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### 800 Grand Concourse Owners, Inc. v. Thompson

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SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

June 2021 Term

McShan, J.P., Brigantti, Hagler, JJ.

800 Grand Concourse Owners, Inc.,  
Petitioner-Landlord-Respondent,

NY County Clerk's No.  
570029/21

-against-

Charlene Thompson,  
Respondent-Tenant,

Calendar No. 21-042

-and-

James Pettus,  
Respondent-Appellant.

Respondent-appellant James Pettus appeals from final judgment of the Civil Court of the City of New York, Bronx County (Miriam M. Breier, J.), entered December 8, 2020, which, upon an order granting petitioner's motion for summary judgment, awarded possession to petitioner in a holdover summary proceeding.

**Per Curiam.**

Final judgment (Miriam M. Breier, J.), entered December 8, 2020, affirmed, without costs.

Petitioner-landlord, a cooperative corporation, established a prima facie

entitlement to summary judgment of possession under the business judgment rule. The evidentiary proof submitted established that the cooperative followed the requisite procedure set forth in Paragraph 31(f) of the proprietary lease in terminating the tenancy of respondent Charlene Thompson on the ground of objectionable conduct, namely, Thompson and her husband's (Pettus) vexatious litigation against the cooperative and its members, as found by several courts, consisting of multiple frivolous and duplicative suits, which caused the cooperative considerable expense and resulted in the loss of insurance coverage (*see generally 1050 Tenants Corp. v Lapidus*, 39 AD3d 379, 383 [2007], *lv denied* 9 NY3d 807 [2007]). The record shows that the cooperative board acted within the scope of its authority and in good faith to further its legitimate interests (*see 40 W. 67<sup>th</sup> St. v Pullman*, 100 NY2d 147 [2003]). “[E]victing tenants who consciously and unabashedly ... inflict thousands of dollars in unnecessary legal fees is in furtherance of the cooperative's legitimate interests” (*Lapidus*, at 383).

Civil Court's comprehensive decision also correctly noted that “Thompson was provided with multiple opportunities to be heard, to defend and to abate the objectionable conduct. The Board listened to Thompson but found that after many chances given, the conduct continued unabated despite her promise to curb Pettus' actions.”

In opposition, respondents failed to raise any factual issue as to whether the

cooperative board acted outside the scope of its authority, in a way that did not legitimately further its corporate purpose, or in bad faith, and that therefore its decision to terminate the tenancy was not protected by the business judgment rule (*see Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530 537-538 [1990]; *see also 40 W. 67th St. v Pullman*, 100 NY2d at 154-155; *Chiagkouris v 201 W. 16 Owners Corp.*, 160 AD3d 469, 470 [2018], *lv denied* 32 NY3d 911 [2018]).

Appellant’s present arguments that his rights under the Federal and State Constitutions have been violated are either not properly before us on this appeal, unpreserved or without merit.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur

I concur

I concur

June 25, 2021