

**Richard A. Sirico, Petitioner-Landlord v. Diane Rodriguez, Respondent(s)-
Tenant "John Doe", "Jane Doe", Respondent-Undertenant(s), 090337/2013
090337/2013**

**Civil Court, Kings County, Housing Part Q
NYLJ Publication Date: Mar 19, 2015**

Cite as: **Sirico** v. Rodriguez, 090337/2013, NYLJ 1202721017358, at *1 (Civ., KI,
Decided March 13, 2015)

090337/2013

Justice Marcia Sikowitz

Decided: March 13, 2015

DECISION/ORDER

*1

Petitioner commenced this holdover proceeding seeking possession of the subject apt. 3rd floor, at 1460 East 4th Street, Brooklyn, NY 11230. The petition alleges the apartment is not subject to rent regulation because it is in a building with less than six units. Respondent's amended answer interposes defenses and counterclaims including the first affirmative defense that the apt. is subject to the New York City Rent and Rehabilitation Law, and Rent and Eviction Regulations, (Rent Control) as respondent resided in the apt. since before July 1, 1971. The building was built in 1922.

A trial was conducted and both sides are represented by counsel. It is undisputed that petitioner never applied for an order of decontrol for the subject apartment.

Petitioner Richard **Sirico** testified in support of petitioner's prima facie case. He testified there are three units in the building, respondent lives on the third floor, and her monthly rent is \$675. On cross examination, petitioner testified that he believes respondent moved into the apt. in 1974 or 1975 based on what his aunt and his mother told him. The petitioner testified that his parents did not move into the building until late in 1971. He testified that he was in the building in 1972 and respondent was not living there. Petitioner admitted he was six or seven years old at the time. On redirect the landlord, who was six years old when his family moved into the building, testified that at the end of 1971, the only tenant in the subject apartment was Gerald Routolo.

Petitioner's second witness, Renee Tricarico, is a non party interested witness and the aunt of the petitioner. She testified that she visited the subject building once or

twice a week from the time her sister moved in, 1973, until her sister died. After her husband died in 1974, she visited more often. This witness testified that a man lived in the subject apt. in 1973, and that the respondent arrived in 1974. The witness admitted she never went inside the subject apartment, and she was not in the building prior to 1973. She did not testify about which days of the week she visited, *2 how long her visits lasted, and what time of day she was there. She was not a credible witness.

Respondent produced a non party interested witness, Gerald Ruotolo, the father of the respondent's son, Robert Ruotolo (Robert). He testified that Robert, his son with the respondent, was born October 20, 1968. The witness testified that he moved into the subject apt. when Robert was a few weeks old which would have put his move in date in November 1968. The witness testified that Robert had his first Christmas in the subject unit in December 1968. Mr. Ruotolo testified credibly that he moved into the apt. with the respondent and their baby, Robert in 1968. The witness testified that he moved out in 1974, and respondent and Robert remained in the apartment.

On cross examination, the witness was asked why he and the respondent did not get married. He testified that his wife would not give him a divorce. He testified that he continued to pay all the bills for respondent and Robert, and that he continues to contribute financially to the respondent. He testified that he still has a good relationship with the respondent, and has always contributed financially to the household.

Respondent Diana Rodriguez testified in support of her defense. She testified she moved into the subject apartment in 1968 when her son was two months old. She continues to live in the apartment, and has never lived anywhere else since 1968. Respondent testified she worked at Zales where she met Gerald Ruotolo when she was seventeen and a half years old. She was born in 1947, and after one year of working together they became boyfriend and girlfriend. She resided at 117 E. 106 Street in Manhattan, in a studio apt. When her son Robert Ruotolo was born she was 21 years old, and living on East 106th Street with Gerald Ruotolo. The respondent testified that in December 1968 she moved into the subject apt. with Gerald Ruotolo and their baby son, Robert. The apt. on E. 106 Street was a studio and not large enough for them. She confirmed Gerald Ruotolo's testimony that he paid all the bills. When they moved into the apt, it had no furniture and needed some work, and Gerald put up wallpaper.

Respondent testified that when she moved into the subject apartment at the end of 1968, they were the only occupants in the building for the first year. Francis Sable was the landlord, and she sometimes asked the respondent to show an apt. Eventually a woman named Helen with three children moved into the second floor apt. The Sharon family moved into the first floor apt. around the time that the Sirico's¹ purchased the building. The respondent testified that "Ricky" the petitioner, moved into the building when he was about six years old. Yvonne Sirico introduced herself to the respondent as the new owner, and told respondent to pay the rent to Sal Sirico. The tenant testified that Sal and Yvonne Sirico collected rent as owners for one or two years prior to moving into the building.

The tenant testified that the petitioner and his family moved into the building in the early 1970's. Respondent testified that she and Yvonne Sirico became friends. Respondent's exhibit C is nineteen photographs of the respondent, her son Robert, and Mr. Ruotolo in the subject *3 apartment. C-2 is a photograph of Robert Ruotolo when he was three months old in 1968 in the kitchen with Gerald Ruotolo. There is a photograph of respondent and her brother in the kitchen taken in 1969, and a photograph of respondent on the living room floor with Robert, nine months old, in 1969. Respondent produced a photograph from 1965 when she was eighteen years old, depicting her and Gerald Ruotolo at an office party at Zales, where they met. The majority of the photographs depict respondent with either Robert or other members of her family at birthday parties, or Christmas time in the subject apt. between 1969 and 1971. Respondent pointed out that the flowered wall paper on the walls in the photographs from 1968 on is the same flowered wall paper depicted in C-18, 19 and 20 which were taken in 2014 in the kitchen and door way area.

Exhibit D is the certificate of baptism for Robert, reflecting a baptism on October 12, 1969 and indicating the subject building as the address. Part of Exhibit D is a register of names and addresses for the baptisms, and #384 is the respondent with Gerald Ruotolo, baptism date October 12, 1969, and residence is the subject premise.

Respondent testified that Gerald moved out of the apt. in 1975, and he continued to pay all the bills and support her and Robert. The bills remained in Gerald's name as respondent had no income. She began receiving SSI in 1979. Respondent testified that she thought of Gerald as her husband. She knew his children from his first relationship/marriage, and the children visited at the subject apt.

Respondent produced a non party witness, Yvette Yuquilima, a niece of respondent. The witness testified that respondent initially lived with her mother, the witness' grandmother, and then respondent moved to the apt. on East 106th Street. She testified that in 1968, when she was eleven years old, respondent moved to the subject apartment. Ms. Yuquilima's first visit to the subject apt. was after Robert was born in 1968, when he was two months old. She would visit her aunt (respondent), Uncle Gerry (Gerald Ruotolo) and the baby (Robert) every weekend. She lived in a family of eight, and she was happy to spend the weekends with respondent. Ms. Yuquilima testified that Gerald Ruotolo moved out when Robert was about six or seven years old.

She spent all the holidays, Christmas, thanksgiving and birthdays, at the subject apt. The witness recalled the other tenants in the building including the Sharon family on the first floor, and Yvonne Sirico and her family including Ricky (petitioner) on the second floor. She testified the Sirico's moved in a year or two after respondent moved in. She testified that house was empty when respondent and Gerald Ruotolo moved in.

A non party witness, Robert Routolo, respondent's son, testified that respondent has never lived anywhere else since he was born in October 1968. The witness identified the photographs in evidence depicting him as a baby in the subject unit. He testified the rear bedroom is his, and that his father, Gerald, moved out when he was about four and a half or five years old. He testified that he has never lived anywhere else. On cross examination the witness testified that in 2007 he took occupancy of the second floor, and he was evicted in 2013. He moved back in with the respondent on the third floor.

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A non party witness, Craig Thompson, testified as a record keeper for National Grid. Exhibit F, G and H are the records for the first, second and third floor, and the account holders' name correspondent to respondent's testimony regarding the occupants of the floors through the years.

Petitioner, Richard Sirico testified in rebuttal that he lived on the second floor as a child. The first time the witness was in the subject apartment was in 1978. He was not in the apt. prior to 1970. He goes to the apt. for repairs or to bring contractors in. The petitioner testified that some of the photographs respondent produced were not taken in the subject apt. However, on cross examination he admitted he was in error regarding two of the photographs and, in fact, they were taken in the subject apt. One photograph petitioner testified was not taken in the apt. because it

depicted a fireplace. Respondent testified that Gerald Ruotolo installed a fake fireplace when he was fixing up the apt.

Discussion

Apartments in buildings that were completed prior to February 1, 1947 and that contain three or more units "occupied or intended to be occupied" as residences (NY City Rent and Rehabilitation Law [Administrative Code of City of NY] section 26-403 [e][1]), which apartments have not become "vacant" since July 1, 1971, are subject to rent control (id. 26-403[e][2][i][9]; NY City Rent and Eviction Regulations [9 NYCRR]2200.2 [f][17]; see Matter of Posalski v. State of New York Div. of Hous & Community Renewal. Off, of Rent Admin., 291 AD2d 327[2002]; Kahana v. Gaeta, 8 Misc 3d 138[A], 2005 NY Slip Op 51313[U] [App Term, 2d & 11th Jud Dists]) KC Saad v. Elmuza, 12 Misc3d 57 (App Term, 2nd Dept. 2006)

Respondent submitted sufficient credible evidence in the form of testimony, photographs, and documentary evidence to support her claim that she has continuously resided in the subject apartment since December 1968. Petitioner's rebuttal evidence consists of his recollection from when he was six years old in 1972. He did not enter the subject apartment until 1978, and he provided no specific reason for believing that respondent did not reside in the apt. in 1972.

Based on a preponderance of the credible evidence, respondent has successfully proven a prima facie case to support her defense that the apt is subject to Rent Control. Respondent has proven, based on the overwhelming preponderance of the credible evidence, that she has continuously resided in the subject apt. since December 1968. Therefore, the petition is dismissed with prejudice. This constitutes the decision and order of the court.

DATED: March 13, 2015

1. The petitioner's parents, Salvatore and Yvonne Sirico, purchased the building on April 30, 1969.

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