

DISTRICT OF COLUMBIA COURT OF APPEALS

Hugues Denver Akassy v. William Penn Apartments Limited Partnership

891 A.2d 291 (D.C. 2006) · No. 02-CV-141; 02-CV-291 · Decided February 2, 2006

SUMMARY

The District of Columbia Court of Appeals reviewed a landlord-tenant dispute involving a consent judgment, a rent increase, and the tenant's failure to pay the increased amount. The court held that the agreement incorporated applicable law, did not bar lawful rent increases or challenges to them, and authorized enforcement remedies for breach of its pay-on-time provision. Because the legality of the rent increase was pending before the agency with primary jurisdiction, the court required a stay of the eviction proceeding under the principles of *Drayton v. Poretsky Management, Inc.*, and remanded.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Wagner, Senior Judge; Washington, Chief Judge; Farrell, Associate Judge
JURISDICTION	District of Columbia
DECIDED	February 2, 2006
DOCKET	02-CV-141; 02-CV-291
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The tenant appealed from an order vacating the stay of a writ of eviction based on his alleged breach of a consent judgment's pay-on-time provision. The landlord cross-appealed from an order staying the writ pending appeal.
STANDARD OF REVIEW	Contract ambiguity is reviewed de novo. The grant of a stay pending appeal is reviewed for abuse of discretion. Issues not raised in the trial court generally are not considered on appeal.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Hugues Denver Akassy v. William Penn Apartments Limited Partnership

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QUESTIONS PRESENTED

1. Whether the term 'rent' in the consent judgment included lawful rent increases implemented after the agreement.
2. Whether interpreting the consent judgment to include lawful rent increases constituted a unilateral modification.
3. Whether the consent judgment should be set aside for unilateral mistake of fact.
4. Whether timely payment of the arrearage permanently quashed the writ and barred any later writ based on breach of the pay-on-time provision.
5. Whether the trial court was required under the primary-jurisdiction doctrine and Drayton to stay the eviction proceeding while the administrative agency determined the legality of the rent increase.
6. Whether the trial court abused its discretion by granting a stay pending appeal.

HOLDINGS

1. The term 'rent' was not ambiguous and, construed in light of the governing rent-control law, included the amount lawfully charged by the landlord, including lawful rent increases.
2. Construing the consent judgment to incorporate lawful rent increases did not constitute a unilateral modification of the agreement.
3. The tenant failed to establish grounds for setting aside the consent judgment based on unilateral mistake.
4. Payment of the specified arrearage and permanent quashing of the initial writ did not eliminate the tenant's separate obligation to make timely future payments or deprive the landlord of remedies for a later breach.
5. When the legality of a rent increase is the determinative issue in deciding whether a tenant breached a consent judgment and the tenant has challenged that increase before the agency with primary jurisdiction, the trial court must stay the eviction proceeding under Drayton pending final administrative disposition.
6. The trial court may, in its discretion, require payment of the disputed rent increase into the court registry during the stay; the amount must be determined case by case rather than by a rigid rule limiting payment to the undisputed rent.
7. The trial court did not abuse its discretion in granting the tenant a stay pending appeal.

KEY QUOTATIONS

“Application of the doctrine of primary jurisdiction requires that when there is pending before the Administrator or the [Rental Housing Commission] RHC a challenge to a rent increase that bears upon the

amount of rent owed by a tenant defending a possessory action brought for nonpayment of rent, the [Landlord & Tenant] Judge should stay the action to await the ruling of the Administrator or, if an appeal is taken to the RHC, then of that body.” (891 A.2d at 304-05)

“Therefore, where, as here, the determination of whether a breach has occurred rests solely upon the legality of the rent charged, the rule from Drayton is implicated, and the court should refrain from ruling thereon.” (891 A.2d at 307)

“Thus, in Mullin, this court held that modification of a protective order to reflect a rental increase not yet finally approved by the Rental Housing Commission is not an adjudication of the merits of the rent increase under Drayton.” (891 A.2d at 308)

FACTUAL BACKGROUND

The landlord sued the tenant for possession based on unpaid June and July 2001 rent and obtained a default judgment. The parties entered a consent judgment requiring payment of arrearages and timely monthly rent for one year, with waiver of further stays and redemption rights upon untimely payment. When the landlord raised the rent from \$879 to \$1,050 effective January 1, 2002, the tenant tendered only \$879 and filed an administrative challenge alleging that the increase was illegal. The landlord sought eviction based solely on the tenant's failure to pay the increased amount.

PROCEDURAL HISTORY

The landlord obtained a default judgment for possession after the tenant failed to pay rent and failed to appear. The parties then entered a consent judgment that stayed execution conditioned on payment of arrearages and timely payment of future rent for one year. After the landlord imposed a rent increase and the tenant paid only the prior rent while challenging the increase before the DCRA, the trial court vacated the stay and authorized eviction. A different trial judge granted a stay pending appeal. The consolidated appeals resulted in affirmance of the stay pending appeal but reversal and remand for entry of a Drayton stay pending final agency resolution.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter a Drayton stay pending final disposition of the tenant's administrative challenge to the rent increase; determine the appropriate protective-order payment amount in the trial court's discretion; and consider the effect of the final agency order on the landlord's claim that the tenant breached the consent judgment. The landlord's cross-appeal concerning the stay pending appeal was affirmed.

CASES CITED

- Drayton v. Poretsky Mgmt. Inc., 462 A.2d 1115 (D.C. 1983)
- Mullin v. N Street Follies Ltd. P'ship, 712 A.2d 487 (D.C. 1998)
- Moore v. Jones, 542 A.2d 1253 (D.C. 1988)

- *Camalier & Buckley, Inc. v. Sandoz & Lamberton, Inc.*, 667 A.2d 822 (D.C. 1995)
- *Double H Hous. Corp. v. Big Wash, Inc.*, 799 A.2d 1195 (D.C. 2002)
- *Kapusta v. District of Columbia Rental Hous. Comm'n*, 704 A.2d 286 (D.C. 1997)
- *Flippo Constr. Co. v. Mike Parks Diving Corp.*, 531 A.2d 263 (D.C. 1987)
- *Capital City Mortgage Corp. v. Habana Vill. Art & Forklore, Inc.*, 747 A.2d 564 (D.C. 2000)
- *Sacks v. Rothberg*, 569 A.2d 150 (D.C. 1990)
- *Deutsch v. Barsky*, 795 A.2d 669 (D.C. 2002)
- *Hildreth Consulting Eng'rs v. Larry E. Knight, Inc.*, 801 A.2d 967 (D.C. 2002)
- *Bell v. Tsintolas Realty Co.*, 139 U.S. App. D.C. 101, 430 F.2d 474 (1970)
- *Stets v. Featherstone*, 754 A.2d 292 (D.C. 2000)
- *Barry v. Washington Post Co.*, 529 A.2d 319 (D.C. 1987)
- *In re Antioch Univ.*, 418 A.2d 105 (D.C. 1980)

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