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Property--Condemnation--Covenant of Quiet Enjoyment (Dolman v. United States Trust Co., 2 N.Y.2d 110 (1956))

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limits of their own contract. The evil sought to be prevented, that of fraud and collusion, by Section 167(3) of the Insurance Law is equally present whether or not the accident occurs in other jurisdictions.[25] The Court of Appeals has stated: "It is not allowable, to interpret what has no need of interpretation, and when the words have a definite and precise meaning, to go elsewhere in search of conjecture, in order to restrict or extend the meaning." [26]

PROPERTY — CONDEMNATION — COVENANT OF QUIET ENJOYMENT.—Plaintiff-lessee brought an action for breach of covenant of quiet enjoyment. The lease contained a provision that, in the event of condemnation, the term would end and the lessee would not participate in the award. Prior to the execution of the lease, defendant-lessor had some inconclusive negotiations with the City of New York looking to a sale of the property. Subsequent to the execution of the lease, the defendant-lessor gave the City an option to purchase any award resulting from condemnation proceedings. Thereafter, the property was condemned and the City exercised its option. Plaintiff alleged that the defendant's co-operation in giving the option constituted a breach of covenant. The Court of Appeals *held* that the defendant's action did not constitute interference with the plaintiff's possessory rights, and that the eviction was the direct result of the sovereign's exercise of the right of eminent domain. *Dolman v. United States Trust Co.*, 2 N.Y.2d 110, 138 N.E.2d 784 (1956).

A grantee of leased real property acquires title subject to the lease, and the possessory rights of the lessee are not divested by a sale to the City or a private individual.[1] The landlord has the duty to protect the tenant's possessory rights, and any interference by the landlord resulting in an actual or constructive eviction is a breach of covenant of quiet enjoyment.[2] However, when a tenant is evicted by the sovereign's exercise of its power of eminent domain, no action arises against the landlord.[3] Protection is afforded to the landlord

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[25] General Acc. Fire & Life Assur. Corp. v. Ganser, 2 Misc. 2d 18, 23, 150 N.Y.S.2d 705, 710 (Sup. Ct. 1956) (dictum).

[26] McCluskey v. Cromwell, 11 N.Y. *593, *601 (1854), cited with approval in Meltzer v. Koenigsberg, 302 N.Y. 523, 525, 99 N.E.2d 679, 680 (1951) (per curiam).

[1] N.Y. REAL PROP. LAW § 223.

[2] See Sears, Roebuck & Co. v. 9 Ave.-31 St. Corp., 274 N.Y. 388, 9 N.E.2d 20 (1937); Fifth Ave. Bldg. Co. v. Kernochan, 178 App. Div. 19, 165 N.Y. Supp. 122 (1st Dep't), *aff'd*, 221 N.Y. 370, 117 N.E. 579 (1917); Times Square Improvement Co. v. Fleischmann's Vienna Model Bakery Co., 173 App. Div. 633, 160 N.Y. Supp. 346 (1st Dep't 1916).

[3] N.Y.C. ADMIN. CODE § B15-37.0; Gallup v. Albany R. Co., 7 Lans. 471

since the taking of the leasehold premises by eminent domain is an act of the government separate and apart from the actions and intentions of the parties. Thus, the tenant is ousted through no wrongful act or default or failure of title on the landlord's part, and such a taking is in no sense an eviction for which the landlord is responsible.[4] The tenant is, however, entitled to share in the condemnation award according to the value of his remaining interest,[5] unless a clause in the lease terminates the tenant's rights.[6]

In cases where the condemnation results from fraud or other fault of the landlord, the evicted tenant may recover the difference between the fair rental value of the unexpired term at the time of the eviction less the rent reserved by the terms of the lease.[7] Thus, where the landlord's act of neglect has proved to be the cause of a building being condemned when it could have been repaired for occupancy, the landlord breached the covenant of quiet enjoyment.[8]

Other cases indicate that a severe obligation has been imposed on landlords to prevent breach of the covenant.[9] In *Ganz v. Clark*,[10] a landlord had conveyed title to a grantee who assumed the mortgage. Subsequently, there was a default in payment of interest resulting in foreclosure and eviction of the tenant. Although the default was not caused by the bad faith of the grantor, liability was imposed for breach of the covenant. The court stated that "unless the weightiest reason be advanced whereby its breach may be condoned, the conclusion must follow that the agreement shall be enforced or a penalty paid for its violation." [11] Furthermore, actions have been upheld where landlords, attempting to avoid the obligations of their leases, have vexed the

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(Sup. Ct. 1872), *aff'd*, 65 N.Y. 1 (1875); *cf.* Ireland Real Estate Co. v. New York, N.H. & H.R.R., 72 Misc. 530, 131 N.Y. Supp. 978 (N.Y. City Ct. 1911).

[4] Burke v. Tindale, 12 Misc. 31, 33 N.Y. Supp. 20 (1895), *aff'd*, 155 N.Y. 673, 49 N.E. 1094 (1898); Connor v. Bernheimer, 6 Daly 295 (N.Y.C.P. 1875). This would follow the general rule in the law of contracts that supervening impossibility is an excuse for nonperformance provided there is no contributory fault on the part of the promisor. RESTATEMENT, CONTRACTS §§ 457, 458, 460 (1932); 6 WILLISTON, CONTRACTS §§ 1939, 1959 (rev. ed. 1938).

[5] Pabst Brewing Co. v. Thorley, 145 Fed. 117, 119 (2d Cir.) (dictum), *cert. denied*, 203 U.S. 597 (1906); Folts v. Huntley, 7 Wend. 210, 215 (Sup. Ct. 1831) (dictum).

[6] Matter of the City of New York (Allen St.), 256 N.Y. 236, 243, 176 N.E. 377, 379 (1931) (dictum).

[7] See Sears, Roebuck & Co. v. 9 Ave.-31 St. Corp., 274 N.Y. 388, 9 N.E.2d 20 (1937); Mack v. Pachin, 42 N.Y. 167 (1870).

[8] Lindwall v. May, 111 App. Div. 457, 97 N.Y. Supp. 821 (2d Dep't 1906); Burofsky v. Turner, 274 Mass. 574, 175 N.E. 90 (1931).

[9] See Snow v. Pulitzer, 142 N.Y. 263, 36 N.E. 1059 (1894); Mayor of the City of New York v. Mabie, 13 N.Y. 151 (1855); Al's 344 Ninth Ave. Corp. v. Kernochan, 275 App. Div. 904, 89 N.Y.S.2d 667 (1st Dep't 1949) (per curiam).

[10] 252 N.Y. 92, 169 N.E. 100 (1929).

[11] Ganz v. Clark, 252 N.Y. 92, 94, 169 N.E. 100 (1929).

tenant with unsuccessful lawsuits,[12] or induced other tenants to enjoin the tenant from deriving the beneficial enjoyment for which he had contracted.[13] It would seem, from the foregoing, that the language employed by the court at Special Term [14] would apply to the facts of the instant case. There, it was aptly stated that "if the covenant of quiet enjoyment is to have any force it means . . . that the landlord must . . . do nothing affirmative to deprive the tenant of possession . . . and that means . . . nothing affirmative, not alone openly and directly, but also by subterfuge or indirection." [15]

In the principal case, the validity of the option agreement between the landlord and the City was not in dispute since such agreements are specifically authorized by the Administrative Code of the City of New York.[16] The unique issue was whether the defendant-landlord, by granting the option to the City, co-operated to the *affirmative* degree of creating an exception to the rule that the landlord is not liable for breach of covenant of quiet enjoyment when the tenant's eviction results from an exercise of the power of eminent domain. The plaintiff sought to avoid the effect of the clause terminating his right to share in the condemnation award by alleging that the co-operation of the landlord was the direct cause of his eviction and, therefore, a breach of the covenant of quiet enjoyment. Thus, the Court declared it necessary to consider the intention of the parties. This may best ". . . be ascertained from an examination of the . . . [entire] lease, and not . . . [any] particular clause . . . ." [17] The majority rejected the tenant's contention by stressing the termination clause, and by characterizing the landlord's action as a mode of condemnation. The Court declared that any other interpretation would render ineffective the legislative intent under the Administrative Code,[18] and that there was no causal relationship between the eviction and the option agreement to purchase the condemnation award.

On the other hand, the minority contended that if any terms of a lease are ambiguous or require interpretation, they must be resolved against the landlord and in favor of the tenant.[19] Further, the covenant of quiet enjoyment should be construed as a protection to tenants,

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[12] See, *e.g.*, Paddell v. Janes, 90 Misc. 146, 152 N.Y. Supp. 948 (Sup. Ct. 1915); Akerly v. Vilas, 23 Wis. 207 (1868).

[13] See Williams v. Getman, 114 App. Div. 282, 99 N.Y. Supp. 977 (3d Dep't 1906) (per curiam).

[14] Dolman v. United States Trust Co., 206 Misc. 929, 134 N.Y.S.2d 508 (Sup. Ct. 1954).

[15] *Id.* at 932, 134 N.Y.S.2d at 511.

[16] N.Y.C. ADMIN. CODE § B15-30.0. The courts have previously dealt with similar option agreements. Matter of the City of New York (Chrystie St.), 236 App. Div. 321, 258 N.Y. Supp. 243 (1st Dep't 1932).

[17] Bovin v. Galitzka, 250 N.Y. 228, 232, 165 N.E. 273, 275 (1929).

[18] N.Y.C. ADMIN. CODE § B15-30.0.

[19] Dolman v. United States Trust Co., 2 N.Y.2d 110, 120, 138 N.E.2d 784, 790 (1956) (dissenting opinion); see 455 Seventh Ave. v. Hussey Realty Corp., 295 N.Y. 166, 65 N.E.2d 761 (1946).

not only from the lawful claims of third persons having title paramount to the lessor, and the unlawful entry of the lessor, but also from any interference by the landlord with the tenant's leasehold rights. Therefore, the giving of the option was an act which the landlord was not legally bound to do, and hence, a breach of the covenant. It would then appear that the conclusion of the minority is logical. Public policy, however, would seem to require the Court's decision. To hold otherwise might deter landlords from negotiating with the City and curtail operation of the statute [20] where a leasehold interest exists. However, the case should be strictly limited and freely distinguished.

SUPPORT AND MAINTENANCE — NEW YORK UNIFORM SUPPORT OF DEPENDENTS LAW HELD CONSTITUTIONAL.—A proceeding was commenced in California under the California Reciprocal Enforcement of Support Act by a mother, resident of California, against her former husband, resident of New York, to enforce support of their minor child. The petition was forwarded to the New York Domestic Relations Court. Pursuant to the reciprocity provisions of the New York Uniform Support of Dependents Law that court ordered respondent to make support payments by depositing specified sums into court. On appeal, respondent attacked the procedure as unconstitutional. In affirming the order granting support, the Court *held* that the procedure did not violate the compact clause, the due process clause or the equal protection clause of the Federal Constitution. *Landes v. Landes*, 1 N.Y.2d 358, 135 N.E.2d 562 (1956).

Prior to the enactment of reciprocal support legislation the remedies available to a dependent where an obligor left the jurisdiction were cumbersome, expensive, and rarely if ever accomplished the desired social ends. In the main, criminal liability was ineffective. Although a husband-father could be prosecuted under certain circumstances,[1] the result of such a prosecution was merely an added financial burden upon the state. Often, the cost of extradition discouraged prosecution.[2]

The effectiveness of the civil remedies available to a dependent was usually limited to those cases where the obligor could be located

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[20] N.Y.C. ADMIN. CODE § B15-30.0.

[1] N.Y. PEN. LAW §§ 50, 480.

[2] U.S. CONST. art. IV, § 2, cl. 2, provides for extradition of a felon *"who shall flee from justice."* In many cases an obligor may not have fled from justice. He may have entered another state to secure employment. See Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93, 94 (1951).