

541 Union LLC v. Rivera, L&T 46455/15

May 17, 2017

- Civil Court, Bronx County, Housing Part S
- L&T 46455/15
- Judge Miriam Breier
- For Plaintiff: For Petitioner: David L. Moss & Associates, New York, NY.
- For Defendant: For Respondent: Fernando Mancias, Esq., Bronx Legal Services, Bronx, NY.

Cite as: 541 Union LLC v. Rivera, L&T 46455/15, NYLJ 1202786329078, at *1 (Civ., BX, Decided May 1, 2017)

[Read Summary of Decision](#)

Decided: May 1, 2017

DECISION/ORDER

*1

Petitioner, 541 Union LLC, commenced the instant summary holdover proceeding against respondent, Thomas Rivera, on the grounds that he was the licensee of Antonia Rodriguez, the deceased tenant of record of apartment #3B at 541 Union Avenue, Bronx, New York 10455 ("subject apartment"). Petitioner served a ten day notice of termination of license/and/or notice to quit dated July 14, 2015 on respondents Thomas Rivera, "John Doe" and "Jane Doe" requiring respondents to quit, vacate and surrender possession of the subject apartment to petitioner by August 5, 2015. After respondents failed to so vacate, the notice of petition and petition holdover dated August 6, 2015 were served.

The proceeding initially appeared on the Part M court calendar on August 24, 2015. Respondent, Thomas Rivera, appeared without an attorney and the proceeding was adjourned to October 1, 2015 for an ACP referral. On October 1, 2015, the proceeding was adjourned to November 23, 2015 for trial or settlement.

Respondent failed to appear on November 23, 2015 and an inquest was held and judgment of possession entered after inquest. The proceeding was discontinued against "John Doe" and "Jane Doe" at inquest. Respondent moved by Order to Show Cause returnable December 10, 2015 to vacate his default. The motion was adjourned to January 22, 2016 at which time it was granted and the proceeding adjourned to February 17, 2016 for respondent to obtain counsel. Use and occupancy was ordered to be paid without prejudice.

On February 17, 2016, respondent appeared without counsel, but was referred to LSNY and the proceeding adjourned to March 4, 2016 for trial. On March 4, 2016, the proceeding was referred to Part X to be sent out for trial. Respondent filed an answer to the petition in which he alleged a general denial and that he was "seeking succession." The proceeding was referred to Part S for trial, conferenced and adjourned to March 17, 2016 for respondent to retain counsel and for possible settlement.

On March 17, 2016 respondent appeared in Part S with counsel, Legal Services of New York — Bronx, who filed a notice of appearance on respondent's behalf. The proceeding was *2 subsequently adjourned to April 6, 2016, May 10, 2016, June 13, 2016, July 7, 2016, July 26, 2016, and finally until September 14, 2016 at which time the trial was commenced in Part S. The proceeding was adjourned to October 5, 2016 for continued trial, and then adjourned without date for the court to arrange to hear the testimony of a witness for respondent who was homebound. When it was determined that the homebound witness would not participate in the trial, the proceeding was restored for January 18, 2017 and adjourned to February 8, 2017 when the trial was concluded. Both sides rested and agreed to submit post-trial memoranda by March 8, 2017.

Petitioner proved its prima facie case at trial through the testimony of its witness, David Tennenbaum, the manager of the subject building, with the introduction of the deed, multiple dwelling registration and DHCR rent registration.

Petitioner introduced into evidence the last renewal lease between it and Antonia Rodriguez, the rent stabilized tenant of the subject apartment. That lease dated February 10, 2014 was for a two year term expiring June 30, 2016. The riders to the lease reported the household composition to be only

Ms. Rodriguez. No one else was listed as a family member or occupant of the apartment.

Petitioner submitted Ms. Rodriguez's death certificate into evidence, proving that she passed away on April 18, 2015. The death certificate showed the subject apartment as her residence address and that she was 70 years old at the time of her death.

Mr. Tennebaum testified that he found out about Mr. Rivera after Ms. Rodriguez passed away. Before that, he thought she lived alone. Petitioner submitted a signed document into evidence dated June 6, 2015 between the petitioner and Mr. Rivera in which Mr. Rivera agreed he would vacate from the apartment by June 30, 2015.

On cross-examination, Mr. Tennenbaum testified that he does not spend time at the subject premises and that he was not acquainted with Ms. Rodriguez and was unaware of Mr. Rivera until he found out that Mr. Rivera was living in the apartment. This proceeding was commenced against Mr. Rivera after he failed to vacate from the subject apartment pursuant to the June 6th agreement Rivera signed with petitioner.

Thomas Rivera testified on his own behalf. Mr. Rivera testify that he was born in 1928, which made him 88 years old. He testified that he has lived in the subject apartment for 11 or 12 years, and that before that he had lived in Brooklyn since 1969.

Mr. Rivera testified that he was married when he lived in Brooklyn, and that he remains married to a woman named Aida Rivera with whom he has six children. He described his relationship with Aida as that of "Trump and Clinton" because they did not get along and bickered constantly.

Mr. Rivera testified that he met Ms. Rodriguez 18 years ago because she worked around the corner from where he lived. They were friends and then they started "dating." They began living together in the subject apartment 11 or 12 years ago. Ms. Rodriguez was Mr. Rivera's "woman." *3

Mr. Rivera testified that the subject apartment is a one bedroom apartment and that he and Ms. Rodriguez slept together there. He was a plumber by trade, and fixed the flushometer without calling the landlord. In 2008 or 2009, he bought and installed a new refrigerator, sink and stove in the apartment.

Mr. Rivera testified that he never divorced Aida, because she would not sign the divorce papers. Had Aida agreed, he would have divorced her "instantly." He viewed Ms. Rodriguez, who he referred to as "Antonia" as his wife and "wanted to be with her the rest of his life." Mr. Rivera described Ms. Rodriguez as "loving and good." She did not bicker like Aida who always fought with him.

Mr. Rivera testified that Ms. Rodriguez cooked rice and beans for him. She would buy the groceries with money he gave her, and return the change to him. Ms. Rodriguez liked to shop at Macy's and they would shop there for blouses for her. They enjoyed taking the Circle Line. They vacationed once in St Croix. They travelled to Philadelphia to visit with his sisters, and she became "sisters with his sisters."

Ms. Rodriguez was born in Ecuador and had family there, so in December 2012, they travelled to Ecuador to meet her family. Respondent introduced a photograph of himself with Ms. Rodriguez and her sisters in Ecuador that was stamped dated December 8, 2012.

Mr. Rivera testified that he and Ms. Rodriguez would eat all of their meals together at home. She would wait to eat with him when he returned home from work. They would watch television together and he would fall asleep watching her soap operas which he "hated."

Mr. Rivera testified that he and Ms. Rodriguez initially split the rent for about three months after he moved into the subject apartment. But it was evident to him that Ms. Rodriguez needed more help, so he began to pay the full rent. Mr. Rivera testified that he would go around the corner and purchase money orders with which to pay the rent.

Mr. Rivera testified that Ms. Rodriguez became ill and was diagnosed with liver cancer. Mr. Rivera testified that he cared for her and would pick her up when she fell. He testified that he developed a hernia from doing that. Mr. Rivera testified that he was "devastated" when Ms. Rodriguez died, and that he keeps a picture of her on the apartment door, so he sees her when he leaves and returns to the apartment.

Wanda Perez testified on behalf of Mr. Rivera, whom she identified as her father. She confirmed that her father is still married to her mother, Aida

Rivera, and that her parents argued loudly and constantly when he and Aida lived together. She testified that Mr. Rivera and Aida have lived apart for more than fifteen years; Mr. Rivera first moved into a basement apartment in the building they lived in in Brooklyn. Aida still lives in Brooklyn and Mr. Rivera in the Bronx.

Ms. Perez testified that up until six months before her testimony in October 2016, she did not have a good relationship with Mr. Rivera, so she had not seen him for many years and did not meet Ms. Rodriguez. She testified on cross-examination that her father left Brooklyn for the Bronx eight to ten years ago, and that he gets happy when he speaks of Ms. Rodriguez. *4

Respondent's next witness was homebound, so the record was left open for the parties to go to the witnesses' home and take testimony there. However, the witness later decided not to testify, so both sides rested and post-trial briefs were submitted to the Court on March 8, 2017.

Discussion and findings of fact

The death certificate submitted into evidence by the petitioner, proved that the tenant of record of the subject apartment, Antonia Rodriguez, died on April 18, 2015. In order to succeed to Ms. Rodriguez's rent stabilized tenancy and be issued a lease in his name, Mr. Rivera was required to prove by a fair preponderance of the credible evidence that he is a non-traditional family member of the deceased tenant, Antonia Rodriguez. 9 NYCRR §2520.6 (o)(2). And because he is over the age of 62, Mr. Rivera also had to prove that he resided in the subject apartment as his primary residence with Ms. Rodriguez for one year prior to her death. 9 NYCRR §2520.6 (p), 9 NYCRR §2523.(5)(b)(1).

Factors to be considered in determining whether respondent met his burden of proof and is entitled to succeed to Ms. Rodriguez's tenancy are statutory under the definition of "family member" contained in 9 NYCRR §2520.6(o)(2). These factors are:

- (i) longevity of the relationship;
- (ii) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
- (iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

- (iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;
- (v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;
- (vi) 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;
- (vii) 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;
- (viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

The credible testimony adduced at trial demonstrates that Mr. Rivera lived with Ms. Rodriguez as his primary residence for more than one year prior to her death on April 18, 2015. *5

The issue remaining is whether or not respondent sufficiently proved by a fair preponderance of the credible evidence that he was a non-traditional family member of the deceased tenant, Antonia Rodriguez.

There was very little documentary evidence submitted by respondent at trial. Respondent showed a photograph of himself and the deceased tenant with her sisters in Ecuador, and that was the only personal memento produced at the trial. There was no proof of the couple's intermingling of finances or formalization of legal obligations.

The respondent's credible testimony did however, establish the he and the deceased tenant shared a long, committed relationship, that she relied on him for household expenses, that they held themselves out to be a loving couple, that they visited with family members, that Mr. Rivera cared for Ms. Rodriguez when she became ill, and that Ms. Rodriguez cared for Mr. Rivera in everyday life, by cooking his meals and waiting for him to get home from work in order to eat with him.

The credible testimony from Mr. Rivera demonstrated that the two were a loving couple who would have married, but for the fact that Mr. Rivera was still married to Aida who would not give him a divorce. Mr. Rivera's description of his married life with Aida was consistent with that of his daughter, Wanda Perez, who testified on his behalf. By all accounts, Mr. Rivera seemed to have found peace in his relationship with Ms. Rodriguez.

At the time of her death, Ms. Rodriguez was about 71 years old, and Mr. Rivera was 87. When they began living together approximately 11 years before, they were already at a point in their lives where they might not do the kinds of things younger couples would do, such as opening joint bank accounts. And there was the additional legal impediment of Mr. Rivera being married to another woman. However, it is the Court's opinion that Mr. Rivera proved by a fair preponderance of the credible evidence that he was a non-traditional family member of the deceased tenant, Antonia Rodriguez, having shared her home, cared for her, travelled with her paid her rent, bought her food, introduced her to his sisters, travelled to meet her sisters, and engaged in a happy domestic life with Ms. Rodriguez that was cut short by her death.

After considering all of these factors and the credible testimony adduced at trial, the petition is dismissed with prejudice, and respondent is found to have proven his right to succeed to the subject apartment as a non-traditional family member and to a renewal lease in his own name.

The Clerk shall enter judgment dismissing the petition with prejudice. This constitutes the Decision and Order of the Court after trial. A copy of this Decision/Order is being mailed to both sides, along with their trial exhibits.

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So Ordered:

Dated: May 1, 2017

Bronx, New York