

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

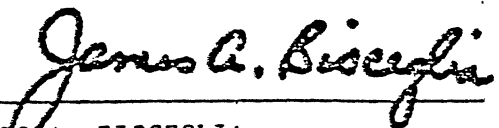
HOUSING COURT DEPARTMENT
WORCESTER COUNTY DIVISION
NO. 86-SP-1251

WHITTIER TERRACE ASSOC. *
*
*
VS. *
*
ROBERT ERESSY *
*

JUDGMENT AND NOTICE
OF ENTRY OF JUDGMENT

This action came on for hearing before the Court,
John G. Martin, presiding, and the issues having been
duly heard and findings having been duly rendered, it
is ORDERED and ADJUDGED under Rule 10 of the Uniform
Rules of Summary Process, that judgment enter for the
~~PLAINTIFF(S) / DEFENDANT(S)~~ for possession ~~XXXXXXXXXX~~
~~XX~~
~~XX~~

Accordingly, judgment enters at 10:00 A. M. this
NOVEMBER 25, 1986



JAMES A. BISCEGLIA
CLERK MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

WORCESTER, SS.

HOUSING COURT DEPARTMENT
WORCESTER COUNTY DIVISION
NO. 86-SP-1251

PLAINTIFF

WHITTIER TERR. ASSOC.

VS.

ROBERT ERESSY

DEFENDANT

FINDINGS OF FACT AND ORDER
FOR JUDGMENT

The Plaintiff has set forth a prima facie case for possession based on alleged violation of the lease.

The essential facts are not in dispute and may be summarized as follows:

On August 28, 1986 the Defendant went to the landlord's office on the general premises [1] and asked to see the bookkeeper who was not immediately available. The Defendant became loud and profane and was shown into the manager's office. The Defendant and the manager discussed the payment of interest on his security deposit. The Defendant became further upset and threw a card holder at the vicinity of the manager. The manager attempted to physically restrain the Defendant and in the ensuing struggle, the Defendant hit the manager with his hand, knocking off the manager's glasses. The police were called, but before they arrived, the landlord's maintenance superintendent

came to the assistance of the manager and restrained the Defendant [2] until the police removed him from the premises for a cooling off period.

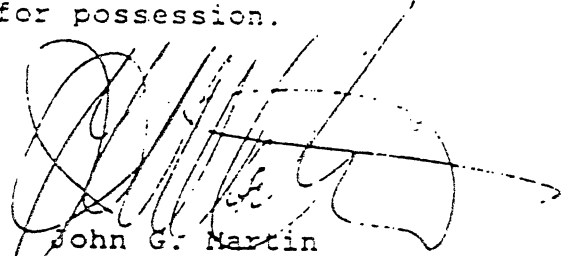
The Defendant has lived in the premises for about two years with a Section 8 lease and this is the first incident of violence. The Defendant is classified as a handicapped person in that he has cerebal palsy and a seizure disorder. He also has an emotional disorder. All conditions are chronic and the Defendant remains under active medical management with daily medications prescribed to permit him to cope with everyday living. The Court finds the Defendant to be intelligent and articulate and quite concerned with finding his "niche".

The Plaintiff contends the incident is violative of paragraphs F.2, F.3, and F.14 of the lease. The Court finds the altercation had only the most peripheral impact on "privacy, security and peaceful enjoyment" of other residents. Further, the Court cannot determine whether the chair was broken by the maintenance man or by the Defendant but there is no evidence that it was broken as the result of a wanton act which the Court finds is an unstated, but implied element in paragraph F.3. It is clear that the Defendant's actions on August 28 did amount to a "disturbance, private or public". The question is, however, whether this disturbance constitutes a substantial violation of the lease. It is a close question but in view of the Defendant's two year postive history, the Court will give him the benefit of the doubt and find that the incident, although serious, does not,

as an isolated occurrence, rise to the level of a substantial violation which would justify action.

Judgment for the Defendant for possession.

Date: November 24, 1986



John G. Martin
First Justice

cc: Eugene Rubin, Esq.
11 Norwich Street
Worcester, MA 01603

Judith Kaye, Atty.
Legal Services
332 Main Street
Worcester, MA 01608

JGM/dmt

1. The Defendant lives in separate building from that which houses the landlord's office but both are part of the same single complex.
 2. During this phase of the incident the Defendant had been seated in a chair which became damaged either through the efforts of the Defendant to get up or by the attempt of the maintenance superintendant to keep him in the chair.
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