

Shoo, Fly, Shoo; Summary Evictions of Family Members

By Vesselin Mitev

Husband and wife are in the middle of a divorce. Wife realizes that the husband, whom she never bothered to put on the deed, is living in her house (in which she is living in pursuant to a questionable life estate deed transfer from her own mother, who is now relegated to the (illegal) apartment on the side of the house), and based on the luminary advice of her learned counsel, who posits that the temporary orders do not encompass this scenario, since there is no right to something you don't own, commences a summary eviction proceeding in landlord tenant court.

Second scenario: Wife and husband are divorced, pursuant to a stipulation of settlement, but the judgment has not yet been entered. Husband was supposed to have vacated the home but has not yet done so, but still contributes to the expenses. Again, having had enough, the wife serves the husband with a notice of termination and commences an eviction proceeding.

Scenario three: Mom and dad, who managed to raise an otherwise completely unremarkable man-child, sign the deed over to said man-child (do nothing with the mortgage) and, thanks to either shoddy work or glaring incompetence, fail to reserve themselves a life estate. Said man-child, fresh off taking shirtless selfies and making duck faces at Senor Frog's in Cabo, has decided that due to pressing gym-related

"business" interests, he needs to sell the family home and cash out; again, mom and dad have been served with a notice to appear in district court.

Scenario four: Man and woman have two kids, have been together for 12 years, work in the same business (man has a landscaping company and the woman does the books) and share a home (although it is solely in the man's name); the romantic wick finally burns out, and man now seeks to evict the mother of his children from his house, since the love of his life, who hails from Ukraine and met him via the wonder that is the internet, will be arriving shortly, and all must be in order. Like the prior three exemplars, a summary eviction proceeding has been commenced.

While it would take reams of paper to summarize the relevant intertwining statutes, the basic starting point of any attempt to remove or otherwise alter someone's interest in real property via a summary proceeding is a landlord-tenant relationship (see RPAPL Article 7). In each of the aforesaid examples, such a relationship is clearly lacking and thus the landlord-tenant court, which is a creature of statute and thus must strictly construe its jurisdictional limits, should not be the proper forum.

Of course, there is a giant exception to the rule, codified in RPAPL 713, which specifies a number of exceptions where



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such a proceeding may be maintained, despite there being no formal landlord-tenant relationship. Now we have looped back upon ourselves, and sit, Toad-like, bemoaning to Mole, that "We must stop eating" as he ate another. Thankfully, our inquiry is not at an end, since a whole swath of case law has carved out the

"familial" exception to such evictions, which began with a husband's attempt to oust his wife from a house he owned, in *Rosenstiel v. Rosenstiel*, 20 A.D.2d 71, 245 N.Y.S.2d 395 (1st Dept. 1963).

In *Rosenstiel*, the court held that summary proceeding was not authorized to oust the wife from possession, reasoning that she was "lawfully in possession to begin with as the wife of the [petitioner] [and] she continued in possession . . . not by virtue of any license or special arrangement . . . but solely on the basis of the existence of their marital relationship."

Fifty years later, in *Nauth v. Nauth*, 42 Misc.3d 672 (NY Civ. Ct. 2013), the Court extended that holding to the divorced ex-wife of the husband, who continued to reside in the former marital residence, in a top floor apartment, holding that she was a family member, and tracing the evolution of the family member exception to being summarily evicted from a home: (*Nagle v. Di Paola*, 134 Misc.2d 753, 512 N.Y.S.2d 761 (N.Y. Dist. Ct. 1987)), recognizing adult lifetime partners (*Braschi v. Stahl*

Assoc. Co., 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989)), recognizing adult children (*Sirota v. Sirota*, 164 Misc.2d 966, 626 N.Y.S.2d 672 (N.Y.C. Civ. Ct. 1995)), recognizing an ex-girlfriend and minor children of the relationship (*DeJesus v. Rodriguez*, 196 Misc.2d 881, 768 N.Y.S.2d 126 (N.Y.C. Civ. Ct. 2003)), see also *Robinson v. Holder*, 24 Misc.3d 1232 (A), 901 N.Y.S.2d 902 (N.Y. Dist. Ct. 2009)), recognizing adult grandchildren (*Williams v. Williams*, 13 Misc.3d 395, 822 N.Y.S.2d 415 (N.Y.C. Civ. Ct. 2006)), and recognizing a sister-in-law (*Kakwani v. Kakwani*, 40 Misc.3d 627, 967 N.Y.S.2d 827 (N.Y. Dist. Ct. 2013)).

In sum, when faced with a petition to evict via summary proceeding anyone who is a direct or indirect family member, a cogent and applicable defense is that the strictly limited landlord tenant court has naught the jurisdiction over the proceeding, given the evinced loathing by the courts to summarily dispossess persons of their rights and interest to property that were shaped by their belonging first to a(n) (ever-expanding) class of family.

Note: Vesselin Mitev is a partner at Ray, Mitev & Associates, LLP, a New York litigation boutique with offices in Manhattan and on Long Island. His practice is 100 percent devoted to litigation, including trial, of all matters including criminal, matrimonial/family law, Article 78 proceedings and appeals.