New York Law Journal

SERVING THE BENCH AND BAR SINCE 1888

NEW YORK, WEDNESDAY, AUGUST 6, 2008

LETTERS

To the Editor

Judges Should Review Default Judgments

In their July 30 article tracing the evolution of the erosion of the procedural protections formerly afforded to tenants, "A New Direction," Adam Leitman Bailey and Dov Treiman go to considerable lengths to excoriate those courageous judges who, in the 1980s, carefully reviewed the thousands of applications for default judgments filed by landlord's law firms. Let us not forget that this enhanced scrutiny often revealed petitions riddled with defects, fraudulent affidavits of service and false affidavits of investigation relating to the military status of the defaulting tenant.

The judges were rightly concerned that since these default judgments could result in the eviction of an entire family, thus contributing to the massive number of tenants who were rendered homeless or forced to live in shelters or overcrowded and substandard conditions, they should be carefully examined. The judges should be applauded for their effort to apply basic principles of due process and fairness to a court where these concepts were sorely lacking and where 90 percent of the litigants on one side—landlords, are represented by counsel and only 15 percent of tenants have attorneys. Until this imbalance is rectified Housing Court will never be a court where all litigants can obtain equal justice.

As to the authors' central proposition, conspicuously absent from their article is the Appellate Division, First Department ruling in *Riverside Syndicate Inc. v. Saltzman*, which may signal a reversal of the trend. In *Riverside*, the panel reversed the order of the appellate term, reinstated the order of the Housing Court and held that because the petitioner had not filed proof of service at least five days prior to the return date of a holdover petition (as required by §§735 and 733 of the Real Property Actions and Proceedings Law), the proceedings should have been dismissed. In doing so, the court stated:

"A summary proceeding is a special proceeding 'governed entirely by statute...and it is well established that there must be a strict compliance with the statutory requirements to give the court jurisdiction,' (*Berkley Assoc. Co. v. DiNolfi*, 122 AD2d 703, 705 (1986); *MSG Pomp Corp. v. Doe*, 185 AD2d 798 (1992)). Thus, the court should have granted respondents' motions to dismiss the petitions."

For those of us who represent tenants, the good old days may be back, at least in the First Department.

Samuel J. Himmelstein
New York, N.Y.

No Value in Displacing Low-Income Tenants

In their article, "A New Direction, More Decisions Favor Landlords Over Tenants," (NYLJ July 30, page 5) Adam Leitman Bailey and Dov Treiman state that the courts are "moving beyond procedure to the substance of the cases and judging the merits themselves in a vastly pro-landlord manner." Based upon a considerable amount of time spent in the hallways of any of the housing courts, it is apparent that most housing court cases are not judged "on the merits" at all but settled pursuant to stipulations negotiated between pro-se tenants and landlord attorneys. Such stipulations, between parties with vastly unequal bargaining power and understandings of the law, are now more difficult to vacate according to the authors. This situation cries out for legislative (and judicial) action and is all the more reason why tenants and tenant advocates must support the efforts to elect a Democratic State Senate this fall.

The authors also favorably note that "parties may not contract for rent stabilization" citing *HDFC v. Smalls*, 43 AD3d 7 (First Dept. 2007). In *Castro v. Carrano*, 44 A.D.3d 1038, 844 NYS 2d 435 (2007), however, the Appellate Division, Second Department found that an agreement "referring to the rent stabilization law" which provided the tenants "the same rights as those afforded tenants protected by the rent stabilization law" was enforceable. (I was proud to represent the elderly tenants who had resided in their home for 40 years.)

Messrs. Bailey and Treiman see the new movement toward eroding tenant protections as a "conservative" victory. If stable families and communities are "conservative" values, however, there is nothing "conservative" about facilitating the continuing displacement of low and moderate income tenants from their homes.

David Hershey-Webb
New York, N.Y.