

190/11

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss
No. 95-SP-1487

Hampden Division
Housing Court Department

_____)
FEDERAL HOME LOAN MORTGAGE)
CORP.,)
	Plaintiff)
)
ALEKSANDR and LYUBOV)
SURZHUKOV,)
	Defendants)
_____)

**RULINGS AND ORDER ON
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

1. The issue presented in this case is whether the Section 8 tenancy involved in this rental was terminated prior to the commencement of this action. After hearing and consideration of the memoranda of the parties, I conclude that no genuine issue of material fact exists as to whether the tenancy was properly terminated. It was not. Therefore, the motion of the defendants/tenants for summary judgment must be allowed.

2. The plaintiff first questions whether a valid Section 8 tenancy ever existed between the defendants (tenants) and Nicholas Leboy, the original landlord and predecessor in title to the plaintiff. The basis for this question is that the Section 8 lease was executed for Mr. Leboy by one Edward Merzel, as agent. The defendants have submitted an affidavit stating that Merzel's signature as agent created a valid lease between the defendants and Leboy. The plaintiff has not countered this affidavit with a counter-affidavit or otherwise

as provided by Mass.R.Civ.P. 56(c). Therefore, as provided in Mass.R.Civ.P. 56(e), the defendants are entitled to a ruling in their favor on this point.

3. As for termination of the tenancy, for purposes of this ruling, I will assume, without deciding, that the common law rule remains in effect, under which the foreclosure of a mortgage terminates a subsequently-created private (unsubsidized) tenancy. See Hall, Massachusetts Law of Landlord and Tenant, (4th ed. Little, Brown 1949), § 7 and cases cited. Given the massive changes in residential landlord/tenant law that have occurred since the earliest days of the Republic when this rule was adopted, a substantial question must exist as to the continued viability of this old common law treatment. See Boston Housing Authority v. Hemingway, 363 Mass. 184, 293 N.E.2d 831 (1973) (independent covenants rule abandoned). This question is particularly raised by the Legislative Policy providing that tenancies at will are not terminated by transfers of the property. G.L. c. 186, § 13.

4. Even if the mortgage foreclosure would have terminated a private tenancy, that rule of state law is preempted by the Section 8 Statute and regulations, which impose a uniform, nation-wide requirement of good cause stated in a proper notice for termination of tenancies. Attorney General v. Brown, 400 Mass. 826, 511 N.E.2d 1103 (1987). The plaintiff in this case appears to concede as much by sending the defendants a notice

to quit and alleging in its complaint that that notice "terminat[ed] your tenancy," a step that would not have been required if the tenancy had already been terminated by operation of law.

5. The notice in this case is inadequate to terminate the tenancy as a matter of law because it does not allege good cause for the termination, much less with the kind of particularity required by governing case law. Even if the notice were not defective in this respect, it was untimely as given during the first year of the tenancy, when terminations may only be made for the kind of tenant-based good cause that is not alleged in this case.

6. For these reasons, the defendants' motion for summary judgment is hereby ALLOWED. I hope to issue more detailed rulings on the questions presented in the near future.

So entered this 9th day of August, 1995.

William H. Abrashkin
William H. Abrashkin
First Justice