Buffalo Law Review

Volume 9 | Number 1 Article 108

10-1-1959

Property—Application of Decontrolling Provisions of Residential Rent Law

Buffalo Law Review

praisal formula, for tenants will pay the same rent regardless of whether it is collected by the owner or the lessee-manager.

The right to a specific return on the investment has not previously been predicated on ownership alone, but on the right of a landlord to a fair return. When the state government took over rent control from the Federal Government in 1950, its Rent and Eviction Regulations were copied almost word for word from the existing federal regulations, and the state adopted this definition of landlord: "An owner, lessor, sublessor, assignee, proprietary lessee of a housing accommodation . . . or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodation or an agent of any of the foregoing."[20] Since it is the person in possession and control who is entitled to the rents, and since New York speaks of the right of a landlord to rents without setting up a hierarchy among owners, lessees and others considered landlords, the majority opinion is in keeping with precedent. It does not couple a maximum six percent return to a particular estate's investment in the property, but makes it depend solely on the right of a statutory landlord to a six percent return on the value of the property standing apart from the fortuitous or non-fortuitous investment of owner or lessee.

APPLICATION OF DECONTROLLING PROVISIONS OF RESIDENTIAL RENT LAW

The New York State Residential Rent Law[21] provides in part; "housing accommodations which are rented after April first, nineteen hundred fifty-three and have been continuously occupied by the owner thereof for a period of one year prior to the date of renting" are not subject to control. In *Capone v. Weaver*,[22] the landlord petitioner, sought to annul a determination by the Rent Administrator that his apartment was not decontrolled under the above statute. Petitioner owned several apartments, one of which was occupied by tenant, who had intervened in the instant case, and one by himself.

In 1954, petitioner, because of a family situation causing hardship, sought to exchange apartments with the tenant, but the tenant refused, as he had tenure under the above statute and controlled rents. Upon the tenants refusal, petitioner obtained an eviction of this tenant on the conditions, imposed by the Rent Administrator, that he offer to exchange apartments with the tenant and offer him a two year lease at the then present rent. Upon the lease's expiration, petitioner informed the tenant that he could continue to occupy the premises on a month-to-month basis, at double the rent. The tenant claimed a violation

20. N.Y. Rent and Eviction Regulations § 2(6) N.Y. UNCONSOL. LAWS (McKinney Supp. 1959); means person in possession and control in People v. S. A. Schwartz Co., 7 Misc. 2d 635, 165 N.Y.S.2d 1008 (Sup. Ct. 1957). For Federal definition, see, Rent Regulation for Housing in New York City Defense Rental Area, § 13(a)(8): "'Landlord' includes an owner, lessor, sublessor, assigness or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodations, or an agent of any of the foregoing." Cited in Woods v. William A. White & Sons., 172 F.2d 356 (2d Cir. 1949).

21. N.Y. SESS. LAWS 1946, c. 27, § 2(h).

22. 6 N.Y.2d 307, 189 N.Y.S.2d 833 (1959).

of the Residential Rent Law in a proceeding before the Rent Administrator who ruled that the tenant's apartment had not become decontrolled, since the exchange was for the landlord's benefit and merely a substitution of controlled housing accommodations. The Supreme Court dismissed the petition, but the Appellate Division[23] reversed, holding that the above statute demands only two conditions; (1) a renting after April first, Nineteen Hundred fifty-three, and (2) continuous occupancy by the owner for one year prior to renting. Since petitioner landlord met both provisions, the disputed apartment must be ruled decontrolled.

It is a common proposition that the literal meaning of an unambiguous statute should be followed,[24] but the purpose which the statute is to effect must be given precedence.[25] "A thing which is within the letter of the statute is not within the statute unless it is within intent of the lawmakers."[26] Prior lower court decisions[27] on almost identical fact situations as the instant case, have held that such exchanges for the landlord's benefit do not result in rent decontrol for the tenant. The purpose of the instant statute was to induce owner-occupiers to make their housing accommodations available to the rental market. This being the purpose, the legislature could not have intended to penalize a tenant with a controlled apartment who exchanges with a landlord, for the latter's benefit.

The Court of Appeals felt the Rent Administrator had made an equitable adjustment of the interests of the parties, the landlord getting the larger apartment and the tenant getting the landlord's apartment, subject to rent control. The Court made reference to decisions which allowed departure from the literal meaning of a statute[28] and held that the Rent Administrator's determination was neither arbitrary nor unreasonable, and a clear case for administrative discretion. In giving great weight to the administrator's interpretation of the rent control statute, under diverse conditions, the court reaffirmed a policy, *i.e.* to leave undisturbed an administrative ruling where it is not clearly shown to be contrary to law.[29]

DEPENDENT AND INDEPENDENT COVENANTS IN A LEASE

Landlord and tenant entered into a lease whereby premises were to be used for storing and shipping of goods. The certificate of occupancy then in effect permitted the first floor of the leased premises to be used as a dance hall. In the lease, the landlord covenanted to make application to obtain a certificate

23. 7 A.D.2d 1004, 184 N.Y.S.2d 289 (2d Dep't 1958).
24. Lawrence Const. Co. v. New York, 293 N.Y. 634, 59 N.E.2d 630 (1944).
25. People v. Ryan, 274 N.Y. 149, 8 N.E.2d 313 (1939).
26. River Brand Rice Mills Inc. v. Latrobe Brewing Co., 305 N.Y. 36, 110 N.E.2d 545 (1953).
27. Brettler v. Weaver, 14 Misc. 2d 1031, 177 N.Y.S.2d 835 (Sup. Ct. 1958); Ashen v. McGoldrick, 17 Misc. 2d 23, 189 N.Y.S.2d 919 (Sup. Ct. 1954).
28. New York Post Co. v. Leibowitz, 2 N.Y.2d 677, 163 N.Y.S.2d 409 (1957); See also, *supra* notes 25 and 26.
29. People v. McCall, 219 N.Y. 84, 113 N.E. 795 (1916); See also, Ry. Comm'r v. Rowen and Nichols Oil Co., 311 U.S. 570 (1914); Gray v. Powell, 314 U.S. 402 (1941).