St. John's Law Review

Volume 22
Number 2 *Volume 22, April 1948, Number 2*

Article 12

Landlord and Tenant--Eviction under Emergency Rent Act--Cooperative Ownership (Hicks v. Bigelow, 55 A.2d 924 (Mun. Ct. of App. D.C. 1947))

St. John's Law Review

the law and a creature of equity depending not on contract but upon principles of equity and justice.[9]

It is apparent that there will be no uniformity among the decisions until a ruling on the question is made by a Circuit Court of Appeals or by the United States Supreme Court, or until the Federal Tort Claims Act is amended to specifically allow or disallow such claims by an insurance company as subrogee.

J. B. McG.

LANDLORD AND TENANT—EVICTION UNDER EMERGENCY RENT ACT—COOPERATIVE OWNERSHIP.—The defendant tenant occupied the apartment since 1941, having gone into possession under a lease with the corporate owner. In July 1946 the lessor corporation sold the apartment house, assigning the defendant's lease to the new owners. In 1947 a cooperative was formed and the property deeded to it. At the time of the trial the entire building was under cooperative ownership. The plaintiff acquired shares of stock in the new company, plus a proprietary lease purporting to give her the right to possession of the defendant's apartment for ninety-nine years with the right to one hundred year renewals. The plaintiff then served the defendant with statutory notice to quit and upon her refusal to quit brought this action to evict her. In the trial court, with a jury, the plaintiff was successful. The principal defense was to the effect that the plaintiff was just another tenant, and not an owner or landlord under the act[1] defining a landlord as "an owner, lessor, sub-lessor, or other person entitled to receive rent for the use or occupancy of any housing accommodation." *Held,* for the plaintiff, as a landlord under the classification mentioned. *Hicks v. Bigelow,* 55 A. 2d 924 (Mun. Ct. of App. D. C. 1947).

The pivotal point in the case is the determination of the plaintiff's position as a landlord. The defendant's contention that she is merely another tenant would seem to gain support from the common law conception of a personal relationship between the landlord and tenant,[2] and the required presence of certain essentials such as permission and consent of the landlord to the occupancy, subordination to the landlord's title, reversion, and generally some contractual relationship express or implied.[3] However, the case is decided under a statutory definition, and one which is quite common, being substantially the same as the New York Emergency Rent Laws applying

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[9] Wojciuk v. United States, 74 F. Supp. 914 (E. D. Wisc. 1947); *accord,* Grace v. United States (Maryland) (no opinion for publication).

[1] D. C. CODE SUPP. V. 45-1611(g) (1940).

[2] WALSH, THE LAW OF PROPERTY 233 (2d ed. 1937).

[3] See Note, 51 C. J. S., Landlord and Tenant § 2 (1947).

to housing, commercial, and business space,[4] and the Administrative Code of the City of New York.[5]

The District of Columbia Court notes that the issue involved has arisen principally in New York State, and in substantiation of its views cites the case of *542 Morris Park Avenue v. Wilkins,*[6] involving summary proceedings for possession of apartments, brought in that case by the cooperative corporation in behalf of its stockholders, wherein it was held that the stockholders were in effect regarded as the owners of the rooms occupied or to be occupied by them. This same view appears again in *Curtis v. Le May,*[7] holding as in the instant case, that the cooperative stockholder, the proprietary lessee, "... stands in the position of the landlord-lessor and acquires all of that entity's rights." [8] In *Curtis v. Le May,* however, there is an important distinction in that the plaintiff was also the assignee of the lease under which the defendant was in possession, rents having been collected for the plaintiff's account, which in itself established a basis for a landlord-tenant relationship.

The question as to who are proper parties to bring actions for possession under this type of statutory definition has arisen more frequently with regard to business and commercial space. The great majority of cases have held uniformly that ownership of stock in corporations holding title to real property does not enable stockholders to maintain proceedings for possession.[9] The courts have required a possessory right, a legal title, as a condition, and a clear compliance with statutory definitions. There is an aversion to any relaxation of laws such as those under discussion, being born as they are

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[4] Laws of N. Y. 1946, c. 274, amended by L. 1947, c. 704; Laws of N. Y. 1947, c. 822, c. 823.

[5] § U-41-7.0(b) (4) (1947).

[6] 120 Misc. 48, 197 N. Y. Supp. 625 (Sup. Ct. 1922). (The issue involved in the *Morris Park* case arose again in the later New York case of Smith v. Feigin, — App. Div. —, 77 N. Y. S. 2d 229 (1st Dep't 1948), where the Appellate Term of the Supreme Court criticized the holding that cooperative stockholders should be considered as owners of the rooms occupied or to be occupied by them, contending that there was no authority for such a proposition. However, on appeal the Appellate Division unanimously reversed the Appellate Term and concluded that such stock ownership did bring the plaintiff within the scope of the statutory requirement of owner, thus holding squarely with the Washington court in the instant case.)

[7] 186 Misc. 853, 60 N. Y. S. 2d 768 (Mun. Ct. 1945).

[8] *Id.* at 856, 60 N. Y. S. 2d at 770.

[9] Ditmars Homes v. Logerfo, 188 Misc. 286, 67 N. Y. S. 2d 414 (Mun. Ct. 1946); Nathan Straus-Duparquet, Inc. v. Moglen, 185 Misc. 831, 58 N. Y. S. 2d 714 (Sup. Ct. 1945); Tishman Realty & Const. Co. v. Wolf, 185 Misc. 317, 57 N. Y. S. 2d 73 (Sup. Ct. 1945); Trade Accessories v. Bellet, 184 Misc. 962, 55 N. Y. S. 2d 361 (Sup. Ct. 1945). *Contra:* 816 5th Avenue v. Leonard, 188 Misc. 728, 67 N. Y. S. 2d 386 (Mun. Ct. 1947). See also Stephens, *Controls Over Commercial Rents in New York City,* 17 N. Y. S. B. A. BULL. 151, 164 (1945).

of emergencies, and designed to protect existing tenancies.[10] This need for strict construction is also based on the premise that the emergency laws are a stricture on the common law, and that liberal interpretations should therefore be avoided.[11]

It should also be noted that the issue of the good faith of the plaintiff in seeking possession is a basic factor.[12] In the instant case that fact was decided favorably for the plaintiff by the jury. Good faith would seem to assume additional importance in view of the obvious possibilities for unscrupulous schemes in cooperative arrangements with the present housing conditions.

In general it would seem that the holding of the District of Columbia court, while being just under the circumstances, cannot be treated as conclusive of the fact that stockholders should be deemed owners or landlords of portions of the property held by the cooperative corporation, even under the statutory definitions cited.

D. J. C.

LANDLORD AND TENANT—RESTRICTIVE COVENANTS.—A Washington, D. C. corporation leased a store upon the defendant's covenant "that he will use said premises for the sale of alcoholic beverages and other items usually associated with the sale of liquor for 'Off Sale' [Off Premises] consumption and for no other purpose whatsoever." Defendant subsequently discontinued the operation of the liquor store. The plaintiff corporation brought action for possession on the grounds that the covenant had been violated by the discontinuance, and further alleged that, since the store was in a parking center, its non-use constituted waste. The corporation's motion for summary judgment was denied; and, when it elected to stand on its motion, judgment was given to the defendant. Plaintiff appealed. *Held,* the covenant was restrictive and not mandatory. It was for the litigants to adopt language that would have clearly shown the intent to impose upon the defendant the duty of continuing in possession. *Congressional Amusement Corporation v. Weltman,* 55 A. 2d 95 (Mun. Ct. of App. D. C. 1947).

The plaintiffs argue that the agreement implicitly meant not only that it would not be used for any other purpose, but that it must be *used.* They contend that an unoccupied store is just as undesirable

[10] Reconstruction Syndicate v. Sharpe, 186 Misc. 897, 61 N. Y. S. 2d 176 (Mun. Ct. 1946).
[11] Kristal v. Steinberg, 188 Misc. 500, 69 N. Y. S. 2d 476 (Mun. Ct. 1947).
[12] Richelieu Realty Co. v. Mangin, 187 Misc. 440, 63 N. Y. S. 2d 381 (Sup. Ct. 1946).