184 WINDSOR AVENUE, LLC v. STATE, No. CV 07-4029956-S (Feb. 5, 2009)

184 WINDSOR AVENUE, LLC v. STATE OF CONNECTICUT.
2009 Ct. Sup. 2806
No. CV 07-4029956-SConnecticut Superior Court Judicial District of Hartford at Hartford
February 5, 2009

[EDITOR'S NOTE: This case is unpublished as indicated by the issuing court.]
MEMORANDUM OF DECISION
HALE, JTR.

This is an action by a landlord against a former lessee for unpaid rent claimed due because of the hold-over of a sub-lessee who refused to vacate the premises formerly covered by a lease. The plaintiff is 184 Windsor Avenue, LLC which is the successor in interest to 184 Windsor Avenue Limited Partnership. The plaintiff and the plaintiff's successor in interest will be referred to as the "landlord." The defendant is the State of Connecticut, agency charged with leasing properties, Department of Public Works "DPW" or "State."

On or about May 20, 1998 the parties, the landlord and the state, signed a five-year lease for premises denominated suite B "for use by the Board of Education and Services for the Blind, "BESB," a state agency, and Connecticut Radio Information System, Inc., "CRIS," an IRS 501(c)(3) a charitable corporation. CRIS is not a state agency.

The total space covered by the lease was 43,464 square feet of which 3,100 square feet were occupied by CRIS. CRIS was not a party to the lease and paid no rent. The occupancy by CRIS was fully recognized by the landlord. Under the terms of the

lease, the landlord was required to furnish during the term of the lease electricity for the entire premises including that occupied by CRIS. Pursuant to paragraph fourteen of the lease if at the expiration or termination of the lease term, including any applicable extension periods contained therein, the leasee held over for any reason, the tenancy of the lessee thereafter operated and was construed to be a tenancy from month to month at the same base rate.

On February 23, 2004 the state gave notice that it was going to cancel its tenancy at which time the state was occupying the premises on a month to month holdover term and that it would vacate the premises as of March 20, 2004. The 3,100 square feet of suite B occupied by CRIS has a separate entrance, separate alarm system and a separate electrical meter. On March 20, 2004 the state vacated the portion of the premises that was not occupied by CRIS radio. The state told CRIS radio that it CT Page 2807 would have to leave the premises. However the premises continued to be occupied by CRIS radio.

The landlord negotiated a lease with the city of Hartford for the benefit of The Pathway Magnet School. Although it began work in July of 2004 no rent was paid until occupancy of the school on September 4, 2004. This lease covered the premises formerly occupied by BESB. In July of 2005 the landlord entered into a lease agreement with CRIS radio who continued to occupy the portion of the premises that it had under the state lease.

The landlord claims a total of $204,151.33 for rent unpaid by the state from March 20, 2004 through September 3, 2004. The landlord claims that the state tendered a pro rata payment for the month of March 2004 in the amount of $23,387.80. However, CRIS radio remained in the space during the full month of March 2004 so the landlord claims an additional $13,938.80 for the month of March. The landlord claims that CRIS radio remained in the space during the five-month period from April

2004 to August 2004 and therefore claims five months of full rent for an additional claim of $186,633. The monthly rent is $37,306.60. In addition to the $180,533 the landlord claims that CRIS remained in the space for three days in September of 2004 which equals the sum of $3,679.53.

The landlord received permission under § 4-160(a) of the general statutes to bring this action and therefore no claim of sovereign immunity is involved.

The original lease was in two parcels, suite A and suite B. Suite B was occupied by the BESB and suite A was occupied partially by BESB and partially by CRIS.

On or about August 5, 2003 the DPW advertised an invitation to submit a lease proposal (invitation) to lease a total of 42,500 net useable square feet which was to include 3,100 square feet for CRIS. The total space was to be used for BESB administrative offices. On or about August 19, 2003 the landlord submitted a response to the invitation which included the CRIS space which was not accepted.

On February 26, 2004, three days after the termination letter, Mr. Wayne Mulligan, Chairman of the Board of CRIS, informed the Attorney General that he was in contact with the landlord and that "they have agreed to work with us on a transition that is reasonable and fair as we explore new facilities for the CRIS operation." Mr. Shane Mallory, administrator for leasing and property transfer for the DPW, testified CT Page 2808 that at the February 27, 2004 meeting Mr. Mulligan indicated that CRIS radio had made its own arrangement with the landlord to stay in the space it occupied. In his affidavit dated May 12, 2004 Mr. Mulligan stated "I know from my conversation with the property manager of 184 Windsor Avenue that the company wants us to stay at our facility and would be willing to work with us in any feasible way." On March 16, 2004 the landlord instituted a temporary restraining order, TRO, action against the State "to wholly and absolutely

desist and refrain from ordering . . . CRIS to vacate the [landlord's] premises until such time as a court has conducted a hearing into the propriety and legality of the commissioners order to . . . CRIS radio to vacate the premises." In a letter dated March 24, 2004 Mallory advised Mr. LiPuma, the landlord's property manager, that since the tenancy was terminated on March 20, 2004 "the rent has ceased as of that date." In further correspondence between Mr. Mallory and Mr. LiPuma regarding certain missing property and certain repairs no mention was ever made as to the absence of rent. In a letter dated November 5, 2004 Mr. LiPuma wrote to Mr. Mulligan stating that they were sensitive to CRIS's plight and to the fact that CRIS has remained for seven months with no rent but that since the landlord had paid all the operating expenses for CRIS they now felt that it was necessary to come to some conclusion of the tenancy of CRIS during all that period." This letter was sent to Governor Rell, Lieutenant Governor Sullivan, Secretary of State Bysiewicz, Attorney General Blumenthal, the Commissioner of Public Works, the Secretary of the Office of Policy of Management and the CRIS Board of Directors and CRIS listeners.

It should be noted that Mr. LiPuma was not called as a witness to rebut the testimony of Mr. Mallory and Mr. Mulligan.

The landlord filed a claim at the office of the claims commissioner on March 7, 2005 seeking rent allegedly due since March 20, 2004. On March 19, 2005 the landlord served a notice to quit on CRIS and on March 21, 2005 the landlord served a notice to quit on the State in reference to suite B.

The landlord's legal position is set forth in the following quotation which it takes from a New York case "the law is clear that upon the termination of a lease, it is the obligation of the tenant to remove the under tenant. It is well settled that a wrongful holding over by a subtenant is to be deemed the same as a wrongful holding over of the tenant sublessor . . . a covenant [to surrender the premises at the

termination of the lease] requires delivery of possession of the premises at the end of the term without the subtenant in possession, even though the landlord consented to the sublease . . ., and even though the subtenant holds over without the tenant's authority and CT Page 2809 against his wishes . . ." Stahl Associates Co. v. Mapes, 400 NYS 2d 12, 14-15 (App. div. 1985). They also site Sullivan v. George Ringler Co., 69 NYS 38 (App. div. 1901) and 49 Am. Jur.2d landlord and tenant § 273 (2006).

No attempt was made by the State to evict CRIS from its occupancy. The landlord did not commence its summary process action until April 13, 2005 but subsequently withdrew the same just prior to the entering into a lease with CRIS.

The position of the State is "where a landlord enters into an arrangement with a party, even if prior to that point there was no privity between the two, a new tenancy is established." Citing Carrano v. Shoor, 118 Conn. 86, 97 (1934).

In the opinion of this Court the liability of the state for rent of the entire 43,464 square feet ended on March 20, 2004. Almost immediately, or at least very shortly after receiving notice from the State that it was to vacate the premises by March 20, 2004, CRIS entered into a relationship with the landlord which, if not a formal tenancy, at least could be termed a tenancy in sufferance. The actions of the landlord in first attempting to negotiate another lease with the State and then its actions against the State on behalf of CRIS and later entering into negotiations for a lease with Pathway School strongly indicate that the landlord accepted the termination of the lease as to the entire 43,464 feet. As indicated by the State "absent the landlord/CRIS radio connection, had the State simply vacated the premises, left CRIS radio in possession, and then ignored the landlord's demands for rent or for the ejectment of CRIS radio, the State would have some liability (not however, for the total rent but tenant in sufferance, it would be for the reasonable use and occupancy).

Stahl Associates v. Mapes, 111 A.2d 626, 629, 490 Nys.2d 12 (App.div. 1st dept. 1985). No such action was taken by the landlord.

In the opinion of this Court the post-termination conduct of the landlord was sufficient to estop him from asserting a claim against the State. The landlord was working with CRIS to force the State to stay. The landlord and "CRIS listeners" were actively politicking to get a new suite A lease that would include the CRIS radio. The landlord and CRIS were working together to get the Court to order that CRIS stay and the landlord was affirmatively allowing CRIS to stay. The landlord was seeking to vindicate the alleged rights of CRIS to remain undisturbed at Windsor Avenue. In the meantime no attempt was made by the landlord to seek rent for the property. Clearly a new tenancy was created between the landlord and CRIS which cutoff any liability of the State. CT Page 2810

Judgment may enter for defendant, the State of Connecticut.

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