Loyola Consumer Law Review

Volume 3 | Issue 3 Article 13

1991

New York Court Upholds Rent Control Regulations Which Broaden the Definition of Family to Include Adult Lifetime Partners

Tim Brandhorst

Iowa Supreme Court

(continued from page 107)

repurchase the agricultural land on the same terms that the bank seeks to dispose of the land.

The Coles contended that First Bank's receipt of the sheriff's certificate constituted a purchase of agricultural land. Therefore, the Coles argued that First Bank was required first to offer the certificate to them before it offered the certificate to the Steeres, as First Bank held the agricultural land in accordance with § 524.910(2).

The Iowa Supreme Court rejected the Coles' argument. The court distinguished between holding title to real estate and holding a lien on real estate. The court found that the sheriff's certificate only created a lien and was an interest in personal rather than real property. In addition, the court noted that the statute applied only to the sale or disposition of land. Since First Bank merely assigned the sheriff's certificate to the Steeres, the court found that a sale of land had not occurred. The court held that the assignment did not trigger the right of first refusal contained within the statute.

In addition, the court found that § 524.910(2) permitted a bank to dispose of real property only after the bank had vested title to the property. The court noted that only after a mortgagor's redemption period expired would title vest in the holder of a sheriff's certificate of sale. In this case, the redemption period had not expired prior to First Bank's assignment of the sheriff's certificate. Because the sheriff's certificate did not vest title in First Bank, the court held that the right of first refusal contained within the statute did not apply.

The court speculated that the legislature probably intended for the right to first refusal to apply in a case such as this since the statute was intended to grant relief to financially troubled farmers. However, the court refused to legislate, confirming the district court's interpretation of § 524.910(2).

No Oral Contract Existed

Lastly, the Coles alleged that First Bank orally agreed to sell the Coles a portion of the foreclosed property for a reduced price in the event First Bank was the highest bidder in the foreclosure sale. The court adopted the district court's factual findings. The court found that the Coles' problems with their line of credit began in December 1985. At that time, First Bank gave the Coles until April 1986 to pay their debts in full. In October 1986, a First Bank official met with the Coles and their sons in an effort to resolve the nonpayment of their loans and avoid future litigation; the official told them that if they would deed the property to First Bank, First Bank would sell them six acres for $10,000 and would finance the sale. However, First Bank and the Coles did not discuss the particular terms of the deal, and the Coles did not act upon this offer. The court agreed with the district court's characterization of the conversation as preliminary negotiations instead of an agreement.

The court found further evidence that supported First Bank's claim. A letter written to the Coles by their attorney stated that First Bank would be more willing to consider a settlement if one could be obtained without litigation. This supported the bank's assertion that the offer was made to avoid litigation expenses. Finally, the court cited the Coles' inaction in other dealings with First Bank as evidence that the Coles took no action on the bank's offer and that no oral agreement existed. The court held that the Coles failed to meet their burden of proof to show by clear and convincing evidence that a contract existed.

Jonathan Barrish

New York Court Upholds Rent Control Regulations Which Broaden the Definition of Family to Include Adult Lifetime Partners

In *Rent Stabilization Association of New York v. Higgins,* 562 N.Y.S.2d 962 (A.D. 1 Dept. 1990), the Supreme Court of New York, Appellate Division, reversed a lower court decision enjoining the implementation of amendments to New York City rent control regulations. The new regulations broaden the definition of 'family' and increase the availability of rent control benefits.

Background

The New York State Court of Appeals, in *Braschi v. Stahl Associates Co.,* 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989), recently held that the term "family," as used in the New York City rent control regulations, 9 NYCRR § 2204.6(d), Rent Control Law, included "two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence." 74 N.Y.2d at 211. In late 1989, the State Division of Housing and Community Renewal ("DHCR") began the process of amending its rent control and stabilization regulations by promulgating an emergency rule in accord with the *Braschi* definition of family. The emergency rule broadened the definition of family members entitled to rental succession rights.

The prior rent stabilization regulations provided for succession in two circumstances: first, where the family member had resided with the named tenant from the beginning of the tenancy and the named tenant vacated the premises, 9 NYCRR § 2523.5[b][1] (1987), and second, where the family member had resided with the named tenant for at least two years immediately prior to the death of the named tenant. 9 NYCRR § 2523.5[b][2] (1987). The emergency rule promulgated by the DHCR abolished the distinction between the named tenant's death or mere departure. Upon the named tenant's abandonment of the premises, a family member could succeed to the rights of the tenant, after residing with the tenant from the start of the lease or for at least two years. In addition, the emergency rule listed eight specific factors to be considered in determining whether the requisite emotional

and financial interdependence existed between the named tenant and the family member.

A group of property owners (the "property owners"), sought a declaration from the Supreme Court, Albany County, that the emergency rule was unconstitutional as a taking of property without just compensation and that it violated other housing-related statutes. The property owners also argued that the emergency rule was contrary to the intent of the legislature, and that it was too vague and therefore void.

The property owners moved for a preliminary injunction in the trial court. The court enjoined the DHCR from implementing the emergency rule. Despite the injunction, in March 1990, the DHCR proceeded to file with the Secretary of State permanent regulations identical to the emergency rule.

The property owners successfully moved for a second preliminary injunction with respect to the permanent regulations in the New York County IAS Court. The DHCR appealed the decision to the Supreme Court of New York, Appellate Division.

The Appellate Court's Analysis

The court examined the property owners' arguments against the DHCR regulations in the context of the property owners' likelihood of success on the merits, the standard for a party's entitlement to a preliminary injunction. The property owners contended that the regulations were beyond the scope of the DHCR's rulemaking authority and contrary to legislative intent.

The court found that the legislature clearly granted the DHCR a broad mandate to protect tenants and the public interest, a mandate which would affect landlord-tenant relationships. Under this grant of power, the DHCR could amend its rent control regulations, when the amendments were enacted to avoid harm to the family members of the named tenant who died or abandoned the apartment. The court found that the amendments in question, which extended non-eviction protection and responded to a shortage of low and middle income housing, comported with that broad mandate. Thus, the court held that there was little likelihood that the property owners would succeed on the merits on the grounds that the new regulations exceeded the authority of the DHCR or were contrary to legislative intent.

Alternatively, the property owners argued that the DHCR, in promulgating the permanent regulations, violated the doctrine of separation of powers by attempting to legislate rather than merely adopt an administrative rule. In support of their contention, the property owners cited a series of bills introduced in the state legislature concerning succession by "family members," none of which were passed. The property owners claimed that the legislature's failure to pass these bills constituted a tacit pronouncement by the legislature that succession rights be narrowly construed. The court, however, found that the regulations were enacted in response to the *Braschi* decision and were in an area within the expertise of the DHCR. Therefore, the regulations advanced the policies of the regulatory scheme mandated by the legislature; the DHCR did not violate the doctrine of separation of powers by promulgating the regulations.

On appeal, the property owners also argued that the amendments were too vague, and thus void. The property owners contended that the amendments provided no criteria for determining when a non-traditional relationship began. However, the court found that the amendments specified eight factors to make such a determination. These factors allowed a person to distinguish between genuine family members and mere roommates hoping to benefit from a rent-controlled apartment. The court noted that the successor to a lease must demonstrate a familial relationship to the tenant and more than a passing connection to the apartment. The court held that the amendments were not vague, as the amendments explicitly listed eight factors to be considered in determining the commencement of a non-traditional relationship.

Finally, the property owners argued that the new regulations affected unconstitutional takings, depriving the landlord of the use of property indefinitely, without just compensation. The court noted that the occupancy of the succeeding family member was limited to the lifetime of that member, making impossible an indefinite and perpetual family possession of the property by generations of strangers. Further, the regulation would not prevent landlords from realizing a reasonable return on their property because the terms of the successive leases were limited and the class of people entitled to succession was limited. Most importantly, both the New York State Court of Appeals and the U.S. Supreme Court have upheld rent control.

The Supreme Court of New York, Appellate Division held that the amendments did not change fundamentally the character of the rent control system and therefore could not constitute a taking.

The property owners failed to demonstrate on any grounds the likelihood of their success on the merits. Therefore, the court reversed the injunction granted below and allowed the implementation of the new regulations.

Tim Brandhorst

Consumer News: The Politics of Fuel

(continued from page 99)

Committee, but the bill faces a tough floor fight, a competing bill marked up by the Senate Energy and Natural Resources Committee that would leave CAFE standards to Department of Transportation ("DOT") rulemaking and the threat of a veto by President Bush. "I don't think there's any question that if [the] Bryan bill passes, we're going to have a veto fight," said Transportation Secretary Samuel Skinner. "This bill is unacceptable."

> "This legislation will begin the process of changing the conditions that make us so dependent on the unstable Middle East and on the oil that we know ultimately is a finite resource."

According to Deputy Secretary of Energy, W. Henson Moore, the administration favors giving the Department of Energy ("DOE") and DOT the authority to set CAFE standards. Administration officials also believe that fuel efficiency standards should not be changed until a National Academy of Sciences report on the feasibility of CAFE increases is completed later in the summer.

Heavy lobbying from advocacy groups has already begun. The Coalition for Vehicle Choice ("CVC"), an auto industry funded group, and the Insurance Institute for Highway Safety say the higher mileage standards will lead to smaller cars and more highway fatalities. "Both science and common sense point to the same conclusion, that smaller cars mean greater risks in vehicle crashes," said Diane Steed, president of the CVC and former chief of the National Highway Safety Administration. But another safety group disputes such claims. The Center for Auto Safety, a nonprofit research foundation, published a study recently that indicated that safety would not be jeopardized by the higher CAFE standards.

Environmental groups support the Bryan bill. A Sierra Club report suggests that higher fuel efficiency standards will save the country 2.5 billion barrels of oil a day while vehicles will remain about the same size. "The auto industry has been crying wolf for decades," said Dan Becker, director of energy programs for the Sierra Club. "Back in 1974, when the first CAFE bill was being discussed, Ford said we'd all be driving Pintos and Mavericks if it got passed."

> . . .higher fuel efficiency standards will save the country 2.5 billion barrels of oil a day while vehicles will remain about the same size.

Even if the Bryan bill fails this session, auto industry, safety and environmental experts agree that fuel efficiency legislation will remain on Congress' agenda throughout the 1990s.

ANNOUNCEMENT

The ***Loyola Consumer Law Reporter*** has made available storage binders for its subscribers. The binders are ideal for libraries to store issues on the shelf prior to leather binding. In addition, the binders are useful for individual subscribers to store issues to preserve them as research material in the office library or as a desk reference.

The binders are graphically designed to compliment the appearance of the individual issues of the ***Reporter*** and are large enough to store eight issues—two entire volumes! The binders are available for $3.50. If you are interested in ordering a storage binder simply mail a photocopy of this announcement. ***Loyola Consumer Law Reporter,*** Loyola University of Chicago School of Law, One East Pearson, Chicago, IL 60611.

____ Please send me a ***Loyola Consumer Law Reporter*** storage binder for $3.50.
____ My payment is enclosed.
____ Please bill me.

Name _____
Address _____
City _____
State _____
Zip _____
Phone _____

NEWS FLASH

Can recycling is becoming an international practice. The can recycling rate in Western Europe rose to 20 percent in 1990 up from 16 percent in 1989 and 10 percent in 1987. In 1990, America recycled almost 60 percent of the 55 billion cans which were used.

The societal benefits of recycling cans are being recognized. Industry analysts estimate that the energy saved in the U.S. in 1990 for aluminum recycling was equivalent to more than 20 million barrels of oil. Americans used more cans in 1990 than the rest of the world combined; however, their recycling rate is not the best. Sweden, for example, recycles 82 percent of the cans it uses through a voluntary deposit system.

The 12-nation European Community's executive body has supported a draft proposal for member states to increase their recycling of total packaging waste to 60 from 20 percent and to reduce the total volume of packaging 10 percent.

The ***Loyola Consumer Law Reporter*** says be a responsible consumer: RECYCLE!

INTENTIONAL BLANK

INTENTIONAL BLANK

INTENTIONAL BLANK

INTENTIONAL BLANK