

10-1-1957

Real Property—Breach of Covenant of Quiet Enjoyment

Diane Gaylord

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Diane Gaylord, *Real Property—Breach of Covenant of Quiet Enjoyment*, 7 Buff. L. Rev. 165 (1957).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss1/89>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

which certain statutes may prescribe.⁴ Under circumstances similar to those presented above, the Emergency Housing Rent Control Law provides injunctive relief but does not make provision for damages.⁵ Thus, the Court held that plaintiff did not have a legal basis for his first cause of action. Section 535 of the Real Property Law provides relief of treble damages for forcible entry or detainer. "Forcible" has been defined as meaning with violence or a threat giving rise to fear of imminent personal injury.⁶ No such forcible entry or detainer was correctly alleged in this case. The Court did not decide whether a statutory tenant would come within the protection of section 535, but held that even if one would, plaintiff did not state a cause of action within it.

It appears that the Court has correctly applied the law. Nonetheless, plaintiff would be justified in complaining of the result for he obviously suffered some damage. However, since his only remedy is a statutory one, his complaint would be correctly addressed to the Legislature.⁷

Breach Of Covenant Of Quiet Enjoyment

The covenant of quiet enjoyment has as its primary purpose the protection of the lessee from lawful claims of third persons. It also is a promise by the lessor that he himself will not interfere with the lessee's enjoyment of the property.⁸ However, interference with the lessee's possession under the power of eminent domain does not constitute a breach of the lessor's covenant of quiet enjoyment for the reason that parties in making the covenant were contemplating interference by virtue of existing rights.⁹ A covenant against eminent domain would be a covenant not against an existing right but against a naked possibility.¹⁰ On the other hand if the lessor's act brought about the interference by the public police power, it has been held that this is a breach of a covenant of quiet enjoyment since this is interference by the lessor himself.¹¹

In *Dolman v. United States Trust Company of New York*,¹² the lessor-defendant, upon the initiative of the city agreed to give the city an option at a certain price on any award to which defendant became entitled upon condemna-

4. *Rosner v. Textile Binding and Trimming Co.*, 300 N.Y. 319, 90 N.E.2d 481 (1950); *David v. Fayman*, 298 N.Y. 669, 82 N.E.2d 404 (1948).

5. N.Y. EMERGENCY HOUSING RENT CONTROL LAW §8591.

6. *Fults v. Munro*, 202 N.Y. 34, 95 N.E. 23 (1911).

7. *Marony v. Applegate*, 266 App. Div. 412, 42 N.Y.S.2d 768 (1st Dep't 1943).

8. *Mayor of New York v. Mabie*, 3 Kern. 151 (N.Y. 1885); *Sears Roebuck & Co. v. 9th-31 Street Corporation*, 274 N.Y. 388, 9 N.E.2d 20 (1937), *motion for reargument denied*, 274 N.Y. 636, 10 N.E.2d 589 (1937).

9. *Kip v. New York & H.R.Co.*, 22 Sickels 227 (N.Y. 1876); *Corrigan v. Chicago*, 144 Ill. 537, 33 N.E. 746 (1893); *Weeks v. Grace*, 194 Mass. 296, 80 N.E. 220 (1907).

10. *Ellis v. Welch*, 6 Mass. 246 (1810).

11. *Lindman v. May*, 111 App. Div. 457, 97 N.Y. Supp. 821 (2d Dep't 1906).

12. 2 N.Y.2d 110, 157 N.Y.S.2d 537 (1956).

tion, a process authorized by law.¹³ The lessee of the property, in possession under a lease containing a covenant of quiet enjoyment and a provision that in the event of condemnation, the landlord could terminate the lease, brought suit against the lessor on the grounds that the covenant had been breached. Plaintiff claims that interference with his possession was due, not to governmental action, but to the lessor's action which induced the city to acquire the property by condemnation. The Court of Appeals held, however, that the act of the defendant did not bring about the condemnation since the granting of the option was merely incidental to a greater force, the sovereign power of condemnation. Thus the tenant lost his possessory rights when the property was condemned and not when the option was given.

Plaintiff contended and the lower courts¹⁴ found that since the lessor received by condemnation under the option agreement the same sum as he would have received by a sale of the property under a proposed contract which the defendant and the city negotiated before the condemnation took place, defendant's act of agreeing to the option procedure was used to avoid his lease with the plaintiff. The dissent agreeing with this position cites *Lindman v. May*¹⁵ as authority for its point of view. In that case, it was held that the landlord had breached the covenant of quiet enjoyment when the premises were condemned after the landlord had been warned by the city that if he did not repair the premises, they would be torn down. An opposite conclusion was reached in another case where it was held that the landlord had not breached an obligation to the tenant upon condemnation since the landlord had not covenanted to repair and thus his act was not the moving force in bringing about the condemnation.¹⁶

Defendant's ignorance of the option process until informed of it by the city, plaintiff's awareness of the negotiations between the city and the defendant, and the presence of the condemnation provision in the lease indicating that both parties considered and provided for such an event lead us to the conclusion that any act of the defendant was merely incidental not only to the sovereign power but to the lease agreement itself. Thus, the defendant did not use the option procedure to violate his agreement with the plaintiff.

The Court's decision has set an adequate criteria for future cases and allows the Code of New York City to be given its full effect in this area.

13. ADMINISTRATIVE CODE OF THE CITY OF NEW YORK §B15-30.0 (1939).

14. 143 N.Y.S.2d 58 (Sup. Ct. 1955); 1 A.D.2d 809, 148 N.Y.S.2d 809 (1st Dep't 1956).

15. See note 11 *supra*.

16. *Mellis v. Berman*, 9 N.Y.S.2d 553 (Sup. Ct. 1939)