

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

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206 WEST 80th STREET LLC,

Index No.: L&T 78155.17
DECISION/ORDER

**Petitioner-
Landlord,**

-against-

JULIANNA MORGAN,

**Respondent-
Occupant,**

“JOHN DOE AND “JANE DOE”

**Respondent-
Under-Occupant.**

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HON. ANNE KATZ:

In this licensee holdover proceeding, petitioner alleges that Julianna Morgan (“respondent”) is a licensee of 206 West 80th Street, Apartment 5-W, New York, New York 10024 (“premises”). Petitioner terminated respondent’s license to remain at the premises by “Ten Day Notice to Quit To a Licensee” dated October 2, 2017. The tenant of record, Foster Grimm (“Grimm”) passed away in October, 2016. The notice required respondent to vacate by October 20, 2017. Respondent failed to vacate and petitioner commenced this proceeding by Notice of Petition and Petition dated October 23, 2017. The premises is subject to the Rent Stabilization Law of 1969, as amended.

The proceeding initially appeared in Part H on November 8, 2017. Respondent submitted a *pro se* Answer dated January 11, 2018. Respondent’s Answer alleged that she is entitled to succession rights to the premises. The parties engaged in motion practice and discovery. On August 7, 2018, the parties entered into a “So Ordered” Stipulation in which the parties consented to petitioner’s *prima facie* case. A trial was conducted on October 26, 2018.

Petitioner’s Case

Petitioner’s *prima facie* case included the following documents:

1. Notice to Admit;
2. Deed;
3. Multiple Dwelling Registration;
4. Lease renewal between petitioner and Grimm which expired September 30, 2017;
5. Deposition transcript taken of respondent on March 22, 2018 with the signature page and errata sheet annexed.

Petitioner rested after the *prima facie* case.

Respondent's Case

Direct Testimony

Respondent testified on her own behalf at the trial. Respondent testified that she was introduced to Grimm in November, 2010 through a mutual friend. Respondent was looking for a place to live and Grimm was looking for a roommate. According to respondent, she moved into the premises with Grimm on December 5, 2010. Respondent testified that she intended to reside with Grimm for six months. However, respondent testified that she remained at the premises with Grimm until he passed away in October, 2016. According to respondent's testimony, throughout the period she resided with Grimm, their relationship evolved from roommates to friends and eventually to an emotional and familial-like relationship. Specifically, respondent testified that she viewed Grimm as a "grandfather figure".

Respondent testified that when she moved into the premises she agreed to pay a quarter of the rent and a quarter of the shared utilities. When the living arrangement became more permanent, respondent agreed to pay half the rent and half of their shared utilities. Respondent testified that she and Grimm shared the cost of food, toiletries and various household items. Respondent testified that she had no pictures with Grimm or any holiday/birthday cards from Grimm because he was "old fashioned". Respondent testified that Grimm did not communicate with her by email since they lived in the same apartment and that she had no text messages from Grimm since any texts messages were contained on an old phone and Grimm's sister took his phone.

Respondent testified that she and Grimm dined together, attended farmers markets, music concerts, operas and movies together. Respondent testified Grimm liked classical music and took respondent under his wing to broaden her horizons. Respondent testified that she and Grimm had a family membership at MoMA and submitted a duplicate receipt to respondent, from MoMA, for a dual gift MoMA membership in 2012 (RB). The receipt listed the cardholder as "Ms. Julianna Morgan" (RB). Attached to the dual membership was a receipt for \$140.00 for a MoMA membership renewal in 2014. The MoMA renewal was purchased on Grimm's Visa card (RB).

Respondent testified that in October, 2015 Grimm was diagnosed with cancer and she was physically present for Grimm 24 hours a day 7 days a week. Respondent testified she took care of Grimm out of concern, not for monetary gain or to be named on Grimm's will, on his life insurance policy or to be named as his healthcare proxy. Respondent alleged that financial gains were not her "goal". Respondent testified she had experience taking care of terminally ill patients because she had previously volunteered with cancer patients and that Grimm did not have a nurse until he entered hospice care. According to respondent, Grimm's nurse came to the premises one or two times per week for a couple of hours. According to respondent, she prepared a spreadsheet of friends to assist Grimm when he needed to receive chemotherapy or go to doctors visits. (RD). The spreadsheet contained a rotation schedule, for Grimm's friends to accompany him. (RD) Respondent testified that she accompanied Grimm to the doctor approximately six or seven times.

Respondent testified that although Grimm had a brother and sister, he was estranged from them. According to respondent, neither Grimm's brother or sister asked if she needed anything, did nothing to help take care of Grimm and were emotionally unsupportive. In fact, respondent testified that Grimm's sister relied on her. Respondent testified that Grimm's relatives did not visit with him until the end of his life. Respondent submitted a letter which she alleged Grimm composed and signed which in which Grimm advised petitioner that he was entering hospice and requested respondent be granted permission to take over his lease (RA). The letter was dated October 2, 2016 and stated respondent was responsible for Grimm's finances for the premises. The letter further stated respondent acted in the capacity of a family member and took care of him since his October, 2015 cancer diagnosis. Respondent testified that it was difficult to watch Grimm deteriorate and that Grimm was in denial of his prognosis.

Cross-Examination

On cross examination, respondent admitted that she had no blood relationship to Grimm or written domestic partnership agreement. Respondent testified that she and Grimm had no joint bank accounts, no joint credit or debit cards, no joint loans and that they each had exclusive use of their own bank accounts. Respondent testified that she and Grimm did not share a cell phone account. However, both respondent and Grimm had cell phones and Grimm was the sole user of his land line. Respondent testified that while she paid for half of the rent and half of the utilities none of the accounts were in her name.

Respondent testified that Grimm had no power of attorney, health care proxy or living will and Grimm's sister was the beneficiary of his will. Respondent also testified she was not a payee for Grimm's social security income, she was not listed as a dependent on Grimm's tax returns and she was not a beneficiary to Grimm's retirement account. Respondent testified that she did not take care of Grimm's finances and was not sure who did and Grimm's sister settled his affairs.

Respondent testified she had no medical decision making authority. According to respondent, the doctors and hospitals were in direct contact with Grimm's sister. Respondent testified that upon Grimm's death, his sister took items she wanted which included his medical alert bracelet, cell phone and important documents, and left the rest of Grimm's belongings to respondent. Respondent stated that Grimm's sister saw her as "just someone who was living with him".

Respondent admitted that she was not listed on the rotation spread sheet she created for Grimm's appointments and she was not the sole caretaker since Grimm's friends helped take care of him.

Respondent testified that at the end of Grimm's life, Grimm's mental capacity diminished, he had trouble remembering things and that on a couple of occasions, Grimm almost burned down the premises. Respondent's testimony indicated that Grimm's judgment was impaired.

Redirect Testimony

On redirect, respondent testified that although Grimm had memory lapses, he was lucid when he composed his request for respondent to acquire his lease. Respondent pointed out that Grimm's request to transfer the lease was signed and witnessed by Grimm's sister and Grimm's friend. Respondent testified that she encouraged Grimm to obtain a cell phone however she felt that there was no reason for her and Grimm to share accounts. Respondent testified that Grimm had no living will and they did not discuss retirement accounts because "it did not make sense to her". Respondent reiterated that Grimm was in denial of his prognosis.

Testimony of Armando Carmona

Armando Carmona testified for respondent. He testified that he was born and raised in Apartment 4W, below the premises. He testified that he knew Grimm since 1980 or 1981 since there were only twelve units in the building and respondent moved into the premises with Grimm as a roommate about seven or eight years ago, but was not sure of the date. According to Carmona, respondent has good moral character and is a good neighbor. He stated that respondent helped Grimm and Grimm relied upon her as family. He testified that he saw Grimm and respondent together but he did not see them go to the hospital together. Carmona was unsure of the date Grimm passed away, did not know Grimm's sister and did not know who made medical decisions for Grimm or the details of Grimm's will and/or life insurance policy. Carmona did not have any pictures with Grimm or holiday cards from Grimm.

Testimony of Susan Kipp

Susan Kipp also testified for respondent. Kipp's residence is on the same floor as the premises. Kipp testified she has resided in the building for forty years and alleged Grimm resided in the building for thirty years. Kipp testified she was friendly with Grimm prior to his illness but became really good friends during his illness. Kipp described Grimm as a good neighbor, an "old hippie" who liked music. According to Kipp, respondent was the only consistent person in Grimm's life and was his sole support. Kipp testified that respondent took care of physically removing Grimm's diapers, took care of Grimm's personal needs and bought groceries, which included his diapers, until Grimm's death. Kipp testified that during the spring, 2016 and summer, 2016, respondent helped Grimm up and down the stairs, purchased food and supplies and provided emotional and physical support to Grimm. Kipp testified that she met Grimm's sister once when Grimm was ill but never saw Grimm's family members in 2014 or 2015. According to Kipp, Grimm's family members were only present immediately before he passed away. Kipp testified that respondent is honest straight and forward. She testified that respondent and Grimm were initially roommates but they also socialized inside and outside of the premises. Kipp stated that she believed respondent was took care of Grimm since there was no smell in the hallway. According to Kipp, respondent took care of Grimm as a good friend and not as a nurse. Kipp did not have any photographs with Grimm and/or any birthday or holiday cards from Grimm. Kipp testified that she knew that Grimm had made his sister the beneficiary of his life insurance policy and retirement account. Kipp knew that respondent did not make the medical decisions for Grimm.

Findings and Conclusions of Law

Section 2204.6(d)(3) of the NYC Rent and Eviction Regulations (“Regulations”) protects surviving family members, of a deceased tenant, from eviction. Under *Section 2204.6(d)(3)*, the alleged successor must prove that he or she is a family member that resided with the tenant of record for two years prior to the tenant’s death in order to be protected. The Regulations define two separate classes of protected tenants. The first class is “traditional family members”: husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law and sister-in-law. The second class is non traditional family members”. “Non-traditional family members under NYCRR §2204.6(d)(3) are any persons who reside, with the tenant of record, in the housing accommodation, as their primary residence and proves an emotional and financial commitment between such person and the tenant of record. The court considers the following, to determine if someone meets the definition of “non-traditional family member, *Braschi v. Stall Assoc. Co*, 74 NYS2d 201, 212, 544 NYS2d 784, 790, 543 NE2d 49, 55 (1989):

- a) longevity of the relationship;
- b) sharing of or relying upon each other for payment of household or family expenses and other common necessities of life;
- c) intermingling of finances as evidenced, among other things by, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.
- d) engaging in family type activities by jointly attending family functions, holidays and celebrations, social and recreational activities etc;
- e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, conferring upon each other a power of attorney and/or authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as representative payee for purposes of public benefits, etc.
- f) 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;
- g) regularly performing family functions, such as caring for each other or each others extended family members, and/or relying upon each other for daily family services;
- h) engaging in any other patterns of behavior, agreement, or other action which evidences the intention of creating a long term, emotionally-committed relationship.

While the above factors help determine if a person meets the definition, no one factor is dispositive. *See Braschi, supra*. It is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which controls the final analysis. *See*

Braschi, supra. When adopting *Braschi*, the Court of Appeals recognized the importance of non-traditional family member to succeed to rent regulated apartments and held:

[W]e conclude that the term family, as used in 9 NYCRR 2204.6(d) should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but should find its foundation in the reality of family life.

Length of Residence

There appears to be no dispute that respondent resided with Grimm at the premises, as her primary residence, from December, 2010 through October, 2016. Respondent has met the two year requirement.

Financial Commitment

Respondent moved into premises and initially agreed to pay one fourth of the rent and one fourth for the shared utilities. Once it was clear that respondent's living arrangements were more permanent, respondent agreed to pay one half of the rent and one half of the shared utilities. Aside from sharing the rent, utilities and other household expenses, respondent and Grimm did not intermingle finances, did not share any bank accounts, had exclusive use of their own bank cards, had no credit cards or loan obligations together. Respondent was not a recipient of Grimm's social security or a listed as a dependant on his tax returns. Respondent testified that she did not take care of respondent's finances and did not know who did. Respondent testified that she and Grimm did not discuss his retirement accounts because they did not make sense to her. Respondent admitted. Grimm did not name her in his will, as a beneficiary of his life insurance policy and/or a beneficiary on his retirement account. This Court believes that the testimony and evidence do not establish a financial commitment other than roommates or friends.

Emotional Commitment

Respondent testified that she and Grimm dined together, shopped together and spent time at movies, concerts and operas together. However, respondent testified that while she and Grimm engaged in these activities, they did them alone. Respondent testified she and Grimm did not hold themselves out as family, that her parents did not meet Grimm, that Grimm's sister solely looked upon her as "someone Grimm lived and then when she went to holiday celebrations at her parents, Grimm did not accompany her. Despite the emotional connection respondent testified to, Respondent Grimm appointed his estranged sister as the executrix of his estate and gave his estranged sister power of attorney. Additionally, respondent testified that although she was not in this relationship for financial gain, Grimm did not name respondent in his will, as a beneficiary on his life insurance policy or as a beneficiary on his retirement account.

Respondent was unable to show that she and Grimm celebrated birthdays together, enjoyed holidays together, exchanged holiday cards, texts or emails with each other to memorialize their relationship all of which would be expected of people involved in a relationship. Respondent and Grimm did not interact with friends and family, hold themselves out as "family", take pictures together, travel together or attend religious services together which again, would be considered normal every day activities which people involved in a "family-like" relationship would participate in. Moreover, Grimm did not name respondent in his will, provide for her financially or allow respondent to participate in major decisions as would be expected between two people allegedly committed and involved as respondent and Grimm. Although respondent submitted a MoMA membership, such membership was not for the exclusive benefit of respondent and Grimm. Lastly, despite respondent's testimony that she was present for Grimm "24/7" and her witnesses' testimony that respondent was Grimm's sole emotional support, respondent was employed outside of the premises and testimony revealed that Grimm's friends helped take care of him. Therefore, although respondent's testimony appeared sincere, this Court finds that the emotional relationship did not rise to the level of "non traditional" family and that the relationship was solely as roommates.

Conclusion

Based upon the trial testimony, deposition testimony and documentary evidence submitted at trial, respondent has failed to prove that she falls within the protected class of "non traditional" family member as contemplated by *Braschi, supra*. Respondent's failure to provide documentation of her relationship with Grimm, in and of itself did not undermine her succession rights, rather it was the totality of the testimonial evidence combined with the lack of documentary evidence which did not establish the requisite emotional and financial commitment needed to succeed to the premises. *530 Second Avenue. Co., LLC v. Zenker, 160 AD3d 160, 74 NYS3d 41 (App. Div. 1st Dept. 2018)*.

Final judgment of possession in favor of petitioner. Issuance of the warrant of eviction shall be forthwith, execution stayed 30 days for respondent to voluntarily vacate. This Constitutes the Decision and Order of this Court. The parties shall pick up their trial exhibits from room 225, window 9 within thirty days or the exhibits may be destroyed.

Dated: New York, New York
February 6, 2019



HON. ANNE KATZ, J.H.C.

