Belkin Burden Wenig & Goldman, LLP

UPDATE

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March 2006

Sherwin Belkin, Editor

Granddaughter Forges Deceased Tenant's Signature — Rewarded With Succession Rights

Riverton Assocs. v. Knibb was a licensee holdover proceeding brought in 2002 against the granddaughter of the deceased tenant who was claiming succession rights to her grandmother's rent stabilized apartment. The grandmother had died in late 1999. At trial, the granddaughter submitted no documents to establish her co-occupancy of the apartment with her grandmother, offering, instead, only her testimony and that of corroborating witnesses indicating that she primarily resided with her grandmother for two (2) years prior to her grandmother's death – testimony that the trial court found credible (in fact, the court found that the granddaughter had lived with her grandmother since the early 1990's).

However, during the trial the granddaughter admitted that she had forged her grandmother's signature on two renewal leases after the grandmother had died. Civil Court Judge Rolando Acosta held that by failing to affirmatively advise the owner of her grandmother's death, the grand-daughter had denied the owner the opportunity to investigate

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Some (Tenants) Like It Hot!

How far would a residential tenant go to hold onto a rent regulated apartment? Pretty far, you say? We have all heard stories about tenants who will lie on the witness stand to cover up an illegal sublet or rent gouging. You have probably heard tales of impish tenants who will file false tax returns to hide their primary residence. Maybe you even heard the lore of rogue tenants who will forge a deceased relative's signature on rent checks and renewal leases to prevent management from ever becoming aware that grandma actually died [see *Stacey Bender's article above*].

You certainly will not be shocked to learn that, while even acknowledging blatant fraudulent behavior, on occasion, such malfeasor's are allowed to keep or succeed to rent regulated apartments. It seems unjust, but it is an unfortunate fact of New York City landlord-tenant litigation, that sometimes it pays to lie, cheat and steal. Countless times the consequence of a tenant or would-be successor committing a fraud is: "Let the IRS deal with it; because I believe the family member really was living with the tenant." These types of cases continue to confound owners and

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Special Points of Interest:

- **Fraud and deceit by an occupant claiming succession rights might not deprive the occupant of such rights.**
- **The lengths tenants will go to hold onto a rent regulated apartment.**

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and contest her status as a successor tenant at an earlier date. For example, during discovery, the owner sought discovery of documents for the period 2000 to 2002, when the correct two year test period was actually 1997 to 1999 (that is, two year's prior to the tenant's permanent vacating from the apartment by reason of her death). The court found that the granddaughter's acts of deceit undermined the "integrity" of the rent regulatory scheme. As a result, the trial court held that the granddaughter had forfeited her right to succeed to the tenancy.

On December 25, 2005, a 2 to 1 majority of the Appellate Term, First Department, reversed, found in favor of the granddaughter and dismissed the petition. In so doing, the Appellate Term held that the evidence had "plainly demonstrated" that the granddaughter was entitled to succeed to the grandmother's tenancy. The appellate court held that the granddaughter had not forfeited her succession rights by concealing her occupancy from the owner for two years after the grandmother's death or by her forging her deceased grandmother's signature.

The Appellate Term rested its decision upon the granddaughter's long term co-occupancy with the tenant and its finding that the short-term duration of her "misrepresentations, any fraud or irregularities committed in the aftermath" of her grandmother's death could not reasonably be said to have prejudiced the owner's prosecution of its claim. Finally, the Court specifically distinguished this case from a prior decision it had issued where waiver of succession was found where an occupant claiming succession had lived elsewhere for seven years prior to claiming succession.

Judge Lucindo Suarez dissented, stating that the "right to succeed to a rent stabilized tenancy is not automatic." Rather, the would-be successor is entitled to be offered a right of renewal. By failing to act when the first offer of renewal arose (in fact, avoiding a renewal in her own name), the dissenter would hold that the granddaughter forfeited her succession claim.

So, what does this split decision mean in terms of an occupant's obligation to disclose the death of the tenant to the owner where the occupant intends to claim succession rights to that tenant's tenancy? The majority decision seems to indicate that where an occupant has a bone fide claim of succession, the fact that the occupant may not have immediately disclosed the tenant's death to the owner, or may have even committed fraud in attempting to hide the tenant's death from the owner, will not deprive the occupant of the right of succession, should the occupant affirmatively establish that right on the merits.

Clearly, the deceptive/fraudulent conduct of the occupant will affect the occupant's credibility at trial. Further, since the Appellate Term did specifically hold that the granddaughter's "relatively short-term" period of deception was relevant to its finding, the decision also seems to indicate that where fraud is perpetuated by an occupant for a longer period of time, the Court could find differently.

In the end, the burden is still upon the occupant to establish a right to succession by the preponderance of the evidence. As a practical matter, it is a good practice to routinely compare signatures on renewal lease agreements with other signatures of that tenant that are already in the tenant file or on prior renewal leases. While it may be burdensome and time-consuming, discovering even one forgery intended to deceive, warrants such efforts.

In light of Judge Suarez having issued such a strong dissent, criticizing the majority decision, finding that the majority's decision would "open the door to possible fraudulent claims" and that the integrity of the rent stabilization scheme is threatened by individuals who assert succession rights only when it suits their convenience, an appeal to the Appellate Division appears to be a valid option for the owner. As such, the Appellate Term's decision may not be the final word in this matter.

[**Editor's Note:** BBW&G does not represent the owner on this case. As of the writing of this article, leave for a further appeal to the Appellate Division has not yet been sought.]

This article was written by Stacey Bender, a partner in BBW&G's Litigation Department.

Stacey E. Bender

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their attorneys.

Other times however, tenants and those hoping to become tenants are not so fortunate.

Take for example, a case handled by BBW&G, which involved an attorney who forged her deceased sister's signature on various documents to try to hold onto the low rent apartment and then lied about it under oath (and here you thought attorneys were above such unseemly behavior). The attorney was ultimately evicted and also suspended from the practice of law.

In some cases, the lunacy amounts to pure "Billy-Wilder-esque" comedic gold. The true story of Michael Jones, the son of Carol Jones, the tenant of a $170.00 a month public housing apartment in Brooklyn is a case in point. Mrs. Jones died in 1999. Mr. Jones wanted desperately to hold onto his deceased mother's apartment. So he and his sister, Valerie Carthen, hatched an *almost* brilliant scheme. In order to try to fool the landlord, Ms. Carthen allegedly signed renewal leases as her deceased mother.

Mr. Jones then did his share by moving into the apartment. To further the scheme—and here is the faulty brilliance of the plot—Mr.Jones, dressed in drag and claimed to be his deceased mother when visiting the Housing Authority management office. *(Go ahead, read that sentence again.)* Not surprisingly, the plot was ultimately foiled. Mr. Jones was evicted and his sister was charged with forgery.

There is a bizarre post-script to this story. Mr. Jones, while presumably willing to sacrifice his dignity to hold on to this low rent apartment, could not quite pull the trigger. It seems that the apartment was apparently not worthy of a shave. Mr. Jones' photograph appeared in the *New York Daily News,* and showed him not to be the picture of idyllic feminine beauty; for when Mr. Jones posed as his mother, he had a full beard!

What about the institution of marriage? Is getting married solely for the purpose of obtaining succession rights to a rent regulated apartment within the realm of appropriate tenant behavior? Will a court sanction such behavior, or will the courts examine whether or not the marriage was fraudulent.

To answer this question we need not look to the abstract, as BBW&G recently handled a case involving this very question. Specifically, our client was faced with a disgruntled tenant who decided he would find someone to marry so that he could pass on his apartment before he moved back to the family homestead in Indiana. But, before getting into the truly astonishing facts of the case, it is necessary to understand a few basic principles governing succession rights.

In the case of rent controlled tenants (as is the case for rent stabilized tenants) when an occupant wishes to succeed to the rent regulated status of the "permanently vacated" tenant, that occupant must demonstrate to the Court that in fact he/she: (a) is a family member; and (b) he/she has co-occupied the apartment (as a primary residence) with the tenant for two years prior to the tenant's permanent vacatur. If the relationship is shorter than two years, the family member must demonstrate that he/she co-occupied the apartment with the tenant from the inception of the relationship.

When it comes to defining "family members" there is a narrow list of persons (spouse and certain blood relatives) entitled to claim such a status. (For the moment we will put aside the issue of "non-traditional family members" because different legal standards apply.)

Interestingly, with respect to spouses, in the early 1990s there were a few lower court decisions, which held that once a tenant produces a marriage license, the inquiry into whether the relationship was legitimate or a fraud was at an end. These cases predominantly arose in the case of "deathbed marriages." One notable example was the case of a man who married his wife just a few weeks prior to his death. The owner attempted to defeat the wife's succession claim based upon the claim that the tenant was gay. So, obviously, the marriage was a sham designed to pass on the apartment to his plutonic companion. The Court refused to allow the owner to inquire into the true nature of the relationship, deeming the marriage certificate dispositive and holding that third parties

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do not have standing to challenge a marriage.

With this legal and historical back drop in mind, let's look at a case recently handled by BBW&G entitled *H-F Associates v. Sullivan*. The case presented the court with a truly extraordinary, yet disturbing set of facts. While the matter was initially commenced as a non-primary residence holdover proceeding, the case rapidly transformed into an exposé of just how far individuals would go to pass on a valuable rent controlled apartment.

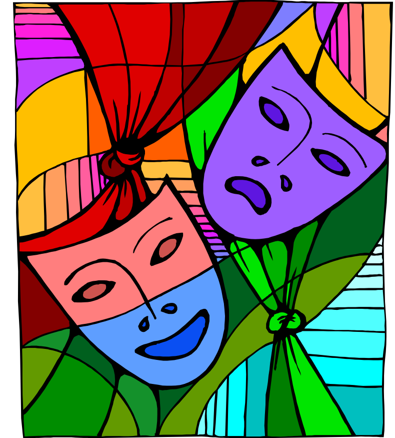
The primary players in this disreputable plot were James "Zack" Sullivan, and his putative ex-wife/business partner, Samantha Finch. Sullivan, a native of Kempton, Indiana, was the long-time rent controlled tenant of an Upper West Side pre-war "classic six" apartment, where he originally resided for many years with his first wife and son. By all accounts, Sullivan was a brilliant craftsman, who, to the envy of others in his field, superbly restored antique furniture.

Sullivan wanted to move back to Kempton to live at the family homestead. But before he could sing the old song, "Back Home Again, In Indiana," Sullivan approached his landlord and requested $25,000.00 for the surrender of his apartment. He was rebuffed by his landlord. Thus, he decided to take matters into his own hands (telling some friends about his scheme).

Enter Finch (*stage right*). Samantha Finch was known as "Maya" to her friends. At the time Sullivan was living in his *rent controlled* Apartment, Finch was residing on the Upper West Side in a *rent stabilized* apartment. Finch, by all accounts, was a sophisticated and intelligent woman who desperately wanted to adopt a child. Finch was quite savvy when it came to knowing her rights as a rent regulated tenant. After being informed that her business acquaintance, Sullivan, had been rebuffed in his request for a buy-out from his landlord, Sullivan and Finch saw an opportunity whereby he would get $25,000.00 and she would become the rent controlled tenant of record of the apartment in her own right

Thus, a fraudulent scheme designed to "create" succession rights was born, and so was the ultimate marriage of convenience. Without reflection on the moral or ethical considerations, Sullivan and Finch conspired to marry and then quickly divorce. They believed (albeit incorrectly) *that* being married for one year conferred the right of succession upon the divorced spouse who remained in the apartment.

To them, this was nothing more than a business relationship and a financial transaction, with a few attendant details. Namely: how to structure the relationship so that rights of each spouse were fully protected, while also ensuring that the so-called "consequences" of the marriage were eliminated or minimized. Sullivan and Finch wanted to ensure that their respective mandates as spouses (including pecuniary



interests and parental obligations—if Finch adopted) were nonexistent. To protect these interests, a prenuptial agreement was drafted.

With persistence (and good fortune) during the discovery phase of the litigation, the tenants turned over the prenup, as well as the divorce papers. The prenup was quite telling: While such agreements are not unusual, this was no ordinary prenup. Instead, as BBW&G demonstrated at trial, this prenup, and all of the understandings reached between Sullivan and Finch, were a calculated and complex commercial transaction.

Specifically, it was, astonishingly, established by evidence at trial that:

- *In 2000, Sullivan decides that he wants to retire to Indiana;*
- *Late in 2000 or early 2001, Sullivan approached his landlord about a buyout of $25,000.00 to $30,000.00;*
- *The Landlord refuses to pay Sullivan the unsolicited buyout;*
- *In 2001, Sullivan discussed with his friends his plan to get married to a woman, who would move into the apart-*

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ment, pay him money to pass on the apartment and then he would "split";

- *In early 2002, Sullivan and Finch retain counsel to effectuate their business transaction;*
- *On April 2, 2002, Sullivan and Finch enter into a prenuptial agreement;*
- *As part of the prenup, Sullivan and Finch agreed that if Sullivan lived in the apartment for one year and the marriage was terminated, Sullivan would be entitled to a $25,000 payment if Finch was then residing in the apartment;*
- *Sullivan and Finch also agreed that if the marriage terminated, it was Sullivan's intention to retire outside of the state;*
- *The prenup eliminated all joint property;*
- *The prenup waived Sullivan and Finch's entitlement to each other's property, including all assets, and retirement plans;*
- *Sullivan and Finch waived their rights to equitable distribution and spousal support;*
- *Sullivan and Finch waived their rights to spousal election or intestacy;*
- *Sullivan and Finch agreed that Sullivan would have no parental, custodial or financial responsibilities for children adopted by Finch;*
- *On April 30, 2002, Sullivan and Finch were married;*
- *Thereafter, Sullivan began removing his possessions and making trips to Indiana;*
- *Finch was still living in her own apartment until about August 2002, when she requested from her landlord permission to sublet;*
- *In the sublet application, she indicated that the purpose of the sublet was that she was going to live with a business associate as a roommate;*
- *The sublet request was denied, a holdover proceeding was commenced and in November 2002, Finch surrendered her apartment;*
- *In the interim, Sullivan's apartment was cleaned up and renovated to suit Finch's tastes;*
- *In August 2002, Finch packs up her possessions and moves to the apartment;*
- *Sullivan continues his slow relocation to Indiana;*
- *In August 2003, Sullivan started the planned divorce proceeding. Finch paid the fees associated with the action. The grounds for divorce: "Constructive abandonment" for essentially the entire marriage (except for the first few months when they were not even living together);*
- *On September 13, 2003, Sullivan cleans out all of his possessions, makes his last trip to Indiana and never returns;*
- *Finch did not oppose the divorce, but instead signed an affidavit claiming that she would not contest the divorce; and*
- *A Judgment of Divorce was rendered on December 23, 2003, based upon the uncontested allegations of "constructive abandonment".*

Rather than trying to rebut these facts at trial, Finch asserted that her lawful marriage to Sullivan ends the inquiry into her entitlement to succession rights.

BBW&G's strategy employed quite a different tact: We asserted that the Court must look into the underlying facts relating to the marriage to determine whether or not it was a real marriage or simply a sham.

Part of the motive behind our challenging past precedent, was the recognition that there is great debate going on nationwide about the "sanctity of marriage". We thought that no matter where you stood in that debate, a marriage that was so apparently a scam would garner no sympathy. We also made it very clear to the judge that we were not trying to set aside the marriage. In fact, the marriage was already terminated. Instead we just wanted the Court to look at the events leading up to the marriage and divorce to determine whether such a marriage could create succession rights.

The comparison that may come to mind (and that we wanted to convey to the court) is what is commonly referred to as a "marriage of convenience". Such marriages are often borne out of a desire to obtain citizenship or permanent residency in the United States. In such cases, the Federal Government does not seek to invalidate the marriage,

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but, rather, examines whether the marriage should form a basis upon which immigration rights may be conferred. We employed the same reasoning. Don't attack the marriage—just the motives.

As in any good case, there was also a back-up plan. Specifically, BBW&G argued that even if the Court found that the marriage between Sullivan and Finch was sufficient for potential succession rights, Finch had not proven that she actually lived in the apartment as her primary residence with Sullivan from the inception of the relationship. Ultimately, this back-up plan came in handy.

At trial we were able to prove that Finch continued to live in her rent stabilized apartment through August 2002. The adoption agency's "home study" demonstrated that Finch did not move into Sullivan's apartment at the inception of the marital relationship. We were also able to show that:

- Finch stated under oath that she lived in *her* own apartment until August 2002;
- In Finch's application to sublease her own apartment she swore under oath that she still lived there;
- Photographs showed Finch moving out of her own apartment in August 2002;
- The preponderance of the documentary evidence (e.g., Time Warner Cable, telephone, bank statements) showed the move of Finch to the Sullivan address after August 2002; and
- Finch stipulated that her phone service at the Sullivan apartment was not turned on in her own name until August 13, 2002.

When all was said and done: the trial court flatly rejected Finch's succession claim. The Court rested on BBW&G's back-up argument—that Finch did not co-occupy the apartment from the inception of the marital relationship with Sullivan. The judge noted that it was not necessary to address whether the marriage was a sham or not. Interestingly, despite its stating that it did not need to reach the sham marriage issue, the Court did exactly that. The Trial Judge noted:

> I found the testimony of Samantha Finch to be utterly incredible. She lied repeatedly, and in the most casual way, to nearly everyone. She lied to her landlord at 74th Street about her reasons for wanting to sublet that apartment. She lied to the adoption agency evaluating her fitness to adopt a child about virtually every aspect of her application to the agency. **She quite obviously entered into the marriage with Mr. Sullivan for the sole and explicit purpose of attempting to succeed to his tenancy, and she lied repeatedly to her friends, to building employees and to the court about that**. There is simply no reason on this record to believe her on the subject of when she moved in to the subject apartment. [Emphasis added]

The scathing ruling by the Court was nothing short of the jury ruling in *The Producers* that Max Bialystock was "Incredibly Guilty."

So what does all of this mean? Perhaps, a great deal. Perhaps it sheds some much needed light on the deceptions, distortions and assorted dastardly deeds that New York's property owners are all too often forced to deal with.

Undoubtedly, some people will defend those who engage in such mischief under the theory that "Everybody does it." Or, as Joe E. Brown says to the de-wigged Daphne (a/k/a Jack Lemmon), at the conclusion of Billy Wilder's *Some Like it Hot*, as Daphne finally confesses that she is actually a man: **"Nobody's Perfect!"**

This article was written by Matthew Brett, an associate practicing in BBW&G's Litigation Department.

Matthew Brett

BBW&G NEWS

MAY I QUOTE YOU?

Sherwin Belkin was recently interviewed on National Public Radio's *MarketPlace* program. To hear Mr. Belkin discuss some strategies in trying to negotiate vacancies with rent regulated tenants (or as he described it to NPR: "Apartment Liberation"), on the Internet go to http://marketplace.publicradio.org/shows/2006/01/26/PM200601267.html — click on "Marketplace: Please move." Mr. Belkin also addressed the issue of "required services" under Rent Stabilization in Jay Romano's article in *The New York Times'* Sunday Real Estate Section "When Service Cuts Lead to Rent Cuts." Mr. Belkin noted that a DHCR order finding a service reduction not only reduces the rent, but requires that the owner restore the service. Mr. Belkin said one defense to such a complaint was that the service was too minor (*de minimis*) to warrant a rent reduction. In addition, to change services and avoid tenant challenge an owner can file an application with DHCR for Modification of Services. Mr. Belkin was also part of a panel discussion at the New York County Lawyer's Association program, co-sponsored by The Community Housing Improvement Program, Inc. ("CHIP") and *The Apartment Law Insider* entitled "Current Trends in Holdovers and Evictions." Mr. Belkin discussed recent decisions affecting succession rights.

Aaron Shmulewitz, who heads BBW&G's Co-op/Condo Department, was quoted in the Sunday *Times* "Q & A" column in response to a question from a unit owner regarding a renter who smokes in front of the apartment because the renter's roommate will not allow smoking in their apartment. Mr. Shmulewitz said that the rules of most co-ops, condos and homeowners associations prohibit residents from engaging in objectionable conduct and, if such rule exists in the writer's building, the rule could be invoked against the owner of the renter's unit, or, if necessary, eviction or injunctive relief can be sought from the courts against both the owner of the smoker's unit and the renter.

BBW&G Litigation Associate **Matthew Brett** is co-chairing a Continuing Legal Education course at the Association of the Bar of the City of New York. on April 27, 2006 entitled "Housing in Cyberspace: Landlord/Tenant Litigation and Electronic Technology." The seminar will focus upon the use of online resources in Housing Court litigation.

Craig Price, who practices in the firm's Transactional Department, spoke at the Eastside offices of The Corcoran Group on the various aspects of due diligence in a purchase of a New York City cooperative, condominium and townhouse. In addition, Mr. Price who, along with BBW&G client **Richard Ravitch**, is a Board Member of the Sports and Arts in School Foundation (SASF), rang the closing bell at NASDAQ. SASF, the largest provider of after school programs in the New York City Public Schools, runs a festival during President's Week and the ringing of the NASDAQ bell coincided with the kick-off event held at J.P. Morgan Chase's headquarters.

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Legal Update

March 2006