

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, Ss.

No. 99-SP-2369

Hampden Division

Housing Court Department

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BANK UNITED,

Plaid-f

v.

GAIL VOGEL and PHILIP WHEELER,
Defendants

NATIONAL CENTER
RULINGS AND ORDER ON
CROSS MOTIONS FOR
SUMMARY JUDGMENT
ON POVERTY LAW

After hearing, and after review of the memoranda and other papers filed by the parties, the following rulings and order are to enter on the cross motions of the parties for summary judgment:

1. *Uncontested Facts.* The premises that are the subject of this action are located at 24 East School Street, West Springfield. The defendants-Gail Vogel (tenant) and her adult son, Philip Wheeler, who is disabled, have lived in the first-floor apartment in the premises for approximately ten years. At all material times, their tenancy has been under a Massachusetts Rental Voucher lease.

2. After the tenant's former landlord fell into arrears in his mortgage payments, the plaintiff, Bank United, foreclosed on his mortgage. At the foreclosure sale on March 5, 1999, Bank United acquired the premises.

3. By letter dated December 17, 1998, Bank United had written to the "Occupants" of the premises, notifying them of the impending foreclosure. The letter set forth Bank United's expectation that title to the premises would be transferred to the Secretary of Housing and

Urban Development after the foreclosure. The letter states that pursuant to HUD regulations, the tenant "will be permitted to remain as a tenant if you wish if, after inspection of the property, HUD determines that the following conditions are met." The two conditions stated included a determination that the tenants had been in occupancy for at least ninety days prior to the transfer of title, and that the premises were structurally sound, free from health and safety hazards, and habitable. The letter contained detailed information about the conditions of continued occupancy, and invited the tenant to apply for continued occupancy on forms provided. The tenant filled out the forms and returned them to the indicated address.

4. On or around February 17, 1999, the tenant received a letter on HUD letterhead from an organization identified only as "AMS, Inc. for HUD," notifying the tenant that her request to continue living in the property as a tenant after the transfer of ownership to HUD had been denied. A list of three reasons for denial was included, with the tenant being informed that "one or more" of those conditions were not met." The letter informs the tenant of her right to request reconsideration of that decision, and to appeal it. The tenant made a written appeal of this decision on February 19, 1999. After this appeal, various communications took place between the tenant's housing search worker at the New England Farmworkers Council and an employee of AMS, Inc. I infer that as part of these communications, AMS, Inc. requested documentation of the disability affecting the tenant's son, because on March 15, 1999 the tenant sent AMS, Inc. documentation of her son's condition and of her status as his guardian.

5. By form letter dated May 10, 1999 one Darlene Simpson, an "acquisition specialist" at an organization called "Citiwest," informed the tenant that her request to continue living in the property again had been denied. In distinction to the letter from AMS,

Inc., which had determined that “one or more” of specified conditions had not been met, a box was checked on the form letter from Citiwest informing the tenant that “none of the following [four] conditions was met.” Once again, the tenant was informed of her right to request reconsideration of, and to appeal, the decision.

6. By letter dated May 26, 1999, the tenant, through counsel, appealed the decision set forth in the May 10, 1999 letter from Citiwest. The stated grounds for the appeal were that a move would aggravate the permanent disabilities affecting the tenant, and that the procedures followed by HUD and its contractors were unlawful. This letter was followed by another letter from the tenant’s attorney dated June 16, 1999, again stating the tenant’s position that she was eligible for occupied conveyance under HUD regulations.

7. Around the time of the hearing on this motion, the parties reported to the court that Citiwest and/or AMS, Inc., had approved the tenant’s request for occupied conveyance status. It appears, however, that HUD has taken no action on the tenant’s request.

8. ***Additional Factual Issues.*** Despite the absence of a dispute regarding the above facts, the factual record is insufficiently developed to entitle either party to summary judgment at this stage in the proceedings. Insofar as I am able to determine, for example, Bank United has not provided a record explanation of the nature of the entities identified only as AMS, Inc. and Citiwest. No evidence has been offered as to the authority under which these entities purport to operate, or the legal basis for such authority in relation to 24 CFR § 203.68 1, which confers decision-making authority upon HUD Field Office Managers . In addition, Bank United has argued at length that the tenant does not qualify for occupied conveyance status, inter *alia*, on the basis that the disability affecting the tenant’s family is not a qualifying disability and was not documented in a sufficiently timely manner. The

tenant has sufficiently raised factual questions on these points to entitle her, at a minimum, to a hearing on the merits of those claims.

9. ***Preemption and Ripeness.*** Whatever the ultimate result may be on the merits of the tenant's claim for occupied conveyance status, it would be inappropriate for a state court to address those merits with the dispute in its present posture, for two reasons. First, the tenant has a strong argument that the HUD regulations governing occupied conveyances do, indeed, preempt the authority of state courts to adjudicate the entitlement of the parties to possession of the premises, at least until after the federal regulatory process has been completed. *See, e.g., Ayers v. Philadelphia Housing Authority, 908 F.2d 1184 (3d Cir. 1990)* (state statutes establishing procedures for evicting homeowners for failure to make mortgage payments preempted by HUD regulations governing homeowner eviction in Turnkey III housing).

10. Second, even if it were to be determined that principles of preemption do not operate to deprive this court of the authority to adjudicate this dispute at this time, the dispute is not ripe for judicial review. Both parties have reported to the court that the tenant's request for occupied conveyance status is still pending before HUD at this time. HUD has the responsibility for determining this question. 24 CFR § 203.677. Not only the proper balance between state and federal authority, but also the proper balance between courts and administrative agencies, cuts in favor of a determination that this matter should be continued until the administrative process has been completed. Only in this way can the potential be avoided for the manifestly unjust result of a state court possibly evicting a family suffering from a serious and well-documented disability when that family may have a right to continued occupancy as determined by the responsible federal agency.

11. Order. For the above reasons, an order is to enter: (1) denying the motions of both parties for summary judgment; and (2) continuing the case generally pending a decision by HUD on the tenant's pending administrative appeal. Both parties may have discovery permitted by the Uniform Summary Process Rules, on a schedule stipulated by the parties or established by the Clerk-Magistrate or his designee.

So entered this 27th day of October, 1999.

William H. Abrashkin

William H. Abrashkin
First Justice