Succession Rights: Attack of the Zombie Tenants

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With summer upon us, our thoughts turn to summer movies, in particular the new Brad Pitt vehicle, *World War Z*. In the movie, Brad Pitt attempts to stop a zombie pandemic that threatens the world. Although we have not seen the film, our guess is that Brad is up to the task.

Oddly, New York City owners of rent-regulated apartments face a similar, albeit less widespread menace: zombie tenants, i.e., opportunistic imposters who assume the identity of long dead tenants of cheap rent-regulated apartments. These dead tenants are reanimated by forged leases, unchanged mailbox labels, and anonymous money orders. If all goes well, the imposter keeps a rent-regulated apartment for years or decades, and the landlord, ignorant of the scam, never knows that he or she has been defrauded.

This article will discuss some of the more celebrated zombie tenant cases.

Succession

The elaborate subterfuges described below arise from the fact that rents for rent-regulated apartments in New York City are often substantially below market. They also arise from the fact that both rent stabilization and rent control have "succession" regulations, whereby, under enumerated circumstances, a rent-regulated apartment can be passed on to a family or non-traditional family member when the rent-regulated tenant of record departs the apartment, or this world.

Zombie tenant attacks occur where the tenant of record vacates and the remaining occupant, rightly or wrongly, believes that he or she will not be able to lawfully succeed to the apartment.

'Hultgren'

The earliest and most celebrated zombie tenant case—the judicial equivalent of, say, George A. Romero's 1968 *Night of the Living Dead*—is *117th West 57th Street Realty v. Estate of Hultgren*, 1993 WL 393073 (App. T. 1st Dept.), rev'd 205 A.D.2d 363, 614 N.Y.S.2d 900 (1st Dept. 1994). The rent controlled apartment at issue in *Hultgren* was described in the pleadings as "Penthouse a/k/a Apt. 6A, 6B, 7A." At the time of the litigation, the rent for this seven and one-half room apartment was $90.25 per month. The extraordinary size of the apartment, coupled with its virtually nonexistent rent, made the apartment the perfect breeding ground for zombies.

The rent-controlled tenants of record were Robert and Frances Hultgren. They apparently shared the apartment with another married couple, Robert and Laura Knipe. The Hultgrens vacated the apartment in 1950. The Knipes remained in possession. As of 1950, the concept of "succession" did not exist under rent control.

The Knipes then undertook a scheme to assume the identity of the departed Hultgrens. They did this by paying rent by money orders using the name "Hultgren," by leaving the "Hultgren" name on the mailbox, and by signing their periodic complaint letters to the landlord using the name "Hultgren." This subterfuge, astoundingly, lasted for approximately 40 years.

The landlord woke up in 1990, and commenced a licensee proceeding against Robert and Laura Knipe. *117th West 57th Street Realty v. Knipe*, NYLJ, Sept. 5, 1990, at 19, col. 1 (N.Y.C. Civ. Ct.). Civil Court dismissed the petition on various procedural grounds.

The landlord in *Hultgren* then started a holdover proceeding against the Knipes, which led to a non-jury trial in Civil Court. The court dismissed the petition, holding that the landlord knew or should have known that the "Hultgrens" were the Knipes, and that by failing to discover the subterfuge, had waived any right to contest the Knipes' occupancy.

In a 2-1 decision, the Appellate Term affirmed for the reasons stated in Civil Court's determination. Justice William P. McCooe, however, dissented, writing:

Factually, I have no dispute with the findings of the Trial Court that the present occupants, the Knipes, lived with the rent controlled tenants, the Hultgrens, until the Hultgrens vacated in 1950 and for the past forty-three years the Knipes have resided in these premises.

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I disagree with the finding of waiver which is the voluntary relinquishment of a known right.

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Two facts compel me to disagree. The Knipes have paid rent by money order using the name Hultgren for the past forty-three years and signed his name to complaint letters although Hultgren has not only departed the apartment but this world. The Hultgren name still appears on the mailbox together with the Knipes'. Why this subterfuge if the landlord knew the Knipes were the tenants? There is no proof of a waiver.

McCooe continued:

The Knipes argue that the equities are in their favor because they are 69 and 67 years of age, respectively. I am unimpressed since their occupancy of this seven and one-half room penthouse across the street from Carnegie Hall for forty three years is a largesse, presently paying $90.25 per month rent (no misprint), their daughter may have succession rights and there is no showing they are without funds.

The landlord then appealed to the Appellate Division, First Department, which unanimously reversed for the reasons stated in the dissenting opinion by McCooe.

Several post-*Hultgren* cases have had similar facts and similar results. In *411 East 70th Street, LLC v. Tsingos*, 2002 WL 759618 (App. T. 1st Dept.), the offending occupant moved in in 1975, keeping the original tenant's name on the mailbox and paying the landlord "with money orders in the tenant's name." The Appellate Term, affirming the Civil Court, found that the offending occupant had no right to continued possession.

In the more recent case of *1234 B'way LLC v. Chen,* 32 Misc.3d 142(A), 938 N.Y.S.2d 228 (App. T. 1st Dept. 2011), the occupant paid key money to the departing tenant and moved into his SRO unit; he thereafter "either paid rent directly to this former occupant or tendered the rent in cash to petitioner and received rent receipts in the name of the long-departed tenant of record." Appellate Term, citing *Hultgren*, unanimously reversed the Civil Court and awarded the landlord a judgment of possession.

'South Pierre Associates'

Another celebrated zombie tenant case is *South Pierre Assocs. v. Mankowitz*, 17 Misc.3d 53, 844 N.Y.S.2d 552 (App. T. 1st Dept. 2007). In *South Pierre*, the Appellate Term, First Department described the occupant's conduct as follows:

The trial evidence plainly shows, and it is not seriously disputed, that respondent [Stanley] Mankowitz engaged in a persistent and systematic pattern of deception in concealing his occupancy status from petitioner for 13 years following the death of the stabilized tenant in November 1989, by forging the tenant's name on no fewer than seven renewal leases and numerous rental payments. Respondent's course of deception was studied and purposeful—indeed, it was a stratagem admittedly implemented upon advice of counsel—and it persisted through October 2002, when respondent, unable to comply with petitioner's request for the long deceased tenant to notarize a document, finally informed petitioner of the tenant's death and, for the first time, sought the issuance of a renewal lease in his [respondent's] name.

The Appellate Term held that by engaging in such conduct, the occupant waived his succession claim:

On this record, and considering the severity and duration of respondent's fraudulent conduct, respondent must be deemed to have waived any claim that he might have had to succeed to the tenancy. The law is settled that succession rights are not automatically vested in a potential successor upon the death of a stabilized tenant, but remain inchoate until the occupant's "status as a qualified successor [is] ratified by judicial determination at a time after the tenant's death."

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The ruse carried out by re-spondent herein, by which he affirmatively misrepresented both his status and that of the deceased tenant for well over a decade, "represent[ed] a substantial departure from the ordinary course" and, by necessity, unduly prejudiced petitioner in the prosecution of its eviction claim. In this regard, we note that respondent's extreme delay in notifying petitioner of the tenant's death—or, more accurately, his prolonged efforts to actively conceal the tenant's death—prevented petitioner from undertaking a contemporaneous investigation into the emotional and financial underpinnings of respondent's "nontraditional" family member succession claim (internal citations omitted).

Thus, the Appellate Term held that even if the occupant might have had a valid succession claim, prolonged deception will constitute a waiver of that claim. See also *Third Lenox Terrace Assocs. v. Edwards*, 23 Misc.3d 126(A), 881 N.Y.S.2d 367 (App. T. 1st Dept. 2009).

'Knibb'

Sometimes the subterfuge will work, at least where it does not go on for too long, and where the occupant may indeed have an otherwise valid succession claim.

In *Riverton Assocs. v. Knibb*, 11 Misc.3d 14, 811 N.Y.S.2d 854 (App. T. 1st Dept. 2005), respondent moved into her grandmother's apartment in 1991 and cared for her until the grandmother died in 1999. These facts, without more,

would have established a valid succession claim under RSC §2523.5(b).

The granddaughter, apparently unaware of her valid succession claim, concealed her grandmother's death from the landlord for a two-year period through the submission of renewal leases bearing her grandmother's forged signature.

Civil Court (Acosta, J.) found in favor of the landlord. In a 2-1 decision, Appellate Term reversed, stating:

In view of respondent's persuasive showing of a long-term co-occupancy with her grandmother, as specifically found by the trial court, and the relatively short-lived duration of respondent's misrepresentations, any fraud or irregularities committed in the aftermath of the grandmother's death cannot reasonably be said to have caused petitioner any discernible prejudice in the prosecution of its eviction claim.

In dissent, Justice Lucindo Suarez was unsympathetic to respondent:

Knibbs' deceitful conduct herein, described by the majority as "relatively short-lived," consisted in not only intentionally shielding her presence in the apartment from the landlord for many years prior to her grandmother's death, but also in forging her deceased grandmother's signature on a renewal lease in May 2000 and on a second renewal lease two years later in May 2002. The deceit ceased only upon its discovery. While Knibb had a right to be named as a tenant on the renewal lease after her grandmother's death…she failed to exercise that right.

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The integrity of the rent stabilization scheme is threatened not only by tenants who sublet at a profit, but also by persons such as Knibb who rely on deception and forgery to conceal their presence from landlords and assert succession rights when it suits their convenience (internal citation omitted).

See also *Patmund Realty v. Mui*, 32 Misc.3d 1232(A), 936 N.Y.S.2d 60 (N.Y.C. Civ. Ct. 2011).

Attorneys representing landlords are advised to beware of such subterfuges. Landlords should always be suspicious of payments by money orders, and upon renewal, should always check to see if the tenant's current signature matches signatures on prior leases.

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