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Alsaede v. Elkount

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2024 NY Slip Op 50249(U)
Decided on February 14, 2024
Civil Court Of The City Of New York, Kings County
Slade, J.
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Decided on February 14, 2024
Civil Court of the City of New York, Kings County

Nabeel Alsaede, Petitioner(s),

against

Ahmed Elkount; Rabla Hdnance; "John" "Doe"; "Jane" "Doe"; Respondent(s).

Index No. LT-051325-19/KI
Kimberley Slade, J.

This owner's use holdover proceeding was commenced by Nabeel Alsaede (Nabeel) seeking to recover the subject unit for his personal use. The property is managed by Capital A Management NY, Inc. (Capital A). the only lease between the current ownership and respondent was signed in December 2016 with Capital A and respondent, Elkount. The deeded owners include Nabeel and his father, Ali Alsaede, and a few other individuals. Ali Alsaede (Ali) is the principal of Capital A. At the conclusion of petitioner's *prima facie* case respondent moved for a directed verdict dismissing the proceeding.

Elkount argues that the predicate or termination notice (Golub) served in this proceeding is insufficient as a matter of law and cannot support the termination of his tenancy. Elkount argues that as his sole lease following the 2016 sale of the building was between himself and Capital A Management that Nabeel is not a proper party to sever his tenancy. He asserts that

as Nabeel was entirely unknown to him and lacks authority to act on behalf of Capital A that he may not terminate Elkount's tenancy as that the notice served violates the principal espoused in *Siegel v. Kentucky Fried Chicken*, 108 AD2d 218, 488 NYS2d 744 (1985), aff'd 67 NY2d, 492 NE2d 390 (1986) where that court held that "a tenant is entitled to know with safety whether the notice to terminate emanates from a person with the requisite authority."

Nabeel argues that his ownership interest alone entitles him to obtain possession of this unit and, as an owner, he is both entitled to possession of the unit and has standing to maintain this proceeding. He further argues that he is not precluded from maintaining this proceeding as less than a full owner (12.5%) arguing that a joint tenant may maintain a summary proceeding to recover possession and that it is irrelevant that he is not part of management or a lessee. He acknowledges that Capital A may not recover possession as it is a corporation.

While testifying, as it relates to this motion, Nabeel was unsure of how many owners other than himself are on the deed and was initially unaware of what percentage of the building he owned. He was aware of the existence of Capital A but lacked any knowledge of its structure or whether his father was a principal, or what role his father might play within the management of that company or the building. He acknowledged that he has no management responsibility or obligations related to the building. Nabeel was additionally uncertain as to whether a larger [*2]apartment that became available was offered to him.

Ali Alsaede testified that he is self-employed in real estate and that the subject premises are managed by Capitol A of which he is the president. He collects rents, pays expenses and otherwise engages in the management activities of his business. The evidence established that petitioner purchased the premises in 2016, that respondent has been a tenant since 2009, and again, that the only lease subsequently executed was executed by Capital A and respondent.

The notice served provides as is relevant to this matter:

"Combined notice of landlord's intention to commence proceedings to recover Housing Accommodations based on owner's use pursuant to Section 2524.2(c)(3) and Section 2524.4(a) of the Rent Stabilization Code of the City of New York and Thirty Day Notice of termination."

Please take further notice that your tenancy in the premises stated above is hereby terminated effective ...that being the expiration of your current lease on the grounds that the

landlord of the subject premises, intends to move into your apartment and use it as his primary residence. Then the notice indicates that "one of the landlords/owners, wants to move into the premises involved and reside there as a primary residence."

The grounds are summarized as:

1. Nabeel is a landlord/owner.

2. Nabeel lives in a one family house with extended family totaling twelve occupants.

3. Nabeel desires to move due to overcrowding/the number of people in the house.

4. Nabeel requires the 1st floor apartment in good faith as it will be easier and less disturbing to other occupants as he and his family go in and out.

The notice is signed by Nabeel Alsaede as Landlord/Owner. There are no annexations to the notice that would reveal to respondent who Nabeel is *vis a vis* the management company or anyone connected to the management company or to ownership of the premises, nor assertions related to this relationship. No deed, no demonstration of a familial relationship to Ali or Capital A, nor any other paper or document that would indicate, on its face, who Nabeel is in relation to the building, to respondent or why he might have a claim to recover this apartment.

The threshold question that must be answered in this motion is whether the notice served violates the *Siegel id*. principal as argued by respondent. In *Siegel id*. the Court of Appeals affirmed the Appellate Division's determination that the predicate notice served in that proceeding failed as it was signed by an attorney unknown to the recipient and, based narrowly upon the terms of the lease that specifically delineated and governed who may issue notices to that respondent, and that the respondent in that proceeding was entitled to notice as delineated by the lease. As the attorney who signed the lease was neither and was unknown to respondent it failed. The *Siegel id*. decision and those cases that have followed it have construed its holding narrowly and it has primarily remained limited to the type of narrow lease restriction that was the subject of its holding.

As there is no argument in this matter related to the terms of a lease that limit or otherwise delineate who may issue notices the question becomes whether the termination notice is otherwise insufficient based upon the argument that the termination notice issued in the name of Nabeel Alsaede fails as he lacks any apparent or explicit authority to issue a

notice that respondent may confidently rely upon as being issued by an individual who has such authority. The question is considered from a respondent's perspective, and it does not require analysis of whether petitioner is within his rights or has an entitlement to commence and maintain such a proceeding but solely addresses the sufficiency of the notice.

Without specifically addressing the notice issue, Nabeel opposes Elkount's motion and argues that the very definition of landlord includes both owners and lessors, and while acknowledging he is not a lessor, argues that there is nothing in the law that disallows an owner, including a minority owner, from pursuing an owner's use holdover. Further, petitioner argues that under similar scenarios—albeit not involving regulated units—co-owners have successfully maintained summary proceedings and obtained possessory awards.

The cases petitioner cites do not hit this issue head on and none were brought in a property subject to rent stabilization nor where anything other than a simple termination notice was required prior to service of a petition. In *Trama v. Trama*, 15 Misc 3d 1146(A) (Nassau Dist.Ct 2007) the husband brought the case and after he died his wife sought to enforce an agreement to vacate in a private house where respondent lived in a room. That court held,

"it is well settled that a spouse, even though a co-owner and a tenant by the entirety with the petitioner, is not a necessary party. Either one of two co-owners may maintain a summary proceeding to gain possession in his or her own name...It is also well settled that a cause of action for possession of real property may continue after the death of a petitioner and may be maintained by one entitled to possession of the property."

Here there were no regulatory issues, nor questions of the sufficiency of the notice. The court permissively substituted one party for another following the death of the other based upon their joint tenancy.

In the *Matter of Elizabeth Baker v. Charles B. Westfall*, 30 Misc 2d 946, 219 N.Y.S.2d 328, Montgomery County 1961, also cited by petitioner, the Husband leased premises and his wife, a co-owner, disagreeing with her husband, sought to remove the tenant. The court held "In a summary proceeding [a] petitioner may not evict her husband's tenant from the premises but she can remove him from exclusive possession. Her only right is to be put in possession of the premises *with* the respondent Westfall and share with him the occupancy and use of the premises (*Finnegan v. Humes*, 252 App. Div. 385; *Infante v. Sperber, supra*)." (*emphasis added*). Even *assuming arguendo* these cases addressed the notice issue, which

they do not, they primarily stand for the proposition that tenants by the entirety may individually pursue a summary proceeding and at least in the *Baker id.* case the outcome would likely be highly undesirable to all, assuming it were a viable remedy.

The heart of Elkount's argument is at paragraph 15 of his motion for the directed verdict, "[h]ere, Like *Siegel*, *id*. the lease and the notice of termination were not executed by the same party, or an agent prescribed to act on behalf of Capital A. Management. Nabeel Alsaede may be a partial owner, but he was not a party to the rent stabilized lease agreement executed by Capital A. Management and respondent Elkount and the lease does not provide for him to act an agent for Capital A Management." Implicit in this argument—or as its logical consequence—is the idea that there is no proof of Nabeel's entitlement to seek this unit within or accompanying the Golub notice.

At the Appellate Division the court in *Siegel*, id. after discussing prevailing case law, determined, "[u]nder such circumstances the mere assertion of authority on the face of the notice by a total stranger to the transaction that he is the landlord's attorney and that he is authorized to act on the latter's behalf cannot be deemed to provide the tenant with the surety of notice to which he is contractually entitled." (citations omitted), *Siegel v Kentucky Fried Chicken of Long Island*, 108 AD2d 218 (NY App. Div. 1985). And when affirmed at the Court of Appeals that court, while narrowly viewing the issue in light of the specific facts of the case upheld the [*3]general proposition articulated at the Appellate Division, "[u]nder such a lease notices of default and of termination signed not by the owner or the attorney named in the lease but by another attorney with whom the tenant had never previously dealt, were insufficient and the tenant entitled to ignore them as not in compliance with the lease provisions concerning notice." *Siegel v. Kentucky Fried Chicken*, 108 AD2d 218, 488 NYS2d 744 (1985), aff'd 67 NY2d, 492 NE2d 390 (1986).

This theme was recently echoed by the court in *US Bank v Augustine*, 74 Misc 3d 1206(A) where the court did not dismiss the proceeding but discussed the authority issue in an analogous context:

"Here, it is undisputed that the notice to quit was accompanied by the attorney-certified referee's deed for the subject premises (which specifically refers to petitioner as trustee for the relevant trust), along with the limited power of attorney appointing Hudson Homes Management LLC as attorney-in-fact for petitioner, as trustee for LSF9 Master Participation Trust (among other trusts). The notice is purported to be signed by Hope Rosales on behalf of

Hudson Homes Management LLC. *While it is well established that the recipient of a notice must be able to act upon it with safety* (Reeder v. Sayre, 70 NY 180, 187-188 [1877]), *the court is satisfied that the documentation included with the notice here, namely the attorney-certified deed and the power of attorney, were sufficient to apprise respondents of the signatory's authority to act on behalf of petitioner as trustee and transferee of a property sold in foreclosure*. See *Port Royal Owners Corp*., 57 Misc 3d at 15; see also *Plotch v. Dellis*, 60 Misc 3d 1, 4-5 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018].

The court continued,

"Here, unlike the scenario in *BILKIS et al., as Coexecutors of the Estate of Anthony D'Amato, Deceased, v Leader*, The notice of nonrenewal in this nonprimary residence holdover was executed by Anthony D'Amato, husband of the record owner and registered managing agent of the building premises. In such form, the notice was sufficient to serve as a predicate for the eviction proceeding. *D'Amato was necessarily known to the tenant, having resided in the small brownstone for the entire period of tenant's occupancy.* We note that there is no lease in the record, and therefore no evidence of any lease provision requiring notice from the landlord personally (cf. *Siegel v. Kentucky Fried Chicken*, 108 AD2d 218, 488 N.Y.S.2d 744, affd. 67 NY2d 792, 501 N.Y.S.2d 317, 492 N.E.2d 390). Moreover, we have held that statutory notices given under the Rent Stabilization Code may be signed by the registered agent (*3+8 Associates v. Green,* N.Y.L.J., June 3, 1992, at 22, col. 1 [App. Term, 1st Dept]; *Pamela Equities Corp. v. Fattore,* N.Y.L.J., April 20, 1989, at 23, col 2 [App. Term, 1st Dept]; see also, *Kwong v. Eng,* 183 AD2d 558, 583 N.Y.S.2d 457). D'Amato's signature as attorney-in-fact does not dictate a contrary result."

(*all emphasis added*).

In *Bilkis* the recipient of the notice knew by whom it was signed and could reasonably rely on the authority of that notice as it was inherently reliable under the circumstances. The respondent there knew who signed the notice and, as that notice was signed by one with a nexus to the building and was known to the respondent, it was facially reasonable that such a person would have the express or implicit authority to terminate or sever the landlord/tenant relationship and that the notice was issued by one who would have, at a bare minimum, the apparent authority to seek possession of the unit in question. Given the facts in that case the notice was reliable.

The testimony and exhibits in this proceeding make it abundantly clear that Nabeel has never had a role or presence in the building or its management, whether formal or informal. There is no indication that Elkount has any reason to know of Nabeel's existence prior to service of the Golub notice upon him. The notice served asserted that Nabeel was a landlord/owner, yet he has no landlord relationship to respondent and, as an owner he was unknown to respondent. There was no annexation or recitation in the notice as to the source of Nabeel's entitlement to seek possession from Elkount. The notice served upon Elkount might just as well have been served by a stranger as that is substantively who Nabeel is in relation to Elkount. This is not to assert that Nabeel may not seek possession from ElKount—this court need not and does not address that question but does agree with respondent that the notice fails for the reasons stated above.

For all of the foregoing reasons the petition is dismissed.

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