CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART N

-- X

RSP UAP-3 PROPERTY LLC,

Petitioner,

Index No. 86300/2015

- against -

DECISION/ORDER

RICHARD J. SCHULZ, LUISA BACCHIANI,
RICHARD B. SCHULZ, and CINDY HWANG SCHULZ ,

Respondents.

-- X

Present: Hon. Jack Stoller
Judge, Housing Court

RSP UAP-3 Property LLC, the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Richard B. Schulz ("Respondent"), Cindy Hwang Schulz ("Respondent's spouse"), Richard J. Schulz ("Respondent's father"), and Luisa Bacchiani ("Respondent's stepmother"), the respondents in this proceeding (collectively "Respondents"), seeking possession of 41 West 72nd Street Apt. 15C, New York, New York ("the subject premises") on the ground that Respondent's father and Respondent's stepmother are tenants of the subject premises pursuant to the Rent Stabilization Law; that Respondent's father and Respondent's stepmother have not been maintaining the subject premises as their primary residence; and that Respondent and Respondent's spouse's occupancy of the subject premises is derivative of Respondent's father's and Respondent's stepmother's tenancy. Respondent interposed an answer asserting a defense of succession, a creation of a tenancy by Respondent's payment of rent and execution of leases, and that Petitioner's predicate notice was not timely as Respondent's father and Respondent's stepmother permanently vacated the subject premises

years before Petitioner effectuated its service. The Court held a trial of this matter on May 3, 2017, June 13, 2017, August 14, 2017, August 16, 2017, October 17, 2017, and December 11, 2017.

The parties did not dispute a number of material facts. The subject premises is a condominium unit that had been subject to the Rent Stabilization Law prior to the conversion of the building in which the subject premises is located ("the Building") to a condominium building; the subject premises remained subject to the Rent Stabilization Law after the conversion; Petitioner is the owner of the subject premises; a prior rent-stabilized lease for the subject premises expired on November 30, 2015; and Petitioner effectuated service of a notice pursuant to 9 N.Y.C.R.R. §2524.2(c)(2) dated August 17, 2015 ("the Golub notice") informing Respondent's father and Respondent's stepmother that Petitioner was not renewing the lease due to an allegation of nonprimary residence.

The first member of Respondents' family to live in the subject premises was Respondent's stepmother, who moved in as the rent-stabilized tenant of record in 1973. Respondent's stepmother married Respondent's father in 1990, Respondent's stepmother forwarded their marriage certificate to one of Petitioner's predecessors-in-interest,[1] who subsequently prepared renewal leases for the subject premises in the names of both Respondent's stepmother and Respondent's father, pursuant to 9 N.Y.C.R.R. §2522.5(g)(1), and both of them executed rent-stabilized renewal leases for the subject premises up to a two-year renewal lease

---

[1] The record indicates that Petitioner has had a number of predecessors-in-interest, although the record is not clear which entity owned the subject premises on which date. For purposes of prosaic convenience, the Court refers to any predecessor-in-interest of Petitioner as "the prior landlord."

commencing December 1, 2003. Respondent's stepmother and Respondent's father both testified that they moved to upstate New York sometime around 2004 or 2005, records in evidence show that Respondent's father and Respondent's stepmother purchased property in upstate New York in 2005, filed state and federal taxes in upstate New York going back to 2005, obtained driver's licenses in upstate New York as of 2012, and registered to vote in upstate New York as of 2008.

Respondent moved into the subject premises around 2004, evidenced by his testimony, tax returns, and a driver's license.

Respondent and Respondent's father have the same first name and the same last name.[2] The only difference between their names is their middle initial. The prior landlord and Petitioner registered the subject premises with DHCR pursuant to 9 N.Y.C.R.R. §2528.3 from 2003 through 2015 with different variations of Respondents' Name and Respondent's stepmother's name. The Respondents' Name and signature, along with the name and signature of Respondent's stepmother, appear on two-year renewal leases commencing December 1, 2005, December 1, 2007, December 1, 2009, December 1, 2011, and December 1, 2013, after Respondent's stepmother had moved out of the subject premises. Respondents' Name and Respondent's stepmother's name and signatures also appear on a rider attached to the two-year renewal lease commencing December 1, 2009. The rider states that the subject premises is the primary residence of both names and also contains Respondent's date of birth. Similar riders

---

[2] Respondent's name is "Richard B. Schulz." Respondent's father's name is "Richard J. Schulz." Leases and other documents were frequently signed "Richard Schulz" with no middle initial. For the purposes of convenience, in this opinion, the Court refers to the name "Richard Schulz" appearing on a document without a middle initial as "the Respondents' Name."

attached to the two-year renewal leases commencing December 1, 2011 include Respondents' Name, Respondent's date of birth, and Respondent's spouse's name. A letter in Respondents' Name dated October 3, 2011 sent to Petitioner said that the names on a lease commencing December 1, 2011 were spelled wrong and that they should be in Respondents' Name and Respondent's stepmother's name.

A rider attached to the lease commencing December 1, 2013 lists Respondent's father as an emergency contact. Respondent signed a different rider concerning window guards with his middle initial on December 26, 2013. A W-9 form containing Respondent's Social Security number was submitted to Petitioner at that time.

Respondent paid the rent in his name, including his middle initial, by check every month from September of 2006 through October of 2015. Petitioner held Respondent's security deposit for Respondent, in his name, including his middle initial, by an account opened in May of 2013 which generated 1099 forms for 2014 and 2015 in Respondent's name, again including Respondent's middle initial.

The material facts in dispute concern the extent and timing of knowledge of Petitioner and/or the prior landlord of Respondent's occupancy of the subject premises. Petitioner's director of operations testified on Petitioner's *prima facie* case that a review of leases at the time Petitioner purchased the subject premises in December of 2013 did not give him notice that Respondent, as a person distinct from Respondent's father, lived in the subject premises. Respondents testified to a different effect.

Respondent and Respondent's stepmother both testified that, at some point within a year of moving into the subject premises in 2004 they met with one or two representatives of the prior

landlord in the subject premises. Respondent testified that a super who worked at the Building told him that the prior landlord wanted the meeting. While Respondent had previously testified at a deposition that he only met one representative of the prior landlord, Respondent's stepmother testified at trial that they met two, a man and a woman. Respondent testified that Respondent's stepmother's testimony jogged his memory to that point. Neither Respondent nor Respondent's stepmother remembered the names or titles of the people they testified that they met, but they both testified that they communicated with these people about Respondent's occupancy of the subject premises and that the people asked Respondent to move to a lower floor in the Building. Respondents did not introduce any evidence of a written memorialization of this meeting. Respondents did call as a witness the super that informed Respondent and Respondent's stepmother of the meeting. The super, who testified that his title was actually "resident manager" ("the resident manager") testified that there was a meeting at the subject premises in 2004, that he did not know the purpose of the meeting, and that two of the people at the meeting worked from the concern that owned the rentals in the Building at the time.

Respondents also introduced testimonial evidence that employees working at the Building knew that Respondent lived in the subject premises. Respondent and Respondent's stepmother testified that various doormen, supers, and managers saw him on a continuous basis from to 2004 to the present. Respondents called as witnesses a doorman who worked in the Building from 1995 to 2014, another doorman who worked in the Building from 2003 to 2016, an employee who worked as a porter from 2004 through 2013 and then as a doorman from 2013 through 2017, and the resident manager, who worked in the Building from 2003 through 2014. All four witnesses testified that they regularly saw Respondent in and out of the subject premises during

the time that Respondent testified that he lived there. All four also testified that they did not have to report illegal occupancies, that the Board of the condominium employed him, and that Petitioner did not employ them.

Petitioner's managing member testified on rebuttal that he did not know that Respondent was living in the subject premises as a distinct person from Respondent's father at the time that the Golub notice was served; that Petitioner does not, as a practice, compare signatures, middle initials, dates of birth, or Social Security numbers of signatories to leases who have the same name as one another; and that the due diligence Petitioner engaged in at the time Petitioner purchased the subject premises entailed comparing the name of the tenant on a rent roll with the name on the lease.

The petition did not plead the multiple dwelling status of the subject premises. During the trial, Petitioner moved to amend the petition to reflect the multiple dwelling status of the subject premises. However, as the owner of a condominium unit, Petitioner is not the owner of the Building and therefore does not have to prove compliance with MDL §325. Eng v. Roth, N.Y.L.J. Feb. 8, 1982 at 6:1 (App. Term 1st Dept.), Dworkin v. Duncan, 116 Misc.2d 853, 856 (Civ. Ct. N.Y. Co. 1982). See Also 152 W. Realty, LLC v. N & G Luggages, Inc., 15 Misc.3d 1121(A) (Civ. Ct. N.Y. Co. 2007)(the requirement that the petition state the multiple dwelling registration status of the subject premises is intended to foster compliance with HPD filing requirements). Moreover, neither a multiple dwelling registration nor a showing of the multiple dwelling status of the subject premises is an element of a holdover cause of action, Czerwinski v. Hayes, 8 Misc.3d 89 (App. Term 2nd & 11th Dists. 2005), and thus a holdover petition that does not plead multiple dwelling status is not subject to dismissal. 152 W. Realty, LLC, supra, 15

Misc.3d at 1121(A), *citing* Baer v. Gotham Craftsman Ltd., 154 Misc.2d 490 (App. Term 1st Dept. 1992). Accordingly, as a ruling on a motion to amend the pleading as such has no effect on the outcome of this matter, the Court denies Petitioner's motion as moot.

Respondents argue that Petitioner's service of the Golub notice was defective because Petitioner did not effectuate service of it on Respondent and Respondent's spouse. However, as the Rent Stabilization Code only requires service of a predicate notice "to [a] *tenant*," 9 N.Y.C.R.R. §2524.2(a)(emphasis added), and not a non-tenant occupant, Petitioner need not effectuate service of the Golub notice on Respondent and Respondent's spouse. 149th Partners LP v. Watts, 49 Misc.3d 139(A)(App. Term 1st Dept. 2015), 1700 First Ave. LLC v. Parsons-Novak, 46 Misc.3d 30 (App. Term 1st Dept. 2014). Respondent claims that he is the tenant of the subject premises under two theories, but the adjudication of Respondent's status turns on the merits of those defenses, not on service or lack thereof of a predicate notice. Accordingly, the Court first considers Respondent's succession defense, which the Court may entertain in a nonprimary residence holdover proceeding. Malone v. Spinsky, 31 Misc.3d 1239(A)(Civ. Ct. N.Y. Co. 2011).

The evidence on trial, particularly Respondent's stepmother's testimony that she and Respondent's residency of the subject premises only overlapped for about three months, shows that they did not co-reside the two years that Respondent must show in order to be entitled to succeed to the tenancy of Respondent's stepmother and Respondent's father. 9 N.Y.C.R.R. §2523.5(b)(1). Moreover, as Respondent's stepmother continued to execute renewal leases after she no longer maintained the subject premises as her primary residence, she vitiated Respondent's succession claim, as such an execution of leases effectively changes the date of

Respondent's stepmother's permanent vacatur to the expiration of the most recent lease, two years before which Respondent's stepmother and Respondent did not co-reside at the subject premises. Third Lenox Terrace Assoc. v. Edwards, 91 A.D.3d 532, 533-534 (1st Dept. 2012), 206 W. 104th St. LLC v. Zapata, 45 Misc.3d 135(A)(App. Term 1st Dept. 2014), 525 W. End Corp. v. Ringelheim, 43 Misc.3d 14, 15-16 (App. Term 1st Dept. 2014), Extell Belnord LLC v. Eldridge, 42 Misc.3d 143(A) (App. Term 1st Dept. 2014), BCD Delancey LLC v. Jian Gou Lin, 42 Misc.3d 132(A) (App. Term 1st Dept. 2013), 360 W. 55th St., L.P. v. De George, 36 Misc.3d 126(A) (App. Term 1st Dept. 2012), East 96th St. Co., LLC v. Santos, 13 Misc.3d 133(A) (App. Term 1st Dept. 2006), Metropolitan Life Ins. Co. v. Butler, 2002 N.Y. Misc. LEXIS 1403 (App. Term 1st Dept. 2002).[3]

Respondent's defense that he and Petitioner are already in a landlord/tenant relationship with one another rests upon his execution of leases that have his first name and his last name on them, his payment of rent as such for many years, his presence in the subject premises, the meeting that he and Respondent's stepmother testified about in 2004, and the knowledge of employees working at the Building that he lived in the subject premises. As the creation of a landlord/tenant relationship only arises from a legitimate manifestation of intent on the part of the parties to create such a relationship, Simry Realty Corp. v. Ondrias, 38 Misc.3d 137(A)(App. Term 1st Dept. 2013), Respondent must prove that Petitioner and/or the prior landlord affirmatively recognized his tenancy in order to prevail on his defense. Johny v. Tolbert, 8 Misc.3d 130(A)(App. Term 2nd & 11th Depts. 2005).

---

[3] As such authority holds that the expiration of Respondent's stepmother's most recent lease on November 30, 2015 is the date of permanent vacatur, the Golub Notice, served between 90 and 150 days before that date, is timely. 9 N.Y.C.R.R. §2524.2(c)(2).

Herein lies the vulnerability of Respondent's argument. Respondent's stepmother once sent a letter to the prior landlord with her marriage certificate to have Respondent's father added to the lease. Respondent sent a letter to Petitioner to correct the spelling of names on a lease renewal offer. Respondents thus demonstrated the capacity to memorialize an aspect of their tenancy in writing when they wanted to. However, rather than clarify that the "Richard Schulz" signing leases and paying rent happened to be a different "Richard Schulz" than the one who the prior landlord had accepted as a tenant, Respondent permitted the ambiguity over the identity of the occupant of the subject premises to fester over the course of a decade. Respondent's stepmother's continuing co-execution of the leases throughout those years only contributed to the ambiguity, insofar as her submission of documentation of her marriage to one "Richard Schulz" rendered her execution of the leases intuitively consistent with the continued occupancy of the same "Richard Schulz" who the prior landlord previously recognized, not her stepson of the same name

Respondent testified that Petitioner should have checked to confirm the differences in the dates of birth, middle initials, Social Security numbers, and signatures between him and Respondent's father. The only discernible notice in the record to Petitioner that Respondent has a different middle initial from Respondent's father is Respondent's middle initial on various rent checks he paid to Petitioner. While Respondent disclosed his date of birth in some riders to leases he signed, the record is unclear how Petitioner would know Respondent's father's date of birth. But even assuming *arguendo* that Respondent's father's middle initial or date of birth appeared in a tenancy file somewhere, Respondent's argument that a landlord has to resort to being a sleuth to ascertain who occupies an apartment undermines his argument that the prior

landlord or Petitioner affirmatively intended to create a landlord/tenant relationship with Respondent, as the legal authority requires. Chusid v. Wright, 138 A.D.2d 291, 292 (1st Dept.), *appeal dismissed*, 72 N.Y.2d 948 (1988)(the creation of a landlord-tenant relationship should not be reduced to a matter of gamesmanship, seduction and artifice). Cf. 85 Fourth Partners, L.P. v. Puckey, 16 Misc.3d 136(A)(App. Term 1st Dept. 2007), Riverside Holdings v. Murray, 2002 N.Y. Misc. LEXIS 492, 1-2 (App. Term 1st Dept. 2002), Metro. Life Ins. Co. v. Sucdad, 1985 N.Y. Misc. LEXIS 3361 (App. Term 1st Dept. 1985)(a current occupant's use of a prior tenant's name on leases and rent payments demonstrates that a landlord did not intend to create a landlord/tenant relationship with that occupant by accepting rent or countersigning leases).

The implications of Respondent's argument would penalize landlords who are not aggressive in, say, scrutinizing perceived inconsistencies between signatures on leases or checks or a tenant's choice about a use of a middle initial. In an era in which this style of aggressive scrutiny of tenants prompted the Legislature to amend the Housing Maintenance Code to combat harassment of tenants, N.Y.C. Admin. Code §§27-2004(a)(48), 27-2115(m), incentivizing landlords to engage in such conduct thwarts public policy.

Respondent argues that the knowledge of employees at the Building of his occupancy tends to prove that the prior landlord and/or Petitioner accepted him as a tenant. But these employees all testified that they did not work for Petitioner or the prior landlord, as the owner of an individual unit in a condominium building, and had no duty to report information about occupancy to Petitioner or the prior landlord, thus compromising the probative value of that evidence. Respondent also argues that the meeting he and Respondent's stepmother had with two representatives of the prior owner in 2004 evinces the prior landlord's acceptance of him as a

tenant. Respondent's protracted cultivation of the impression that Respondent's father continued to live in the subject premises outweighs the probative value of the meeting in 2004, however, particularly given Respondent's and Respondent's stepmother's inability to remember the names or titles of the people he spoke with, the lack of corroborating writing, and the remoteness in time of the meeting.

Accordingly, the Court finds that Petitioner has proven that Respondent's father and Respondent's stepmother have not maintained the subject premises as their primary residence, that Petitioner is therefore also entitled to a judgment against Respondent and Respondent's spouse, whose occupancy is derivative of Respondent's father and Respondent's stepmother, and that Respondent did not meet his burden of proving his defenses. The Court awards Petitioner a final judgment of possession against all the Respondents. Issuance of the warrant of eviction is permitted forthwith, execution thereof is stayed through January 31, 2018 for Respondents to vacate. On default, the warrant may execute.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York
December 22, 2017

HON. JACK STOLLER
J.H.C.