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Real Property--Landlord and Tenant--Retention of Security after Eviction Governed by Terms of the Lease (Rosenfeld v. Aaron, 248 N.Y. 437 (1928))

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In that case a conveyance of lots in the Sea Gate tract with reference to the field map, was under consideration. The Court said,[4] "* * * at the time this original grantee took title the defendant already maintained a fence * * * and 'guard * * * and it enforced regulations for admission through the entrance gate of only persons known to be property owners or persons * * * having business with property owners.' It must, therefore, have been clear to the grantee that his grantor did not intend to grant him a right to use the street except in the manner that a street in such a private residential colony would be used."

The essential facts are the same as those provided here. The decision is conclusive upon the right of the defendant to maintain a fence to reasonably regulate admission to the community. The plaintiff is protected in all the rights to which it is entitled by this judgment. Injunction properly denied.

REAL PROPERTY—LANDLORD AND TENANT—RETENTION OF SECURITY AFTER EVICTION GOVERNED BY TERMS OF THE LEASE.—Plaintiff's assignors deposited $6,000. with defendant Aaron as security on a lease for ten years. The lease provided that the money should be retained by the landlord until the expiration of the term when it was to be returned with interest unless the tenants had forfeited it by a violation of the covenants or conditions of the lease. In the event that the landlord re-entered for breach by tenants of these provisions, he was to have the right to terminate or relet as tenants' agents. Thereafter the landlord sold the premises and the lease to defendant Mazer, transferring at the same time, the deposit, upon the latter's agreement to indemnify him against any claim therefor by the tenants. Subsequently, Mazer brought dispossess proceedings against the tenants and obtained a final order in summary proceedings against them. Plaintiff thereupon brought this action to recover the deposit upon the ground that the lease was terminated. *Held,* for the defendant. The action was prematurely brought. Rosenfeld v. Aaron, 248 N. Y. 437 (1928).

The conveyance of the property to Mazer did not terminate the tenants' obligation under the lease.[1] Where the deposit is not transferred to the grantee the security agreement is a mere collateral covenant not running with the land.[2] Here the grantee received the deposit and agreed to indemnify the original landlord. The covenant to return passed to the grantee subject to the terms of the lease. Though no warrant to dispossess was issued [3] the removal of the tenants after the issuance and service of the precept cancelled and

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[4] *Ibid.,* 327.

[1] Kottler v. N. Y. Bargain House, 242 N. Y. 28, 150 N. E. 591 (1926).

[2] Fallert Brewing Co., Ltd. v. Blass, 119 A. D. 53, 103 N. Y. S. 865 (2nd Dept. 1907).

[3] C. P. A., Sec. 1434.

annulled the lease, *unless* by a proper survivorship clause the landlord reserved the option to keep it alive for the purpose of reletting and holding the tenants for the deficiency.[4] A mere provision that in case of "re-entry" the lessor may so relet does not give him such authority upon the recovery of possession by summary proceedings.[5] Where, however, the parties by their contract give the word "re-entry" a broader scope than its technical common-law definition, such is not the case.[6] Therefore, until the landlord by some affirmative act terminates the lease, the action is premature.

SPECIFIC PERFORMANCE—JURISDICTION—PERSONAL SERVICE OUTSIDE OF STATE.—The vendee brought an action to compel specific performance of an agreement to convey real property situated in Westchester County, N. Y. The vendor, a resident of Connecticut, was not served in New York, nor did he appear in the action but he was personally served with a copy of the summons and verified complaint in the State of Connecticut. The Supreme Court at Special Term, issued an order directing the Sheriff to convey the property to plaintiff as provided by statute. Defendant's motion to set aside the service of the summons and complaint was denied.[2] Upon appeal he contended that the Court was without jurisdiction to make the decree in question, since equity acts *in personam* merely, in the absence of a statute enabling it to make a judgment *in rem*; that there is no statute which authorizes personal service outside of the State in an action for specific performance. *Held,* order affirmed. The service was proper and sufficient to give the Court jurisdiction to grant a judgment *in rem,* binding upon the non-resident. Garfein v. McInnes, 248 N. Y. 261 (1928).

The language of the Civil Practice Act[3] is broad enough to include an action for specific performance and service without the State is sufficient to give the Court jurisdiction to render a judgment *in rem* binding upon the non-resident so served. But a decree *in personam* must be supported by actual service within the State.[4] Consequently it is necessary to decide whether the judgment is directed solely against the defendant himself or whether it operates directly upon the property resulting in a transfer of title to plaintiff. That "equity acts *in personam*" is one of its oldest maxims and a

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[4] Hoffman Brewing Co. v. Wuttge, 234 N. Y. 469, 138 N. E. 411 (1923).

[5] Michaels v. Fishel, 169 N. Y. 381, 62 N. E. 425 (1902).

[6] Anzolone v. Paskusz, 96 A. D. 188, 89 N. Y. S. 203 (1st Dept. 1904), herein approved.

[1] C. P. A., Sec. 979.

[2] 223 App. Div. 28, 227 N. Y. S. 585 (2nd Dept. 1928).

[3] C. P. A., Secs. 232, 235.

[4] Hart v. Sansom, 110 U. S. 151 (C. C. No. Dist. of Texas, 1884).