DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 11,761
Consolidated with
TP 11,778, TP 11,788 & TP 11,803

CHRISTOPHER BINDER, Landlord-Appellant

v.

KAREN HAWTHORNE, ET AL., Tenant-Appellees

On a Motion to Intervene in an Appeal from a
Decision and Order of the Rent Administrator, D.C.

Issued May 14, 1986

ORDER

Creswell, Commissioner: Jesse and Benjamin Aiken have moved to intervene as co-appellants in landlord Christopher Binder's appeal of the Rent Administrator's decision and order in this case. The Aikens purchased the subject housing accommodation shortly after the evidentiary hearing but before the decision was issued, and are the successors to appellant Binder. They moved to intervene in order to argue for reinstatement of the rent and rent ceiling increases that the Rent Administrator disallowed when he ordered rollbacks to the 1979 levels in the decision appealed from.

In the alternative, the Aikens moved for limited intervention on the sole issue of their possible liability as successor landlords for damages imposed against Binder. In this, the Aikens seek to insure that they would not be liable for the damages assessed against Binder.

The Aikens's motion to prosecute the appeal as co-appellants is denied. Their motion to intervene on the limited issue of the liability of a successor landlord is granted. Upon consideration of the arguments of counsel for the tenant appellees and for the Aikens, [1] the Commission finds that it cannot assess against the Aikens any liability for penalties imposed by the Rent Administrator against Binder in this case for reasons stated below.

Apparently landlord Binder owned [2] the subject hous-

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1. The Aikens's lawyer was first retained by them after the Rent Administrator had issued his decision. He contacted Binder's attorney to inquire if Binder would appeal. The Aikens's attorney represented to the Commission that he was then retained by Binder to prosecute the appeal on Binder's behalf. No supporting written authorization or retainer agreement was proffered. Without objection by appellees, we permit this dual representation, but note as a caution to counsel the potential conflict between the interests of his various clients, particularly on the issue of the successors' liability for the prior landlord's possible violations of the Act.

2. The chain of ownership of the property is not altogether clear. Prior to the present controversy, the property was owned by Benjamin Aiken's father, Ernest H. Aiken, who on his death devised the property to a family trust of which Jesse H. Aiken was trustee. The trust conveyed the property to a partnership which reconveyed it to another partnership of which Binder was a general partner. When the Binder partnership took title, it assumed the obligations of a prior deed of trust under whose terms the foreclosure sale took place.

ing accommodation until mid-January 1985, when it was purchased by Jesse and Benjamin Aiken at a foreclosure sale under a deed of trust in which the Aikens were secured beneficiaries. Before taking title to the property, the Aikens had managed the property and collected rents beginning on November 1, 1984, apparently to protect their security interest in the face of Binder's default. The trustee's sale to the Aikens took place shortly after the final hearing on this matter but some seven weeks before the Rent Administrator's decision and order was issued.

The Aikens were not named respondents in the proceedings before the Rent Administrator. Although they had actual knowledge of the tenant complaints, they were not served with formal notice of the hearing by the Rent Administrator, and were under no legal obligation to defend. They did not seek to intervene before or at the hearing. And although the Aikens, for more than two months prior to the hearing, acted as benificial owners of the property, they did not acquire legal title until after the hearing record was closed. On the other hand, Binder was a proper party before the Rent Administrator and was served with notice of the hearing. He was then represented by counsel, and although he elected not to defend actively the complaints filed against him, he did exercise his right to appeal. In the circumstances where the Aikens elected not to intervene and defend before the Rent Administrator, we find no reason to permit them to appeal at this late stage. This is particularly true since Binder has

appealed and is present through counsel to argue for restoration of the rents and ceilings which were rolled back by the Rent Administrator. The Aikens's motion to be allowed to participate as appellants is denied.

The Commission, however, grants the Aikens's motion to intervene on the limited question of their liability for damages assessed against Binder. The Aikens's interest in this issue has not been waived in any sense. The liability of a successor landlord has not been fully addressed by the Commission, and both the intervenor and the tenants seek some disposition of this question.

Liability of the Successor Landlord

Prior Commission decisions have established a precedent that a present landlord may not, as a general rule, be held liable for the transgressions of his or her predecessor. Quality Management v. Henderson, TP 1,575 (RHC, proposed decision of September 9, 1982, adopted absent objection of the parties September 28, 1982); Wilform v. Moorstein, TP 4,760 (RHC, September 29, 1982). Substantial evidence to show that the transgressor and the new landlord were essentially the same entity, that the conveyance was a fraudulent attempt to avoid liability, or that the new landlord knew of and profitted by his predecessor's transgression might compel an opposite conclusion. Despite the intricacies of prior Aiken family ownership and the fact that Jesse and Benjamin Aiken did not come as arms-length strangers when they bought the building on January 24, 1985, we find no substantial evidence

to tie them legally to, or impose liability on them for, Binder's actions as owner and landlord.

However, Binder's actions as owner and landlord apparently ended on November 1, 1984, for on that date, Binder relinquished control of the housing accommodation to the Aikens who thenceforth collected the rents and fully managed the property. The Aikens then became the property's "landlord" under §103(12) of the Act, D.C.Code 1981 Ed., §45-1503(12), which defines that term as "an owner . . . assignee, any agent thereof, or any other person receiving or entitled to receive rents or benefits for . . . any rental unit. . . ." Commission decisions have held that the rental or managing agent for a property owner may be held liable for rent overcharges even if they benefit the owner. In this case, after November 1, the Aikens were more than mere agents for Binder. The deed of trust which secured the Aikens's creditor interest in the subject property gave Binder the right to the rents from the property only if he were not in default under any of the terms thereof. (Paragraph 1 of the deed of trust so provides, and the landlord in his brief on this issue states in confirmation: "Pursuant to these documents, the seller/lender [the Aiken trust] . . . reserved no rights to the rents or profits from the property so long as the buyer/borrowers [Binder] were not in default.") Apparently upon Binder's default, the right to rents and profits reverted to the Aikens (through their designated trustee). Thus, the Aikens, from November 1, 1984, have several indi-

ces of at least beneficial or equitable ownership of the property. We find that these indices of equitable ownership might be sufficient to hold the Aikens liable for rent overcharges beginning in November 1984, even though legal title to the property remained in Binder's name for another 85 days until foreclosure proceedings could be completed. 3/ In this, we do not depart from the general rule that a landlord is not liable for the act of his predecessor. Rather, we find that the Aikens's liability from November 1, 1984, would be for their own acts as landlord from which they, not Binder, profited.

However, we cannot hold the Aikens liable in the present circumstances for any rent overcharges, either as successors to Binder or based on their own actions as equitable owners or statutory landlords. No liability can be assessed against the Aikens in the absence of certain due process pro-

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3. In stating our basis for the Aikens's liability for rent overcharges from November 1, 1984, we are not unmindful of the contrary expression in Aiken v. Pugh, D.C.Sup. Court, C.A. No. L&T 47148-85, Memorandum Opinion of December 4, 1985, "that the RACD decision of March 6, 1985 against Christopher Binder is personal to Binder, and does not bind [Aiken], who purchased the subject premises in January, 1985." Id at 4. Aiken now suggests that the Commission is bound by this ruling under the doctrine of primary jurisdiction. Our understanding of that doctrine leads us to the opposite conclusion: that the Superior Court should defer to the administrative agency issues of possible violation of and liability under the act which the administrative agency is charged to enforce. Drayton v. Poretsky, 462 A.2d 1115 (D.C.App. 1983). We do not seek a jurisdictional dispute with the Superior Court; we note our slight departure from the Court's holding on the Aikens's potential liability from November 1, 1984 to January 24, 1985.

tections. In the proceedings before the Rent Administrator, the Aikens were not named as respondents. They were not served with a complaint against them and were under no legal obligation to defend a complaint against Binder. It is immaterial that they may have had actual knowledge of the complaints against Binder. The D.C. Administrative Procedures Act is unequivocal to the effect that reasonable and specific notice is a condition precedent to exposure to liability. D.C.Code 1981 Ed. §1-1509(a).

The second reason why liability cannot attach to the Aikens is because the factual bases of their possible liability, i.e., their management of the property after November 1 and the deed of trust provisions giving them certain indices of ownership, were not findings made by the Rent Administrator supported by substantial evidence in the record. Again, it is immaterial that these "facts" may have been admitted in pleadings before the Commission. They were not in the Rent Administrator's record as required by the APA, D.C.Code 1981 Ed. §1-1509(c). The evidentiary basis for liability must be found in the Rent Administrator's hearing record; it cannot be found in the appeal record. Meier v. D.C. Rental Accommodations Comm., 372 A.2d 566 (D.C.App. 1977).

No matter how well-intended our goals, the Commission cannot ignore or dismiss the Aikens's due process rights to achieve equity, fairness or "substantial justice." Smith v. D.C. Rental Accommodations Comm., 411 A.2d 612 (D.C.App. 1980). Nor do we have authority to make the independent

findings of fact required to impose liability on the Aikens. Based on procedural due process considerations--absence of notice, lack of opportunity to defend, and absence of a foundation or predicate in the evidentiary record--we hold that the Aikens cannot be held liable for rent overcharges in these proceedings before the Commission. See Meier, supra.

It is so ordered by the Commission this 14th day of May, 1986.

Belva D. Newsome, Chairperson

Daniel B. Jordan, Commissioner

Isaiah T. Creswell, Jr., Commissioner