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COMMONWEALTH OF MASSACHUSETTS
NORTHEAST HOUSING COURT

G.E. CAPITAL MTGE SERVICE

Plaintiff

- v.- No. 96-SP-02565

VALERIE DILLARD

Defendant

DECISION AND ORDER

1. Expiration of the Section 8 lease

The plaintiff's argument that the lease "expired on its own terms" is hard to follow. At page 2 of the memorandum filed January 28, 1997, the plaintiff says that the HAP Contract "expired by its own terms on or about January 31, 1994." At page 4 the plaintiff says, "the HAP contract expired by its own terms on January 31, 1993." Then at page 2 of the supplemental memorandum filed February 26, 1997, the plaintiff says, "the HAP contract and Section 8 lease expired on their own terms in 1993."

The plaintiff's argument begins, "Leases are contracts. Courts review the 'four corners' of such instruments to determine their terms." The argument then proceeds, "Although the HAP contract and Section 8 lease do not specifically state that the parties had agreed to annual contracts, their intent to do so can be inferred." The argument is contradictory, doomed to failure.

The lease is clearly a self-extending "regulatory lease" that is terminable by the tenant, at will, but by the landlord or by the PHA, only for cause. Spence v. O'Brien, 15 Mass.App. 489, 496, 446 N.E.2d 1070, 1075 (1983).

Whatever the facts may have been in Whitehall Manor Properties v. Lamothe, 13 Mass.App. 917, 430 N.E.2d 852 (1982) (rescript), the Section 8 Program Lease in this case began on February 1, 1990, and continues until a termination either (1) by the Landlord, or (2) by the Tenant, or [2a] by mutual agreement, or (3) by the PHA.

There is no evidence offered in this case that any of those events occurred, and the plaintiff's argument that the Section 8 lease "expired on its own terms" is without merit.

2. Ninety days notice and good cause requirements

The defendant's supplemental memorandum, pages 2-4, concedes the suspension of the ninety days notice requirement, and that there is no ninety days notice requirement in this case. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Section 203(b), P.L. 104-134, 110 Stat. 1321, April 26, 1996, and Section 201(g), P.L. 104-204, 110 Stat. 2893, September 26, 1996, amending 42 U.S.C. §1437f(c)(8),(9). See also, 24 C.F.R. §982.455(b)(3).

The plaintiff's supplemental memorandum, pages 17-18, concedes the continuing requirement of termination only for cause, 42 U.S.C. §1437f(d)(1)(B)(ii), and the continuing requirement of notice of cause under §1437f(d)(1)(B)(iv). See also, 24 C.F.R. §982.310.

3. Definition of "Owner"

Thus, the sole remaining issue is whether the plaintiff, which is the foreclosing mortgagee's successor, is an "owner" within the meaning of Section 8 law, such that it is bound by the Section 8 law's good cause and notice of good cause requirements.

The Section 8 law, 42 U.S.C. §1437f(f)(1) provides:

> the term "owner" means any private person or entity, including a cooperative, or a public housing agency, having the legal right to lease cooperative, an agency of the Federal Government, or a public housing agency, having the legal right to lease or sublease dwelling units;

Elsewhere, 42 U.S.C. §1437f(d)(2)(C) provides:

> The contract shall obligate the owner to have such extensions of the underlying contract for assistance payments accepted by the owner and the owner's successors in interest.

Nothing in the statutory definition limits the meaning of the term "owner" to the "original owner" or the "original contracting owner" of the Section 8 lease and contract. Likewise, the HUD regulation, 24 C.F.R. §882.102 (definition of "owner"), merely tracks the statute, and implies no limitation.

Although "lenders" and "mortgagees" are not "owners" as such (a "lender" or "mortgagee" does not have "the legal right to lease or sublease dwelling units"), nothing in the statute excludes from the definition of "owner" a "person or entity" who is also a lender or mortgagee, or a person or entity who succeeds to ownership by reason of a levy or foreclosure, or by reason of a voluntary purchase at a forced sale following foreclosure of the original owner's interest in the property.

Without any support for its position in the statutory text, the plaintiff advances a "policy argument" for its position that a non-contracting foreclosing mortgagee (and its vendee) should not be required to "inherit" a Section 8 tenancy.

To accept this argument would require that the plain and broad language of the statute be ignored, and that, in order to "do equity," a generalized legislative purpose and intent, contrary to the express statutory language, be judicially divined, discovered, and recognized.

The plaintiff's result-oriented argument must be rejected, as nothing in our law authorizes a court to so re-write a statutory definition. See v. Lumis, 246 Mass. 340, 343, 141 N.E. 105, 106 (1923); Prudential Ins. Co. v. Boston, 369 Mass. 542, 546-547, 340 N.E.2d 858, 861 (1976).

It seems to me obvious that the plaintiff (whose complaint and underlying notice to quit in this Court claim status as a "person entitled to summary process" under Gen.L. c.239 §1 by reason of its status as the "new owner" of the dwelling premises) is equally an "owner" of those same premises within the meaning of Section 8 law, 42 U.S.C. §1437f(f)(1).

It appears that all other courts which have considered the question have reached the same conclusion. Federal Home Mortgage Corp. v. Hobbs, Bos.Hsg.Ct. No. 95-04475 (Winik, J., December 18, 1995), pp.7-8; EMC Mortgage Corp. v. Smith, Bos.Hsg.Ct. No. 95-04794 (Winik, J., January 4, 1996), pp.6-7; Federal Home Mortgage Corp. v. Surzhukov, Ham.Hsg.Ct. No. 95-SP-1487 (Abrashkin, J., August 9, 1995 and January 22, 1996); Bristol Savings Bank v. Savinelli, New Haven Superior Ct. No. CV-95-0377478-S (March 21, 1996), p.4; German v. Federal Home Mortgage Corp. [IV], 899 F.Supp. 1155 (S.D.N.Y. 1995), pp.1162-1165. See also, O'Brien v. Westerly Housing Authority, 626 F.Supp. 1065 (D.R.I. 1986) (Section 8 lease was not voided mid-term by sale of the property). And see, Boston Rent Equity Board v. Dime Savings Bank, 415 Mass. 48, 50-52, 611 N.E.2d 245, 247-248 (1993) (foreclosing mortgagee which purchased residential premises at foreclosure sale could not avoid rent control's "good cause" eviction requirements on the basis that it had no landlord-tenant or other contractual relationship with former mortgagor's tenants).

4. Good Cause

The plaintiff rightly points out that the law permits a termination of the Section 8 housing relationship for reasons of good cause, and that good cause can be "business or economically based." 42 U.S.C. §1437f(d)(1)(B)(ii). 24 C.F.R. §982.310(d)(iv). Mitchell v. HUD, 569 F.Supp. 701, 708-709 (N.D.Cal. 1983), citing Swann v. Gastonia Housing Authority, 502 F.Supp. 362, 367 (W.D.N.C. 1980), aff'd. 675 F.2d 1342 (4th Cir. 1982).

The plaintiff argues in its motion (although it does not by competent evidence offer to prove) that it has good business reasons to terminate or avoid Section 8 (and all other) leasehold entanglements. See, Boston Rent Equity Board v. Dime Savings Bank, 415 Mass. 48, 50, 611 N.E.2d 245, 247 (1993).

It is not clear why, in this particular case, Fannie Mae's mortgage servicer seeks to avoid the burdens (and benefits) of a Section 8 subsidized tenancy. Consider, for example, the actions taken by Fannie Mae's brother Freddie Mac, in German v. Federal Home Mortgage Corp. [IV], 899 F.Supp. 1155, 1160 (S.D.N.Y. 1995), which within days of its foreclosure sale issued "Dear Tenant" letters committing itself to providing "clean, decent housing" to its "inherited" Section 8 tenants.

Of course, I cannot determine whether in fact the plaintiff has good cause to terminate the defendant's tenancy on this motion for summary judgment. Attorney General v. Brown, 400 Mass. 826, 831-836, 511 N.E.2d 1103, 1107-1110 (1987) (reversing a summary judgment ruling that legitimate business reasons for refusing Section 8 tenants did not exist). And see, Boston Rent Equity Board v. Dime Savings Bank, 415 Mass. 48, 52, 611 N.E.2d 245, 248 (1993).

Moreover, even were I free to do so, the plaintiff's failure to comply with Section 8's notice of good cause requirements, under 42 U.S.C. §1437f(d)(1)(B)(iv) and 24 C.F.R. §982.310, is fatal to its case.

Accordingly, the plaintiff's motion for summary judgment must be denied, and the defendant's motion to dismiss must be allowed, and it is so ordered.

David D. Kerman
Associate Justice

May 23, 1997