5/12/70

Memorandum 70-57

Subject: New Topic - Disposition of Abandoned Property in Lease Termination Cases

A troublesome problem in California is the disposition of property remaining on leased premises when the lease is terminated. Exhibit I is a copy of a recent opinion concerning this problem. The court struggles with the existing law, reaches its conclusions with "some misgivings," and comments: "Future Legislatures will undoubtedly grapple further with this problem and hopefully will make the legislative intent of future amendments clear."

Related to the same general subject is Exhibit II attached--a letter from Ronald P. Denitz, Assistant General Counsel of Tishman Realty & Construction Co., indicating that the existing law is confused and unsatisfactory insofar as it relates to the rights and obligations of the landlord concerning disposition of personal property of an office building tenant when the tenant has breached the lease (and especially when the tenant abandons the premises, leaving personal property behind).

In addition, lawyers have advised me orally that lawyers--possibly OEO lawyers--representing tenants have advised the tenants to leave some worthless property on the premises just to create a nuisance for the lessor. The technique is so effective that lawyers are advising lessors to not use the unlawful detainer procedures but instead to pay the lessee who is in default on his lease a hundred dollars or more to vacate the premises without creating any difficulties.

The staff suggests that this general area of the law is in need of study. We believe that the Commission should request specific authority

to study this area of the law from the 1971 Legislature rather than relying on our existing general authority to study whether the law "relating to the rights and duties attendant upon termination or abandonment of a lease should be revised." Before undertaking the study suggested by the staff, the staff believes that it would be desirable to obtain specific approval for the study of the topic so that the Legislature can determine whether it wishes to study the topic itself.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Appellate Department, Superior Court, Los Angeles

[Civ. No. 12389. Feb. 3, 1970.]

PATRICIA A. DOBNER, Plaintiff and Respondent, v. CAMILLA BORRINI, Defendant and Appellant.

SUMMARY

The trial court entered an order granting a claim of exemption to a tenant dispossessed through unlawful detainer proceedings. (Municipal Court of the Los Angeles Judicial District of Los Angeles County, Alan G. Campbell, J.)

The appellate department of the superior court affirmed the judgment of the trial court. The question on appeal involved construction of the provisions of Code Civ. Proc., § 1174, relating to disposition of a dispossessed tenants's property remaining on the premises. The court held that such provisions must be construed in harmony with the exemption statutes (Code Civ. Proc., § 690 et seq.), so that, as to proceeds of exempt property sold after the mandatory 30-day storage period, the landlord was entitled only to the costs of protecting and storing the property, but that the proceeds of other property might also be applied to the landlord's original judgment and costs. It was further held that the landlord could not enhance his claim for storage of exempt property by arbitrarily holding it beyond the statutory 30-day period. (Opinion by Whyte, P. J., with Vasey, J., concurring. Separate dissenting opinion by Wong, J.)

HEADNOTES

Classified to McKinney's Digest

(1) **Statutes § 187 — Construction and Interpretation — Construction With Reference to Other Laws.**—It is the duty of a court to construe statutes together so as to harmonize them if possible; amendment or repeal by implication is not favored.

(2) **Landlord and Tenant § 276—Unlawful Detainer—Property of Dispossessed Tenant.**—The provisions of Code Civ. Proc., § 1174, relating to storage by the landlord for 30 days of property remaining in demised premises after the tenant is dispossessed through unlawful detainer proceedings and for distribution of proceeds of sale of the property, must be construed in harmony with Code Civ. Proc., § 690 et seq., relating to exempt property; thus the landlord is entitled to be reimbursed for the cost of such mandatory holding and storage out of the property held, exempt or nonexempt, and may sell the property after the 30-day period to recoup his costs in storing and selling the property; the tenant is entitled to possession of exempt property at any time by paying the costs which have then been incurred by the landlord in protecting and storing the property; the landlord may hold and by proper action apply to his original judgment and costs any nonexempt property left behind by the tenant; but, insofar as exempt property is concerned, the landlord cannot run up his claim by arbitrarily holding the property beyond the 30-day period, and he is only entitled to reimbursement for that period plus the reasonable time necessary to effect a sale.

[See Cal.Jur.2d, Landlord and Tenant, §§ 381, 382.]

(3) **Landlord and Tenant § 305(1)—Unlawful Detainer—Appeal—Review.**—Affirmance of a municipal court order granting claim of exemption was required, where, although reimbursement allowed a landlord under Code Civ. Proc., § 1174, for holding and storage of the property in question may have gone beyond the mandatory 30-day period provided by the statute, the record did not so show; an appellant must furnish a record which demonstrates error, and one which only shows that error may or may not have occurred is insufficient to support a reversal.

COUNSEL

Perez & Ferr and Richard A. Weinstock for Defendant and Appellant.

Patricia A. Dobner, in pro. per., for Plaintiff and Respondent.

OPINION

WHYTE, P. J.—This case involves the troublesome problem of what should be done with property remaining in the demised premises when the tenant is dispossessed through unlawful detainer proceedings.

Prior to 1967, upon a judgment of restitution being issued, the enforcing officer served the writ on the tenant who had five days to vacate and if he did not do so then the enforcing officer simply put the property out on the street or sidewalk. (Code Civ. Proc., § 1174.) This often resulted in the loss of whatever remaining property the unfortunate tenant had through the action of the elements.

Faced with this picture of deprivation, the Legislature in 1967 amended section 1174 to require the county to store the property for 30 days subject to redemption by the tenant upon "payment of reasonable costs incurred by the enforcing officers and in providing such storage and the judgment rendered in favor of the plaintiff, including costs." The costs of moving and storage were to be reimbursed to the county and the judgment and costs of procuring the same were to be reimbursed to the plaintiff.

Strictly construed, this amendment could be interpreted as repealing by implication section 690 et seq. of the Code of Civil Procedure relating to exempt properties. (1) However, it is the duty of the court to construe statutes together so as to harmonize them if possible. Amendment or repeal by implication is not favored. (*People* v. *Derby* (1960) 177 Cal. App.2d 626 [2 Cal.Rptr. 401].) We must give effect to both section 1174 and section 690 et seq. if possible.

Insofar as section 1174 required storage of property by the county for 30 days, it was clearly for the benefit of the tenant. The benefit is the same whether the property is of a kind which is exempt under section 690 et seq. or whether it is non-exempt property. The identical public interest which justifies granting the exemption in the first place justifies the protection of the property so exempted from unnecessary deterioration. Insofar as the statute required payment of the judgment and costs out of the porperty stored, it is for the benefit of the landlord. The landlord had no proper claim to reach exempt property for this purpose.

As section 1174 was amended in 1967, it seems clear that it can be reconciled with section 690 et seq. by allowing the county, under section 1174, to require that, upon redemption of any property exempt or non-exempt, it be reimbursed for the cost of storing and protecting said property while allowing the tenant to claim his exemption against any attempt to satisfy the original judgment from such property.

But in 1968, the Legislature again amended section 1174. Doubt had been expressed as to the constitutionality of the requirement that the county store the property on the ground that such provision constituted a gift of public funds in contravention of article XIII section 25 (formerly art. IV § 31). At least one county counsel had advised levying officers in his county not to store property under section 1174 for this reason.

The 1968 amendment shifted to the plaintiff landlord the duty of storing the property. The reimbursement provisions were not changed except to provide payment of the expenses of storage to the plaintiff rather than the county. Nor do we believe this altered the proper construction of the statute in relation to section 690 et seq. To require any landlord, large or small, to stand the expense of storage himself would deprive him of his property without due process. Many a small landlord may be dependent almost solely upon his rental for his livelihood. To allow the tenant to require the landlord to protect his property for 30 days and then come along and say, "Thank you very much but that property is exempt so I'll take it now and you may stand the storage bill," would work an unreasonable hardship which the Legislature could hardly have intended. Nor would this hardship be materially lessened by giving the plaintiff, who already has one uncollected judgment for rent, the right to recover another for storage.

Future Legislatures will undoubtedly grapple further with this problem and hopefully will make the legislative intent of future amendments clear. (2) But we must construe the statutes as they now exist and, not without some misgivings, have reached these conclusions:

(1) Under Code of Civil Procedure section 1174, the plaintiff is under mandatory duty to store property left on the premises for 30 days.

(2) Plaintiff is entitled to be reimbursed for the cost of such mandatory holding and storage out of the property held, exempt or non-exempt, and may sell said property after said 30 days to recoup his costs in storing and selling said property.

(3) The tenant is entitled to possession of property exempt from execution under Code of Civil Procedure section 690 et seq. at any time by paying the costs which have then been incurred by the plaintiff landlord in protecting and storing said property.

(4) The landlord may hold and by proper action apply to his original judgment and costs any non-exempt property not removed from the premises by the tenant upon his vacating the property.

(5) Insofar as exempt property is concerned, the landlord cannot run up his claim by arbitrarily holding the property beyond the 30-day period

and is only entitled to reimbursement for that period plus the reasonable time necessary to effect a sale.

(3) Applying the foregoing rules, the order of the trial court is affirmed. While we may suspect that the amount of reimbursement here allowed goes beyond the mandatory period, the record does not so show. It is the duty of appellant to furnish a record which demonstrates error. One which only shows that error may or may not have occurred is insufficient to support a reversal. (*People* v. *Clifton* (1969) [a]270 Cal.App.2d 860 [76 Cal.Rptr. 193].)

The order granting claim of exemption is affirmed. Respondent to recover her costs on appeal.

Vasey, J., concurred.

WONG, J.—I dissent.

The question presented in this appeal is whether or not the Legislature in enacting Code of Civil Procedure section 1174 intended to affect the exempt properties provisions of Code of Civil Procedure sections 690 and following. It has not done so expressly, and I am of the opinion that it did not intend to do so by implication.

The last paragraph of section 1174 contains the following language: "All money realized from the sale of such personal property shall be used to pay the costs of the plaintiff in storing and selling such property, and any balance thereof shall be applied in payment of plaintiff's judgment, including costs."

If section 1174 is construed to cover property exempt by section 690 et seq., then such property can be sold to satisfy the plaintiff's judgment, including costs. To permit exempt property to be used to satisfy a judgment would be contrary to long established public policy. As early as 1905, our Supreme Court stated: "Statutes exempting property from execution are enacted on the ground of public policy for the benevolent purpose of saving debtors and their families from want by reason of misforture or improvidence. The general rule now is to construe such statutes liberally, so as to carry out the intention of the legislature, and the humane purpose, designated by the lawmakers." (*Holmes* v. *Marshall* (1905) 145 Cal. 777, 778-779 [79 P. 534, 104 Am.St.Rep. 86, 2 Ann.Cas. 88, 69 L.R.A. 67].)

In *Los Angeles Finance Co.* v. *Flores* (1952) 110 Cal.App.2d Supp. 850, 854 [243 P.2d 139], our court stated: "It follows logically that this

[a]Advance Report Citation: 270 A.C.A. 947.

same policy requires a *strict* construction of any provisions which tend to limit the exemptions elsewhere in the statute extended to the debtor. In 25 Corpus Juris 10 (par. 8), the rule is thus stated: 'conversely to the rule of liberal construction of the grant of an exemption, provisions which limit or take away the exemption are strictly construed, whether in provisos and exceptions or in amending statutes.' "

I would reverse the judgment.

SINCE 1898 Memo 70-57 EXHIBIT II (213) 385-8

Tishman Realty & Construction Co., Inc.

WEST COAST HEADQUARTERS

3460 WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA 90005

February 19, 1970

Mr. John H. DeMoully,
Executive Secretary
California Law Revision Commission
Stanford University
Stanford, California

Re: California Law Revision Commission -
Recommendation on Leases

Dear John:

Now that Assembly Bill No. 171 has cleared its first hurdle, it is appropriate that I suggest to you an additional matter for possible study by the Commission in the field of leasing.

A great deal of confusion exists with reference to the rights and obligations of the landlord concerning disposition of personal property of an office building tenant when the tenant has breached the lease (and especially when the tenant abandons the premises, leaving such personal property behind). Although Civil Code Section 1861a gives the keeper of an unfurnished apartment house a lien on the tenant's personal property therein, and Section 1862 gives a similar type of lien to the keeper of a furnished apartment house when such personalty remains unclaimed for six months, an office building landlord frequently hesitates to run the risk of a conversion-claim by using self-help in the absence of lien-rights.

In addition to situations where an office-building landlord's lien might be of significant value, Landlords should additionally be protected from conversion-actions where all the landlord wants to do is to clear the rooms of tenant's personal property in order to re-let the premises; under the present law we hesitate to even pack and store tenant's papers (and, often, junk) for fear of being accused of theft or conversion, a fortiori a tenant's valuable furniture and carpets and drapes.

At the present time it appears that an action at law coupled with an attachment and/or execution levy is our only safe remedy, although the same is obviously the wrong way to merely "clear the decks" of what appears to be worthless trash. Such a cluttering of the courts is, additionally, of a negative social value.

We would appreciate the possibility of the Commission studying the matter and would feel honored to set with the Commission on hearings of the matter.

Sincerely,

TISHMAN REALTY & CONSTRUCTION CO., INC.

By _____
Ronald P. Denitz
Assistant General Counsel

RPD:ere