

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT L&T PART**

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LILIAN LEVY a/k/a LILLIAN LEVY,

Petitioner(s)

against

JENNIFER PEDERSEN, CODY PEDERSEN,
TEAL PEDERSEN, JANE DOE and JOHN DOE,

Respondent(s)
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INDEX NO. LT-005630-13

**Present:
Hon. Scott Fairgrieve**

Trial Decision

Petitioner commenced this holdover proceeding to recover possession of the premises located at 40 Bayview Place, Massapequa, New York, from Respondents Jennifer Pedersen, Cody Pedersen and Teal Pedersen.

Petitioner became the title owner of the premises pursuant to a foreclosure sale on June 4, 2013.

Petitioner paid 10% down at the sale in the amount of \$34,000.00. At the time Petitioner purchased the property she testified that she had no knowledge of the Respondents being tenants at the property.

Later in June of 2013, Petitioner met Respondents at the premises. The closing occurred on August 13, 2013, when Petitioner received a Referee's Deed from the Referee Gerard DeGregoris, Jr., Esq.

The annual taxes on the premises are approximately \$17,000.00.

A Notice of Pendency of Action was recorded on June 10, 2011, with the Nassau County Clerk's Office in the action pending in the Supreme Court Nassau County entitled, Joseph Ehrenreich v. Ernest G. Paragallo, et al.

Respondent Jennifer Pedersen received a lease from Ernest Paragallo (the former owner of the premises) which term began on February 19, 2011 and ended on December 31, 2016. Respondent testified that she was an employee of the former owner Ernest G. Paragallo. Mr. Paragallo went to jail for animal abuse. This lease was never recorded with the Nassau County Clerk. Petitioner testified that she searched the records of the Nassau County Clerk's Office and did not see any recorded lease concerning the premises.

The lease provided for a rental per month of \$800.00 for the entire six (6) year period. The lease also required the landlord to pay the LIPA bill each month for the entire six (6) year term.

Petitioner had a real estate appraiser Donald Candelara testify that the fair market rental value is approximately \$3,000.00 to \$3,200.00 per month. This value was put into question because Respondent claimed that the property was not in good condition.

Respondent has paid no rent to Petitioner.

Decision

Petitioner is entitled to a judgment of possession with the warrant stayed until January 31, 2014. After January 31, 2014, Petitioner may proceed to evict Respondent forthwith.

The evidence demonstrates that the Petitioner had no knowledge of the Respondents' tenancy. Thus, Petitioner is not bound by rule of the law that possession of the property by a tenant is notice of the nature and extent of the possessor's interests, with respect to the property occupied. See *Tehan v. Thos. C. Peters Printing Co., Inc.*, 71 AD2d 101, 421 NYS2d 465 (4th Dept 1979).

Since the six (6) year lease was not recorded, the lease is void with respect to a good faith purchaser. See *Citibank v. Plagakis*, 21 AD3d 393, 800 NYS2d 192 (2nd Dept 2005).

In *Hi-Rise Laundry Equipment Corp. v. Matrix Properties, Inc.*, 96 AD2d 930, 466 NYS2d 375 (2nd Dept 1983), the Court held:

However, in order for the lease to be valid against subsequent purchasers, section 291 of the Real Property Law requires that it be recorded. As plaintiff failed to record the lease, it is "void as against any person who subsequently purchases or acquires" the property (Real Property Law, § 291).

Thus, the lease in question is void as against Petitioner who is a good faith purchaser for value.

Also, the unrecorded lease executed before the filing of the Notice of Pendency and never recorded is defeated by the foreclosure judgment and sale. See *West 56th Street and 57th Street Corp. v. Lola Pearl*, 242 AD2d 508, 662 NYS2d 312 (1st Dept 1997); *1426 46 St., LLC v. Klein*, 60 AD3d 740, 876 NYS2d 425 (2nd Dept 2009).

The Respondent's lease is also voidable under Debtor and Creditor Law § § 273

and 276 based upon the holding of *West 56th and 57th Street Corp., supra*, wherein the Court held:

The lease was also properly held to be voidable under Debtor and Creditor Law § § 273 and 276 because, at a time when the sponsor was insolvent, and with intent to hinder, delay or defraud creditors, it gave defendant, an employee of the sponsor, extraordinary rights to perpetual renewal leases with rents limited to those allowed under the Rent Stabilization Law, to assign and sublet without notice to or permission from the landlord, to exercise these rights without obligation to use the apartment as her primary residence, to allow occupancy by roommates without notice to or permission from the landlord, and a waiver of a security deposit, all supposedly in exchange for defendant's renovation of the apartment under the "interim lease".

In the case at bar, Respondent received a "sweet heart" lease from Mr. Paragallo wherein she only had to pay \$800.00 per month for six (6) years with the landlord paying the LIPA bill each month for a little under \$200.00 per month. The taxes on the premises are approximately \$17,000.00 per year. Respondent was an employee of Mr. Paragallo and obviously received this very favorable lease due to this relationship. Mr. Paragallo's house was going to be foreclosed when the lease was given and he faced jail time for animal abuse.

It is unreasonable for Petitioner to be saddled with a "sweet heart" lease wherein the Petitioner must pay \$17,000.00 in taxes per year, but only receive about \$600.00 a month from Respondent (\$800.00 rent, less the LIPA bill of a little under \$200.00).

Conclusion

Based upon the foregoing, Petitioner is entitled to a judgment of possession with the warrant stayed until January 31, 2014.

So Ordered:


DISTRICT COURT JUDGE

Dated: **DEC 05 2013**

cc: John A. Reno, Esq.
Jennifer Pedersen, pro se