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74 N.Y.2d 201
Court of Appeals of New York.

Miguel BRASCHI, Appellant,
v.
STAHL ASSOCIATES COMPANY, Respondent.

July 6, 1989.

Synopsis
Gay life partner of tenant in rent-controlled apartment moved for preliminary injunction to prevent eviction. The Supreme Court, New York County, Baer, J., granted a preliminary injunction. Landlord appealed. The Supreme Court, Appellate Division, First Department, 143 A.D.2d 44, 531 N.Y.S.2d 562, reversed. Permission to appeal was granted. The Court of Appeals, Titone, J., held that: (1) the term "family" as used in the noneviction provision of the rent-control laws includes unmarried lifetime partners of tenants, not just persons related by blood or law, and (2) the partner established a likelihood of success on the merits of his claim and, thus, he was entitled to a preliminary injunction.

Order of Appellate Division reversed and case remitted.

Bellacosa, J., filed separate concurring opinion.

Simons, J., filed dissenting opinion in which Hancock, J., concurred.

West Headnotes (6)

[1] **Appeal and Error**
Injunction

Court of Appeals may entertain appeal from Appellate Division's denial of preliminary injunction where that denial was based solely on question of law about whether movant demonstrated clear likelihood of success on merits of his claim. McKinney's CPLR 5713.

Cases that cite this headnote

[2] **Landlord and Tenant**
Subtenants, licensees, or other persons

Noneviction provision of Rent Stabilization Code does not apply in defining term "family member" as used in noneviction provision of rent-control laws. (Per Titone, J., with two Judges concurring and one Judge concurring separately.) Rent and Eviction Regulations, § 2204.6(d), McK.Unconsol.Laws; Rent Stabilization Code, §§ 2520.6(*o*), 2523.5(a), (b)(1, 2), McK.Unconsol.Laws.

12 Cases that cite this headnote

[3] **Landlord and Tenant**
Subtenants, licensees, or other persons

Noneviction provision of rent-control laws, which protects surviving spouses of tenants or other members of deceased tenant's family who had been living with tenant, does not concern succession to real property, but rather, is means of protecting occupants of apartments from sudden loss of their home. (Per Titone, J., with two Judges concurring and one Judge concurring separately.) Rent and Eviction Regulations, § 2204.6(d), McK.Unconsol.Laws; McKinney's EPTL 4–1.1, 4–1.2.

25 Cases that cite this headnote

[4] **Landlord and Tenant**
Subtenants, licensees, or other persons

Term "family" as used in noneviction provision of rent-control laws, which protects surviving spouse of tenant or other member of deceased tenant's "family" who had been living with tenant, includes adult lifetime partners whose

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relationship is long-term and characterized by emotional and financial commitment and interdependence; term is not limited to those people related by blood or law. (Per Titone, J., with two Judges concurring and one Judge concurring separately.) Rent and Eviction Regulations, § 2204.6(d), McK.Unconsol.Laws.

92 Cases that cite this headnote

[5] **Landlord and Tenant**
Subtenants, licensees, or other persons

Gay life partner of tenant in rent-controlled apartment should have been given opportunity to prove that he was member of tenant's family, for purposes of determining whether partner was protected from eviction upon tenant's death. (Per Titone, J., with two Judges concurring and one Judge concurring separately.) Rent and Eviction Regulations, § 2204.6(d), McK.Unconsol.Laws.

3 Cases that cite this headnote

[6] **Injunction**
Landlord and tenant

Gay life partner of tenant in rent-controlled apartment established likelihood of success on merits of his claim that he was entitled to protection from eviction as member of tenant's family, for purposes of determining whether partner was entitled to preliminary injunction against eviction after tenant's death. (Per Titone, J. with two Judges concurring and one Judge concurring separately.) Rent and Eviction Regulations, § 2204.6(d), McK.Unconsol.Laws.

11 Cases that cite this headnote

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OPINION OF THE COURT

TITONE, Judge.

In this dispute over occupancy rights to a rent-controlled ***206** apartment, the central question to be resolved on this request for preliminary injunctive relief (*see*, CPLR 6301) is whether appellant has demonstrated a likelihood of success on the merits (*see*, *Grant Co. v. Srogi*, 52 N.Y.2d 496, 517, 438 N.Y.S.2d 761, 420 N.E.2d 953) by showing that, as a matter of law, he is entitled to seek protection from eviction under New York City Rent and Eviction

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Regulations 9 NYCRR 2204.6(d) (formerly New York City Rent and Eviction Regulations § 56[d]). That regulation provides that upon the death of a rent-control tenant, the landlord may not dispossess "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" (emphasis supplied). Resolution of this question requires this court to determine the meaning of the term "family" as it is used in this context.

I.

Appellant, Miguel Braschi, was living with Leslie Blanchard in a rent-controlled apartment located at 405 East 54th Street from the summer of 1975 until Blanchard's *****786** death in September of 1986. In November ****51** of 1986, respondent, Stahl Associates Company, the owner of the apartment building, served a notice to cure on appellant contending that he was a mere licensee with no right to occupy the apartment since only Blanchard was the tenant of record. In December of 1986 respondent served appellant with a notice to terminate informing appellant that he had one month to vacate the apartment and that, if the apartment was not vacated, respondent would commence summary proceedings to evict him.

Appellant then initiated an action seeking a permanent injunction and a declaration of entitlement to occupy the apartment. By order to show cause appellant then moved for a preliminary injunction, pendente lite, enjoining respondent from evicting him until a court could determine whether he was a member of Blanchard's family within the meaning of 9 NYCRR 2204.6(d). After examining the nature of the relationship between the two men, Supreme Court concluded that appellant was a "family member" within the meaning of the regulation and, accordingly, that a preliminary injunction should be issued. The court based this decision on its finding that the long-term interdependent nature of the 10–year relationship between appellant and Blanchard "fulfills any definitional criteria of the term 'family.' "

The Appellate Division reversed, concluding that ***207** section 2204.6(d) provides noneviction protection only to "family members within traditional, legally recognized familial relationships" (143 A.D.2d 44, 45, 531 N.Y.S.2d 562). Since appellant's and Blanchard's relationship was not one given formal recognition by the law, the court held that appellant could not seek the protection of the noneviction ordinance. After denying the motion for preliminary injunctive relief, the Appellate Division granted leave to appeal to this court, certifying the following question of law: "Was the order of this Court, which reversed the order of the Supreme Court, properly made?" We now reverse.

II.

[1] As a threshold matter, although the determination of an application for a provisional remedy such as a preliminary injunction ordinarily involves the exercise of discretion, the denial of such relief presents a question of law reviewable by this court on an appeal brought pursuant to CPLR 5713 when "the Appellate Division denies [the] relief on an issue of law alone, and makes clear that no question of fact or discretion entered into its decision" (*Herzog Bros. Trucking v. State Tax Comm.*, 69 N.Y.2d 536, 540–541, 516 N.Y.S.2d 179, 508 N.E.2d 914, *vacated* 487 U.S. 1212, 108 S.Ct. 2861, 101 L.Ed.2d 898, *on remand* 72 N.Y.2d 720, 536 N.Y.S.2d 416, 533 N.E.2d 255; *see*, Cohen and Karger, Powers of the New York Court of Appeals § 88, at 377 [rev. ed.]; *Public Adm'r of County of N.Y. v. Royal Bank*, 19 N.Y.2d 127, 129–130, 278 N.Y.S.2d 378, 224 N.E.2d 877). Here, the Appellate Division's determination rested solely on its conclusion that as a matter of law appellant could not seek noneviction protection because of the absence of a "legally recognized" relationship with Blanchard. Consequently, appellant's appeal may be entertained, and we may review the central question presented: whether, on his motion for a preliminary injunction, appellant failed to establish, as a matter of law, the requisite clear likelihood of success on the merits of his claim to the protection from eviction provided by section 2204.6(d).

It is fundamental that in construing the words of a statute "[t]he legislative intent is the great and controlling principle" (*People v. Ryan*, 274 N.Y. 149, 152, 8 N.E.2d 313; *see*, *Ferres v. City of New Rochelle*, 68 N.Y.2d 446, 451, 510 N.Y.S.2d 57, 502 N.E.2d 972; ****52** *Matter of Petterson v. Daystrom Corp.*, 17 N.Y.2d 32, 38, 268 N.Y.S.2d 1, 215 N.E.2d 329). Indeed, "the general purpose is a more important aid to the meaning than any rule which grammar ***208** or formal logic may lay down" (*United States v. Whitridge*, 197 U.S. 135, 143, 25 S.Ct. 406, 408, 49 L.Ed. 696). Statutes are ordinarily interpreted so as to avoid objectionable consequences and to prevent hardship or injustice (*see*, *****787** *Zappone v. Home Ins. Co.*, 55 N.Y.2d 131, 447 N.Y.S.2d 911, 432

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N.E.2d 783; *Matter of Petterson v. Daystrom Corp.*, 17 N.Y.2d 32, 38, 268 N.Y.S.2d 1, 215 N.E.2d 329, *supra;* McKinney's Cons.Laws of N.Y., Book 1, Statutes §§ 141, 143, 146). Hence, where doubt exists as to the meaning of a term, and a choice between two constructions is afforded, the consequences that may result from the different interpretations should be considered (*see, Matter of Town of Smithtown v. Moore*, 11 N.Y.2d 238, 244, 228 N.Y.S.2d 657, 183 N.E.2d 66; *People v. Ryan*, 274 N.Y. 149, 152, 8 N.E.2d 313, *supra*). In addition, since rent-control laws are remedial in nature and designed to promote the public good, their provisions should be interpreted broadly to effectuate their purposes (*see, Matter of Park W. Vil. v. Lewis*, 62 N.Y.2d 431, 436–437, 477 N.Y.S.2d 124, 465 N.E.2d 844; *Matter of Sommer v. New York City Conciliation & Appeals Bd.*, 93 A.D.2d 481, 462 N.Y.S.2d 200, *affd.* 61 N.Y.2d 973, 475 N.Y.S.2d 280, 463 N.E.2d 621; McKinney's Cons.Law of N.Y., Book 1, Statutes § 341). Finally, where a problem as to the meaning of a given term arises, a court's role is not to delve into the minds of legislators, but rather to effectuate the statute by carrying out the purpose of the statute as it is embodied in the words chosen by the Legislature (*see,* Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum.L.Rev. 527, 538–540).

The present dispute arises because the term "family" is not defined in the rent-control code and the legislative history is devoid of any specific reference to the noneviction provision. All that is known is the legislative purpose underlying the enactment of the rent-control laws as a whole.

Rent control was enacted to address a "serious public emergency" created by "an acute shortage in dwellings," which resulted in "speculative, unwarranted and abnormal increases in rents" (L.1946 ch. 274, codified, as amended, at McKinney's Uncons.Laws of N.Y. § 8581 *et seq*). These measures were designed to regulate and control the housing market so as to "prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health * * * [and] to prevent uncertainty, hardship and dislocation" *(id.).* Although initially designed as an emergency measure to alleviate the housing shortage attributable to the end of World War II, "a serious public emergency continues to exist in the housing of a considerable number of persons" *(id.).* Consequently, the Legislature has found it necessary to continually reenact the rent-control ***209** laws, thereby providing continued protection to tenants.

To accomplish its goals, the Legislature recognized that not only would rents have to be controlled, but that evictions would have to be regulated and controlled as well *(id.).* Hence, section 2204.6 of the New York City Rent and Eviction Regulations (9 NYCRR 2204.6), which authorizes the issuance of a certificate for the eviction of persons occupying a rent-controlled apartment after the death of the named tenant, provides, in subdivision (d), noneviction protection to those occupants who are 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 [of record]" (emphasis supplied). The manifest intent of this section is to restrict the landowners' ability to evict a narrow class of occupants other than the tenant of record. The question presented here concerns the scope of the protections provided. Juxtaposed against this intent favoring the protection of tenants, is the over-all objective of a gradual "transition from regulation to a normal market of free bargaining between landlord and tenant" (*see, e.g.*, Administrative Code of City of New York § 26–401). One way in which this goal is to be achieved is "vacancy decontrol," which automatically makes rent-control units subject to the less rigorous provisions of rent stabilization upon the termination of the rent-control tenancy (9 NYCRR 2520.11[a]; 2521.1[a][1]).

[2] Emphasizing the latter objective, respondent argues that the term "family member" as used in 9 NYCRR 2204.6(d) should be construed, consistent with this State's intestacy laws, to mean relationships *****788** of blood, consanguinity and adoption in order to effectuate the over-all goal of ****53** orderly succession to real property. Under this interpretation, only those entitled to inherit under the laws of intestacy would be afforded noneviction protection (*see,* EPTL 4–1.1). Further, as did the Appellate Division, respondent relies on our decision in *Matter of Robert Paul P.*, 63 N.Y.2d 233, 481 N.Y.S.2d 652, 471 N.E.2d 424, arguing that since the relationship between appellant and Blanchard has not been accorded legal status by the Legislature, it is not entitled to the protections of section 2204.6(d), which, according to the Appellate Division, applies only to "family members within traditional, legally recognized familial relationships" (143 A.D.2d 44, 45, 531 N.Y.S.2d 562). Finally, respondent contends that our construction of the term "family member" should be guided by the recently enacted noneviction provision of the Rent Stabilization Code (***210** 9 NYCRR 2523.5[a], [b][1], [2]), which was passed in response to our decision in *Sullivan v. Brevard Assocs.*, 66 N.Y.2d 489, 498 N.Y.S.2d 96, 488 N.E.2d 1208, and specifically enumerates the individuals who are entitled to noneviction protection under the listed circumstances (9 NYCRR 2520.6[*o*]).

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However, as we have continually noted, the rent-stabilization system is different from the rent-control system in that the former is a less onerous burden on the property owner, and thus the provisions of one cannot simply be imported into the other (*Sullivan v. Brevard Assocs.*, 66 N.Y.2d 489, 494, 498 N.Y.S.2d 96, 488 N.E.2d 1208, *supra; see, 8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 136–137, 313 N.Y.S.2d 733, 261 N.E.2d 647). Respondent's reliance on *Matter of Robert Paul P. (supra)* is also misplaced, since that case, which held that one adult cannot adopt another where none of the incidents of a filial relationship is evidenced or even remotely intended, was based solely on the purposes of the adoption laws (*see*, Domestic Relations Law § 110) and has no bearing on the proper interpretation of a provision in the rent-control laws.

[3] We also reject respondent's argument that the purpose of the noneviction provision of the rent-control laws is to control the orderly succession to real property in a manner similar to that which occurs under our State's intestacy laws (EPTL 4–1.1, 4–1.2). The noneviction provision does not concern succession to real property but rather is a means of protecting a certain class of occupants from the sudden loss of their homes. The regulation does not create an alienable property right that could be sold, assigned or otherwise disposed of and, hence, need not be construed as coextensive with the intestacy laws. Moreover, such a construction would be inconsistent with the purposes of the rent-control system as a whole, since it would afford protection to distant blood relatives who actually had but a superficial relationship with the deceased tenant while denying that protection to unmarried lifetime partners.

Finally, the dissent's reliance on *Hudson View Props. v. Weiss*, 59 N.Y.2d 733, 463 N.Y.S.2d 428, 450 N.E.2d 234 is misplaced. In that case we permitted the eviction of an unrelated occupant from a rent-controlled apartment under a lease explicitly restricting occupancy to "immediate family". However, the tenant in *Hudson View* conceded "that an individual not part of her immediate family" occupied the apartment (*id.*, at 735, 463 N.Y.S.2d 428, 450 N.E.2d 234), and, thus, the sole question before us was whether enforcement of the lease provision was violative of the State or City Human Rights ***211** Law. Whether respondent tenant was, in fact, an "immediate family" member was neither specifically addressed nor implicitly answered (*see*, dissenting opn. at p. 220, at p. 794 of 544 N.Y.S.2d, at p. 59 of 543 N.E.2d).

[4] [5] Contrary to all of these arguments, we conclude that the term family, as used in 9 NYCRR 2204.6(d), should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic *****789** history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic, and ****54** certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence. This view comports both with our society's traditional concept of "family" and with the expectations of individuals who live in such nuclear units (*see, also, 829 Seventh Ave. Co. v. Reider*, 67 N.Y.2d 930, 931–932, 502 N.Y.S.2d 715, 493 N.E.2d 939 [interpreting 9 NYCRR 2204.6(d)'s additional "living with" requirement to mean living with the named tenant "in a *family unit*, which in turn connotes an arrangement, whatever its duration, bearing some indicia of permanence or continuity" (emphasis supplied)]).[1] In fact, Webster's Dictionary defines "family" *first* as "a group of people united by certain convictions or common affiliation" (Webster's Ninth New Collegiate Dictionary 448 [1984]; *see*, Ballantine's Law Dictionary 456 [3d ed. 1969] ["family" defined as "(p)rimarily, the collective body of persons who live in one house and under one head or management"]; Black's Law Dictionary 543 [Special Deluxe 5th ed. 1979]). Hence, it is reasonable to conclude that, in using the term "family," the Legislature intended to extend protection to those who reside in households having all of the normal familial characteristics.[2] Appellant Braschi should therefore be afforded the opportunity to prove that he and Blanchard had such a household.

***212** This definition of "family" is consistent with both of the competing purposes of the rent-control laws: the protection of individuals from sudden dislocation and the gradual transition to a free market system. Family members, whether or not related by blood, or law who have always treated the apartment as their family home will be protected against the hardship of eviction following the death of the named tenant, thereby furthering the Legislature's goals of preventing dislocation and preserving family units which might otherwise be broken apart upon eviction.[3] This approach will foster the transition from rent control to rent stabilization by drawing a distinction between those individuals who are, in fact, genuine family members, and those who are mere roommates (*see*, Real Property Law § 235–f; *Yorkshire Towers Co. v. Harpster*, 134 Misc.2d 384, 510 N.Y.S.2d 976) or newly discovered relatives hoping to inherit the rent-controlled apartment after the existing tenant's death.[4]

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*****790 **55** The determination as to whether an individual is entitled to noneviction protection should be based upon an objective examination of the relationship of the parties. In making this assessment, the lower courts of this State have looked to a number of factors, including the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the ***213** reliance placed upon one another for daily family services (*see, e.g., Athineos v. Thayer*, N.Y.L.J., Mar. 25, 1987, at 14, col. 4 [Civ.Ct., Kings County], *affd.* N.Y.L.J., Feb. 9, 1988, at 15, col. 4 [App. Term, 2d Dept.] [orphan never formally adopted but lived in family home for 34 years]; *2–4 Realty Assocs. v. Pittman*, 137 Misc.2d 898, 902, 523 N.Y.S.2d 7 [two men living in a "father-son" relationship for 25 years]; *Zimmerman v. Burton*, 107 Misc.2d 401, 404, 434 N.Y.S.2d 127 [unmarried heterosexual life partner]; *Rutar Co. v. Yoshito*, No. 53042/79 [Civ.Ct., N.Y. County] [unmarried heterosexual life partner]; *Gelman v. Castaneda*, NYLJ, Oct. 22, 1986, at 13, col. 1 [Civ.Ct., N.Y. County] [male life partners]). These factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control. Appellant's situation provides an example of how the rule should be applied.

[6] Appellant and Blanchard lived together as permanent life partners for more than 10 years. They regarded one another, and were regarded by friends and family, as spouses. The two men's families were aware of the nature of the relationship, and they regularly visited each other's families and attended family functions together, as a couple. Even today, appellant continues to maintain a relationship with Blanchard's niece, who considers him an uncle.

In addition to their interwoven social lives, appellant clearly considered the apartment his home. He lists the apartment as his address on his driver's license and passport, and receives all his mail at the apartment address. Moreover, appellant's tenancy was known to the building's superintendent and doormen, who viewed the two men as a couple.

Financially, the two men shared all obligations including a household budget. The two were authorized signatories of three safe-deposit boxes, they maintained joint checking and savings accounts, and joint credit cards. In fact, rent was often paid with a check from their joint checking account. Additionally, Blanchard executed a power of attorney in appellant's favor so that appellant could make necessary decisions—financial, medical and personal—for him during his illness. Finally, appellant was the named beneficiary of Blanchard's life insurance policy, as well as the primary legatee and coexecutor of Blanchard's estate. Hence, a court examining these facts could reasonably conclude that these men were much more than mere roommates.

***214** Inasmuch as this case is before us on a certified question, we conclude only that appellant has demonstrated a likelihood of success on the merits, in that he is not excluded, as a matter of law, from seeking noneviction protection. Since all remaining issues are beyond this court's scope of review, we remit this case to the Appellate Division so that it may exercise its discretionary powers in accordance with this decision.

Accordingly, the order of the Appellate Division should be reversed and the case remitted to that court for a consideration of undetermined questions. The certified question should be answered in the negative.

BELLACOSA, Judge (concurring).

My vote to reverse and remit rests on a narrower view of what must be decided in this case than the plurality and dissenting opinions deem necessary.

*****791** The issue is solely whether petitioner qualifies as a member of a "family", as that generic and broadly embracive word is used in the anti-eviction regulation of the rent-control apparatus. The particular ****56** anti-eviction public policy enactment is fulfilled by affording the remedial protection to this petitioner on the facts advanced on this record at this preliminary injunction stage. The competing public policy of eventually restoring rent-controlled apartments to decontrol, to stabilization and even to arm's length market relationships is eclipsed in this instance, in my view, by the more pertinently expressed and clearly applicable anti-eviction policy.

Courts, in circumstances as are presented here where legislative intent is completely indecipherable (Division of Housing and Community Renewal, the agency charged with administering the policy, is equally silent in this case and on this issue), are not empowered or expected to expand or to constrict the meaning of the legislatively chosen word "family," which could have been and still can be qualified or defined by the duly constituted enacting body in satisfying its separate branch

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responsibility and prerogative. Construing a regulation does not allow substitution of judicial views or preferences for those of the enacting body when the latter either fails or is unable or deliberately refuses to specify criteria or definitional limits for its selected umbrella word, "family", especially where the societal, governmental, policy and fiscal implications are so sweeping (Breitel, *The Lawmakers*, 65 Colum.L.Rev. 749, 767–771; *see also*, *Boreali v. Axelrod*, 71 N.Y.2d 1, 11–12, 523 N.Y.S.2d 464, 517 N.E.2d 1350). For then, "the judicial function expands beyond the ***215** molecular movements, in Holmes' figure, into the molar" (Breitel, *op. cit.*, at 770).

The plurality opinion favors the petitioner's side by invoking the nomenclature of "nuclear"/"normal"/"genuine" family versus the "traditional"/ "legally recognizable" family selected by the dissenting opinion in favor of the landlord. I eschew both polar camps because I see no valid reason for deciding so broadly; indeed, there are cogent reasons not to yaw towards either end of the spectrum.

The application of the governing word and statute to reach a decision in this case can be accomplished on a narrow and legitimate jurisprudential track. The enacting body has selected an unqualified word for a socially remedial statute, intended as a protection against one of the harshest decrees known to the law—eviction from one's home. Traditionally, in such circumstances, generous construction is favored. Petitioner has made his shared home in the affected apartment for 10 years. The only other occupant of that rent-controlled apartment over that same extended period of time was the tenant-in-law who has now died, precipitating this battle for the apartment. The best guidance available to the regulatory agency for correctly applying the rule in such circumstances is that it would be irrational not to include this petitioner and it is a more reasonable reflection of the intention behind the regulation to protect a person such as petitioner as within the regulation's class of "family". In that respect, he qualifies as a tenant in fact for purposes of the interlocking provisions and policies of the rent-control law. Therefore, under CPLR 6301, there would unquestionably be irreparable harm by not upholding the preliminary relief Supreme Court has decreed; the likelihood of success seems quite good since four Judges of this court, albeit by different rationales, agree at least that petitioner fits under the beneficial umbrella of the regulation; and the balance of equities would appear to favor petitioner.

The reasons for my position in this case are as plain as the inappropriate criticism of the dissent that I have engaged in ipse dixit decision making. It should not be that difficult to appreciate my view that no more need be decided or said in this case under the traditional discipline of the judicial process. Interstitial adjudication, when a court cannot institutionally fashion a majoritarian rule of law either because it is fragmented or because it is not omnipotent, is quite respectable jurisprudence. We just do not know the answers or im *****792** plications ***216** for an exponential number of varied fact situations, so we should do what courts are in the business of doing—deciding cases as best they fallibly can. Applying the unvarnished regulatory word, ****57** "family", as written, to the facts so far presented falls within a well-respected and long-accepted judicial method.

SIMONS, Judge (dissenting).

I would affirm. The plurality has adopted a definition of family which extends the language of the regulation well beyond the implication of the words used in it. In doing so, it has expanded the class indefinitely to include anyone who can satisfy an administrator that he or she had an emotional and financial "commitment" to the statutory tenant. Its interpretation is inconsistent with the legislative scheme underlying rent regulation, goes well beyond the intended purposes of 9 NYCRR 2204.6(d), and produces an unworkable test that is subject to abuse. The concurring opinion fails to address the problem. It merely decides, ipse dixit, that plaintiff should win.

Preliminarily, it will be helpful to briefly look at the legislative scheme underlying rent regulation.

Rent regulation in New York is implemented by rent control and rent stabilization. Rent control is the stricter of the two programs. In 1946 the first of many "temporary" rent-control measures was enacted to address a public emergency created by the shortage of residential accommodations after World War II. That statute, and the statutes and regulations which followed it, were designed to monitor the housing market to prevent unreasonable and oppressive rents. These laws regulate the terms and conditions of rent-controlled tenancies exclusively; owners can evict tenants or occupants only on limited specified grounds (9 NYCRR part 2104 [State]; 2204 [City of New York]) and only with the permission of the administrative agency.

The rent-stabilization system originated in 1969. It is a less onerous regulatory scheme, conceived as a compromise solution to permit regulation of an additional

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400,000 previously uncontrolled properties but also to allow landlords reasonable latitude in controlling the use of the newly regulated properties. One of its principal purposes was to encourage new construction. As both the Rent Control Law and the Rent Stabilization Law make clear, the Legislature contemplated that eventually rent control would end as rent-controlled tenancies terminated, and thereafter became subject to rent ***217** stabilization (*see generally*, *Sullivan v. Brevard Assocs.*, 66 N.Y.2d 489, 494–495, 498 N.Y.S.2d 96, 488 N.E.2d 1208; *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 136–137, 313 N.Y.S.2d 733, 261 N.E.2d 647). These programs were adopted notwithstanding the Legislature's expressed sentiment that the "ultimate objective of state policy" was the "normal market of free bargaining between a landlord and tenant" (*compare*, legislative finding for Emergency Tenant Protection Act of 1974 [the enabling legislation for rent stabilization], L.1974, ch. 576, § 4 [§ 2], McKinney's Uncons. Laws of N.Y. § 8622, *with* legislative finding for Local Emergency Housing Rent Control Act [the enabling legislation for the city Rent Control Law], L.1962, ch. 21, § 1 [2], McKinney's Uncons. Laws of N.Y. § 8602). Manifestly, judicial decisions which permit the indefinite extension of rent-controlled tenancies run counter to the legislative goal of eventually eliminating rent control while maintaining some measure of stability in the residential housing market.

A limited exception to the general rule that rent-controlled properties, when vacated, become subject to rent stabilization is found in section 2204.6(d). It provides that: "(d) 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" (9 NYCRR 2204.6[d] [emphasis added]).

Occupants who come within the terms of the section obtain a new statutory rent-controlled tenancy. Those eligible are identified by the italicized phrase but nowhere in the regulations or in the rent-control statutes *****793** is the phrase or the word "family" defined. Notably, however, family is linked with spouse, a word of clearly defined legal content. Thus, one would assume that the draftsman intended family to ****58** be given its ordinary and commonly accepted meaning related in some way to customary legal relationships established by birth, marriage or adoption. The plurality, however, holds that the exception provided in the regulation includes relationships outside the traditional family. In my view, it does not.

Analysis starts with the familiar rule that a validly enacted regulation has "the force and effect of law" (*see*, *Molina v. Games Mgt. Servs.*, 58 N.Y.2d 523, 529, 462 N.Y.S.2d 615, 449 N.E.2d 395; *Matter of Bernstein v. Toia*, 43 N.Y.2d 437, 448, 402 N.Y.S.2d 342, 373 N.E.2d 238); it should be interpreted no differently than a statute (*Matter of Cortland–Clinton, Inc. v. New York State Dept. of Health*, 59 A.D.2d 228, 231, 399 N.Y.S.2d 492). As such, the regulation should not be extended by construction beyond its ***218** express terms or the reasonable implications of its language (McKinney's Cons. Laws of N.Y., Book 1, Statutes § 94) and absent further definition in the regulation or enabling statutes, the words of the section are to be construed according to their ordinary and popular significance (*People v. Cruz*, 48 N.Y.2d 419, 428, 423 N.Y.S.2d 625, 399 N.E.2d 513).

Central to any interpretation of the regulatory language is a determination of its purpose. There can be little doubt that the purpose of section 2204.6(d) was to create succession rights to a possessory interest in real property where the tenant of record has died or vacated the apartment (*Matter of Herzog v. Joy*, 53 N.Y.2d 821, 439 N.Y.S.2d 922, 422 N.E.2d 582, *affg.* 74 A.D.2d 372, 428 N.Y.S.2d 1). It creates a new tenancy for every surviving family member living with decedent at the time of death who then becomes a new statutory tenant until death or until he or she vacates the apartment. The State concerns underlying this provision include the orderly and just succession of property interests (which includes protecting a deceased's spouse and family from loss of their longtime home) and the professed State objective that there be a gradual transition from government regulation to a normal market of free bargaining between landlord and tenant. Those objectives require a weighing of the interests of certain individuals living with the tenant of record at his or her death and the interests of the landlord in regaining possession of its property and rerenting it under the less onerous rent-stabilization laws. The interests are properly balanced if the regulation's exception is applied by using objectively verifiable relationships based on blood, marriage and adoption, as the State has historically done in the estate succession laws, family court acts and similar legislation (*see*, *Matter of Lalli*, 43 N.Y.2d 65, 69–70, 400 N.Y.S.2d 761, 371 N.E.2d 481, *affd.* 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503). The distinction is warranted because members of families, so defined, assume certain legal obligations to each other and to third persons, such as creditors, which are not imposed on unrelated individuals and this legal interdependency is worthy of consideration in determining which individuals are entitled to succeed to the interest of the statutory tenant in rent-controlled premises. Moreover, such an interpretation promotes

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certainty and consistency in the law and obviates the need for drawn out hearings and litigation focusing on such intangibles as the strength and duration of the relationship and the extent of the emotional and financial interdependency (*see, Morone v. Morone*, 50 N.Y.2d 481, 486, 429 N.Y.S.2d 592, 413 N.E.2d 1154; *People v. Allen*, 27 N.Y.2d 108, 112–113, 313 N.Y.S.2d 719, 261 N.E.2d 637). So limited, the regulation may ***219** be viewed as a tempered response, balancing the rights of landlords with those of the tenant. To come within that protected class, individuals must comply with State laws relating to marriage or adoption. Plaintiff cannot avail himself of these institutions, of course, but that only points up the need for a legislative solution, not a judicial one (*see, Matter of Robert Paul P.*, 63 N.Y.2d 233, 235, n. 1, 481 N.Y.S.2d 652, 471 N.E.2d 424; *Morone v.* *****794** *Morone, supra*, 50 N.Y.2d at 489, 429 N.Y.S.2d 592, 413 N.E.2d 1154).

Aside from these general considerations, the language itself suggests the regulation should be construed along traditional lines. Significantly, although the problem of unrelated ****59** persons living with tenants in rent-controlled apartments has existed for as long as rent control, there has been no effort by the State Legislature, the New York City Council or the agency charged with enforcing the statutes to define the word "family" contained in 9 NYCRR 2204.6(d) and its predecessors and we have no direct evidence of the term's intended scope. The plurality's response to this problem is to turn to the dictionary and select one definition, from the several found there, which gives the regulation the desired expansive construction.[*] I would search for the intended meaning by looking at what the Legislature and the Division of Housing and Community Renewal (DHCR), the agency charged with implementing rent control, have done in related areas. These sources produce persuasive evidence that both bodies intend the word family to be interpreted in the traditional sense.

The legislative view may be found in the "roommate" law enacted in 1983 (Real Property Law § 235–f, L.1983, ch. 403). That statute granted rights to persons living with, but unrelated to, the tenant of record. The statute was a response to our unanimous decision in *Hudson View Props. v. Weiss*, 59 N.Y.2d 733, 463 N.Y.S.2d 428, 450 N.E.2d 234; *see*, legislative findings to ch. 403, set out as note ***220** after Real Property Law § 226–b, McKinney's Cons. Laws of N.Y., Book 49, at 130. In *Hudson View* the landlord, by a provision in the lease, limited occupancy to the tenant of record and the tenant's "immediate family". When the landlord tried to evict the unmarried heterosexual partner of the named tenant of record, she defended the proceeding by claiming that the restrictive covenant in the lease violated provisions of the State and City Human Rights Laws prohibiting discrimination on the basis of marital status. We held that the exclusion had nothing to do with the tenants' unmarried status but depended on the lease's restriction of occupancy to the tenant and the tenant's "immediate family". Implicitly, we decided that the term "immediate family" did not include individuals who were unrelated by blood, marriage or adoption, notwithstanding "the close and loving relationship" of the parties.

The Legislature's response to *Weiss* was measured. It enacted Real Property Law § 235–f(3), (4) which provides that occupants of rent-controlled accommodations, whether related to the tenant of record or not, can continue living in rent-controlled and rent-stabilized apartments *as long as the tenant of record continues to reside there.* Lease provisions to the contrary are rendered void as against public policy (subd. [2]). Significantly, the statute provides that no unrelated occupant "shall * * * acquire any right to continued occupancy in the event the tenant vacates the premises or acquire any other rights of tenancy" (subd. [6]). Read against this background, the statute is evidence the Legislature does not contemplate that individuals unrelated to the tenant of record by blood, marriage or adoption should enjoy a right to remain in rent-controlled apartments after the death of the tenant (*see*, Rice, *The New Morality and Landlord–Tenant Law*, 55 N.Y.S. Bar J. [No. 6] 33, 41 [postscript]).

*****795** There is similar evidence of how DHCR intends the section to operate. Manifestly, rent stabilization and rent control are closely related in purpose. Both recognize that, because of the serious ongoing public emergency with respect to housing in the ****60** City of New York, restrictions must be placed on residential housing. The DHCR promulgates the regulations for both rent-regulation systems, and the eviction regulations in rent control and the exceptions to them share a common purpose with the renewal requirements contained in the Rent Stabilization Code (*compare*, 9 NYCRR 2204.6[d], *with* 9 NYCRR 2523.5[b]). In the Rent Stabilization Code, the Division of ***221** Housing and Community Renewal has made it unmistakably clear that the definition of family includes only persons related by blood, marriage or adoption. Since the two statutes and the two regulations share a common purpose, it is appropriate to conclude that the definition of family in the rent-control regulations should be of similar scope.

Specifically, the rent-stabilization regulations provide under similar circumstances that the landlord must offer a renewal lease to "any member of such tenant's family * *

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* who has resided in the housing accommodation as a primary resident from the inception of the tenancy or commencement of the relationship" (9 NYCRR 2523.5[b][1]; *see also,* 2523.5[b][2]). Family for purposes of these two provisions is defined in section 2520.6(*o*) as: "A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant or permanent tenant".

All the enumerated relationships are traditional, legally recognized relationships based on blood, marriage or adoption. That being so, it would be anomalous, to say the least, were we to hold that the agency, having intentionally limited succession rights in rent-stabilized accommodations to those related by blood, marriage or adoption, intended a different result for rent-controlled accommodations; especially so when it is recognized that rent control was intended to give way to rent stabilization and that the broader the definition of family adopted, the longer rent-controlled tenancies will be perpetuated by sequentially created family members entitled to new tenancies. These expressions by the Legislature and the DHCR are far more probative of the regulation's intended meaning than the majority's selective use of a favored dictionary definition.

Finally, there are serious practical problems in adopting the plurality's interpretation of the statute. Any determination of rights under it would require first a determination of whether protection should be accorded the relationship (i.e., unmarrieds, nonadopted occupants, etc.) and then a subjective determination in each case of whether the relationship was genuine, and entitled to the protection of the law, or expedient, and an attempt to take advantage of the law. Plaintiff maintains that the machinery for such decisions is in place and that appropriate guidelines can be constructed. He refers ***222** particularly to a formulation outlined by the court in *2–4 Realty Assocs. v. Pittman,* 137 Misc.2d 898, 902, 523 N.Y.S.2d 7, which sets forth six different factors to be weighed. The plurality has essentially adopted his formulation. The enumeration of such factors, and the determination that they are controlling, is a matter best left to Legislatures because it involves the type of policy making the courts should avoid (*see, People v. Allen,* 27 N.Y.2d 108, 112–113, 313 N.Y.S.2d 719, 261 N.E.2d 637, *supra*), but even if these considerations are appropriate and exclusive, the application of them cannot be made objectively and creates serious difficulties in determining who is entitled to the statutory benefit. Anyone is potentially eligible to succeed to the tenant's premises and thus, in each case, the agency will be required to make a determination of eligibility based solely on subjective factors such as the "level of emotional and financial commitment" and "the manner in which the parties have conducted their everyday lives and held themselves out to *****796** society" (plurality opn, at p. 212, at p. 790 of 544 N.Y.S.2d, at p. 55 of 543 N.E.2d).

By way of contrast, a construction of the regulation limited to those related to the tenant by blood, marriage or adoption provides an objective basis for determining who is entitled to succeed to the premises. ****61** That definition is not, contrary to the claim of the plurality, "inconsistent with the purposes of the rent-control system" and it would not confer the benefit of the exception on "distant blood relatives" with only superficial relationships to the deceased (plurality opn., at p. 210, at p. 788 of 544 N.Y.S.2d, at p. 53 of 543 N.E.2d). Certainly it does not "cast an even wider net" than does the plurality's definition (plurality opn., at p. 211, n. 1, at p. 789, n. 1 of 544 N.Y.S.2d, at p. 54, n. 1 of 543 N.E.2d). To qualify, occupants must not only be related to the tenant but must also "[have] been living with the tenant" (*see,* 22 NYCRR 2204.6[d]). We applied the "living with" requirement in *829 Seventh Ave. Co. v. Reider,* 67 N.Y.2d 930, 502 N.Y.S.2d 715, 493 N.E.2d 939, when construing the predecessor to section 2204.6(d), and refused to extend the exception to a woman who occupied an apartment for the five months before the death of her grandmother, the statutory tenant, because she was not "living with" her grandmother. We held that the granddaughter, to be entitled to the premises under the exception, was required to prove more than blood relationship and cooccupancy; she also had to prove an intention to make the premises her permanent home. Since she had failed to establish that intention, she was not entitled to succeed to her grandmother's tenancy. That ruling precludes the danger the plurality foresees that distant relatives will be enabled to take ***223** advantage of the exception contained in section 2204.6(d) (*cf.*, 9 NYCRR 2523.5[b][1], [2]).

Rent control generally and section 2204.6, in particular, are in substantial derogation of property owners' rights. The court should not reach out and devise an expansive definition in this policy-laden area based upon limited experience and knowledge of the problems. The evidence available suggests that such a definition was not intended and that the ordinary and popular meaning of family in the traditional sense should be applied. If that construction is not favored, the Legislature or the agency can alter it as they did after our decisions in *Hudson View Props. v. Weiss,* 59 N.Y.2d 733, 463 N.Y.S.2d 428, 450 N.E.2d 234, *supra* and *Sullivan v. Brevard Assocs.,* 66 N.Y.2d 489, 498 N.Y.S.2d 96, 488 N.E.2d 1208, *supra.*

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Accordingly, I would affirm the order of the Appellate Division.

KAYE and ALEXANDER, JJ., concur with TITONE, J.

BELLACOSA, J., concurs in a separate opinion.

SIMONS, J., dissents and votes to affirm in another opinion in which HANCOCK, J., concurs.

WACHTLER, C.J., taking no part.

Order reversed, with costs, and case remitted to the Appellate Division, First Department, for consideration of undetermined questions. Certified question answered in the negative.

All Citations

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Footnotes

1 Although the dissent suggests that our interpretation of "family" indefinitely expands the protections provided by section 2204.6(d) (dissenting opn, at p. 216, at p. 792 of 544 N.Y.S.2d, at p. 57 of 543 N.E.2d), its own proposed standard—legally recognized relationships based on blood, marriage or adoption—may cast an even wider net, since the number of blood relations an individual has will usually exceed the number of people who would qualify by our standard.

2 We note that the concurrer apparently agrees with our view of the purposes of the noneviction ordinance (concurring opn., at p. 215, at p. 791 of 544 N.Y.S.2d, at p. 56 of 543 N.E.2d), and the impact this purpose should have on the way in which this and future cases should be decided.

3 We note, however, that the definition of family that we adopt here for purposes of the noneviction protection of the rent-control laws is completely unrelated to the concept of "functional family," as that term has developed under this court's decisions in the context of zoning ordinances (*see, Baer v. Town of Brookhaven,* 73 N.Y.2d 942, 540 N.Y.S.2d 234, 537 N.E.2d 619; *McMinn v. Town of Oyster Bay,* 66 N.Y.2d 544, 498 N.Y.S.2d 128, 488 N.E.2d 1240; *Group House v. Board of Zoning & Appeals,* 45 N.Y.2d 266, 408 N.Y.S.2d 377, 380 N.E.2d 207). Those decisions focus on a locality's power to use its zoning powers in such a way as to impinge upon an individual's ability to live under the same roof with another individual. They have absolutely no bearing on the scope of noneviction protection provided by section 2204.6(d).

4 Also unpersuasive is the dissent's interpretation of the "roommate" law which was passed in response to our decision in *Hudson View Props. v. Weiss,* 59 N.Y.2d 733, 463 N.Y.S.2d 428, 450 N.E.2d 234. That statute allows roommates to live with the named tenant by making lease provisions to the contrary void as against public policy (Real Property Law § 235–f [2]). The law also provides that "occupant's" (roommates) do not automatically acquire "any right to continued occupancy in the event that the tenant vacates the premises" (§ 235–f[6]). Occupant is defined as "a person, other than a tenant or a member of a tenant's immediate family" (§ 235–f[1][b]). However, contrary to the dissent's assumption that this law contemplates a distinction between related and unrelated individuals, no such distinction is apparent from the Legislature's unexplained use of the term "immediate family."

* For example, the definitions found in Black's Law Dictionary 543 (Special Deluxe 5th ed.) are: "Family. The meaning of word 'family' necessarily depends on field of law in which word is used, purpose intended to be accomplished by its use, and facts and circumstances of each case * * * Most commonly refers to group of persons consisting of parents and children; father, mother and their children; immediate kindred, constituting fundamental social unit in civilized society * * * A collective body of persons who live in one house and under one head or management. A group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root. A group of kindred persons * * * Husband and wife and their children, wherever they may reside and whether they dwell together or not" (citations omitted). The term is similarly defined in the other dictionaries cited in the plurality opinion.

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