



Court of Appeals of New York.

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

July 6, 1989.

Order of Appellate Division reversed and case remitted.

Bellacosa, J., filed separate concurring opinion.
Simons, J., filed dissenting opinion in which Hancock, J., concurred.

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... 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 death in September of 1986. In November 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...

... 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... We now reverse.

II. [omitted] [208]

III.

... 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... [209]

... [R]espondent 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 of blood, consanguinity and adoption in order to effectuate the over-all goal of 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)... [210, 211]

... [W]e 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 history, but instead should find its foundation in the reality of family life. In the

context of eviction, a more realistic, and 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... 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... 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... 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... or newly discovered relatives hoping to inherit the rent-controlled apartment after the existing tenant's death...

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 [citations omitted]. 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.

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] Accordingly, the order of the Appellate Division should be reversed and the case remitted to that court for a consideration of undetermined questions...

[Concurring and dissenting opinions omitted.]

Fact Pattern

Ida Ciccione, a 79-year-old retiree, came to your law office two weeks ago hoping that you could prevent her from being evicted from the apartment she has lived in for 13 years.

When Ms. Ciccione's husband died in 1996 she began spending more and more time with her lifelong friend, Thelma Brogden, who was also a widow. To encourage her to "get on with her life," Brogden took the grieving Ciccione to Atlantic City on the second anniversary of her husband's death. There, the two had so much fun that they decided to travel together more often.

To make their plan financially viable the two eventually decided to pool some of their financial resources and "laugh their way through old age." Ciccione sold her house and promptly moved into Brogden's rent-controlled apartment on 79th street. Half of the proceeds from the sale of Ciccione's house went into a trust for her own children, and the other half was deposited into a bank account in her name that she opened up to pay for her household expenses and trips with Brogden.

Thereafter, the two were inseparable – referring to one another as "sisters by choice," they hiked in the desert southwest, gambled at Foxwoods, and visited each other's families once a year.

Brogden died quite suddenly last month, leaving three adult children and no will. Brogden's landlord has told Ciccione that she has no right to remain in the apartment, and that he would seek to evict her unless she moved out voluntarily.

You have researched the law and found a case and a statute on point. Today you will be meeting with Ciccione to tell her about what you found and talk to her about how she should proceed.

Legal Citation in Context

Please comment on these statements found in petitioner/ landlord’s brief (assume all page number references are correct):

1. Homosexual relationships that are quasi-marital in nature may, in some instances, be so similar in structure to legalized adult partnerships that the New York courts will treat them as constituting a family for the purpose of preventing eviction under the rent codes. *See Braschi v. Stahl Assoc.*, 74 N.Y. 201, 210-11(1989).
2. “Mere roommates” do not constitute family members for the purpose of rent protection. *Braschi*, 74 N.Y. at 213.

Please comment on these statements found in defendant’s brief (assume all page number references are correct):

3. In order to prevent eviction, New York law seeks to recognize wherever the household members evince the caring and dedication that family members typically provide one another. *See Braschi v. Stahl Assoc.*, 74 N.Y. 201, 212 (1989)(explaining that “dedication, caring and self-sacrifice” of the parties should control).
4. In determining family status for purposes of tenant succession great weight should be placed on the manner and terms by which members describe their own relationship to one another. *See, e.g.*, 9 NYCRR § 2520.6(0)(2)(vi); *Braschi*, 74 N.Y. at 213.

Compilation of Codes, Rules and Regulations of the State of New York Title 9. Executive Department
Subtitle S. Division of Housing and Community Renewal
Chapter VIII. Rent Stabilization Regulations
Subchapter B. Rent Stabilization Code
Part 2520. Scope (Refs & Annos)

9 NYCRR 2520.6
Section 2520.6. Definitions

(n) *Immediate family*. A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the owner.

(o) *Family member*.

(1) A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant.

(2) Any other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between such persons be required or considered:

(i) longevity of the relationship;

(ii) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(vii) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.