

DISTRICT OF COLUMBIA COURT OF APPEALS

Banks v. Eastern Savings Bank

8 A.3d 1239 (D.C. 2010) · No. Nos. 08-CV-16, 08-CV-1281, 09-CV-427, 09-CV-428 · Decided December 2, 2010

SUMMARY

The District of Columbia Court of Appeals held that a landlord’s failure to timely serve the Rent Administrator with a copy of a notice to vacate rendered the notice defective and required reversal of the judgment for possession. The court also held that foreclosure extinguished the tenant’s pre-foreclosure lease, converted the tenant to a tenancy at will, and supported filing a lis pendens concerning that tenancy. It affirmed the denial of intervention by a purported assignee because a tenancy at will was not assignable without the landlord’s consent.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Newman, Senior Judge; Washington, Chief Judge; Glickman, Associate Judge
JURISDICTION	District of Columbia
DECIDED	December 2, 2010
DOCKET	Nos. 08-CV-16, 08-CV-1281, 09-CV-427, 09-CV-428
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tenant Matt Banks appealed three trial-court rulings arising from eviction proceedings involving separate basement and second-story units, including a judgment for possession, release of a lis pendens, and denial of intervention.
STANDARD OF REVIEW	The opinion does not state a single general standard of review; it applies de novo statutory interpretation and reviews the trial court's legal conclusions concerning eviction notice compliance, the effect of foreclosure on leasehold interests, lis pendens, and intervention.
PRECEDENTIAL VALUE	Published precedential opinion of the District of Columbia Court of Appeals
PARTIES	Matt Banks v. Eastern Savings Bank

TOPICS

eviction

landlord tenant

foreclosure

lis pendens

intervention

PRACTICE AREAS

landlord-tenant

real estate

foreclosure

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Eastern Savings Bank's failure to deliver a copy of the notice to vacate to the Rent Administrator within five days rendered the eviction notice defective.
2. Whether foreclosure extinguished Banks's pre-foreclosure lease and permitted the trial court to base an eviction judgment on alleged violations of that lease.
3. Whether Banks's tenancy at will constituted an interest in real property sufficient to support a lis pendens.
4. Whether Banks could intervene in the eviction action concerning the second-story unit based on an attempted assignment from another tenant at will.

HOLDINGS

1. A landlord must strictly comply with 14 DCMR § 4300.1's requirement to serve the Rent Administrator with a copy of a notice to vacate within five days after serving the tenant; failure to do so renders the notice defective and requires reversal of the eviction judgment.
2. A foreclosure sale extinguishes subordinate leasehold estates held under the mortgagor, and a tenant remaining in possession becomes a tenant at will of the foreclosure purchaser by operation of law. The purchaser may not obtain possession by enforcing provisions of the extinguished pre-foreclosure lease.
3. A tenancy at will is an interest in real property under the applicable lis pendens statute, so litigation concerning the existence of that tenancy may support a notice of lis pendens.
4. A tenant at will does not possess a freely assignable possessory interest; therefore, an attempted assignment by a tenant at will does not confer an interest sufficient to support intervention under Super. Ct. Civ. R. 24(a).

KEY QUOTATIONS

"A foreclosure action extinguishes all subservient leasehold estates." (1240)

"Therefore, because ESB's Notice to Quit or Vacate was defective, we reverse the judgment for possession." (1243)

"A tenancy at will is identified as an estate in D.C.Code § 42-522, thereby making it an "interest in real property" under a plain reading of both versions of the lis pendens statute." (1244)

"Without an effective assignment of the second-story unit, Banks could not prove that he had such an interest in the eviction proceeding against Kebede." (1245)

FACTUAL BACKGROUND

Banks occupied the basement unit of a single-family dwelling under a lease with mortgagor Vasiliki Pappas, while Wedenha Kebede occupied the second-story unit under a separate lease. Eastern Savings Bank foreclosed on Pappas's mortgage and acquired title, after which it sought possession and served Banks with a notice to vacate based on alleged violations of the pre-foreclosure lease. Eastern Savings Bank delivered the notice to the Rent Administrator nine days after serving Banks, although the applicable regulation required delivery within five days. Banks later filed a lis pendens asserting possession and purchase rights and sought to intervene in the eviction action involving the upstairs unit based on an alleged assignment from Kebede.

PROCEDURAL HISTORY

Eastern Savings Bank acquired the property through foreclosure of the prior owner's mortgage. The trial court entered a nonredeemable judgment for possession of Banks's basement unit based on alleged violations of a pre-foreclosure lease, ordered release of Banks's lis pendens, and denied Banks's motion to intervene in the eviction action concerning the second-story unit. The District of Columbia Court of Appeals reversed the basement-unit judgment, reversed the lis pendens order, affirmed denial of intervention, and remanded with instructions to vacate the September 22, 2008 order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The September 22, 2008 order was reversed and remanded with instructions to vacate. The March 27, 2009 order releasing the lis pendens was reversed. The denial of Banks's motion to intervene was affirmed.

CASES CITED

- Pappas v. Eastern Sav. Bank, FSB, 911 A.2d 1230 (D.C. 2006)
- Ayers v. Landow, 666 A.2d 51, 57 (D.C. 1995)
- Jones v. Brawner Co., 435 A.2d 54, 56-57 (D.C. 1981)
- Sawyer Prop. Mgmt. of Maryland, Inc. v. District of Columbia Rental Hous. Comm'n, 877 A.2d 96, 104-108 (D.C. 2005)
- Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024 (D.C. 1987)
- Charles E. Smith Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 492 A.2d 875, 878 (D.C. 1985)
- Administrator of Veterans Affairs v. Valentine, 490 A.2d 1165, 1166 (D.C. 1985)
- Merriweather v. D.C. Bldg. Corp., 494 A.2d 1276, 1278-1279 (D.C. 1985)
- Molla v. Sanders, 981 A.2d 1197, 1201 (D.C. 2009)
- Thompson v. Mazo, 245 A.2d 122, 123 n. 1 (D.C. 1968)
- Thornhill v. Atlantic Life Ins. Co., 63 App.D.C. 184, 70 F.2d 846, 846-847 (1934)
- Davis v. United States, 397 A.2d 951, 956 (D.C. 1979)
- 1st Atlantic Guar. Corp. v. Tillerson, 916 A.2d 153, 157 (D.C. 2007)
- Keroes v. Westchester Apartments, 36 A.2d 263, 264 (D.C. 1944)

- Comedy v. Vito, 492 A.2d 276, 279 (D.C. 1985)
- Jones v. Fondufe, 908 A.2d 1161, 1162-1163 (D.C. 2006)

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