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National Housing Cooperatives Case Law Survey (1/1/2012-Present)

Emigrant Mortgage Co., Inc. v. Greenberg, 34 Misc. 3d 1236(A), 950 N.Y.S.2d 608 (Dist. Ct. 2012) (unreported)

Petitioner, Emigrant Mortgage Company, Inc., commenced a holdover proceeding against Respondent Louise Greenberg to recover possession of a cooperative premises located in Great Neck, NY. Petitioner loaned money to Respondent under a Security Agreement which enabled Respondent to purchase co-op stock for occupancy of her unit. The co-op stock was pledged as collateral. Respondent defaulted under the Security Agreement and Petitioner became the owner of Respondent's co-op stock through a sale at a public auction.

Through its purchase at the auction, Petitioner acquired all of the borrower's "right, title and interest" in Respondent's co-op stock. It thereby acquired "all right, title and interest" to her proprietary lease for her co-op unit. The Court confirmed that a sale of co-op stock pledged as collateral to the secured party transfers all of the owner's rights in the cooperative.

Petitioner initially brought the proceeding to evict Respondent pursuant to RPAPL § 713(5), which allows an eviction where: "The property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him."

Respondent moved to dismiss this proceeding pursuant to CPLR 3211(a)(2) on the grounds that the Court lacked subject matter jurisdiction. Petitioner opposed this application and cross moved for an order allowing it to plead RPAPL § 713(1) as a basis for bringing this summary proceeding.

RPAPL § 713(1) allows an eviction where "The property has been sold by virtue of an execution against him or a person under whom he claims and a title under the sale has been perfected." RPAPL § 701 grants jurisdiction in a special proceeding to recover possession of real property. RPAPL § 713, in turn, authorizes evictions after foreclosures or execution sales. The principal question thus presented before the court was whether these statutes may be applied to a case involving the sale at a public auction of co-op shares after the owner's default.

The Court recognized that cooperative apartments "are personal property, not real property" under the law governing a lender's foreclosure of a security agreement. Nevertheless, it realized that the tenant in reality is occupying living space in a building which is real property. "Since the cooperative apartment (personal property) is part and parcel of a building which is real property, proceedings involving the occupants of a cooperative apartment present a hybrid situation."

The Court went on to point out that "Cooperatives have been treated by courts as realty in many different situations. See, e.g. Baranello v. 700 Shore Road Waters Edge Inc., 159 Misc.2d 1040, 607 N.Y.S.2d 584 (Sup.Ct., Nassau County 1993), where the court held that cooperatives were real property for purposes of the automatic stay."

Regarding this “hybrid situation,” Greenberg pointed out that “...other courts, have assessed on a case-by-case basis which aspect of this paradoxical interest predominates, in order to determine the applicability of a particular rule of law or statutory scheme; for example, in *United Hous. Found. v. Forman* (supra [421 U.S.], at 848–851 [95 S.Ct. at 2058–60]) the United States Supreme Court held that because shares in a housing cooperative are purchased primarily to provide living space, and lack the characteristics traditionally associated with stock, they are not ‘securities’ for the purpose of Federal securities law, ...”

Based upon this analysis, the Court concluded that it, indeed, had jurisdiction to grant an eviction pursuant to RPAPL § 701, and that RPAPL § 713(1), may be used by a secured party which obtains ownership of the cooperative apartment after a non-judicial sale of the defaulting tenant’s interest in order to evict the tenant who no longer has any interest in the cooperative. It held that “As between the secured party and the defaulting tenant, the secured party has a superior right to the apartment and may seek to evict the defaulting tenant when his/her interest has been extinguished.” Thus, the Court denies the motion to dismiss and granted the cross motion to amend the pleadings to reflect RPAPL § 713(1).

Golia v. Srinivasan, 95 A.D.3d 628, 945 N.Y.S.2d 11 (N.Y. App. Div. 2012)

Shareholder-tenant of a housing cooperative brought a proceeding to annul determinations of Board of Standards and Appeals (BSA) denying her appeal of determination of New York City Department of Buildings (DOB) that declined to revoke a building permit issued to coshareholder-tenant, and granting the appeal of determination of DOB to the extent of reinstating his building permit. The Supreme Court of New York County denied consolidated petitions and dismissed proceedings. Shareholder-tenant appealed, but the Appellate Court affirmed, based on a number of different holdings:

-That the Standards and Appeals (BSA) of building permit issued to shareholder-tenant in the co-op was based on a rational interpretation of the city zoning resolution as applied to the site on which the shareholder-tenant sought to construct a single-family residence, and thus had to be upheld. This was because that for more than 40 years, the city buildings department had interpreted the zoning resolution to require setbacks measured from the lot line, due to the unusual manner in which the cooperative’s properties were defined, The boundaries of many plots were not coincident with edge of adjoining walkways, service lanes, or streets, and, thus, department’s interpretation was reasonable in light of the cooperative’s unique configuration— notwithstanding the co-shareholder-tenant’s assertion that the zoning resolution mandated that the setbacks be measured from edge of a street.

-That the lot of the shareholder-tenant in the housing cooperative existed separately and individually from all other adjoining tracts of land prior to effective date of the city zoning resolution, and therefore qualified as exempt the preexisting small lot. Therefore, her proposed new construction of a single-family residence on that lot did not violate a regulation requiring minimum of 3,800 square feet for single-family detached residence, or regulations addressing minimum distances between buildings and waterfront lot certifications. The co-op certified that plot was as it existed prior to the zoning resolution’s effective date, and, in addressing a minor discrepancy between the plot card and subsequent survey, the Board of Standards and Appeals (BSA) rationally determined that the survey was more reliable than the plot card, which was prepared by one who was not a licensed surveyor.

-The BSA rationally determined that the proposed construction of a single-family residence on a corner lot of the shareholder-tenant in the co-op did not eliminate access to mapped street, in violation of statute, as it fronted a sand lane and mapped city street, consistent with city administrative code requiring that at least eight percent of total perimeter of proposed building front directly on mapped street.

-The BSA also rationally determined that since the proposed construction of a singlefamily residence on corner lot of the Plaintiff merely maintained a preexisting noncompliance, construction was exempt from zoning parking requirements and building code standards involving distance between septic tanks, foundation walls, and seepage pits; the BSA explained that on-site wastewater disposal systems within the cooperative had to meet Department of Environmental Protection’s standards “to the greatest extent feasible from an engineering point of

view,” and that the city buildings department was satisfied that shareholder-tenant had met such standards in connection with his replacement of septic tank.

Brooks Sloate Terrace Co-op. Ass’n, Inc. v. Griffin, A-2033-10T1, 2012 WL 444004 (N.J. Super. Ct. App. Div. Feb. 14, 2012 (unpublished))

Defendant shareholder LaDora Griffin appealed an order denying her motion for an award of attorney’s fees pursuant to a New Jersey court rule based on an allegedly frivolous complaint filed against her by Plaintiff, Brooks Sloate Terrace Cooperative Association, Inc. In said Complaint, the cooperative was seeking a declaratory judgment that defendant violated its bylaws/rules and regulations regarding offensive conduct, which, if successful, could result in an eviction order against defendant.

The Court then went over the long-winded procedural history of the case that lead to the appeal of the issue on Defendant’s contention that the motion judge erred by not awarding sanctions under local Rule 1:4–8. It held that in addressing defendant’s motion for fees and costs pursuant to Rule 1:4–8 and Rule 4:23–2, the motion judge did not address the facts or conclusions of law applicable to a request for sanctions under Rule 1:4–8.

The Court pointed out that for all motions “decided by a written order that [are] appealable as of right,” the court must “by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon[.]” More specifically, a court imposing frivolous litigation sanctions must “describe the conduct determined to be a violation of [the] rule and explain the basis for the sanction imposed.” It added that, similarly, a court rejecting sanctions for frivolous litigation must also explain the decision.

The appellate court ruled that motion judge failed to make the necessary findings with regard to the shareholder defendant’s Rule 1:4–8 motion. For that reason, it reversed and remanded the denial of her motion to the motion judge for a decision in compliance with Rule 1:7–4(a).

Trump Vill. Section 3, Inc. v. City of New York, 100 A.D.3d 170, 952 N.Y.S.2d 65 (2012)

Plaintiff was a residential housing cooperative corporation that brought an action against the City of New York for a declaratory judgment that a taxable transfer of the co-op complex did not occur when the corporation amended its certificate of incorporation as a part of its voluntary dissolution, reconstitution, and termination of its participation in the Mitchell–Lama affordable housing program. Defendant moved to dismiss, and the cooperative moved for summary judgment. The Supreme Court of New York awarded summary judgment to the defendants, and the Corporation appealed.

As a Mitchell–Lama Program cooperative housing corporation, Trump Village enjoyed certain government benefits, including a low-interest government mortgage loan and substantial exemptions from municipal real property taxation. The program was created to encourage and facilitate the construction and continued operation of affordable rental and cooperative housing in the State of New York for moderate- and middle-income families.

In return for these benefits, and as required by statute, various restrictions encumbered the cooperative corporation’s tenant-shareholders, including restrictions on resale to third parties. Trump Village remained in the Mitchell–Lama program and, thus, continued to be governed by the Mitchell–Lama laws for approximately 45 years, until 2005 when it fully repaid the governmental mortgage loan that financed its development.

In 2009, the New York City Department of Finance issued a Notice of Determination to Trump Village of a tax deficiency in the sum of \$21,149,592.50, which included interest and a penalty. The Department opined that since Trump Village was now a private cooperative corporation that had amended its certificate of incorporation and terminated its participation in the Mitchell–Lama program by reconstituting, it had engaged in a transaction that qualified “as a conveyance of the underlying real property.”

The City defendants essentially argued that, by voluntarily dissolving and subsequently reconstituting, the co-op became a new corporation and that, accordingly, the amended certificate of incorporation constituted a deed.

Thus, they maintained that the purported deed was delivered at the time of execution, and that the purported deed was delivered by an “old” Trump Village to a “new” Trump Village.

The Supreme Court, Appellate Division disagreed, and held that a taxable “transfer” of real property did not occur here because there was no transfer or conveyance of any real property or an interest in real property; thus, under those circumstances, no taxable event occurred. It therefore reversed and remanded.

Rolling Meadows Co-op., Inc. v. U.S. Dep’t of Hous. & Urban Dev., CIV. 12-564 ADM/TNL, 2013 WL 943523 (D. Minn. Mar. 11, 2013)

Rolling Meadows is a low-income housing cooperative that is divided into two sections. Section I has 104 residential units and was developed in 1971. Until September 2011, Section I was encumbered by a mortgage insured and subsidized by the United States Department of Housing and Urban Development (“HUD”). Section II has 98 residential units and was developed in 1973. Section II (at issue here) was encumbered by a HUD Section 236 mortgage.

The NHA created the Section 236 program “for the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project...” The program approves government subsidized and insured mortgages for low-income housing developers who submit to HUD regulations designed to provide housing for low-income tenants. In exchange for its government insured mortgage, Rolling Meadows signed a Regulatory Agreement with HUD.

The terms of the Regulatory Agreement remained in effect as long as the cooperative was making payments on the mortgage. The Regulatory Agreement requires Rolling Meadows to maintain a reserve fund under the control of the mortgagee, to maintain a general operating reserve, to observe strict income limits for occupants; and additionally, the Regulatory Agreement prohibits the cooperative from selling, encumbering, remodeling, incurring liabilities in excess of a certain amount, and entering into contracts for management or supervisory services without prior approval of the Secretary of HUD. At the time the cooperative fully satisfies the mortgage obligation, HUD regulation concludes.

In December 2011, Rolling Meadows informed its loan servicer that it sought to prepay its Section II—236 Mortgage; the servicer approved, but the NHA required Rolling Meadows to obtain the Secretary of HUD’s approval.

In February 2012, HUD denied Rolling Meadows’ request for prepayment because: (1) Rolling Meadows failed to provide an appropriate 150 day prepayment notification letter; (2) the Property did not meet the Section 250(a) repair requirements; and (3) Rolling Meadows refused to enter a Use Agreement—would allow HUD to continue oversight of the cooperative, as it would have done under the Regulatory Agreement until the maturity date of the original mortgage, June 1, 2014.

Rolling Meadows objected to HUD’s reasons for denial of prepayment, asserting that: (1) It had sent 150 day prepayment notification letters to its shareholders/residents, which satisfied the notification requirement; (2) The co-op was not seeking funding for repairs to the property and no repairs were necessary; and (3) Rolling Meadows believed it did not need a Use Agreement because there was no such requirement in Section 250(a) and because the cooperative’s members voted to remain a limited equity, low-income housing cooperative following satisfaction of its mortgages. HUD maintained its denial of permission for prepayment.

The Court held that 12 U.S.C. § 1715z–15 limits the Secretary of HUD’s approval of mortgage prepayments, but not its denial. Rolling Meadows’ project owners negotiated a beneficial subsidized and insured mortgage and in exchange submitted itself to HUD regulation for the term of the mortgage. Rolling Meadows has not demonstrated a legal right, a private right of action in favor of project developers, to end HUD regulation by prepayment. It thus lacked the proper standing, and subject matter jurisdiction, and the Court granted the Government’s motion to dismiss.

Schuman v. Greenbelt Homes, Inc., 2020 SEPT.TERM 2011, 2013 WL 3233307 (Md. Ct. Spec. App. June 27, 2013) (not yet published, opinion dated 6/27/13)

Plaintiff was the owner of a unit in Defendant housing cooperative who brought this action against the cooperative housing association for a breach of the implied covenant of quiet enjoyment and negligence, and against his neighbor for breach of contract, nuisance, trespass, and negligence. He claimed that his neighbor's smoking caused secondhand cigarette smoke to enter his patio and home. The trial court entered judgment in Defendants' favor, and Plaintiff appealed.

The Maryland Court of Special Appeals affirmed the circuit court's decision, ruling that:

1. Tobacco smoke is not a nuisance per se;
2. The owner failed to establish that neighbor's smoking on his outdoor patio for up to an hour and a half each evening constituted a nuisance in fact;
3. The coop's failure to stop his neighbor from smoking did not breach any implied covenant of quiet enjoyment;
4. Plaintiff failed to establish that smoke entering his unit amounted to a trespass; and
5. The owner failed to establish that secondhand smoke caused him any harm, and thus failed to establish that the cooperative was negligent.

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