

LANDLORD-TENANT

It's Case-by-Case Deciding 'Family Member' or Licensee



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Over 50 years ago, the Appellate Division, First Department in *Rosenstiel v. Rosenstiel*¹ held that a husband, who owned what had been the marital home in his name only, could not evict his wife from the home by way of a licensee holdover proceeding under Real Property Actions and Proceedings Law (RPAPL) §713(7).² The court reasoned that a spouse's right to occupy the family residence did not stem from her husband's permission, but from the very family relationship itself, and therefore a spouse could not be summarily evicted as a mere licensee.

Since *Rosenstiel* was decided, the courts have developed a "family exception" to RPAPL 713(7). In these cases, where a court finds that a true "family relationship" exists, the courts will not permit one family member to evict another in a summary licensee holdover proceeding with a 10-day notice to quit. Rather, in such cases, an action in Supreme Court for ejectment would have to be commenced. Based on the various decisions that have dealt with these issues over the years, the term "family member" has been defined broadly and is not limited to "legally defined" members of a family. This article will discuss some of those decisions.

Shortly after *Rosenstiel*, in the 1964 decision *Matter of Brennecke v. Smith*,³ the husband and wife lived in the marital home, which was owned by the wife, with their four children. Thereafter, the wife left the marital home and, because of financial problems, she deeded the home to a friend who never lived in the home. The friend then commenced a summary proceeding to evict the husband as a licensee. Relying on the First Department's decision in *Rosenstiel*, the court dismissed the proceeding, finding that the husband was not a licensee, despite the fact that the petitioner was not a member of respondent's family.

In *Minors v. Tyler*,⁴ a 1987 decision of the Civil Court, Bronx County, the petitioner was the title owner of a home in which he cohabited with the respondent for a number of years as purported husband and wife, although the parties were never legally married. The petitioner commenced a holdover proceeding to evict the respondent from the home as a licensee whose license was revoked. In ruling against the petitioner and transferring the proceeding to the Supreme Court, the court stated:

As generally understood in the law of real property, a licensee is one who enters upon or occupies lands by permission, express or implied, of the owner, or under a personal, revocable, nonassignable privilege from the owner, without possessing any interest in the property, and who becomes a trespasser thereon upon revocation of the permission or privilege [citation omitted]. Can we reasonably conclude that one who assumes a "marital relationship" without the benefit of marriage comes within that definition? I think not! She is, at least, a co-occupant who possesses an interest in the property and who, in this case, asserts a claim to ownership. As such, it is the opinion of this court that she may not be removed from occupancy in a summary proceeding commenced under RPAPL 713 (7).⁵

The definition of "family member" for purposes of whether a person can be evicted as a licensee under RPAPL 713(7) is a flexible one.

Domestic Partners

The tide then seemed to turn against extending "family member" protection to unmarried partners when, in 2001, the Nassau County District Court issued its decision in *Blake v. Stradford*.⁶ In that

case, the petitioner, Easton Blake, who was the titled owner of the home and the ex-domestic partner of the respondent Kim Stradford, commenced a summary licensee holdover proceeding against respondent and the couple's two minor children to evict them from the home. The respondent interposed an affirmative defense of lack of jurisdiction based on her contention that she was not a licensee because of her status as a "domestic partner." The court, after trial, rejected the respondent's affirmative defense and granted a judgment of possession in favor of the petitioner.

The court in *Blake* reiterated the law, as enunciated by the Appellate Division in *Rosenstiel*, that if the respondent's status was one of a "wife" she would not be deemed a mere "licensee" and could not be evicted under RPAPL 713(7). The court noted that the "[t]he occupation of a marital home by a wife is not possession existing by virtue of the permission of her husband" but instead a wife's "possession of the premises exists because of special rights incidental to the marriage contract and relationship."⁷ The court concluded that "in the instant case, however, the respondent is not cloaked with the status of 'wife.'"⁸

In ruling against the respondent, the court in *Blake* specifically rejected the respondent's reliance on the Civil Court, Bronx County's decision in *Minors*, supra, stating that the court "disagrees with the Civil Court's decision [in *Minors*] and is bound by the Court of Appeals' decision in *Morone v. Morone*,⁹ which was a palimony case where the plaintiff sought compensation for domestic services performed. *Morone* stated that "cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation."¹⁰ The *Blake* court also noted that "the New York State Legislature has not sought fit to enact statutes to protect the property rights of 'domestic partners.'"¹¹

Only two years after *Blake*, however, the Civil Court, Richmond County decided *DeJesus v. Rodriguez*.¹² The court in *DeJesus* refused to follow the court's ruling in *Blake*, supra, and held that a domestic partner of the petitioner could

not be evicted as a mere “licensee.”

In *DeJesus*, the petitioner, the record owner of the subject property, and the respondent had resided together in the home for 10 years. The petitioner was also the biological father of the two minor children living in the home. After the petitioner moved out of the home, he served a 10-day notice to quit on the respondent and thereafter commenced a summary holdover “licensee” proceeding to evict the respondent from the premises. The respondent asserted as a defense that “she is not a licensee, having simultaneously moved in with the petitioner and contributed to the purchase price of the home and payment of household expenses.”¹³

In ruling in favor of the respondent, and holding that she was not a mere “licensee,” the court observed that “[c]hanging social customs have increased the number of unmarried persons living together” and that “[t]he ‘nuclear family’ arrangement is no longer the only model of family life in America.”¹⁴ The court held that “[m]odern life requires the courts to recognize that unmarried couples acquire rights similar to married occupants as it affects continued occupancy of the home they have shared” and thus “[w]hile respondent does not have the legal status of a wife, there is no question that she is more than a licensee.”¹⁵

Moreover, the court in *DeJesus* specifically rejected the *Blake* court’s decision and its reliance on the Court of Appeals’ decision in *Morone* as a basis for concluding that the respondent domestic partner in that case was a licensee. The court in *DeJesus* stated:

the court [in *Blake*] relied on *Morone v. Morone*..., a “palimony action” whereby the plaintiff sought to be compensated for her domestic services. *Morone* was strictly an action seeking monetary relief. The court in *Blake* relied on *Morone* for the proposition that “cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation.” However, this does not mean that a domestic partner is devoid of rights.¹⁶

Extended Family

Following *DeJesus*, the 2006 decision of Civil Court, New York County in *Williams v. Williams*¹⁷ extended the “family exception” to a petitioner’s grandchildren. In *Williams*, the petitioner grandmother sought to evict as licensees her adult grandchildren who had lived with her in the apartment for 13 years. The court held that the petitioner could not evict the grandchildren as licensees, finding that:

respondents... have lived in the apartment with petitioner as a family unit since 1993. It is clear that petitioner has cared for them since at least the inception of the tenancy... Protections against sudden eviction should not be determined by genetic history, but should instead be based on the reality of family life. The result is that the respondents are not really licensees whose right to remain

in the apartment can be revoked through a summary proceeding.¹⁸

In the 2009 decision of the Nassau County District Court in *Lally v. Fasano*,¹⁹ the court observed, based on an analysis of various court decisions concerning the “family exception,” that:

[w]hether the parties resided together has often been the “critical factor” in determining whether they are to be considered a “family” for legal purposes. Another consideration in the majority of the... cases was whether there was a duty of the property owner to support the alleged licensees. Encompassed in the duty to support is the parties’ social and financial dependence.²⁰

Each “family exception” case must be carefully analyzed by the court on a case by case basis to determine whether or not the parties were involved in a true family relationship as opposed to mere friends or temporary live-in paramours.

In *Lally*, the court held that the respondent, who was the daughter-in-law of the petitioner who had previously lived with her husband at the premises, was a licensee who could be evicted in a summary proceeding. The court based its ruling on the facts that (1) it was uncontroverted that the petitioner and the respondent never lived together in the subject premises as a family, and (2) the respondent was not financially dependent on the petitioner.

Only three years after *Lally*, however, the very same court, in *Kakwani v. Kakwani*,²¹ extended the “family exception” to the sister-in-law of the petitioner.

In *Kakwani*, the petitioner had lived with her brother in a one family residence. In March 2008, the brother met the respondent, his arranged bride-to-be, in India, and, in November 2008, she moved into the home with the brother and the petitioner. The brother and the respondent were then married a month later, and lived in the master bedroom of the home as husband and wife until sometime in 2012 or early 2013. The husband then moved out of the master bedroom and into another room of the home.

The petitioner then commenced a summary licensee holdover proceeding against the respondent. The respondent maintained that she was a family member not subject to summary eviction under RPAPL 713(7). In ruling in favor of the respondent and dismissing the proceeding, the District Court stated that each “family exception” case “must be carefully analyzed by the court on a case by case basis to determine whether or not the parties were involved in a true fam-

ily relationship as opposed to mere friends or temporary live-in paramours.”²²

In ruling that the respondent and petitioner were part of a family relationship, the court found that:

[t]he young respondent herein is an unemployed woman, born and raised in India, whose family arranged a marriage for her to the petitioner’s brother. The petitioner’s family brought her to this country just a month before her wedding and provided her with a marital residence, the only home she has known since her arrival in this country and her marriage to the petitioner’s brother over four years ago. They have lived together as a true family with all the indicia of a common home, financial support, and emotional interdependence. Her right to reside in the instant premises arises not merely from the petitioner’s consent but from her marriage into the family.²³

Conclusion

As the above cases demonstrate, the definition of “family member” for purposes of whether a person can be evicted as a licensee under RPAPL 713(7) is a flexible one, and has been decided by the courts on a case by case basis depending on the nature of the relationship between the petitioner and the respondent. Generally, where the petitioner and the respondent have shared a common home for a significant period of time, and there is some degree of financial dependence by the respondent on the petitioner, the courts have found sufficient indicia of a family relationship so as to prevent the petitioner from evicting the respondent in a summary proceeding. In those cases where a family relationship is found, the petitioner may be relegated to an ejection action in Supreme Court.

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1. 20 A.D.2d 71 (1st Dept. 1963).

2. RPAPL §713, entitled “Grounds where no landlord-tenant relationship exists” provides in relevant part: “A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds: ... 7. He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor...”

3. 42 Misc.2d 935 (County Ct. Westchester 1964).

4. 137 Misc. 2d 505 (Civ. Ct. Bronx Co. 1987).

5. Id. at 507.

6. 188 Misc. 2d 347 (Dist. Ct. Nas. Co. 2001).

7. Id. at 351-52.

8. Id. at 352.

9. 50 N.Y.2d 481 (1980).

10. Id. at 486.

11. 188 Misc. 2d at 352.

12. 196 Misc. 2d 881 (Civ. Ct. Richmond Co. 2003).

13. Id. at 883.

14. Id. at 884.

15. Id. at 885.

16. Id. at 883-84 (citations omitted).

17. 13 Misc. 3d 395 (Civ. Ct. N.Y. Co. 2006).

18. 13 Misc. 3d at 399-400 (citation omitted).

19. 23 Misc. 3d 938 (Dist. Ct. Nas. Co. 2009).

20. Id. at 941 (citation omitted).

21. 967 N.Y.S.2d 827 (Dist. Ct. Nas. Co. 2013).

22. Id. at 833.

23. Id. at 834.