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Property—Real Property—Landlord and Tenant

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BUFFALO LAW REVIEW

Condemnation Proceedings

In a condemnation proceeding the City of New York claimed to be the equitable owner of a parcel of land by virtue of an executory contract of sale, and as such entitled to the award, subject to performance of the contract. The owner disputed the validity of the contract and also claimed it was tainted with fraud.¹⁷

The trial judge declined to pass on the validity of the contract or the city's claim, believing that his only power was to determine legal ownership and make the award accordingly.

The condemnation statute is the measure of the court's jurisdiction.¹⁸ After examining the controlling statute,¹⁹ the court unanimously reversed, concluding that the use of such sweeping terms as "all questions of title" and "every estate, interest and right, legal or equitable" indicated a legislative intent to give the trial court the power to adjudicate all questions of ownership between the parties present in the one proceeding and thereby avoid multiplicity of actions.

The owner had not been deprived of his right to a jury trial under C. P. A. § 425 on the issues of fraud and conditional delivery, because, by stating in open court his willingness to have the validity of the contract litigated, the right to jury trial had been waived.²⁰

Landlord and Tenant

In *Central R. R. Garage Corp. v. Eastern Transport Co.*,²¹ the court was presented with an unusual situation. On September 7, 1951 defendant leased property from plaintiff for twenty-one years with an agreement that if defendant was "unsuccessful in obtaining possession" either party might cancel the lease on or before August 17, 1952. Defendant commenced summary proceedings against a statutory tenant and obtained a final order of eviction. However, the statutory tenant received a stay of execution until June 13, 1952 which was extended until August 25, 1952 whereupon defendant, mindful of the deadline, cancelled the lease on August 8, 1952. Subsequently it was discovered that the Municipal Court had vacated the tenant's stay on July 19, 1952

17. *In re Site For Jefferson House, City of New York*, 306 N. Y. 278, 117 N. E. 2d 896 (1954).

18. *Culver Contracting Corp. v. Humphrey*, 268 N. Y. 26, 196 N. E. 627 (1935).

19. NEW YORK CITY ADMINISTRATIVE CODE § B 15-1.0 (5), (6); § B 15-12.0 (d).

20. *Baird v. Mayor etc., of City of New York*, 74 N. Y. 382 (1878); *Matter of New York L. & W. R. Co.*, 98 N. Y. 447 (1885); 4 CARMODY-WAIT, NEW YORK PRACTICE 2665 (1952).

21. 307 N. Y. 120, 120 N. E. 2d 524 (1954).

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without notifying any of the interested parties. The plaintiff contends that since defendant had the right of possession as of that date the lease could not be cancelled.

All that a landlord need do is give a lessee legal or constructive possession rather than actual physical possession.²² However, the court held (5-2) that physical possession was intended by the parties and since defendant had not been successful in obtaining such he had the right to cancel the lease.

Where a tenant has been made a party to the action, a judgment of foreclosure and an ensuing sale extinguish his rights under a lease²³. Conversely, the new owner has no right to rent payments and his only remedy is in the nature of a writ of assistance, either under C.P.A. § 985²⁴ or C.P.A. § 1411(6).

In *United Security Corp. v. Suchman*,²⁵ the plaintiff, purchaser at a mortgage foreclosure sale, brought a non-payment summary proceeding under C.P.A. § 1410(2) against defendant, a tenant of the mortgagor, who had duly been made a party to the foreclosure proceedings, but refused to pay rent. Plaintiff based his right to such remedy on the Residential Rent Law.²⁶

The Residential Rent Law is emergency legislation. Its primary purpose is to prevent wholesale eviction of tenants who are willing to pay reasonable rents during inflationary years.²⁷ Section 2(7) of the act defines tenant as "A tenant . . . or other person entitled to the possession . . ." Section 2(6) defines landlord as "An owner . . . or other person receiving or entitled to receive rent." Section 5(1) declares: "So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodation with respect to which a maximum rent is in effect pursuant to this act . . . notwithstanding the fact that the tenant has no lease or that his lease, or other rental agreement has expired or otherwise terminated."

22. *U. M. Realty & Imp. Co. v. Roth*, 193 N.Y. 570 (1908); *Mirsky v. Harowitz*, 46 Misc. 257, 92 N.Y. Supp. 48 (Sup. Ct. 1905); *Podalsky v. Ireland*, 137 App. Div. 257, 121 N.Y. Supp. 950 (1st Dep't 1910).

23. *Metropolitan Life Ins. Co. v. Childs Co.*, 230 N.Y. 285, 130 N.E. 295 (1921).

24. *Greene v. Geiger*, 46 App. Div. 210, 61 N.Y. Supp. 524 (2d Dep't 1899); *Commonwealth Mtg. Co. v. DeWaltoff*, 135 App. Div. 33, 119 N.Y. Supp. 781 (1st Dep't 1909).

25. 307 N.Y. 48, 119 N.E. 2d 881 (1954).

26. L. 1946 c. 274 as amended; MCK. UNCONSOL. LAWS § 8581 *et seq.*

27. *Stern v. Equitable Trust Co.*, 238 N.Y. 267, 144 N.E. 578 (1924) (in reference to the emergency rent laws of the 1920's).

Urging that the key provision for bringing the statute into operation is the payment of rent, the majority of the court maintained that since defendant had never paid any rent to plaintiff and the latter was not entitled to any, the defendant was not entitled to possession and therefore was not a tenant under the statute. Since the admittedly pro-tenant legislation gives occupants the privilege of remaining in possession and paying rent, the court felt it would be strange to allow the landlord to impose upon the occupant the status of a tenant against his will.

The dissenters were of the opinion that an occupant assumed the status of tenant by electing to remain in possession and that payment of rent was not essential to being a tenant under the statute.²⁸ Having exercised his privilege they felt the tenant must assume the accompanying burdens.²⁹

The view of the majority is sound in the light of the act's underlying policy to allow tenants to remain in possession without exorbitant increases in rent.

Tax Lien Foreclosure—Adverse Possession

Railroad Law, Section 8 (2) gives railroad corporations the right to acquire property by condemnation but such property must be used only for the purposes of the corporation during its existence. This section has been interpreted as giving railroads only an easement in property which ends when the railroad ceases operations and abandons the use of the property; the fee holder having the right to re-enter upon such happening.³⁰ It follows that the railroad can convey or mortgage no more than an easement.

In a condemnation proceeding instituted by the City of New York, two claims were made to the award. In 1919 the appellants' predecessor was the undisputed owner of the land in question when a railroad condemned it and went into possession. Subsequently the railroad attempted to mortgage the land in fee. In 1935 the railroad stopped using the land. At this point appellants' predecessor had a right to re-enter but did not do so. Appellants claim the award as her heirs. The respondent as liquidator of the mortgage company went into possession in 1936

28. See *Harlem Savings Bank v. Cooper*, 199 Misc. 1110, 101 N. Y. S. 2d 641 (Sup. Ct. 1951); *Pjalzgraf v. Voso*, 184 Misc. 575, 55 N. Y. S. 2d 171 (Sup. Ct. 1945); *DaCosta v. Hamilton Republican Club*, 187 Misc. 865, 65 N. Y. S. 2d 500 (Sup. Ct. 1946).

29. See *Wasservogel v. Meyerowitz*, 300 N. Y. 125, 89 N. E. 2d 712 (1949).

30. *Miner v. New York Central & H. R. R. Co.*, 123 N. Y. 242, 25 N. E. 339 (1890); *Roby v. New York Central & H. R. R. Co.*, 142 N. Y. 176, 36 N. E. 1053 (1894); *Hudson & Manhattan R. R. Co. v. Wendel*, 193 N. Y. 166, 85 N. E. 1020 (1908).