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FEDERAL NATIONAL MORTGAGE ASSOCIATION vs. JAMES M. QUILL.

15-P-950

APPEALS COURT OF MASSACHUSETTS

2016 Mass. App. Unpub. LEXIS 891

September 19, 2016, Entered

JUDGES: Vuono, Massing & Neyman, JJ.[9]

9 The panelists are listed in order of seniority.

OPINION

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Federal National Mortgage Association (Fannie Mae), appeals from a judgment of a Housing Court judge, following a bench trial, which awarded possession to the tenant, James Quill, and $6,600 in damages in connection with Quill's counterclaims for breach of the warranty of habitability and interference with quiet enjoyment. We affirm.

Background. Fannie Mae became the owner of the property at 20 Kirk Drive in Springfield (the property) through a foreclosure sale on December 2, 2011. At that time, Quill resided at the property pursuant to a prior rental agreement with the previous owner, Teikko E. Jones. The rental agreement between Quill and Jones included $400 per month for rent, with the cost of utilities included.[1] The rental agreement was reduced to writing on September 4, 2011. At that time, Jones owed Quill $7,800 for work Quill had performed on the property as a contractor, and Quill was given the right to stay at the property at $400 per month until the outstanding balance was paid off, at which point a new agreement would be negotiated for continued occupancy.

1 The utilities included water, sewer, heat, hot water, and electricity.

In December, 2011, Quill was contacted by a representative of Fannie Mae, "given some kind of written notice, and told they would talk further after the holidays. He didn't hear from that person again." On or about July, 2012, a notice was posted at the property, identifying Fannie Mae as the foreclosing owner, and Hanson Realty, Inc., as the building manager contact. Quill met Mr. Hanson[2] that day, and understood that the necessary repairs[3] to the property would be completed.

Quill spoke with Hanson one time after that, never heard from Hanson again, no repairs were completed, and Quill later learned that Hanson had died unexpectedly at some point in the fall of 2012.

2 Of Hanson Realty, Inc.

3 The necessary repairs included an unsecured exterior door that had damage around its deadbolt, as well as a missing kitchen counter and exposed electric wiring.

On or around November 28, 2012, Nolan Century 21 in West Springfield took over management of the property, and Tammy Collins assumed the role as agent/manager. Collins testified that she had left her business cards on two different doors at the property each of the three times that she visited in December, 2012. There was no evidence that the business cards referenced her role for or affiliation with Fannie Mae, or contained any additional information beyond her name and the realty agency for which she worked. No one appeared to be present at the property at the time of her three visits.

In January, 2013, Fannie Mae filed a complaint for access to the property in the Housing Court, and requested an order to inspect the property. Fannie Mae alleged that Quill was denying its agent (Collins) access to the property. Quill responded that he had never refused access and that he had never been asked for access by Collins or anyone else at Fannie Mae or Century 21. Fannie Mae and Quill reached an agreement for access, and the case was dismissed. No finding was ever made that Quill had refused access to Fannie Mae or its agents.[4]

4 Fannie Mae sought to introduce only the paperwork it filed in the January, 2013, action, as evidence that Quill denied access to Fannie Mae. The judge ordered that the entire case file be brought to the court, and the judge took judicial notice of the entire case file during trial.

Thereafter, Collins walked through the property with Quill, took photographs of needed repairs, and subsequently hired a contractor to perform the repairs. Collins testified that she and the contractor went to the property on one occasion, but could not gain access because Quill was not home. Collins then attempted, but failed, to make contact with Quill in order to schedule a time for the repairs. The judge found that Quill only knew Collins as "Tammy" at a Century 21 office, that Collins said she would be back in touch with him, and that he never heard back from her.

In June, 2013, the Springfield water and sewer commission left at the property a "final notice and demand water service shut off notice," and Quill notified Fannie Mae through their attorney or agent of the potential shut off. In July, 2013, a notice of water shut off was left at the property, the water was shut off, Quill called Fannie Mae's attorney or agent, and water service resumed a few days later. The electricity, which continued to be billed in Jones's name despite Fannie Mae owning the property, was turned off by the electric company for one and one-half months. Quill also testified that, over three winters, he paid more than $5,200 for oil or diesel fuel to heat the property.

After a short bench trial, the judge found that Quill was a bona fide tenant and, as such, could only be evicted for "just cause." The judge ruled that Fannie Mae "failed to notify [Quill] in writing of the amount to be paid for rent or use and occupancy and to whom it was to be paid." The judge found that "[n]o evidence was presented to support the lack of access as a 'just cause,' other than the realtor had left her business cards at the premises, and had gone to the premises on three occasions and not found anyone present at the time, close to two years before the trial." Finally, the judge ruled that Fannie Mae failed to establish "just cause" for possession of the property, and entered a judgment for possession of the property for Quill. As for Quill's counterclaims, the judge awarded Quill $600 in damages for the breach of warranty of habitability, and $6,000 for the interference with quiet enjoyment. This appeal followed.

Discussion. "When reviewing the trial judge's decision, we accept his findings of fact as true unless they are clearly erroneous, and we give due regard to the judge's assessment of the witnesses' credibility." *Andover Hous. Authy. v. Shkolnik, 443 Mass. 300, 306 (2005)*, citing *Mass.R.Civ.P. 52(a)*, as amended, *423 Mass. 1402 (1996)*. However, "we scrutinize without deference the legal standard which the judge applied to the facts." *Kendall v. Selvaggio, 413 Mass. 619, 621 (1992)*.

Fannie Mae first argues that the judge "failed [to] accurately characterize either the terms of the purported memorandum that referenced a prior unwritten agreement, [and] [n]otwithstanding repeated objections regarding hearsay testimony and without the benefit of supporting documentation and over objection, . . .

permitted testimony and incorporated same into its findings and incorporated purported expenses into its findings." Fannie Mae, however, neither articulates any argument regarding the specific evidentiary errors that it alleges, nor explains why (in its view) the judge's determinations were incorrect. Accordingly, these evidentiary objections do not rise to the level of appellate argument, see *Mass.R.A.P. 16(a)(4)*, as amended, *367 Mass. 921 (1975)*, and the issues are deemed waived, *Tobin v. Commissioner of Banks, 377 Mass. 909, 909 (1979)*.[5]

> 5 Assuming, arguendo, that Fannie Mae properly raised claims regarding the admission of alleged hearsay statements offered during Quill's trial testimony, we note that various statements were admissible for nonhearsay purposes and as statements of party opponents. See generally *Mass. G. Evid. § 801(d) (2016)*. We further note the trial judge's abundance of discretion in ruling on evidence. *Zucco v. Kane, 439 Mass. 503, 507 (2003)*.

Fannie Mae also argues that the judge erred in determining that it failed to satisfy the requirements of *G. L. c. 186A, §§ 1-6*, added by St. 2010, c. 258, *§ 6*, "which prohibits institutional lenders and certain financial entities who own foreclosed properties from evicting residential tenants without just cause." *Federal Natl. Mort. Assn. v. Nunez, 460 Mass. 511, 512 (2011)* (*Nunez*). We disagree.

The judge's finding that Quill was a bona fide tenant entitled to the protections of c. 186A was not clearly erroneous. As relevant here, the statute defines a "tenant" as "a person . . . who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy." *G. L. c. 186A, § 1*. It further states that "a lease or tenancy shall not be considered bona fide unless: (1) the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is not the tenant; and (2) the lease or tenancy was the result of an arms-length transaction." *Ibid.* Here, the judge found, consistent with Quill's testimony and the documentary evidence, that Quill and Jones entered into a verbal rental agreement, where Quill would deduct $400 per month from the outstanding balance that Jones owed him for work as a contractor in exchange for tenancy, and Jones would be responsible for all utilities; that on September 4, 2011, said agreement was memorialized in writing, and at that time Jones owed Quill a balance of $7,800; that the lease was a result of an arms-length transaction that began prior to the foreclosure; and that the term of the lease was scheduled to last until the end of May, 2013. Due to Quill's status as an acquaintance of Jones, and the business nature of the rental agreement, the judge was warranted in concluding that Quill's lease and tenancy qualified as bona fide. Thus, at the time of the foreclosure in December, 2011, Quill qualified as a bona fide tenant, and was entitled to the protections of c. 186A.

Fannie Mae, however, failed to satisfy the obligations it owed to Quill as a bona fide tenant under c. 186A. First, the judge found, and nothing in the record before this court contradicts, that the notice to vacate served on Quill failed to provide a cause or request a specific rent amount.[6] In addition, the summary process summons and complaint specifically stated that they were "no cause" proceedings. Thus, the notice was defective, and that fact alone would have justified a ruling against Fannie Mae for possession. See *Nunez, supra at 520 n.11* ("A foreclosing owner that has just cause to evict but has not alleged just cause in the notice to quit and the summary process action needs to recommence the summary process procedure and issue a new notice to quit asserting just cause and, if the tenant does not vacate, file a new summary process complaint").

> 6 Both Fannie Mae's notice to vacate and summary process complaint lacked requests for any specific amount of unpaid rent for use and occupancy. The judge properly found that the bare representation by Fannie Mae's attorney that "no rent had been paid" was insufficient to sustain Fannie Mae's evidentiary burden.

Despite these infirmities, the judge addressed, and properly rejected, Fannie Mae's argument that Quill's alleged denial of access to the property constituted "just cause" for his eviction. The parties' agreement for access, the dismissal of the earlier action (of which the judge took judicial notice), and Quill's testimony that he welcomed access, all supported the judge's conclusion. Therefore, because Fannie Mae failed to establish any just cause for the eviction, Quill was entitled to a judgment of possession. *Nunez, supra at 514*.

We turn to Quill's counterclaims, and briefly address Fannie Mae's contention that the judge erred in ruling for Quill. In its attempt to overcome the judge's finding that Fannie Mae "had constructive notice of the poor

conditions of the property from the inception of its ownership in December[,] 2011, and actual notice from March, 2013, when [Quill] gave [Fannie Mae] access to the property," Fannie Mae states only that "[a]ppellant's witness testified that Quill never permitted access for purpose of completing repairs." Even assuming that the judge credited that testimony, ample evidence existed in the record from which the judge could reasonably find that Quill never refused access, and that Fannie Mae's agent's purported requests for access were never made to Quill. Quill testified that he had not denied access, that he did not enjoy living in the substandard conditions, and that he would have eagerly allowed access for such repairs, had such access been requested of him. The judge did not err in crediting Quill's testimony and finding no refusal of access. Furthermore, review of the record reveals ample support for the judge's factual findings and rulings of law as to both of Quill's counterclaims.[7]

7 To the extent that we have not specifically addressed other issues raised in the parties' briefs, they have not been overlooked. "We find nothing in them that requires discussion." *Commonwealth v. Domanski, 332 Mass. 66, 78 (1954)*.

Judgment affirmed.[8]

8 We deny Quill's request for fees and damages. See *Mass.R.A.P. 25*, as appearing in *376 Mass. 949 (1979)*.

By the Court (Vuono, Massing & Neyman, JJ.[9]),

9 The panelists are listed in order of seniority.

Entered: September 19, 2016.

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