

PRESENT: Lowe, III, P.J., Schoenfeld, Hunter, Jr.,JJ
14-039/040.

Extell Belnord LLC, Petitioner-Landlord-Appellant,

against

Lucy Eldridge and Emily Eldridge, Respondents-Tenants, -and- Daniel Eldridge, Respondent-Undertenant-Respondent, -and- "John and Jane Doe," Respondent-Undertenants.

Petitioner appeals from so much of (1) an order of the Civil Court of the City of New York, New York County (Verna L. Saunders, J.), dated March 19, 2012, as denied its motion for summary judgment of possession in a holdover summary proceeding, and (2) an order (same court and Judge), dated December 7, 2012, as denied its motion to renew the aforesaid order.

Per Curiam.

Order (Verna L. Saunders, J.), dated December 7, 2012, insofar as appealed from, reversed, without costs, motion for renewal granted, and upon renewal, petitioner's motion for summary judgment of possession granted. Execution of the warrant of eviction shall be stayed for 60 days from service of a copy of this order with notice of entry. Appeal from order (Verna L. Saunders, J.), dated March 19, 2012, dismissed, without costs, as superceded by the appeal from the December 7, 2012 order.

A motion for leave to renew must be based upon new facts not offered on the prior motion that would change the prior determination, and must also set forth reasonable justification for the failure to present such facts on the prior motion (*see* CPLR 2221[e][1],[2]). Here, petitioner proffered such evidence by submitting surrender affidavits executed by the defaulting tenants on April 30, 2012, following the denial of petitioner's initial summary judgment motion. [*2]In the circumstances, the court should have granted that branch of petitioner's motion which was for renewal (*see Chunqi Liu v Wong*, 46 AD3d 735, 736 [2007]) and, upon renewal, granted petitioner's motion for summary judgment of possession, since, as set forth below, respondent Daniel Eldridge ("Daniel") failed to raise a triable issue with respect to his proffered succession defense.

The undisputed record evidence established that the defaulting stabilized tenants, respondents Lucy Eldridge and Emily Eldridge, who are sisters, began residing elsewhere by 2000, and that Daniel, their brother, admittedly forged his sisters' signatures on lease renewals extending through July 31, 2011. Thus, tenants "cannot be found to have permanently vacated the apartment at any time prior to the expiration of the last lease renewal on [July 31, 2011]" (*Third Lenox Terrace Assocs. v Edwards*, 91 AD3d 532, 533 [2012]). In the circumstances, and in the absence of any evidence tending to show that Daniel "resided with" either tenant in the subject apartment during the two-year period immediately preceding the tenants' permanent vacatur

(Rent Stabilization Code [9 NYCRR] § 2523.5[b][1]), his succession claim must fail (*see Third Lenox Terrace Assoc. v Edwards*, 91 AD3d at 533). The result would be the same even if the court were to accept Daniel's claim that he is a "disabled person" subject to the one-year co-occupancy requirement (RSC § 2523.5[b][1]). Daniel's acknowledgment that he signed his sisters' names on the aforementioned renewal leases for more than a decade after they began living elsewhere provides an independent basis for the rejection of his succession defense (*see South Pierre Associates v Mankowitz*, 17 Misc 3d 53 [2007]).

Nor has Daniel raised a triable issue as to whether petitioner recognized him as a tenant in his own right or waived the right to contest his continued occupancy (*see Sullivan v Brevard Assocs.*, 66 NY2d 489, 495 [1985]; *117 W. 57th St. Realty Corp. v Estate of Hultgren*, 205 AD2d 363 [1994], *revg* NYLJ, Sept. 14, 1993, at 21, col 1, for reasons stated in dissent of McCooe, J. at Appellate Term).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.
Decision Date: February 27, 2014