67 N.Y.2d 930
(Cite as: 67 N.Y.2d 930, 493 N.E.2d 939)

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829 Seventh Ave. Co. v. Reider
67 N.Y.2d 930, 502 N.Y.S.2d 715
N.Y. 1986.

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829 Seventh Avenue Company, Appellant,
v.
Eve Reider, Respondent.
Court of Appeals of New York

Argued March 17, 1986;
decided April 29, 1986

CITE TITLE AS: 829 Seventh Ave. Co. v Reider

SUMMARY

Appeal, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from an order of that court, entered June 20, 1985, which modified, on the law and the facts, and, as modified, affirmed an order of the Appellate Term of the Supreme Court in the First Judicial Department, entered March 2, 1984 (opn 125 Misc 2d 39), which (1) reversed a judgment of the Civil Court of the City of New York (Jay Stuart Dankberg, J.), entered in New York County,*inter alia,*awarding possession of the subject apartment to respondent tenant, and dismissing the petition on the merits, and (2) awarded final judgment of possession in favor of petitioner landlord. The modification consisted of reversing so much of the Appellate Term order as determined that respondent tenant was not entitled to remain in occupancy pursuant to New York City Rent and Eviction Regulations § 56 (d) and reinstated the landlord petitioner's petition for possession, and affirming that part of the order which ruled that petitioner adequately demonstrated that a landlord-tenant relationship existed. The following question was certified by the Appellate Division: “Was that portion of the order of this Court, which modified the order of the Appellate Term of the Supreme Court, properly made?”

829 Seventh Ave. Co. v Reider,111 AD2d 670, reversed.

HEADNOTES

Landlord and Tenant--Rent Regulation--Family Member “Living With” Prime Tenant

(1) New York City Rent and Eviction Regulations §56 (d), which prohibits the eviction of the surviving spouse of a deceased tenant or some other member of the deceased tenant's family who was living with the tenant, protects only members of a deceased statutory tenant's family, and, thus, the “living with” requirement must be read to mean living with such statutory tenant in a family unit, which in turn connotes an arrangement, whatever its duration, bearing some indicia of permanence or continuity. Consequently, where respondent tenant never put her name on the mailbox of her grandmother, the now-deceased statutory tenant with whom she resided, did not advise either the doorman or the landlord of her cooccupancy, left all her furniture in another apartment which she leased, maintained her telephone number at that apartment, and kept her bank accounts at a bank near that apartment, it was error to find that section 56 (d) protected respondent from eviction as a holdover, since the aforementioned virtually uncontradicted facts were indicia only of transience and temporary occupancy.

APPEARANCES OF COUNSEL

*Jeffrey R. Metz*and*Patricia D. De Ciccof*or appellant.
*Richard B. Feldman*for respondent. ***932**

OPINION OF THE COURT

The order of the Appellate Division should be re-

versed, and the order of the Appellate Term granting final judgment of possession to petitioner landlord reinstated, with costs. The question certified should not be answered as unnecessary.

The issue presented on this appeal is whether the respondent adduced legally sufficient proof that she had been "living with" her grandmother at the time of the grandmother's death.

On May 1, 1982, respondent in this holdover proceeding moved into a rent-controlled one-bedroom apartment in Manhattan of which her grandmother was the statutory tenant. She slept on a sofa bed in the living room, shared household chores with her grandmother and contributed $100 in cash toward each month's rent. Before moving in with her grandmother, the respondent had resided in a studio apartment in Rego Park, Queens, which she leased for $350 per month and furnished with her own furniture and other household goods. On May 1, 1982, the tenant orally sublet her Queens apartment to a friend for $250 per month.

After the grandmother's sudden hospitalization in mid-August 1982 the respondent paid the September rent and after the grandmother's death on September 29, 1982, the respondent paid the October rent, both payments being made with her checks and accepted by the landlord. After the respondent informed the landlord of her grandmother's death, her November rent payment was rejected. Service of a notice of termination of license and notice to quit followed the rejection.

The respondent claims she is entitled to remain in possession of the apartment pursuant to New York City Rent and Eviction Regulations § 56 (d), which provides: "No occupant of housing accommodations shall be evicted under this section where the occupant is either the surviving spouse of the deceased tenant or some other member of the deceased tenant's family who has been living with the tenant".

Section 56 (d), by its terms, protects only members of a deceased statutory tenant's family. Thus the "living with" requirement must be read to mean living with such statutory tenant in a family unit, which in turn connotes an arrangement, whatever its duration, bearing some indicia of permanence ***933** or continuity*(Goodhue House Co. v Bernstein,*NYLJ, Dec. 7, 1981, p 14, col 3).

In the present case, the respondent never put her name on her grandmother's mailbox, and did not advise either the doorman or the landlord of her cooccupancy. She left all her furniture in the Rego Park apartment, maintained her telephone number there, and kept her bank accounts at a Rego Park bank. These facts, found by the courts below on virtually uncontradicted proof, are indicia only of transience and temporary occupancy. The Appellate Division erred, therefore, in determining that section 56 (d) protected the respondent from eviction as a holdover.

Chief Judge Wachtler and Judges Meyer, Simons, Kaye, Alexander, Titone and Hancock, Jr., concur.

Order reversed, with costs, and the order of the Appellate Term reinstated in a memorandum. Question certified not answered as unnecessary.

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