Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. T91-145

CIVIL *ACTION*

HOUSING AUTHORITY OF THE CITY OF PASSAIC,

Plaintiff-Appellee,

-vs-

JULIO TORRES,

Defendant-Appellant.

ON APPEAL FROM

PASSAIC COUNTY DISTRICT COURT

SAT BELOW

Harold M. Nitto, J.J.D.R.C/TA

BRIEF AND APPENDIX
FOR

DEFENDANT-APPELLANT

JAMES M. LARSEN
Passaic County Legal Aid Society
197 Washington Place
Passaic, New Jersey 07055
(201) 779-8000

ATTORNEY(S) FOR DEFENDANT-APPELLANT

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PROCEDURAL HISTORY

Plaintiff filed a tenancy complaint against defendant in the Passaic County District Court on August 13, 1975 seeking a Judgment for Possession against defendant on the grounds of non-payment of rent for the month of August in the amount of $124.00. DA 1.

A hearing was held on August 21, 1975 before the Honorable Harold M. Nitto of the Passaic County Juvenile and Domestic Relations Court temporarily assigned to the Passaic County District Court. At the close of the hearing a Judgment for Possession was entered in favor of plaintiff for non-payment of $124.00 rent with a Warrant to Issue in 60 days.

A Warrant of Removal was issued to a Sergeant-at-Arms of the Passaic County District Court on August 26, 1975 authorizing him to remove all persons from the premises occupied by defendant. DA 2.

Defendant filed a Notice of Appeal with the Appellate Division of the Superior Court on August 29, 1975. DA 3.

On September 2, 1975, the Honorable Herbert W. Susser presiding Judge of the Passaic County District Court signed an Order temporarily staying the Execution of the Warrant of Removal pending a hearing on defendant's application that the Warrant be stayed pending consideration of his appeal. DA 4.

On October 9, 1975 Judge Susuer signed an Order providing for the stay of the Execution of the Warrant of Removal pending

disposition of the case on appeal, provided that defendant should pay as use and occupancy during that period the sum of $74.00 per month, the amount that defendant contended was due and owing to plaintiff. DA 6.

On October 21, 1975 this court entered an Order granting defendant an extension of time from November 3, 1975 to December 3, 1975 within which to file and serve his Brief. DA 8.

The trial Judge has not submitted any written findings of fact or law.

STATEMENT OF FACTS

A hearing was held in this matter on August 21, 1975 before the Honorable Harold M. Nitto.

Plaintiff called as his witness a Donald Pieri. Mr. Pieri testified on direct examination that defendant was a tenant of plaintiff at 226 Sixth Street, Apt 2B and that defendant had agreed to pay a monthly rental of $124.00 on the first of each and every month. Tr 2-10. He further testified that defendant had not paid his $124.00 rental for the month of August 1975 and that he was still in possession of the premises in question. Tr 2-16.

On cross examination the witness testified that he was an employee of plaintiff which is an authority set up under the laws of the State of New Jersey to receive funds from the Federal Government under the National Housing Act. Tr 3-1through 7. He further testified that plaintiff was required to charge each and every tenant no more than one quarter of his family income for rent. Tr 3-8. Mr. Pieri then stated that plaintiff conducted a yearly re-examination of the tenants income to determine if there have been any changes and also that a tenant would be able to come to plaintiff's office and notify plaintiff of any change in income so that a change in rent could be made. Tr 3-20.

Plaintiff then testified in his own behalf. He told the court that he was unemployed and was receiving $90.00 a week from "Disability". Tr 4-4211. He stated that there were four members

of his family: himself, his wife and two children. Tr 4-12. He testified that he had been out of work since April 11th, 1975 and that he had notified the Housing Authority on July 14th, 1975. Tr 4-17. He stated that the Housing Authoirty responded that the rent could not be lowered until October. Tr 4-22. He testified that his wife had recently had a baby and as a result he had incurred $450.00 in doctor bills and $290.00 for hospital bills. Tr 4-24, Tr 5-1.

On cross examination the defendant tesitfied that neither his wife nor any other member of his family was employed. Tr 5-6.

Counsel for defendant then argued that the maximum rent which plaintiff could charge defendant was fixed by Federal law at one quarter of defendant's family income after certain required deductions had been made from that income on a yearly basis and that any rent in excess of that amount was not owing and consequently the court could not enter a Judgment for Possession based on that amount. Tr 6. Counsel for defendant represented to the court that according to his won calculations, the proper rent chargable by plaintiff to defendant was $78.00 a month. Tr 7.

Counsel for Plaintiff represented to the court that according to certain circulars from the Department of Housing and Urban Development, with which he was familiar, Housing Authority was having financial difficulty and that local Housing Authorities had a right to reaccess rents once a year and not before. Tr 7,8. He also told the court that Housing Authorities cannot afford to reduce rent for persons who lost their employment. Tr 8.

I. THE JUDGMENT OF POSSESSION ENTERED BY THE COURT BELOW WAS FOR NON-PAYMENT OF A RENTAL IN EXCESS OF THAT ALLOWED BY THE UNITED STATES HOUSING ACT. 42 U.S.C. § 1401 et.seq.

In 1969 the Congress enacted P.L. 91-152 which amended 42 U.S.C. §§ 1402 (1) to provide that federally funded low rent housing projects may not charge rentals of more than one fourth of family's income. In 1970 it enacted P.L. 91-609 which provided an definition of family income for purposes of applying the one fourth rent limitation;

> In defining income for purposes of applying the one-fourth of family income limitation set forth above, the Secretary shall consider imcome from all sources of each member of the family residing in the household who is at least eighteen years of age; except that (A) non-recurring income as determined by the Secretary, and the income of full-time students shall be excluded; (B) an amount equal to the sum of (i) $300 for each dependent, (ii) $300 for each secondary wage earner, (iii) 5 per centum of the family's gross income (10 per centum in the case of elderly families), and (iv) those medical expenses of the family properly considered extraordinary shall be deducted; and (C) the Secretary may allow further deductions in recognition of unusual circumstances.

These two amendments became known as the Brooke Amendments.

In 1974 Congress significantly revised the United States Housing Act in P. L. 93-383. The new act retained the one quarter of the family's income rent limitation and the definition of income. These provisions are found at 42 U.S.C. § 1437a. It was defendant's contention before the court below that plaintiff's action for non-payment of rent was based on a rental which was in excess of that allowed by the Brooke Amendments.

The defendant testified his family considering himself, his wife and two children. Tr 4. He fruther testified that his only family income were his temporary disability benefits which

amounted to $90.00 a week. Pr 4. This would amount to $4,680.00 a year. Employing the criteria of the Brooke Amendment (subtracting $900.00 for his three dependents and $234.00 as 5% of his gross income), defendants income was $3,546.00 on a yearly basis. One quarter of that amount is $886.00 or the maximum rental which a family with defendant's income would be charged. This amounts to $73.83 a month, which rounds off to $74.00. This compares with the rental sought by plaintiff in the amount of $124.00, a difference of $50.00 a month.

At the trial in this matter, plaintiff's attorney argued that plaintiff was in compliance with the Brooke Amendments because Housing Authorties have a right to reassess a family's income once a year and that they are not required to do so before then.

The acceptance of this argument would totally defeat the purpose of the Brooke Amendments, which was to allow low income persons to be able to afford to live a Public housing project. U.S. Code Congressional and Administative News (1969) P. 1541-42. Low income families whose income decreased after the yearly evaluation had taken place would be compelled to vacate their apartments in public housing projects because they could no longer afford to pay the rent. Other tenants would be obliged to pay rentals far in excess of the amount fixed by the Congress. In the present case, defendant's change in economic circumstances, together with plaintiff's refusal to adjust his rental, resulted in his being charged $50.00 more a month than the one quarter

of family income invisioned by the Brooke Amendments.

Plaintiff's argument was apparently based on the fact that 42 U.S.C. § 1410 (e) 3 requires that a contract between a public housing agency and the Department of Housing and Urban Development shall provide for periodic examinations of the income of families living in the project. This provision was re-enacted in P.L. 93-383 and is found at 42 U.S.C. § 1437 d (e) 2 which requires that the re-examination take place at least once every two years. These provisions, in their context, are clearly designed to compell housing authorities to review tenants eligibility to remain in public housing, not as a limitation on the duty of public housing projects to charge no more then one quarter of a familys' income, a requirement which is set out in a separate section.

This was quite clearly recognized by the United States Department of Housing and Urban Development in its regulations adopted to carry out the Brooke Amendments. Circular RHM 7465.1 Appendix 1 (April 24, 1970) sets down the requirements for interim adjustments of rent in question and answer form:

> 14. Q. After the initial adjustment of tenants' rents, is it necessary to make interim adjustments in rent based on reports by tenants of decreases in their family income?
>
> A. Yes. Interim adjustments will be necessary for tenants affected by the 25% statutory limitation on rents.
>
> 17. Q. Is the interim adjustment to be effective the first of the month in which it occurs or the first of the month following?

A. Both increases and decreases shall be made effective the first of the month following the month in which the change occurs.

Since plaintiff is a Housing Authority financed in part by the Federal Government through the United States Department of Housing and Urban Development it is bound by HUD regulations specifying the rights and duties of tenants and the Housing Authority as to rent, maintenance and manner of occupancy by tenants. Housing Authority of the City of Bayonnev. Isler 127 N.J. Super 568 (App.Div. 1974). There is a presumption that such regulations are valid. Lee v. Housing Authority of Elizabeth 119 N.J.Super 72 (Dis. Ct., 1972).

Employing the criteria of the HUD regulations, it is quite clear that defendant was entitled to a rent reduction for the month of August 1975. Defendant testified that he had been out of work since April 11, 1975 and that he had advised plaintiff of this situation on July 14, 1975. Tr 4. The HUD regulations require a re-evaluation of rent for the month immediately following the month in which a tenants income decreases. Quite clearly the month of August and all the months there after meet this requirement. Thus, plaintiff was under a duty to reduce defendant's rent to $74.00 a month no later than August 1975, the month whose rental is presently at issue in this case.

Counsel for plaintiff also argued that compliance with the Brooke Amendments would be a financial burden to plaintiff which could not afford. Tr 8. This argument is clearly invalid. Having accepted funds from the Federal Government, plaintiff is in no

position to refuse to comply with the conditions set down by that Government on its use. The appropriate forum for the area of such complaint is the Congress in order to seek additional funds to meet the financial requirements of running a Public housing project. Barber v. White 351 F. Supp. 1091 (D. Conn.,1972) National Tenants Orgainization v. The Department of Housing and Urban Development 358 F. Supp. 312 (D.D.C., 1973). Thus, in entering a Judgment for Possession in favor of plaintiff for non-payment of rent in the amount of $124.00 for the month of August 1975, the court below found due and owing to plaintiff a rental of $50.00 in excess of that allowed by the United States Housing Act.

II. THE COURT BELOW WAS WITHOUT JURISDICTION TO ENTER A JUDGMENT FOR POSSESSION FOR NON-PAYMENT OF RENT IN EXCESS OF THAT ALLOWED BY THE UNITED STATES HOUSING ACT.

The Brooke Amendments create a right in tenants of public housing projects to be charged rentals no greater than one quarter of their family's income and they have standing to enforce that right in the Courts. National Tenants Organization v. the Department of Housing and Urban Development Supra and Barber v. White Supra. As such, the Brooke Amendments fall under the provisions of article VI Section 2, otherwise known as the "Supremecy Clause". Barber v. White supra. The Supremacy clause prevents a State Court from ignoring a Federally created right, even if that federally created right conflicts with a State policy. Testa v. Katt 330 U.S. 386 (1947). Therefore, the court below was without authority to enter a Judgment for Possession in contravention of the tenants federally created rights under the Brooke Amendments.

This analysis is consistant with present New Jersey law. N.J.S.A. 2A:18-61.1 (a) authorizes a Judgment of Possession for failure to pay rent due and owing. A rent which is due may, in some cases, not be owing and in such a case a District Court is without jurisdiction to enter a Judgment of Possession for that rent. Marini v. Ireland 56 N.J. 130 (1970).

In Brockchester Inc. v. Matthews 118 N.J.Super 565 (Dist. C., 1972) it was held that a rental in excess of that allowed by Federal regulations made pursuant to the Economic Stablization Act of 1970, P.L. 91-379 was not owing and therefore a Judgment for Possession could not be entered for the rental in excess of that

allowed by Federal law. This decision was noted with approval in Levine v. Seidel 128 N.J. Super 225 (App.Div. 1974).

There would appear to be no reason for distinguishing between the Federal Rent Controls in those cases and the rent limitations put on public housing programs by the Congress. Thus, from a study from both Federal and State law, it is quite clear that the court below was without the jurisdiction to enter a Judgment for Possession for non-payment of rent, where that rental is in excess of that allowed by the United States Housing Act.

III. THE COURT MAY HEAR THIS APPEAL SINCE IT IS GROUNDED ON THE CONTENTION THAT THE COURT BELOW WAS WITHOUT JURISDICTION TO ENTER A JUDGMENT OF POSSESSION FOR NON-PAYMENT OF RENT IN THE AMOUNT ALLEGED BY PLAINTIFF.

N.J.S.A. 2A:18-59 provides "Proceedings had by virtue of this article shall not be appealable except on the ground of lack of jurisdiction."

As presented supra, this appeal is based on the contention that the court below could not enter a Judgment fo Possession for non-payment of rent in the amount of $124.00 because that amount was not owing by defendant to plaintiff since it was excess of the rent allowed under the United States Housing Act. It has been recognized that where an appeal raises the issue of whether a particular rent is owing, it may be heard by the Appellate Court because it raises a jurisdictional issue. Marini v. Ireland supra.

CONCLUSION

Defendant-appellant respectfully request that the Court reverse the Judgment of the Passaic County District Court, Docket No. T91-145 entering a Judgment for Possession against defendant for non-payment of rent in the amount of $124.00 and that it further order that the proceedings in the District Court against defendant-appellant be dismissed with prejudice against plaintiff-appellee.

Respectfully submitted,

JAMES M. LARSEN
Passaic,County Legal Aid Society
197 Washington Place
Passaic, New Jersey 07055
Attorney for Defendant-appellant