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Temporary Relocation to Aid Aging Parents Found No Basis for Eviction From Rent-Stabilized Unit

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A landlord cannot evict a mother who left her teenaged daughter behind in her rent-stabilized New York City apartment while she relocated to California to care for her ailing parents, a state appellate court has ruled.

In 2002, after Charlene Lee had spent almost two years tending to the medical needs of her 80-year-old father and her 77-year-old mother, her landlord, 542 East 14th Street LLC, claimed the two-bedroom apartment she had occupied since September 1997 no longer was her residence and sued to recover the premises.

However, the Appellate Division, First Department, unanimously concluded in 542 East 14th Street LLC v. Lee, 597, that the need to care for her parents constituted a "reasonable ground for her temporary absence" from the apartment where her then 16-year-old daughter, Cindy, lived alone while attending Stuyvesant High School.

The First Department decision appears on page 33 of the print edition of today's Law Journal.

The panel also upheld a $34,000 award of attorney's fees to Ms. Lee. In doing so, it rejected the landlord's claim that fees should not be awarded on account of Ms. Lee's unsuccessful summary judgment motion.

An award of attorney's fees "does not require success at all stages of the litigation," the court held, only that a claimant prevail and receive substantial relief on the central claims advanced in the case, Justice Peter Tom (See Profile) wrote for the appeals panel.

David E. Frazer, a solo practitioner who argued Ms. Lee's appeal, said the ruling marks the first time an Appellate Division panel has recognized that "caring for a sick relative is a viable defense to a nonprimary residence claim by a landlord."

But the case has even larger implications as it goes against a growing number of "frustrating and harmful line of cases" denying tenants recovery for full legal fees, even when they ultimately prevail on their primary claims, Mr. Frazer said in an interview.

In spring 2001, Ms. Lee, a nurse at New York University Medical Center, testified at a Civil Court hearing that she temporarily relocated to California to take care of her elderly father, who was suffering from lupus, high blood pressure and a herniated lumbar disc, and her mother, who was recovering from knee surgery.

Unable to stay with her Mandarin-speaking parents in their "tiny" one-bedroom unit at a senior center in Palo Alto, Ms. Lee said she lived in makeshift quarters so she could accompany them to doctors' appointments and oversee their medical and personal care.

While in California, Ms. Lee worked as a researcher to financially support herself and her daughter, who remained in the $704 a month rent-stabilized unit while attending Stuyvesant.

Every two or three months, Ms. Lee returned to the New York apartment for two to five weeks. She kept her furniture there, maintained utility accounts and listed the unit as her residence on bank accounts. Ms. Lee never voted or owned property in California.

But shortly after she returned to the city in late 2002, Ms. Lee's landlord, which is an affiliate of the estate of real estate mogul Sol Goldman, terminated her tenancy, claiming she had lost primary residence status. When she refused to surrender the apartment, the landlord commenced a holdover summary proceeding.

Lower Court Rulings

In 2005, Manhattan Housing Court Judge Kevin C. McClanahan (See Profile) dismissed the landlord's petition, concluding that Ms. Lee had maintained an ongoing physical nexus to the New York apartment.

Two years later, a 2-1 majority of the Appellate Term, First Department, also sided with Ms. Lee.

"The fact that tenant was employed while in California is understandable since she had to financially support herself and her daughter," Justices William P. McCooe (See Profile) and William J. Davis (See Profile) wrote in 542 East 14th Street LLC. v. Lee, 2007 N.Y. Slip. Op. 27540.

But in a blistering dissent, Justice Douglas E. McKeon (See Profile) insisted the daughter's presence "should be given little, if any weight in determining the tenant's primary residence" and faulted the trial court for viewing it as the "most compelling evidence" of Ms. Lee's residency.

Civil Court depicted Ms. Lee as "torn between parents and child, desirous of allowing her daughter to complete high school at a specialized, prestigious New York institution, yet called by duty to be at the side of her parents. But the decision to leave a teenager to fend for herself 3,000 miles away is one that few parents in good conscience would make and is one which hardly deserving of judicial approbation," Justice McKeon wrote.

The majority shot back that their task was not "to pass judgment on [Ms. Lee's] efficacy as a parent" and noted their ruling was based on a "lengthy trial record" and relevant case law.

'Reasonable Grounds'

Addressing the issue for the first time, the Appellate Division agreed with the Appellate Term majority that a tenant who temporarily relocates to care for sick parents does not lose primary residence status.

Under §2520.6(u) of the Rent Stabilization Code, "no single factor shall be solely determinative" of a tenant's primary residence, Justice Tom wrote. A safe harbor provision in the code protects a tenant who leaves an apartment for certain reasons, including active military duty, full-time studies, hospitalization or "other reasonable grounds" from losing primary residence status [9 NYCRR Section 2523.5(b)(2)].

Justice Tom compared Ms. Lee's case to Hudsoncliff Blg. Co. v. Houpouridou, 22 Misc. 3d 52, 53, which found that the "draconian penalty of forfeiture" of a tenant's "long-regulated apartment should not be visited" on a "rare" individual who made the "heartfelt decision" to travel to Greece to stay by her mother's side during a final illness, returning for brief intervals to the apartment, where she kept her furniture and belongings.

Ms. Lee maintained at least this nexus with the subject premises and as Civil Court noted, "left behind the most important person in her life," the judge added.

Further, the lack of medical documentation of the conditions of Ms. Lee's parents did not "support an adverse inference that their alleged infirmities were merely a pretext" for her absence, Justice Tom wrote.

Having heard Ms. Lee's pretrial testimony that she went to California to care for her "very, very sick father," the landlord "bears sole responsibility for its failure" to avail itself of the liberal discovery permitted in a nonprimary residence proceeding, the judge concluded.

Moreover, while Justice Tom observed that the "propriety" of Ms. Lee's "unenviable" choice to leave her daughter in New York was immaterial to the case, he concluded that "her confidence in her daughter's maturity was well founded, as demonstrated by Cindy's perfect school attendance record and her high academic achievements."

Cindy Lee, who graduated from Stuyvesant with a 3.9 average, is now in her last year at the University of Texas Medical School in San Antonio.

Justices David Friedman (See Profile), James M. Catterson (See Profile), Karla Moskowitz (See Profile), and Dianne T. Renwick (See Profile) joined the panel, which heard arguments on April 29.

Paul N. Gruber of Borah, Goldstein, Altschler, Nahins & Goidel, who represented the landlord, has not decided whether to appeal.

In addition to **Mr. Frazer, Adam Leitman Bailey, William J. Geller and Dov Treiman of Mr. Bailey's law firm represented Ms. Lee.**

"As a result of the Appellate Division's decision, practitioners representing rent-regulated tenants sued for failing to use their homes as primary residences in order to care for ailing relatives somewhere else can now rest comfortably in relying on this exception to the rent stabilization code," Mr. Bailey said.

Ms. Lee still lives in the apartment and continues to visit her father, now 86, and her mother, 84.

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