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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY
LAW DIVISION, SPECIAL CIVIL PART
DOCKET NO. LT-17399-19

UTS BECHMAN, LLC

Plaintiff,

v.

LIZA WOODARD,

Defendant.

APPROVED FOR PUBLICATION

February 27, 2020

COMMITTEE ON OPINIONS

Decided: August 7, 2019

Patrick Jordan, for plaintiff (Ofeck & Heinze, LLP, attorneys).

Liza Woodard, defendant, pro se.

PETRILLO, J.S.C.

This case, one of first impression, involves the rights of a tenant under the New Jersey Foreclosure Fairness Act, N.J.S.A. 2A:50-69 to -71. This is New Jersey's version of foreclosure reform legislation that swept the country following the 2008 "Great Recession." Defendant, pro se, essentially argues that the statute shields her from eviction in this summary dispossession

non-payment action because the new property owner did not strictly comply with the notice requirements of the statute. This court agrees.

Defendant, Liza Woodard, testified that she and her former husband were involved in a contentious matrimonial action. A final judgment of divorce was entered in March of 2019. During and following the divorce, defendant leased from her husband and resided in the subject property. The property is the former marital home.¹ Defendant claims the lease terms included full market rent. Plaintiff has not made any allegations that this is a "sham lease" intended to subvert the foreclosure process. See Malone v. Midlantic Bank, 334 N.J. Super. 238, 249 (Ch. Div.), aff'd, 334 N.J. Super. 236 (App. Div. 2000).

Defendant and her husband were also parties to a foreclosure action regarding the same premises. Defendant was a named party to the foreclosure action and periodically received pleadings and notices. Defendant claims, however, that she did not actively participate in the foreclosure proceeding.

Plaintiff, UTS Bechman, LLC, presented testimony that it acquired title to the subject property in February of 2019.² Defendant was on notice of the

¹ Plaintiff styled this suit as an eviction matter under the LT docket. To the extent relief might have been pursued under the DC docket pursuant to N.J.S.A. 2A:35-1, same was not raised by plaintiff at the hearing as a possible alternate course. Plaintiff proceeded at all times as though defendant was a tenant.

² A deed was recorded showing plaintiff as the owner of the property on May 28, 2019.

sheriff's sale and the filing of the deed. After acquiring title, plaintiff posted a notice on the front door of the property identifying itself as the new owner and providing an address where rent should be paid.

Plaintiff seeks to evict the tenant for non-payment of rent in this summary dispossess action pursuant to N.J.S.A. 2A:18-61.1(a). Rent was not paid for March, April, May and June 2019. Plaintiff further seeks a pro-rata portion of the rent for February 2019. Plaintiff acknowledged that it received rent from defendant for July and August 2019, the months which accrued after the landlord tenant complaint was filed.

The New Jersey Foreclosure Fairness Act is remedial legislation designed to, among other things, protect the rights of tenants who reside in property being foreclosed upon. The statute is a clear and unambiguous legislative pronouncement. It mandates that:

A person who takes title as a result of a sheriff's sale or deed in lieu of foreclose, to a residential property containing one or more dwelling units occupied by residential tenants, shall provide notice to the tenants in both English and Spanish, no later than 10 business days after transfer of title, in accordance with the provision of subsection c. of this section.

[N.J.S.A. 2A:50-70(a).]

The statute provides: detailed and mandatory language, font size, paper size, and delivery requirements. N.J.S.A. 2A:50-70(b)(1). These notice

requirements are to inform residential tenants of the unique and expansive rights enjoyed by residential tenants under New Jersey law. Tenants must be advised of their rights under the New Jersey Anti-Eviction Act, codified as N.J.S.A. 2A:18-61.1, as expressed in Chase Manhattan Bank v. Josephson, 135 N.J. 209 (1994).

In Josephson, the New Jersey Supreme Court determined that New Jersey law, by statute, is different from almost every other state. In Josephson, the Court found that the legislative purpose of the 1986 statutory amendments was designed to: “protect [] tenants from having to confront the devastating effects of eviction not through any fault of their own but merely because they had rented property from landlords that were either unwilling or unable to meet their mortgage obligation.” Id. at 226.

The Court in Josephson specifically found that the 1986 amendments to the New Jersey Anti-Eviction Act, N.J.S.A. 2A:18-61.1, required an owner to prove statutory grounds for “good cause” before a tenant could be evicted. Josephson, 135 N.J. at 234-35. The Court held: “[a]s amended, the Act protects tenants from eviction by foreclosing mortgagees irrespective of whether their tenancy was established before or after execution of the mortgage.” Id. at 235.

The bank, or other successor in interest, essentially receives the property subject to a tenant’s rights to continued possession, unless the tenant stops

paying the rent or otherwise runs afoul of the Anti-Eviction Act. Id. at 226, 235. If the new landlord inherits a lease with unfavorable lease terms, the landlord has remedies, pursuant to N.J.S.A. 2A:18-61.3(b).

New Jersey is just one of a handful of states where the tenant's right to possession continues, essentially unchanged, after a foreclosure. See generally Vicki Been & Allegra Glashauser, Tenants: Innocent Victims of the Nation's Foreclosure Crisis, 2 Alb. Gov't L. Rev. 1, 14-15 (2009); Aleatra P. Williams, Real Estate Market Meltdown, Foreclosures and Tenants' Rights, 43 Ind. L. Rev. 1185 (2010). In most states, the foreclosure extinguishes the leasehold interest of the tenant. Williams, 43 Ind. L. Rev. at 1196-1206.

Federal law provides certain tenant protections under the Protections for Tenants at Foreclosure Act of 2009 (PTFA), Pub. L. No. 111-22, Div. A, Title VII, Section 701, Stat. 1660.³ This remedial legislation, enacted following the 2008 recession and associated economic calamity, mandates certain notices to tenants and establishes at least a ninety-day buffer period prior to an eviction.

³ Originally scheduled to sunset on December 31, 2012, the PTFA was extended by Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, until December 31, 2014. In May 2018, President Donald Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, which renewed and permanently extended the protections of the PTFA. See Pub. L. No. 115-174, § 304 (2018).

Williams, 43 Ind. L. Rev. at 1193. Often, pursuant to the federal statute, tenants may live out the remaining term of their leases. Ibid.

Some individual states responded to the foreclosure crisis by enacting laws with even greater protections for tenants. Been & Glashauser, 2 Alb. Gov't L. Rev. at 16-18; Williams, 43 Ind. L. Rev. at 1205-07. Ultimately, however, other than in New Jersey and a few other states, a tenant's right to remain in the property is often extinguished by foreclosure. Williams, 43 Ind. L. Rev. at 1196-98.

The 2008 New Jersey Foreclosure Fairness Act requires that tenants be made aware of their rights under Josephson and the New Jersey Anti-Eviction Act. The law provides the exact words that the new owner must use in doing so. The new owner must serve a notice that states the tenant does not have to move just because the property has been foreclosed upon. N.J.S.A. 2A:50-70(a).

The notice must expressly state, among other things, in bold 14-point type:

WITH LIMITED EXCEPTIONS, THE NEW JERSEY ANTI-EVICTION ACT, N.J.S.A.2A:18-61.1 ET SEQ., PROTECTS YOUR RIGHT TO REMAIN IN YOUR HOME. FORCLOSURE ALONE IS NOT GROUNDS FOR EVICTION OF A TENANT. YOU ARE PROTECTED BY THIS LAW EVEN IF YOU DO NOT HAVE A WRITTEN LEASE.

....

INDIVIDUALS CAN BE SUBJECT TO BOTH CIVIL AND CRIMINAL PENALTIES FOR TRYING TO

FORCE YOU TO LEAVE YOUR HOME IN ANY
OTHER MANNER

[N.J.S.A. 2A:50-70(a).]

The notice must be served, in buildings with ten or fewer units, by posting the notice prominently on the front door of the tenant's unit and by regular and certified mail. N.J.S.A. 2A:50-70(c)(1). The notice must be in English and Spanish and must be provided to the tenant: "no later than 10 business days after the transfer of title . . ." N.J.S.A. 2A:50-70(a). Tenants who were served with the foreclosure complaint must still receive the notices cited above. N.J.S.A. 2A:50-70(e).

Upon violation, the statute subjects a person to damages in the amount of \$2000 per violation. N.J.S.A. 2A:50-70(f). The court could further find that "treble damages" should be imposed under N.J.S.A. 2A:18-61.6(c).

The language of the statute is plain and clear. The New Jersey Foreclosure Fairness Act was intended as remedial legislation designed to fully inform residential tenants of their rights after a foreclosure. The language used evidences a clear legislative intent that the statute be strictly construed. The legislation is designed to protect tenants from what, in some cases, may be predatory landlords who seek to wrongfully evict a tenant.

In the present matter, the notices provided by plaintiff do not comply with the strict requirements of the New Jersey Foreclosure Fairness Act. The notice

introduced at trial merely notifies the tenant where to pay the rent. It did not include any of the language required by the statute. Further, the notice was not properly served, in that it was not sent by regular and certified mail to defendant.

The landlord argues that the tenant, as a defendant in the foreclosure action, should have been aware that her husband had lost the property and was no longer entitled to payment of rent. There is more than a little merit to this argument. The landlord's argument may yet prevail in some future action for damages. It will not, however, overcome the sweeping language and obvious purpose of the New Jersey Foreclosure Fairness Act in this summary dispossession matter. A tenant should not face eviction from his or her residence, under facts such as these, unless the landlord has strictly followed the statutory requirements of the New Jersey Foreclosure Fairness Act, N.J.S.A. 2A:50-69 to -71, and the New Jersey Anti-Eviction Act, N.J.S.A. 2A:18-61.1.

N.J.S.A. 2A:50-70 became effective on February 16, 2010. There have been no published judicial opinions interpreting this statute. The very title of the statute, which includes the words "protection from eviction," clearly states the focus and nature of the law.

The landlord's undisputed failure in this case to comply with the tenant protection statute cannot be deemed inconsequential. While the landlord's failure to comply does not operate as an absolute defense to a tenant's obligation

to pay rent, it would be categorically inequitable to ignore non-compliance. The statute cannot be read to endorse eviction when the rent apparently was paid, albeit to the wrong person. This is particularly true when plaintiff would have, or could have, avoided this misdirection by doing what the statute requires.

Admittedly, it strains credulity that defendant paid her former husband blithely and obliviously without regard to the outcome of the foreclosure litigation. Nonetheless, the notice mechanism provided by this statute is designed to avoid this very scenario. Plaintiff's failure to abide by the law, strictly and in all respects, was at its own peril.

It cannot be disputed that inasmuch as the statute contains, as it does, proverbial "teeth," see N.J.S.A. 2A:50-70(f), it is designed to provide robust protection to tenants. While not explicitly stated in the statute, it cannot be applied any way other than as a potent tenant protection measure, which guards against eviction under facts such as these. As was said by the Supreme Court in Smith v. Fireworks by Girone, Inc., 180 N.J. 199 (2004):

It is the proper function, indeed the obligation, of the judiciary to give effect to the obvious purpose of the Legislature, and to that end "words used may be expanded or limited according to the manifest reason and obvious purpose of the law. The spirit of the legislative direction prevails over the literal sense of the terms."

[Smith, 180 N.J. at 216 (quoting Alexander v. N.J. Power & Light Co., 21 N.J. 373, 378 (1956)).]

This court holds that a landlord's failure to comply with N.J.S.A. 2A:50-70, in all respects, precludes the landlord's right to evict the tenant for non-payment of rent when the tenant's defense is that she unknowingly paid rent to the wrong landlord. This defense will be rebutted if the plaintiff proves the payment did not occur. The plaintiff can also overcome this defense if it establishes the tenant's payments were made while fully aware of the rightful landlord. That did not occur in this case.

Plaintiff's case is dismissed. Plaintiff is free to seek recompense for its damages, if any, from any party as against whom some claim may lie. This court offers no opinion as to plaintiff's exposure to liability under N.J.S.A. 2A:50-70(f) for having not complied with the notice provisions of N.J.S.A. 2A:50-70(a) to (d).