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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BERGEN COUNTY
DOCKET NO. F-002239-16

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION,

Plaintiff(s),

v.

ARAXIE BOYADJIAN, HIS HEIRS,
DEVISEES, AND PERSONAL
REPRESENTATIVES AND HIS/HER,
THEIR, OR ANY OF THEIR SUCCESSORS
IN RIGHT, TITLE AND INTEREST, MRS.
BOYADJIAN, WIFE OF ARAXIE
BOYADJIAN, HER HEIRS, DEVISEES, AND
PERSONAL REPRESENTATIVES AND HIS/
HER, THEIR, OR ANY OF THEIR
SUCCESSORS IN RIGHT, TITLE AND
INTEREST, HELEN BOYADJIAN, HER
HEIRS, DEVISEES, AND PERSONAL
REPRESENTATIVES NAD HIS/HER,
THEIR, OR ANY OF THEIR SUCCESSORS
IN RIGHT, TITLE AND INTEREST, MR.
BOYADJIAN, HUSBAND OF HELEN
BOYADJIAN, HIS HEIRS, DEVISEES, AND
PERSONAL REPRESENTATIVES AND HIS/
HER, THEIR, OR ANY OF THEIR
SUECESSORS IN RIGHT, TITLE AND
INTEREST, WELLS FARGO BANK,
NATIONAL ASSOCIATION, MARV
BRANDON, RAIT PARTNERSHIP LP,
STATE OF NEW JERSEY, UNITED STATES
OF AMERICA,

Defendant(s).

OPINION

Decided: February 3, 2020

Diana M. Search, for plaintiff (McCalla Raymer Leibert Peirce, LLC, attorneys).

Jack Boyajian, defendant, pro se.

BEDRIN MURRAY, J.T.C. (temporarily assigned)

Before the court is a motion filed by plaintiff, JPMorgan Chase Bank, N.A., seeking an Order declaring the lease agreement between the Boyajian Asset Trust as Landlord and Jack Boyajian, Linda Boyajian, and David Boyajian (“Boyajians”) as Tenants a sham lease, and permitting the scheduled eviction to take place. The Boyajians filed a cross-motion for an Order declaring the lease agreement valid and staying the eviction. At the conclusion of oral argument on January 9, 2020, the court permitted Jack Boyajian to submit proof of payment of rent. The supplemental documents were received on January 14, 2020. For the reasons set forth below, plaintiff’s motion is granted and the Boyajians’ cross-motion is denied.

I. Findings of Fact

On September 30, 2004, defendants Araxie Boyadjian and Helen Boyadjian¹ executed a note in favor of plaintiff’s predecessor in interest, Washington Mutual Bank, FA,² in the amount of \$2,500,000.00. In order to secure the note, defendants executed and delivered a purchase money mortgage to Washington Mutual that encumbered property commonly known as 17 Glenwood Drive, Saddle River, New Jersey 07458. The mortgage was duly recorded in the Bergen County Clerk’s Office. A Loan Modification Agreement in 2008 increased the unpaid principal balance of the loan to \$2,709,386.38.

On August 1, 2010, defendants failed to make the required mortgage payment and

¹ It is noted that Araxie Boyadjian and Helen Boyadjian use a “d” in their surname, while the Boyajians do not.

² Plaintiff, JPMorgan Chase Bank, National Association is successor by merger with Washington Mutual Bank, FA.

subsequent payments due. On January 25, 2016, plaintiff filed a complaint in foreclosure. Final judgment was entered in favor of plaintiff on October 31, 2017 in the amount of \$3,893,874.79. The property proceeded to Sheriff's sale on March 22, 2019, where it was purchased by plaintiff.

Upon taking ownership of the subject property, plaintiff discovered an entity known as the Boyajian Asset Trust ("Trust"), as Landlord, had entered into a lease agreement with the Boyajians, as Tenants, on December 30, 2014. An unrecorded deed dated approximately four weeks after defendants took title to the property conferred title on the Trust, of which Jack Boyajian is the Trustee. The deed price is \$4,250,000.00. The lease between the Trust and the Boyajians provides for an unusually long six-year term beginning on January 1, 2015 and ending on December 31, 2020. The lease, which is executed by Jack Boyajian, Trustee as landlord and by Jack Boyajian, Linda Boyajian, and David Boyajian as tenants, requires no security deposit and imposes no late payment penalty. During oral argument, Jack Boyajian conceded that he negotiated the terms of the lease with himself. It is noted that at the time of the execution of the lease, the loan was more than four years in default.

The rent for the lease term is \$108,000.00 but the manner of payment is not set forth. Instead of providing for a monthly payment, the lease states "\$ N/A per month"; however, simple division reveals a monthly rent of \$1,500.00. This figure is in sharp contrast to the estimate of between \$7,000.00 and \$7,500.00 as fair market rent for the property provided by licensed real estate broker Dawn Pugliese. In her certification, Ms. Pugliese relies on three comparable rentals in the Borough of Saddle River, New Jersey, the area of her employment and location of the property. The single-family house, which Mr. Boyajian estimates to contain approximately 7,000 square feet of living space but plaintiff contends is closer to 10,000 square feet, includes six bedrooms, eight full bathrooms and two half bathrooms. Property taxes are approximately

\$2,400.00 per month.

While not challenging Ms. Pugliese's opinion, Mr. Boyajian argues that his family of four occupies only three bedrooms and a limited common area, justifying a lesser rent. To that end, he offers as proof of value a rental in Saddle River, namely, a three-bedroom apartment on the top floor of a certain property that is not described. Also offered are two houses for rent that fall far short of the grandiosity of the subject property. Further, Mr. Boyajian noted that in prior years, other tenants occupied a separate portion of the premises during his family's residency. He then clarified that the other tenants were defendants Araxie Boyadjian and Helen Boyadjian.

In view of the record, the court is not persuaded that the Boyajians enjoy only a small portion of the property that is theirs alone. Further, the court finds no similarity between the Boyajian house and those offered by Mr. Boyajian as comparable. Instead, the court credits the opinion of rental value given by Ms. Pugliese.

Further, plaintiff argues there is no proof the Boyajians had paid rent since the lease inception. At oral argument, Mr. Boyajian responded that he had not contemplated submitting rent receipts for review by the court. As such, he was given additional time to provide same. Mr. Boyajian subsequently provided a spreadsheet entitled "Boyajian Asset Trust/Transaction Detail By Account/December 1, 2014 through January 14, 2020" showing certain deposits between December 5, 2014 and August 19, 2015. Four deposits amounting to less than \$3,000.00 are referenced on the spreadsheet prepared by the Trust as "Rent for 17 Gl", but these entries are not evidence that rent was paid. Also submitted were several pages of bank statements from Wells Fargo that have no probative value. They are devoid of proof that rental payments were remitted by the Boyajians to the Trust.

In sum, the court finds nothing in the record to support a finding that the Boyajians paid rent

for their use of the property. Assuming, however, that rent was dutifully paid, the narrative that the family uses only three bedrooms and a common area, thereby supporting a bargain basement rent of \$1,500.00 on such a property, is simply not credible.

II. Conclusions of Law

N.J.S.A. 2A:18-61.1 to -61.12, promulgated in 1974 and known as the Anti-Eviction Act, protects residential tenants and their assigns from eviction or non-renewal of the lease by a landlord except for good cause. N.J.S.A. 2A:18-61.3. Good cause includes the tenant's failure to abide by the lease terms, such as non-payment of rent, disorderly conduct, or willful destruction of the premises. N.J.S.A. 2A:18-61.1. The Act, however, exempts property

which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit.

Ibid.

The New Jersey Legislature amended the Anti-Eviction Act in 1986, in part expanding the landlord's prohibited conduct set forth in N.J.S.A. 2A:18-61.3 to "the owner's or landlord's successor in ownership or possession" by adding subsection b. See N.J.S.A. 2A:18-61.3b. In Chase Manhattan Bank v. Josephson, 135 N.J. 209, 225-26 (1994), our Supreme Court held the plain language of this amendment, viewed in tandem with the Act's "overall purpose of protecting blameless tenants from eviction", extends to foreclosing mortgagees and purchasers at foreclosure sales.

Here, the property is held in trust by Mr. Boyajian. The beneficiaries of the trust, according to the Trust Agreement, are the issue of Mr. Boyajian. If no issue remain at the time of

termination of the trust, then Mr. Boyajian is beneficiary.³ As the Trust has not been terminated, Mr. Boyajian and his issue are all potential beneficiaries. As such, they are exempt from protection under the Act.

In addition to the above parties being ineligible for protection under the “trust” provision of N.J.S.A. 2A:18-61.1, the lease agreement itself cannot withstand the scrutiny set forth in Security Pacific Nat. Bank v. Masterson, 283 N.J. Super. 462, 469-70 (Ch. Div. 1994). In that case, which was decided several months after Chase Manhattan Bank v. Josephson, supra, 135 N.J. 209, the court held that “a person who enters into a lease agreement in other than an arms length transaction does not qualify as ‘blameless’ and will not be afforded shelter under the [Act].” Id. at 469. The Masterson court held that when evaluating the validity of a lease in the foreclosure context, “the court’s determination must be informed by all of the principles of reason which imbue its judgment in its fact finding capacity.” Ibid. In short, critical factors in such an analysis include “the relationship of the parties to the lease, whether the rental payments called for in the lease represent the fair market value of the property, and the length of the lease.” Ibid.

In declaring the Masterson lease a sham, the court relied on all three indicia. First, the lease was entered into by parents and their children,⁴ and on that basis alone was subject to close inspection. Id. at 469-70 (citing Johnson v. Lentini, 66 N.J. Super. 398 (Ch. Div. 1961); Coles v. Osback, 22 N.J. Super. 358, 364 (App. Div. 1952)). In fact, Mr. Masterson negotiated the lease with himself under the pretext of a power of attorney. Id. at 469. In the matter at bar, Mr.

³ The Trust Agreement provides that the Trust “shall be distributed to the issue of the Grantor’s [Araxie Boyadjian] son, Jack H. Boyajian, per stirpes, and if Jack H. Boyajian leaves no issue, then to the Grantor’s issue per stirpes.”

⁴ The court found that although Joseph Masterson, the father, claimed to have signed his daughters’ names on the lease without their knowledge, the below market rental payments and long lease term indicated a “sweetheart” deal not protected by the Act. Masterson, supra, 283 N.J. Super. at 470.

Boyajian negotiated the lease with himself as both trustee and tenant so that his family could remain in the family home. Next, the rent in the Masterson lease was \$500.00 per month, while the monthly carrying costs of the property were more than \$2000.00. Id. at 466. Here, the rent is calculated to be \$1,500.00 per month while comparable properties garner rents between \$7,000.00 and \$7,500.00 monthly. The property taxes alone in the Boyajian property are approximately \$2400.00 per month. Finally, the Masterson lease offered a ten-year lease with two ten-year renewal periods. Ibid. In the instant matter, the Boyajian lease is for a six-year term, which the court notes is much longer than the typical New Jersey lease of one to two years. In addition, the court notes that the Trust Agreement permits the income of the Trust, which would include any rent paid, to be turned over to Mr. Boyajian's children at his sole discretion. It is evident that the lease is anything but arms length and overall, serves to enrich the Boyajians.⁵

In sum, the record in this matter is crystal clear. The court concludes that the lease in question was designed to frustrate the mortgagee's efforts to resort to its collateral and in all respects is a sham. As such, the occupants of the property are not protected by the Anti-Eviction Act.

Based on the foregoing, plaintiff's motion is granted and the Boyajians' cross-motion is denied in its entirety. The eviction will be rescheduled in order to afford the cross-movants time to vacate the premises. An Order accompanies this decision.

⁵ The Boyajians rely on an unpublished case in support of their claim that the subject lease is valid. While an unpublished case has no precedential value, the court notes there were questions of fact that warranted remand to the trial court.