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Carrano v. Castro  
 N.Y.Sup.App.Term,2006.

Supreme Court, Appellate Term, New York.  
 2nd and 11th Judicial Districts.  
 James CARRANO, Respondent,

v.

Jose CASTRO and JuanitaCastro, Appellants.  
 March 27, 2006.

**Background:** Landlord brought holdover proceeding against residential tenants. After dismissing tenants' affirmative defenses asserting that they had rights of rent-stabilized tenants, the Civil Court of the City of New York, Kings County, Anthony J. [Fiorella](#), J., entered final judgment awarding possession to landlord. Tenants appealed.

**Holding:** The Supreme Court, Appellate Term, held that landlord was not within his rights in refusing to renew tenants' lease.

Reversed.  
 West Headnotes

**[1] Landlord and Tenant 233 53(2)**

**233** Landlord and Tenant  
     **233III** Landlord's Title and Reversion  
         **233III(A)** Rights and Powers of Landlord  
             **233k53** Transfer of Reversion  
                 **233k53(2)** k. Rights and Liabilities of Grantee or Assignee. [Most Cited Cases](#)  
 Stipulation between residential tenants and landlord's predecessors, which provided that tenants would be deemed to have rights similar to those of rent-stabilized tenants, including renewal rights, was binding upon landlord, given that nothing in the law precluded tenants and prior landlords from making such agreement, that renewal covenants ran with the land and were binding on successors, and that parties to stipulation clearly intended for its terms, other than waiver of right to maintain owner-use proceeding, to be binding on successor landlords, and therefore landlord was not within his rights in refusing to renew tenants' lease.

**[2] Landlord and Tenant 233 53(2)**

**233** Landlord and Tenant  
     **233III** Landlord's Title and Reversion  
         **233III(A)** Rights and Powers of Landlord  
             **233k53** Transfer of Reversion  
                 **233k53(2)** k. Rights and Liabilities of Grantee or Assignee. [Most Cited Cases](#)  
 Lease renewal covenants run with the land and bind successors even though original agreement did not provide that it would be binding on or inure to benefit of assigns of original parties. [McKinney's Real Property Law § 257](#).

**[3] Landlord and Tenant 233 53(2)**

**233** Landlord and Tenant  
     **233III** Landlord's Title and Reversion  
         **233III(A)** Rights and Powers of Landlord  
             **233k53** Transfer of Reversion  
                 **233k53(2)** k. Rights and Liabilities of Grantee or Assignee. [Most Cited Cases](#)  
 Possession of premises constituted constructive notice to purchaser of rights of possessor, and therefore landlord was charged with notice of terms of stipulation between residential tenants and landlord's predecessors, which provided that tenants would be deemed to have rights similar to those of rent-stabilized tenants, including renewal rights.

**\*\*377** Himmelstein, McConnell, Gribben, Donoghue & Joseph, New York City (David Hershey-Webb of counsel), for appellants.  
 Carb, Luria, Cook & Kufeld, LLP, New York City ([Mitchell S. Zingman](#) of counsel), for respondent.

Present: [PESCE](#), P.J., WESTON PATTERSON and [RIOS](#), JJ.

Appeal from orders of the Civil Court of the City of New York, Kings County (Anthony J. Fiorella, J.), dated January 25, 2005, March 18, 2005 and April 25, 2005 and from a final judgment of said court, entered March 18, 2005. The order dated January 25, 2005, insofar as appealed from as limited by tenants' brief, dismissed tenants' affirmative defenses asserting that they have the rights of rent-stabilized tenants, and denied tenants' cross motion for summary judgment dismissing the petition. The order dated March 18, 2005 sua sponte directed the entry of a final judgment in favor of landlord. The

final judgment entered March 18, 2005 awarded possession to landlord. The order dated April 25, 2005, insofar as appealed from, upon in effect granting tenants' motion for reargument of the order dated January 25, 2005, adhered to that order.

\*6 Appeals from orders dated January 25, 2005 and March 18, 2005 dismissed.

Final judgment reversed without costs, orders dated January 25, 2005 and March 18, 2005 vacated, landlord's motion for summary judgment or, in the alternative, to strike tenants' affirmative defenses denied, tenants' cross motion for summary judgment granted and final judgment directed to be entered in favor of tenants dismissing the petition.

Appeal from order dated April 25, 2005 withdrawn.

In a prior holdover proceeding, landlord's predecessors alleged that tenants, \*\*378 who have been in possession of the subject premises since 1964 and who claimed to be rent controlled, were not rent controlled because the apartment had been owner-occupied for more than one year before tenants took possession. A trial resulted in a final judgment in favor of the prior landlords, but the final judgment was reversed by this court on appeal and a new trial ordered based on the insufficiency of the proof (*Castro v. Castro*, N.Y.L.J., Dec. 5, 1991 [App. Term, 2d & 11th Jud. Dists.]). In lieu of retrial, tenants and \*7 the prior landlords entered into a stipulation in which tenants consented to a final judgment in favor of landlord and, in return, were "deemed new rent stabilized tenants, entitled to all rights of the Rent Stabilization Law, including renewal leases." The stipulation also provided, inter alia, that the prior landlords would not seek to recover the apartment for their own use, but that this provision would not apply to a purchaser in good faith.

[1][2] In the instant holdover proceeding, landlord claims, and the court below agreed, that the stipulation is not binding on him because it was not made binding on successors. We disagree. Nothing in the law precluded tenants and the prior landlords from agreeing that tenants would be deemed to have rights similar to those of rent-stabilized tenants (see *546 W. 156 St. HDFC v. Smalls*, 8 Misc.3d 135(A), 2005 N.Y. Slip Op. 51207[U], 2005 WL 1798344 [App. Term, 1st Dept.] ), including expressly renewal rights. Contrary to landlord's contention, renewal covenants run with the land (*Fruhauf v. Bendheim*, 127 N.Y. 587, 28 N.E.

*417 [1891]; Bradley v. General Store Equip. Corp.*, 183 Misc. 199, 201, 51 N.Y.S.2d 420 [1944], *aff'd*, 268 App.Div. 852, 50 N.Y.S.2d 771 [1944]; 74A N.Y. Jur. 2d, Landlord and Tenant § 801) and bind successors "notwithstanding that the original agreement did not provide that it would be binding on or inure to the benefit of the assigns of the original parties" (*St. Regis Rest. Inc. v. Powers*, 219 App.Div. 321, 323, 219 N.Y.S. 684 [1927]; see *Real Property Law § 257*). Here, moreover, it is evident that the parties to the stipulation did intend for its terms, other than the waiver of the right to maintain an owner-use proceeding, to be binding on successor landlords.

[3] We note that landlord never disputed tenants' claim that he had actual notice of the stipulation prior to his purchase of the property. In any event, landlord is charged with notice of the stipulation's terms because "possession of the premises constitutes constructive notice to a purchaser of the rights of the possessor" (*52 Riverside Realty Corp. v. Ebenhart*, 119 A.D.2d 452, 453, 500 N.Y.S.2d 259 [1986] ). Thus, landlord was not within his rights in refusing to renew tenants' lease. Accordingly, the final judgment is reversed and final judgment directed to be entered in favor of tenants dismissing the petition.

The appeals from the orders dated January 25, 2005 and March 18, 2005 are dismissed because the orders were subsumed in the final judgment.

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