

# Family Ties: Eviction Proceedings Against Family Members, Spouses and Domestic Partners

## Appellate Term Rejects Application of “Familial Exception” to Summary Proceeding Against Licensee

By Anthony R. Filosa

What do your couch surfing brother-in-law, your adult child who enjoys the trappings of the family home too much to finally leave the nest, and your live-in (unmarried) significant other have in common? When it comes to their residing in your home, the law regards them as a licensee—one who enters your home with your express—albeit revocable—permission to reside there. When these inhabitants overstay their welcome, RPAPL § 713(7) provides a relatively quick procedure for their removal—a licensee eviction summary proceeding. However, a line of cases that had their roots in the general prohibition of summary eviction proceedings against spouses seemingly rejected the ability to maintain summary eviction proceedings against not only spouses, but also other family members and persons with whom the homeowner resided while holding themselves out as family. The result of this so-called “familial exception” to the maintenance of a summary eviction proceeding against a licensee was that the owner had to resort to the much lengthier and costlier remedy of a plenary action for ejectment. However, in *Heckman v. Heckman*,<sup>1</sup> a recent Appellate Term decision concerning an eviction proceeding between sisters-in-law, the court rejected the notion of any “familial exception” to the maintenance of a licensee eviction proceeding. Rather, the court clarified that those persons who are exempt from a summary eviction proceeding—for instance, a spouse or minor child—are not exempt as a result of any “familial exception” but because, as a person for whom the law imposes an obligation to support, they do not meet the definition of a “licensee,” i.e., one who enters upon real property with the (revocable) permission of the owner. On the other hand, it would appear that a person for whom no obligation exists on the part of the owner to support—think your couch surfing brother-in-law, or your ex-boyfriend—may be evicted as a licensee by means of a summary proceeding.

RPAPL § 713(7) provides, in part, that “after a ten day notice to quit has been served,” a summary eviction proceeding may be brought against 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to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor.”<sup>2</sup> While not defined in RPAPL § 713(7), a “licensee” is “one who enters upon or occupies lands by permission, express or implied, of the owner, or under a personal, revocable, nonassignable



Anthony R. Filosa

privilege from the owner, without possessing any interest in the property, and who becomes a trespasser thereon upon revocation of the permission or privilege.”<sup>3</sup> In *Rosentiel*, a husband sought to evict his wife from the residence they once shared as their marital home.<sup>4</sup> The husband moved out of the home and while an action to annul the marriage was pending, no decree had been entered or agreement reached regarding the termination of the marriage or the occupancy of the marital home.<sup>5</sup> The Appellate Division reversed the judgment of the Supreme Court granting the husband a judgment of possession, reasoning that as a person for whom a legal obligation to support existed, a wife was not a licensee who acquired her right to reside in the premises solely by the revocable permission of her husband.<sup>6</sup> As long as the marital relationship was not annulled or modified by decree or agreement, a husband maintained the obligation to support his wife, and providing housing was a basic element of that obligation.<sup>7</sup>

In 1987, the New York City Civil Court in *Minors v. Tyler*<sup>8</sup> extended the holding of *Rosentiel* to rule that a licensee eviction proceeding could not be maintained against the longtime cohabiting partner of the owner, thus giving birth to the “family member exception” to licensee eviction proceedings. The *Minors* court commanded that “[s]ocial realities require the courts to recognize that unmarried occupants who reside together as husband and wife acquire some rights with respect to continued occupancy of the apartment they shared not unlike those acquired by a spouse.”<sup>9</sup>

---

*“A summary eviction proceeding is a creation of statute and thus there must be strict compliance with the statutory requirements in order to be entitled to any relief.”*

---

The wake of *Rosentiel* (decided in 1963) coincided with the rise in so-called “non-traditional” families and living relationships—persons cohabiting prior to marriage, persons having children together without marrying. *Rosentiel* began to be cited as authority by no doubt well-intentioned courts for the proposition that other family members—not simply spouses (or persons who held

themselves out as such)—were not subject to eviction by a licensee summary proceeding.<sup>10</sup>

In *Heckman v. Heckman*,<sup>11</sup> a licensee eviction proceeding brought against the petitioner's sister-in-law, the Appellate Term held there is no "familial exception" bar to the maintenance of a summary proceeding where the respondent otherwise meets the definition of a licensee or other person subject to a summary eviction proceeding. The court analyzed *Rosentiel*, explaining that its holding had its roots in the existence of a legal support obligation which precluded a finding that the respondent was a licensee whose right to reside in the home was revocable at the will of the owner. The court reasoned that several lower court cases—including a number of those referenced above—which extended *Rosentiel* to bar a summary eviction proceeding against family members for whom no legal support obligation existed were not supported by *Rosentiel* since it "does not provide a basis for the creation of a bar to the maintenance of summary proceedings in situations where there is no legal support obligation."<sup>12</sup> As support for this proposition, the court cited a number of appellate cases—decided after *Rosentiel*—which permitted the maintenance of a summary eviction proceeding against a spouse or other family member for whom no legal support obligation existed or where that obligation had been discharged.<sup>13</sup>

A summary eviction proceeding is a creation of statute and thus there must be strict compliance with the statutory requirements in order to be entitled to any relief.<sup>14</sup> Thus, petitioners like the husband in *Rosentiel*, or the father in *DeJesus*,<sup>15</sup> were always trying to fit a square peg in a round hole. No landlord-tenant relationship typically exists between married spouses or between a parent and a minor child, so no grounds existed under RPAPL § 711 (which supports the maintenance of a summary proceeding where a landlord-tenant relationship exists) to maintain the proceeding. Nor could such a proceeding be maintained under RPAPL § 713 (which supports the maintenance of a summary proceeding in specified instances where no landlord-tenant relationship exists) since a spouse or minor child (or any other person for which a legal obligation to support exists) is not a "licensee" within the meaning of RPAPL § 713(7). Viewed from this perspective, *Heckman* is consistent with *Rosentiel*. However, a family member or other intimate relation for which no legal obligation to support exists would appear to be subject to eviction by a summary proceeding under *Heckman*.

The shift towards "non-traditional" living arrangements will only make these issues more prevalent. As marriage rates decline, the number of adults cohabiting with a partner continues to rise, with an increasing number of adults ages 50 and older involved in cohabiting relationships.<sup>16</sup> More young adults (ages 18-34) are living at home for longer periods—in some cases because they never left, in others because they returned to the nest after living on their own.<sup>17</sup> A more cynical, result-oriented view

of *Heckman* would suggest that its lack of compellingly sympathetic facts made its outcome more palatable. After all, the case involved two adult in-laws and not individuals who lived together in an intimate relationship for any extended period of time or who shared a child.<sup>18</sup>

*Heckman* left the door open for familial relationships that will often prevent an occupant from fitting into a category of respondent subject to eviction pursuant to RPAPL § 713.<sup>19</sup> No legal support relation exists between adults who cohabitate together as partners regardless of the duration of the relationship. Should a cohabiting life partner be subject to eviction on the same amount of notice—10 days, absent an agreement to the contrary—as the operator of your average mall kiosk (which is typically structured as a license agreement)? One wonders how a present day appellate court would reconcile the *Minors* court's command that evolving social norms require the recognition of rights in favor of non-traditional couples<sup>20</sup> with the Court of Appeals' statement that "cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation"<sup>21</sup> with the Court of Appeals' later plea—in a case involving rent-control succession rights of an unmarried same-sex life partner—that members of so-called non-traditional families should be protected from sudden eviction much the same as persons related by blood or marriage.<sup>22</sup> Perhaps legislative action is required to enlarge the notice required to terminate a license for those persons for whom no legal support obligation exists but who nonetheless have maintained a familial relationship which gave rise to their occupancy in the home.

## Endnotes

1. 55 Misc. 3d 86, 90, 50 N.Y.S.3d 793, 796 (Sup. Ct. App. T. 2d Dep't 2017).
2. N.Y. Real Prop. Law § 713(7) (McKinney 2010).
3. *Rosentiel v. Rosentiel*, 20 A.D.2d 71, 245 N.Y.S.2d 395 (1st Dep't 1963).
4. *Id.* at 71.
5. *Id.* at 73.
6. *Id.* at 77-78.
7. *Id.* 76-77.
8. 137 Misc. 2d 505, 507, 521 N.Y.S.2d 380 (Civ. Ct., Bronx County 1987).
9. *Id.* (citing *Concourse Vil. v. Bilotti*, 133 Misc. 2d 973).
10. *Kakwani v. Kakwani*, 40 Misc. 3d 627, 629-630, 967 N.Y.S.2d 827 (Dist. Ct., Nassau County 2013) (sister-in-law); *Williams v. Williams*, 13 Misc. 3d 395, 397, 399-400, 822 N.Y.S.2d 415 (Civ. Ct., New York County 2006) (adult grandchildren); *Sirota v. Sirota*, 164 Misc. 2d 966, 967-68, 626 N.Y.S.2d 672 (Civ. Ct., Kings County 1995) (adult children); *Nauth v. Nauth*, 42 Misc. 3d 672, 674-75, 981 N.Y.S.2d 266 (Civ. Ct., Bronx County 2013) (ex-wife); *Saoidoh v. Saoidoh*, 49 Misc. 3d 1216(A), 26 N.Y.S.S.3d 727 (Civ. Ct., Bronx County 2015) (ex-wife and 19 year-old daughter of petitioner).
11. 55 Misc. 3d at 87, 89-90.
12. See *Heckman*, 55 Misc. 3d at 89.
13. See *Heckman*, 55 Misc. 3d at 88 (citing *Halaby v. Halaby*, 44 A.D.2d 495, 500, 355 N.Y.S.2d 671 (4th Dep't 1974) (holding summary eviction proceeding maintainable against wife who had obtained

support order against husband in Family Court proceeding; support order constituted husband's entire legal obligation for support); *Tausik v. Tausik*, 11 A.D.2d 144, 144-145, 202 N.Y.S.2d 82 (1st Dep't 1960), *aff'd*, 9 N.Y.2d 664, 212 N.Y.S.2d 76 (1961) (holding husband permitted to maintain eviction proceeding against wife from whom he was separated where by agreement husband permitted wife to use apartment owned by husband as temporary abode following separation); *Young v. Carruth*, 89 A.D.2d 466, 469, 455 N.Y.S.2d 776 (1st Dep't 1982) (holding decedent's daughter, as administratrix of decedent's estate, could maintain summary eviction proceeding against decedent's cohabiting partner).

14. See *Clark v. Wallace Oil Co.*, 284 A.D.2d 492, 493, 727 N.Y.S.2d 139 (2d Dep't 2001).
15. *DeJesus v. Rodriguez*, 196 Misc. 881, 885, 768 N.Y.S.2d 126 (Civ. Ct., Richmond County 2003) (dismissing summary eviction proceeding commenced against ex-girlfriend, who resided at premises with petitioner's two minor children).
16. See *Renee Stepler, Number of U.S. Adults Cohabiting with a Partner Continues to Rise, Especially Among Those 50 and Older*, Pew Research Center, April 6, 2017, <http://www.pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older/>.
17. See Drew Desilver, *In the U.S. and Abroad, More Young Adults Are Living with Their Parents*, Pew Research Center, May 24, 2016, <http://www.pewresearch.org/fact-tank/2016/05/24/in-the-us-and-abroad-more-young-adults-are-living-with-their-parents/>.
18. The law imposes an obligation to support one's minor children, which includes the obligation to provide housing. See N.Y. Family Law § 413, § 513 (McKinney 2016); *Sferrazza v. Bergdorf Goodman*, 213 A.D.2d 44, 48, 629 N.Y.S.2d 281 (2d Dep't 1995) (holding a parent's child-support obligation includes an obligation to provide shelter). In order to be consistent with *Rosentiel* and *Heckman*, summary proceedings involving both persons for whom no legal support obligation exists (for instance, the petitioner's girlfriend) and those for whom such an obligation does exist (for instance, the petitioner's minor child with his girlfriend) may require a rather nuanced adjudication. Presumably, the summary proceeding may be maintained against the girlfriend, with the execution of any eventual warrant of eviction stayed pending the determination of a Family Court support proceeding concerning the provision of housing for the minor children, since the execution of a warrant of eviction which would result in the eviction of one's minor child is not countenanced by the law. See *Sears v. Okin*, 6 Misc. 3d 127(A), 800 N.Y.S.2d 357 (App. Term 2004) (holding if owner prevailed in summary proceeding against former domestic partner, "it may well be inappropriate to allow landlord to execute a warrant that will have the effect of evicting his two minor children"); *Landry v. Harris*, 18 Misc. 3d 1123(A), 856 N.Y.S.2d 498 (Civ. Ct., New York County 2008) (holding if owner prevailed in summary proceeding against ex-girlfriend with whom he fathered a minor child, the execution of the warrant of eviction must be stayed pending resolution by Family Court of custody and support issues affecting where and with whom minor child will live).
19. See *Heckman*, 55 Misc. 3d at 90.
20. *Minors v. Tyler*, 137 Misc. 2d 505, 507, 521 N.Y.S.2d 380 (Civ. Ct., Bronx County 1987).
21. *Morone v. Morone*, 50 N.Y.2d 481, 486, 413 N.E.2d 1154, 429 N.Y.S.2d 592 (1980).
22. *Braschi v. Stahl Associates Company*, 74 N.Y.2d 201, 212, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989).

**Anthony R. Filosa, Esq.** is a partner of **Rosenberg Fortuna & Laitman, LLP** in Garden City, New York. He focuses his practice on real estate litigation and commercial litigation, and is a member of the Nassau County Bar Association Commercial Litigation and Real Property Law Committees. Filosa is a 2007 graduate, with Dean's List Distinction, of St. John's University School of Law, where he was a St. Thomas More Scholar.

# NYSBA's CLE On-Demand Bringing CLE to you... when and where you want it!

## Select from hundreds of NYSBA CLE Video/Audio On-Demand Courses

[www.nysba.org/cleonline](http://www.nysba.org/cleonline)

Our online on-demand courses combine streaming video or audio with MP3 or MP4 download options that allow you to download the recorded program and complete your MCLE requirements on the go. Includes:

- Closed-captioning for your convenience.
- Downloadable course materials CLE accessible 24 hours a day, 7 days a week.
- Access CLE programs 24 hours a day, 7 days a week.

