KeyCite Yellow Flag - Negative Treatment
Distinguished by Figueroa v. New York City Housing Authority, N.Y.A.D. 1 Dept., July 21, 2016

10 N.Y.3d 776
Court of Appeals of New York.

In the Matter of Mitchell SCHORR, Respondent,
v.
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT et al., Appellants.

March 13, 2008.

Synopsis
Background: Tenants' son commenced proceeding under Article 78, seeking to annul determination of the Department of Housing Preservation and Development (HPD) to grant landlord a certificate of eviction from Mitchell-Lama apartment. The Supreme Court, New York County, Louis B. York, J., granted petition, and landlord appealed. The Supreme Court, Appellate Division, 41 A.D.3d 303, 839 N.Y.S.2d 52, affirmed, and leave to appeal was granted.

[Holding:] The Court of Appeals held that neither the New York City Department of Housing and Preservation Development (HPD) nor landlord could be estopped from evicting tenant who did not meet eligibility requirements for succession rights to Mitchell-Lama apartment.

Reversed.

West Headnotes (3)

[1] **Landlord and Tenant**
Operation and Maintenance

New York City Department of Housing and Preservation Development (HPD) is statutorily required to enforce the Mitchell–Lama Law and regulations regardless of any actions or acquiescence by the limited-profit housing companies it supervises. McKinney's Private Housing Finance Law § 2(15); New York City Charter § 1802(6)(d).

8 Cases that cite this headnote

[2] **Estoppel**
Estoppel Against Public, Government, or Public Officers

Estoppel cannot be invoked against a governmental agency to prevent it from discharging its statutory duties.

14 Cases that cite this headnote

[3] **Estoppel**
Municipal corporations in general
Landlord and Tenant
Succession rights

Neither the New York City Department of Housing and Preservation Development (HPD) nor landlord could be estopped from evicting tenant who did not meet eligibility requirements for succession rights to Mitchell-Lama apartment, although landlord apparently acquiesced in tenant's occupancy after his parents vacated the apartment; invoking estoppel would have impermissibly prevented HPD from executing its statutory duty to provide Mitchell–Lama housing only to individuals who met specified eligibility requirements. McKinney's Private Housing Finance Law § 2(15); New York City Charter § 1802(6)(d).

36 Cases that cite this headnote

Attorneys and Law Firms

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Preservation and Development, appellant.

Gallet Dreyer & Berkey, LLP, New York City (Michelle P. Quinn and David L. Berkey of counsel), for East Midtown Plaza Housing Company, Inc., appellant.

Rosenberg & Estis, PC, New York City (Jeffrey Turkel of counsel), for respondent.

Andrew M. Cuomo, Attorney General, New York City (Robert C. Weisz, Barbara D. Underwood and Michael S. Belohlavek of counsel), for New York State Division of Housing and Community Renewal, amicus curiae.

Opinion

*****2 *777 **763 OPINION OF THE COURT**

MEMORANDUM.

The order of the Appellate Division should be reversed, with costs, and the petition dismissed.

In 1987, petitioner, his parents and brother moved into a two-bedroom Mitchell–Lama apartment in Manhattan.[1] Because petitioner was 14 years old at the time, he was the only member of his family not listed as a tenant of record. Petitioner left the apartment for college at some point in the early 1990s and there ***778** is no record of his return to the apartment until 1999, when his name first appeared on the apartment's annual income report. By February 2000, the tenants of record had vacated the apartment, leaving petitioner as the sole occupant. Because he did not reside in the apartment for two consecutive years prior to 2000, the year the last tenants of record (his parents) vacated, petitioner did not qualify for successor rights to the apartment under the Mitchell–Lama Law, but nevertheless remained.

Respondent East Midtown Plaza Housing Company, Inc., a limited-profit housing company incorporated under the Mitchell–Lama Law, owns and operates the apartment subject to the regulations and supervisory authority of respondent Department of Housing Preservation and Development (HPD). Although petitioner was no longer authorized to reside in the apartment, East Midtown apparently acquiesced in petitioner's occupancy.[2] Following two successful lawsuits by petitioner against East Midtown in 2001 and 2004, East Midtown initiated eviction proceedings against petitioner in December 2004. Petitioner attempted unsuccessfully to submit an application for successor rights and in July 2005, HPD affirmed the eviction because petitioner could not establish that he qualified for such rights.

In September 2005, East Midtown initiated a holdover proceeding against petitioner in Civil Court. In response, petitioner commenced this CPLR article 78 proceeding seeking to annul HPD's eviction determination. Supreme Court annulled the determination, holding, among other things, that because of East Midtown's apparent consent to the tenancy, HPD and East Midtown were estopped from evicting petitioner. The Appellate Division affirmed, and we now reverse.

[1] The Mitchell–Lama Law prescribes strict guidelines for tenant eligibility and succession, to which East Midtown must adhere (*see* 28 RCNY § 3–02[p][8] [ii]). HPD is the supervising governmental agency responsible for administering the Mitchell–Lama program in New York City (*see* Private Housing Finance Law § 2[15]; New York City Charter § 1802[6][d]). Thus, HPD is statutorily required to enforce the Mitchell–Lama Law and regulations regardless of any actions ****764 ***3** or acquiescence by East Midtown and the other limited-profit housing companies it supervises.

[2] [3] ***779** It is well settled that "estoppel cannot be invoked against a governmental agency to prevent it from discharging its statutory duties" (*Matter of New York State Med. Transporters Assn. v. Perales*, 77 N.Y.2d 126, 130, 564 N.Y.S.2d 1007, 566 N.E.2d 134 [1990]; *see also Matter of Wedinger v. Goldberger*, 71 N.Y.2d 428, 441, 527 N.Y.S.2d 180, 522 N.E.2d 25 [1988], *cert. denied* 488 U.S. 850, 109 S.Ct. 132, 102 L.Ed.2d 105 [1988]; *Matter of E.F.S. Ventures Corp. v. Foster*, 71 N.Y.2d 359, 369–370, 526 N.Y.S.2d 56, 520 N.E.2d 1345 [1988]; *Matter of Parkview Assoc. v. City of New York*, 71 N.Y.2d 274, 282, 525 N.Y.S.2d 176, 519 N.E.2d 1372 [1988], *cert. denied* 488 U.S. 801, 109 S.Ct. 30, 102 L.Ed.2d 9 [1988]; *Scruggs–Leftwich v. Rivercross Tenants' Corp.*, 70 N.Y.2d 849, 852, 523 N.Y.S.2d 451, 517 N.E.2d 1337 [1987]). Here, it is clear that petitioner did not meet the eligibility requirements for succession rights to the apartment and was, therefore, an illegal tenant. Thus, invoking estoppel against HPD and East Midtown would impermissibly prevent HPD from executing its statutory duty to provide Mitchell–Lama housing only to individuals who meet the specified eligibility requirements.

Chief Judge KAYE and Judges CIPARICK, GRAFFEO, READ, SMITH, PIGOTT and JONES concur in memorandum.

Order reversed, etc.

10 N.Y.3d 776, 886 N.E.2d 762, 857 N.Y.S.2d 1, 2008 N.Y. Slip Op. 02083

All Citations

Footnotes

1 The Mitchell–Lama Law (Private Housing Finance Law article II) was enacted in 1955 to offer private housing companies the incentive to develop low- and moderate-income housing (see *Matter of KSLM–Columbus Apts., Inc. v. New York State Div. of Hous. & Community Renewal,* 5 N.Y.3d 303, 308, 801 N.Y.S.2d 783, 835 N.E.2d 643 [2005]). "The program encourages such housing by offering State and municipal assistance to developers in the form of long-term, low-interest government mortgage loans and real estate tax exemptions. In return for these financial benefits, developers agree to regulations concerning rent, profit, disposition of property and tenant selection" (*Matter of Columbus Park Corp. v. Department of Hous. Preserv. & Dev. of City of N.Y.,* 80 N.Y.2d 19, 23, 586 N.Y.S.2d 554, 598 N.E.2d 702 [1992] [citations omitted]).

2 There is no evidence in the record that HPD knew of petitioner's purported "tenancy" during the time period in question.

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