

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 07-CV-1406

CLAUDIA TREADWELL, APPELLANT,

v.

JUDITH TEFFERA and ANDREW B. KERNS, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
Civil Division

(Hon. Melvin R. Wright, Trial Judge)

(Argued February 2, 2010

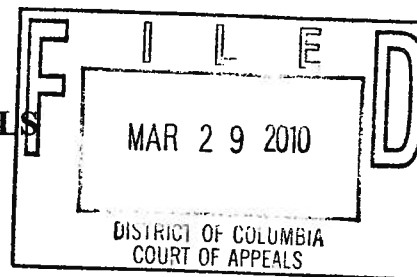
Decided March 29, 2010)

Before KRAMER and OBERLY, *Associate Judges*, and PRYOR, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This litigation stems from a disagreement which arose out of a failed attempt to sell a condominium unit. It involves the owner of the unit, appellee Andrew Kerns, a potential purchaser, appellant Claudia Treadwell, and a subsequent purchaser, appellee Judith Teffera. Appellant Treadwell filed a complaint in the trial court asserting multiple causes of action including breach of contract, specific performance, abuse of process, and a request for relief premised on the violation of appellant's rights under the Tenant Opportunity to Purchase Act ("TOPA"). D.C. Code § 42-3404.02 *et seq.* (2001). The trial court granted judgment for appellees on all counts. On appeal, Treadwell argues that she was entitled, pursuant to an assignment from her daughter, a tenant of the unit, to notice of the sales contract with Teffera and a right of first refusal. We affirm the trial court's rulings except for Treadwell's request for TOPA relief. We remand the case for further consideration regarding that issue.¹

¹ Appellant proceeded *pro se* in this appeal; neither Kerns nor Teffera filed a brief on appeal. Amicus Curiae, the Legal Aid Society of the District of Columbia, filed a brief in support of Treadwell's position. At oral argument, counsel for Amicus was the only individual who argued before the court.



I.

Appellee Andrew Kerns was the owner of a single-family studio condominium unit at 700 7th Street, S.W., Apartment 141, Washington, D.C. On July 27, 1998, Kerns entered into a written lease agreement with Tomara Bowleg to rent his unit. Around July 31, 2000, Kerns provided Bowleg with an offer of sale pursuant to TOPA. Kerns' offer of sale stated the sale price for the unit was \$54,500 and that Kerns had not yet accepted a third-party contract. The offer informed Bowleg that in addition to her rights in the offer of sale, she was entitled under TOPA to

a fifteen (15) day right of first refusal to match a third party contract, even if you do not submit a written statement of interest or if you reject this offer to negotiate. Therefore, if I accept a third party contract, I will send you a Right of First Refusal Notice and a copy of the sales contract.

In response to the offer of sale, Bowleg notified Kerns in a letter dated August 4, 2000:

Please be advised that in accordance with Section 45-1635 of the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, I am assigning my rights under this Offer of Sale to my mother, Claudia Treadwell. I understand that by doing this, she has all the rights and privileges afforded under the above referenced law.

On May 23, 2001, appellant Treadwell and Kerns entered into a written contract for the sale of the condominium unit. The contract provided for a purchase price of \$54,500 and a deposit of \$500. As to settlement, the contract stated:

Within 150 days from the date of final ratification of this contract, or as soon thereafter as a report on the title can be secured if promptly ordered, and survey obtained, if required, and loan processed, all if promptly applied for, Seller and Purchaser agree to make full settlement in accordance with the terms hereof.

Treadwell and Kerns did not effectuate a completion of the sale within 150 days for reasons

that were later disputed at trial.² On June 20, 2005, counsel for Kerns sent a letter to Treadwell terminating the sales contract. Citing the lapse of more than 150 days after ratification of the contract, the letter stated:

As a result of the failure of settlement to occur as required by the express terms of the Contract, this letter shall serve as formal notice that the Cont[r]act is hereby rescinded, terminated, and declared null and void. Pursuant to paragraphs 12(a) the deposit of \$500.00 is forfeited to the Seller. You will have no further liability.

The same day, Kerns signed a sales contract with a third party, appellee Judith Teffera, who owned another unit in the same building. The sales contract provided for the sale of the condominium unit to Teffera for a price of \$59,500. Kerns and Teffera completed the transaction on August 21, 2002. Neither Treadwell nor her daughter received notice of the third-party contract or a notice of a right of first refusal. Treadwell first learned of the sale when Teffera appeared at her door and told Treadwell that she was the new owner.

Soon after she became the unit's new owner, Teffera filed two actions for possession, one against Bowleg for nonpayment of rent, and one against Bowleg and Treadwell asserting that Teffera intended to occupy the unit personally. Both actions were tried together and resulted in a judgment of possession in favor of Teffera. Treadwell and Bowleg were evicted from the condominium on June 30, 2003. However, Teffera did not move into the unit; instead, she sold it to Ronald Montague and his daughter Rielle Montague for \$115,000 on September 24, 2003.

On February 21, 2003, Treadwell filed an action against Kerns and Teffera, and subsequently added the Montagues after they became the new owners of the property. Treadwell alleged four counts in her complaint: (1) a count requesting the court to declare

² Kerns alleged the parties did not go to settlement because Treadwell could not get financing. Treadwell testified that she and Kerns did not conclude the sale because there was a cloud over the title. On this issue, the court stated that "the Court is not able to determine, based on this record, what the cause of the failure of the settlement to go forward was. The Court can only merely conclude – and this was undisputed by both parties – that settlement did not occur." The court later stated that Treadwell had "failed to go to settlement pursuant to the contract," that Treadwell had "the burden of proving that she was ready, willing and able to go to settlement," and that she failed to meet that burden because of insufficient evidence that she had obtaining financing.

that Treadwell was entitled to notice of Teffera's third-party contract and a new offer of sale from Kerns, and that the contract between Kerns and Teffera was null and void, (2) a count for specific performance, requesting the court to order Kerns to perform their contract and proceed to settlement, (3) a count asserting breach of contract, alleging that Kerns breached their contract of sale and is liable to Treadwell for damages, and (4) a count asserting abuse of process, alleging that Teffera used the notice to vacate to willfully deprive Treadwell of her right to purchase the unit. Teffera, Kerns, and Treadwell filed cross-motions for summary judgment, which were denied.

The Montagues also moved for summary judgment, arguing that they were bona fide purchasers for value who had no notice of an outstanding claim against title. They asserted that a title search of the Recorder of Deeds for the District of Columbia did not reveal any recorded document that would indicate that Treadwell had a claim against the property, so specific performance was not an appropriate remedy even if Treadwell prevailed. The trial court granted the Montagues' summary judgment motion on July 3, 2007, and ordered that the matter proceed only as to Teffera and Kerns as defendants.

On October 23, 2007, the court delivered its findings of fact and conclusions of law from the bench, focusing on what it deemed to be the "core issue": "whether or not Ms. Treadwell is a tenant as defined by the statute." The court concluded that Treadwell was not a tenant, and therefore "had no independent right to purchase the unit from Mr. Kerns," and no right to notice of a third-party contract. The court did not address whether Treadwell possessed rights under TOPA pursuant to her assignment, nor whether Teffera had actual, constructive, or inquiry notice of Treadwell's assignment. In addition, the court found that Teffera made a prima facie showing of a good-faith intent to occupy the unit with her children, and that Treadwell failed to rebut that showing. The court entered judgment in favor of Teffera and Kerns on all counts. Treadwell appeals.

II.

On appeal, the primary questions directed to us arise from the assignment of rights by the tenant, Ms. Bowleg, to her mother, the appellant. Appellant thus contends that, pursuant to the assignment from her daughter, she was entitled, under TOPA, to a right of first refusal regarding any third-party contract.

TOPA provides tenants in the District of Columbia with "two distinct sets of rights" when an owner decides to sell the property. *Green v. Gibson*, 613 A.2d 361, 362 (D.C. 1992). First, the owner must "give the tenant an opportunity to purchase the accommodation at a price and terms which represent a bona fide offer of sale." D.C. Code § 42-3404.02 (a). Second, a tenant is entitled to a "right of refusal" for fifteen days after the owner has

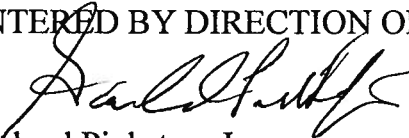
furnished the tenant with a contract to purchase by a third party. D.C. Code § 42-3404.08. In addition, “[s]ection 42-3403.6 provides, without limitation, that a tenant may assign or sell his or her rights ‘to any party, whether private or governmental.’” *Allman v. Snyder*, 888 A.2d 1161, 1167 (D.C. 2005).

Accordingly, where there is an assignment of rights by a tenant, as here, the assignee, “although not a tenant of the rental accommodation, effectively became one for purposes of the Act” *Id.* (quoting *Medrano v. Osterman*, 885 A.2d 310, 312 (D.C. 2005)). Notwithstanding the existence of a purported assignment in this case, the trial court addressed only whether Treadwell was a tenant of the condominium unit herself, and did not determine what rights accrued to appellant as an assignee. Questions surrounding the assignment of rights were central to Treadwell’s claim for TOPA relief, but were unresolved by the trial court.

Given the circumstances in this matter, we conclude that questions surrounding the request for TOPA relief remain pivotal but unresolved. We therefore affirm the judgments entered on all other counts in this litigation, except the prayer for TOPA relief. We thus remand that aspect of the case for further proceedings consistent with this opinion. Accordingly, it is

ORDERED and ADJUDGED that the judgment is hereby affirmed in part, reversed in part.

ENTERED BY DIRECTION OF THE COURT:


Garland Pinkston, Jr.
Clerk of the Court

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