

415 Realty LLC v. Abel Campos, L&T 60858/15

May 17, 2017

- Civil Court, Kings County, Part Q
- L&T 60858/15
- Judge John H. Stanley
- For Plaintiff: For Petitioner: Ronete Koop, Esq., Tenenbaum Berger & Shivers LLP.
- For Defendant: For Respondent: Kip Bastedo, Esq., and Clinton J. Guthrie, Esq., of counsel to Seymour James, Jr., The Legal Aid Society.

Cite as: 415 Realty LLC v. Abel Campos, L&T 60858/15, NYLJ 1202786328518, at *1 (Civ., KI, Decided April 26, 2017)

[Read Summary of Decision](#)

Decided: April 26, 2017

DECISION/ORDER

*1

The Decision/Order after trial is as follows:

Petitioner, 415 Realty LLC, commenced this holdover proceeding against Abel Campos, Angelica Fernandez, John Smith, Jane Doe and John Doe seeking possession of the premises at 415 East 16th St., Apt. F9, Brooklyn, New York premised on a claim that the tenant, Abel Campos, fails to occupy the premises as his primary residence. It is undisputed that the only person presently residing in the premises is Angelica Fernandez and her two daughters sired by Abel Campos.

At trial, petitioner presented one witness, Idrez Bauta, an officer of the corporation and managing agent of the building. Petitioner established ownership and registration of the building. The original lease states that the tenant of record is Abel Campos effective March 1, 2001. The five most recent lease renewals, for one and two year terms variously, were admitted into evidence and span the period from March 1, 2007 through February 28,

2015. All five of the lease renewals were signed by Abel Campos and by Melaim Bauta on behalf of petitioner. Idrez Bauta. Who is the son of Melaim Bauta. Recalled last seeing Abel Campos at the building about five years ago. Idrez Bauta stated that it was his belief that Mr. Campos continued to reside in the premises up until the time of the surrender letter dated April 8, 2015.¹ He based this belief on the fact that Abel Campos continued to sign lease renewals and because the rent was paid in the name of Abel Campos. He recalled seeing Angelica Fernandez about four or five years ago in the lobby of the building and inquired of the superintendent about her. Mr. Bauta stated that the superintendent informed him that she lived in Apt. F9, the subject premises. But Mr. Bauta stated that he did not inquire as to her name. Although he did not know her by name over the span of about 5 years Idrez Bauta stated the he recognized Ms. Fernandez in the building and knew she was associated with Apt F9. *2

Angelica Fernandez testified on her own behalf. She testified that she moved into the premises with Abel Campos and resided in the premises when Abel Campos signed the lease in 2001. Also residing in the premises at that time was their young daughter. Ms. Fernandez stated that Abel Campos left the premises in 2006 and never returned to reside in the premises. A marriage certificate verified the fact that Abel Campos and Angelica Fernandez were married. Angelica Fernandez testified that in 2010 she asked the property manager Melaim Bauta, who managed the building until 2011, for a lease in her name because Abel Campos no longer resided at the premises. She stated that Melaim Bauta advised Ms. Fernandez to continue to have Abel Campos sign the lease renewals and then there would be no such increase. Ms. Fernandez stated that she followed his instructions. Ms. Fernandez also stated that in 2009 she suffered injuries from a fire in the building and that her counsel for the subsequent personal injury lawsuit notified petitioner that Angelica Fernandez lived in the premises.

DISCUSSION

Succession in a rent stabilized apartment is governed by RSC §2523.5(b). The succession statute, RSC §2523.5(b), is a remedial measure to safeguard the eviction of family members from their homes. *Hughes v. Lenox Hill Hospital*, 226 A.D.2d 4 (1st Dept. 1983) See also the Court of Appeals decision in *Murphy v. New York State Division of Housing and Community Renewal*, 21 N.Y.3d 649 (2013) which states that succession provisions are remedial and seek to prevent the dislocation of long term family members

who remain in the premises after the head of household leaves. The thread that runs through the cases construing the succession provision is the need for continuity in possession or, alternatively stated, "the need for a place to call home" (Park South Assocs. v. Mason, 123 Misc.2d. supra, at 753, 474 N.Y.S.2d 672). The succession statute should be construed as a means to prevent dire consequences that would result from eviction. Sommer v. NYC Conciliation and Appeals Board, 93 A.D.2d 169 (1st Dept. 1988). This is especially true here where the daughters of Abel Campos and Angelica Fernandez also reside in the premises and would be disenfranchised from any right that they may possess to the premises without this remedial statute.

In order for Angelica Fernandez to succeed to the premises, she must establish by a preponderance of the evidence that she resided in the premises two years prior to the vacate date of Abel Campos. Here, where there is no showing that Abel Campos surrendered the premises until after the proceeding commenced, the court must consider whether there was a surrender by operation of law. A surrender by operation of law is inferred from the conduct of the parties, namely, the tenant's abandonment of the premises and the landlord's acceptance of the abandonment. Riverside Research Inst. v. KMG, Inc., 68 NY2d 689 (1986).

What transpired here is indication of what may happen when management changes. The arrangement between Melaim Bauta and Angelica Fernandez remained in place for years as evidenced by the fact that Abel Campos continued to sign 5 subsequent leases. It is likely that this proceeding would not have been commenced if Melaim Bauta remained the managing agent.
*3

This proceeding to recover possession was commenced shortly after Melaim Bauta ceased managing the building and his son Idrez Bauta took over management. The evidence establishes that Melaim Bauta knew that Abel Campos permanently left the premises in 2006 because Ms. Fernandez credibly testified that she told him about Abel Campos' departure. Ms. Angelica Fernandez credibly testified that she followed the instructions of Melaim Bauta and had Abel Campos continue to sign lease renewals. The fact that Melaim Bauta accepted Abel Campos' signature on subsequent leases for many years despite knowing that Mr. Campos no longer resided in the premises demonstrates that the landlord acquiesced to this arrangement. In fact, Melaim Bauta assured Ms. Fernandez that this would not create a problem. These facts demonstrate that Abel Campos and Angelica

Fernandez did not engage in any sort of subterfuge to hide the fact that Abel Campos left the premises. This was not a situation where the tenant's "course of deception was studied and purposeful" (*S. Pierre Assocs. v. Mankowitz*, 844 NYS2d 552, 2007 NY Slip Op 27415 [2007].) (concealing occupancy for 13 years and forging 7 leases after death of tenant). This arrangement was altered by the landlord when Melaim Bauta ceased managing the building.² The evidence at trial established that Angelica Fernandez continually resided in the premises since Abel Campos left the premises in 2006; there is no evidence to the contrary.

Courts make a distinction between a physical vacate date from the premises and a permanent vacate date out of a concern for prejudice to petitioner when the tenant or the remaining family member conceal the fact that the tenant moved from the apartment. See, *Elk 300 E 83 LLC v. Dowd*, 2015 NY Slip Op 32443[U] (Civ Ct. Bronx County 2015). The testimony of Idrez Bauta and Angelica Fernandez demonstrates that petitioner was not prejudiced because Angelica Fernandez informed petitioner of her presence and of Abel Campos' departure. Under prevailing caselaw, the permanent vacate date is the expiration date of the last lease renewal in effect. *Third Lenox Terrace Assoc. v. Edwards*, 91 AD3d 532 (1st Dept 2012), *Malone v. Sapinsky*, 31 Misc 3d 1239[A], 2011 NY Slip Op 51044[U] [Civ Ct, Bronx County 2011]. In this instance, the last lease signed by the Abel Campos expired on January 31, 2012. This is the legal permanent vacate date of the last tenant of record Abel Campos.

In order for Angelica Fernandez to succeed to the premises she must show that she resided in the premises for at least 2 years prior to the permanent vacate date of January 31, 2012 which translates to a period commencing on February 1, 2010. The evidence admitted at trial establishes that Ms. Fernandez resided in the premises for at least 2 years prior to Abel Campos departure from the premises in January 31, 2012. The New York City Human Resource Administration (HRA) subpoenaed records show that Angelica Fernandez was a recipient of HRA services throughout the years when she first moved into the premises in 2001. One of the periods of assistance was January 7, 2011 through January 27, 2014; HRA lists Ms. Fernandez's residence as the subject premises during this time period. Subpoenaed documents from Consolidated Edison were admitted into evidence that indicate that Angelica Fernandez's name was placed on the bill in July of 2009 and her name continues on the bill through August of 2015. Ms. Fernandez testified that she began filing income taxes in 2012 when she first learned *4 that tax filing was required. The 2012 form lists her

residence as the subject premises as do the subsequent tax filings for the years 2013 and 2014. The 2012 federal form states that Ms. Fernandez is an independent contractor in the cleaning industry and used the subject premises as her address during the year 2012. The only evidence to the contrary is a National Grid bill for the apartment that was in the name of Abel Campos from Feb. 1, 2001 through June 8, 2013 when it was changed to Angelica Fernandez.

In addition, there is convincing evidence establishing that the landlord knew or should have known Angelica Fernandez resided in the apartment because of the circumstances surrounding a fire in the building in 2009. The fire occurred on January 23, 2009. Ms. Fernandez sustained injuries and was medically treated at Maimonides Medical Center. Respondent retained the services of an attorney in an accident claim and the attorney sent Ms. Fernandez a settlement notification dated February 1, 2010 and addressed to the subject apartment. The landlord was involved in this claim. Angelica Fernandez resided in the premises open and notoriously as evidenced by the fact that Mr. Meisel testified that he had seen her throughout the years in the building. The Appellate Division, First Department, has held that a potential successor has no duty to notify a landlord regarding his or her presence in an apartment. *Matter of Sangro Mgt. Corp. v. NY State Div. of Hous. & Community Renewal*, 25 AD3d 330 [1st Dept 2006].

Accordingly, it is abundantly clear that Angelica Fernandez continuously resided in the premises for at least 2 years prior to the legal permanent vacated date of Abel Campos on January 31, 2012. Angelica Fernandez succeeds to the rent stabilized apartment of Abel Campos. Respondent is awarded a final judgment of possession.

This constitutes the decision and order of the court.

Dated: April 26, 2017

Brooklyn, New York

1. This surrender letter was written after this proceeding was commenced.
2. It should be noted that Melaim Bauta continues to remain a member of the LLC.

