

### Landlord-Tenant Law

# Court Clarifies Extent Of ‘Familial Exception’



By  
**Warren A.  
Estis**



And  
**Michael E.  
Feinstein**

In the 1963 decision of the Appellate Division, First Department *Rosenstiel v. Rosenstiel*, 20 A.D.2d 71 (1st Dept. 1963), the court first set forth what has since become known as the “familial exception” to the maintenance of a summary proceeding pursuant to Section 713(7) of the Real Property Actions and Proceedings Law (RPAPL). That section permits the maintenance of a summary proceeding against persons who are in occupancy of real property pursuant to a license which has been revoked.

In *Rosenstiel*, the First Department held that in the context of a husband and wife, because of “special rights incidental to the marriage contract and relationship, the wife was not a “licensee” of her husband and therefore the husband could not bring a summary licensee holdover proceeding to evict her.

Notably, the court in *Rosenstiel* relied on the fact that the husband

had an obligation to “support and maintain his wife,” and that “the maintenance of a home or housing for the wife is a basic and necessary element of such support.”

### Court Expand the Exception

Over the years, numerous lower courts have extended the holding in *Rosenstiel* to include other “familial” relationships which are not by blood or marriage, even in the absence of legal support obligations. For example, in *Kakwani v. Kakwani*, 40 Misc. 3d 627 (Dist. Ct. Nassau County 2013) the court held that the owner of the home could not summarily evict her sister-in-law as a licensee, despite the fact that the owner had no legal obligation to support the sister-in-law. In *Griffith v. Reid*, NYLJ, Dec 11, 2008, p. 25, col. 1 (Civ. Ct. N.Y. Co.), the court held that a boyfriend could not summarily evict his former girlfriend, even though there were no legal support obligations. In *Sirota v. Sirota*, 164 Misc.2d 966 (Civ. Ct. Kings. Co. 1995), the court held that a father, who was no longer living in the home, could not bring a —

summary proceeding against his two adult children who had lived with their mother until she died, finding that summary proceedings were not maintainable in family situations. In *Williams v. Williams*, the court held that the tenant of record could not bring a summary holdover proceeding against her two grandchildren who had lived in the apartment since the inception of the tenancy. In *Nagle v. Di Paola*, 134 Misc. 2d 753 (Dist. Ct. Nassau Co. 1987), the court held that the petitioner could not bring a summary proceeding to evict his stepchildren.

### ‘Heckman’ Pulls the Brakes

In a decision issued in April 2017 by the Appellate Term, Second Department in *Heckman v. Heckman*, \_\_ N.Y.S.3d \_\_, 2017 WL 1377518 (App. Term, 2d Dept., 9th and 10th Jud. Dist. 2017), however, that court has now put the brakes on the ever-expanding “familial exception” to the maintenance of a summary proceeding. The court, in reversing the District Court, found that there was no “familial

exception” absolute bar to the maintenance of a summary proceeding against a family member, and that such a proceeding may be brought in a proper case.

In *Heckman*, the petitioner in the summary holdover proceeding was the trustee of a trust which owned the premises, and was also the daughter of the deceased former owner who had created the trust. The petitioner had brought the proceeding in her capacity as the trustee of the trust, alleging that the occupant, the daughter-in-law of the deceased former owner, “was a licensee whose

In so holding, the court criticized the numerous prior decisions from lower courts which expanded on the court’s ruling in *Rosenstiel* to develop the so-called “familial exception,” finding that “since *Rosenstiel* does not provide a basis for the creation of a bar to the maintenance of summary proceedings where there is no legal support obligation, there was no ‘familial exception’ to expand...” (citations omitted).

The court went on to observe that there were several decisions from the Appellate Term, Second Department which “implicitly [held] that there is no bar to the maintenance of a licensee proceeding in situations in which the occupant can properly be held to be a licensee.” (See *Pugliese v. Pugliese*, 51 Misc.3d 140[A], 2016 N.Y. Slip Op. 50614[U] (App. Term 2d Dept. 11th and 13th Jud. Dists. 2016); *Odekhiran v. Pearce*, 54 Misc.3d 126[A], 2016 N.Y. Slip Op. 51779[U] (App. Term, 2d Dept. 11th and 13th Jud. Dists. 2016); *DiStasio v. Macaluso*, 47 Misc.3d 144[A], 2015 N.Y. Slip Op. 50694[U] (App. Term, 2d Dept. 9th and 10th Jud. Dists. 2015).

While the court in *Heckman* recognized that “there are familial relationships that will often prevent an occupant from fitting into a category of respondent subject to eviction pursuant to RPAPL 713 (or for that matter RPAPL 711),” it went on to explicitly hold that:

where, as here, it is clear that an occupant does fit into one of the RPAPL 711 or 713 categories,

there is no ‘familial exception’ bar to the maintenance of a summary proceeding.

### Conclusion

The court in *Heckman* was clearly troubled by what it saw as an unjustified expansion of the “familial exception” in the lower courts, which had seemingly established a bar to the maintenance of summary proceedings against anyone falling within the ever-growing definition of a “family member.” The court made clear that at least within its jurisdiction (the 9th and 10th Judicial Districts of the Second Department), there is no such bar, and that a summary proceeding may be brought against a family member where such a proceeding may properly be maintained under the grounds set forth in RPAPL 711 (where a landlord-tenant relationship exists) or RPAPL 713 (where no landlord-tenant relationship exists). We shall have to wait and see whether appellate courts in other jurisdictions will follow suit.

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license has been revoked.” After a nonjury trial, the District Court, Suffolk County dismissed the petition, finding that while the occupant was a licensee, she had established the applicability of the so-called “familial exception” to eviction by summary proceeding. The Appellate Term, Second Department, 9th and 10th Judicial District, reversed and remitted the matter to the District court “for the entry of a final judgment awarding possession to petitioner.”