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RENT STABILIZATION

Corporate and Not-For-Profit Tenants


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Throughout New York City, rent-stabilized apartments are being rented to non-corporeal entities, such as corporations and not-for-profit organizations. These apartments, for example, may be used to house an identified corporate officer, or, in the case of not-for-profit organizations, to house a revolving series of persons affiliated with the entity. This article will discuss the rights of owners and non-corporeal tenants under the RSL.

'Cale Development'

Matter of Cale Dev. Co. v. New York City Conciliation & Appeals Bd. (94 AD2d 229 [1st Dept. 1983], *affd* 61 NY2d 976 [1984]), concerned an apartment that had been rented to a corporation for the occupancy of its president and his wife. The husband and wife never lived in the apartment, although their son did. The Court of Appeals, affirming the First Department, granted possession to the landlord. The court held that the intended occupants did not use the apartment as their primary residence, and that the corporate tenant was not entitled to a renewal lease.

> Where a stabilized lease with a corporation or a not-for-profit entity fails to set forth a particular intended occupant, the landlord should consider whether he or she wishes to renew that lease upon its expiration.

Following *Cale Dev.*, however, the First Department issued a number of decisions protecting non-corporeal tenants from eviction in non-primary residence cases, as long as a class of persons—as opposed to named individuals—was identified in the lease (*see e.g. Koenig v. Jewish Child Care Assn.*, 107 AD2d 542 [1st Dept. 1985], *affd* 67 NY2d 955 [1986] [not-for-profit corporation operated group home for emotionally disturbed girls]; *Schwartz Landes Assoc. v. New York City Conciliation & Appeals Bd.*, 117 AD2d 74 [1st Dept. 1986] [not-for-profit corporation operated home for recently discharged psychiatric patients]).

'Manocherian I'

In *Manocherian v. Lenox Hill Hosp.* (84 NY2d 385 [1994]), the landlord had leased 54 apartments to Lenox Hill Hospital, which, in turn, sublet the units to a revolving series of nurses. When the landlord sought to evict based on non-primary residence, Lenox Hill Hospital engineered the passage of a statute (L 1984, ch 940), which provided that not-for-profit hospitals could satisfy the primary residence test as long as a nurse-affiliate actually lived in any given apartment. The Court of Appeals struck down the statute, holding, in part, that the

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RSL should not be interpreted as vesting "renewal rights in an entity of unlimited existence."

'Manocherian II'

Following *Manocherian I*, Lenox Hill argued, *inter alia*, that notwithstanding the demise of Chapter 940, Lenox Hill was entitled to renewal leases pursuant to the cases that followed *Cale Development*. The First Department rejected this argument, and established the test for when a non-corporeal entity will be entitled to a renewal lease under the RSL.

The motion court correctly found that, despite the lack of direct reference to *Cale* (*supra*) in the majority opinion of *Manocherian* (*supra*), the Court of Appeals rejected the argument that the rights Lenox Hill had enjoyed pursuant to Chapter 940 could be upheld by *Cale* and its progeny. Having found Chapter 940 to be an unconstitutional taking of property rights from the plaintiff landlord, the majority effectively limited *Cale* by citing with approval excerpts from its progeny that warn of the doctrine's similar potential for creating unconstitutional perpetual tenancies.

* * *

Hence, *Manocherian* 'rolls back' the *Cale* 'doctrine' to its limited holding: that a corporation is entitled to renew a lease where the lease specifies a particular individual as the occupant *and* no perpetual tenancy is possible.

(229 AD2d 197 [1st Dept. 1997]).

Of course, even if the lease specifies an intended occupant, that occupant has to live in the apartment in order for the non-corporeal entity to suvive a claim of non-primary residence.

'Avon Bard'

In *Avon Bard Co. v. Aquarian Found* (260 AD2d 207 [1st Dept. 1999]), two contiguous rent-stabilized apartments were leased to a religious corporation, with no particular individual identified as the intended occupant. The tenant asserted that its leader, the Rev. Allen Jenne, had lived in the apartment with his family for 17 years, and should be deemed the primary resident under the lease. The tenant further represented that neither of the units would be occupied by any other member of the church in the future. Notwithstanding such assurances, the First Department found against the tenant:

> Absent extraordinary circumstances, the landlord should prevail in a non-primary residence holdover, and will be able to recover the apartment and substantially increase the legal rent if not deregulate the apartment altogether.

The certificate of incorporation provides for the election of three trustees and proclaims, 'It is the intention of this church that it shall remain perpetual.' There is no assurance that another trustee will not assume occupancy of all or a portion of the leased premises upon the removal of some or all of the Jenne family. Thus, the corporate privilege of using the premises to house officers and employees of the church will 'last for as long as its unilaterally controlled corporate existence' (internal citation omitted).

(*Id*. at 209-10).

'Ole Pa Enterprises'

The First Department continued to strengthen the *Manocherian II* rule in *501 E. 87th St. Realty v. Ole Pa Enters.* (304 AD2d 310 [1st Dept. 2003]). There, the original lease was in the name of blues guitarist Johnny Winter and his wife. Thereafter, the named tenant became Ole Pa Enterprises Inc., an entity that the Winters controlled. Affirming Supreme Court, the First Department found for the landlord:

Although the Winter defendants resided in the subject rent-stabilized apartment in plaintiffs' building for more than 20 years, the evidence adduced at trial showed that the lease for the apartment in which the Winters resided named the corporate defendant, Ole Pa Enterprises Inc., as the tenant,

and did not specify a particular individual as the occupant. Under these circumstances, plaintiffs were entitled to prevail upon their claim that the subject apartment had not been utilized by the tenant of record or any specifically designated individual as a primary residence.

* * *

While it is true that the Winters were named as the tenants of record on an earlier rent-stabilized lease for the same apartment, there is no evidence that the substitution of the corporate tenant, Ole Pa Enterprises, for the Winters was at plaintiffs' instigation to induce the Winters to forgo rent-stabilization protections.

(*Id*. at 310-11).

Subsequent Cases

The Appellate Division, First Department has applied the *Manocherian II* in two cases involving the same not-for-profit entity. In *One Arden Partners v. Unique People* (29 Misc 3d 135[A] [App Term, 1st Dept. 2010]) and *562 Assoc. v. Unique People Services* (25 Misc 3d 131[A] [App Term, 1st Dept. 2009]), a not-for-profit leased multiple rent stabilized apartments. In both cases, the leases named the corporation as the tenant, but failed to identify an individual as the intended occupant. The landlord prevailed in both appeals.

In *2976 Marion v. University Consultation Ctr.* (44 Misc 3d 1209[A] [Civ Ct, Bronx County 2014]), the tenant was a not-for-profit "behavioral health" corporation, which provided "affordable behavioral health, clinical and rehabilitative residential case management and support to those in need." Due to problems arising with respect to the current occupant, the landlord commenced a non-primary residence holdover upon the expiration of the lease. The landlord prevailed on a motion for summary judgment, with Civil Court writing:

> Contrary to tenant's arguments, the relevant renewal Lleases failed to designate any individuals, or even a class of individuals, who are to reside in the premises. Indeed, despite being provided with a 'Tenant Information Update Sheet' accompanying the renewal leases, tenant had utterly failed to fill out the same or designate any occupant for the premises. (internal citation omitted).

The tenants prevailed in *220 W. 98 Realty v. New York Province of the Socy. of Jesus* (291 AD2d 13 [1st Dept. 2002]). Although the lease did not specify intended occupants, a stipulation in a prior litigation listed the particular occupants of the 16 apartments at issue, thereby negating the possibility of a perpetual tenancy. The First Department, however, remanded the matter to Civil Court "for a determination as to which apartments are no longer occupied by the individuals designated pursuant to 1989 stipulation."

Lastly, in *New York Univ. v. Kopper's Chocolate Specialty Co.* (11 Misc 3d 142[A] [App Term, 1st Dept. 2006]), the landlord's real estate director admitted at a deposition that he understood that the apartment would be for unnamed occupant Leslye Alexander, to be occupied by her only. Absent the possibility of a perpetual tenancy, the tenant prevailed.

Where a stabilized lease with a corporation or a not-for-profit entity fails to set forth a particular intended occupant, the landlord should consider whether he or she wishes to renew that lease upon its expiration. Absent extraordinary circumstances, the landlord should prevail in a non-primary residence holdover, and will be able to recover the apartment and substantially increase the legal rent if not deregulate the apartment a ltogether.