Tenant's Acts Found No Basis For an Eviction

BY TOM PERROTTA

A DIVIDED appellate court has ruled that an Upper East Side tenant cannot be evicted on a nuisance theory despite her rancorous roommate, whose behavior resulted in three visits from police officers over five years.

Justice Tom

The decision will be published on Tuesday

The 3-2 ruling from the Appellate Division, First Department written by Justice Peter Tom, granted summary judgment to a 20-year tenant of a rent-stabilized apartment at 301 East 73rd Street.

It also touched off a debate among the justices about the possibility of setting a "chilling" legal precedent that could encourage nuisance evictions in a city where strife between landlords and tenants is common.

The tenant, Irene S. Aranovich, was served with a termination notice by her landlord in October 2000, a month after her roommate, Geoffrey Sanders, allegedly threatened the building's doorman with violence and directed profanity and racial slurs at him.

Mr. Sanders has allegedly been involved in two other altercations at the building. During one, in 1997, he allegedly went to the apartment of a sight-impaired tenant to complain about noise and harassed the tenant and threatened him physically. In 1995, Mr. Sanders allegedly was involved in an incident with the building's superintendent.

All three incidents led to police intervention and criminal complaints filed against Mr. Sanders. The eviction notice sent by Ms. Aranovich's landlord, Domen Holding Co., alleged that Ms. Aranovich and her brother George, a named lessee who does not live at the apartment, had "permitted a nuisance to exist by condoning a pattern of anti-social and outrageous conduct by [Mr.] Sanders."

Ms. Aranovich refused to leave by the date specified by Domen, which then sought a judgment against her. In November 2001, Supreme Court Justice Alice Schlesinger found that a nuisance was not established as a matter of law, and granted Ms. Aranovich's motion for summary judg-

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ment dismissing the complaint. On Tuesday, a divided panel of the First Department affirmed Justice Schlesinger's ruling.

"The necessary question before us is whether three instances, to the extent they are documented in the Notice of Termination, either quantitatively or qualitatively constitute nuisance warranting eviction of the tenant," wrote Justice Tom for the majority in *Domen Holding Co. v. Aranovich*, 903. "I conclude that as a matter of law they do not."

The judge noted several cases on the same topic, such as the First Department's 1947 ruling in *Metropolitan Life Insurance v. Moldoff*, 272 A.D. 1039, in which the court ruled that no nuisance was presented when a tenant, in a suicide attempt, allowed gas to escape into the kitchen.

In contrast, the judge cited several cases where a nuisance was present, including *Stratton Cooperative v. Fener*, 211 AD2d 559 (1995), where health and safety concerns arose from a tenant's chronic accumulation of newspapers and debris, and *Acorn Realty v. Torres*, 169 Misc. 2d 670, a 1996 ruling from the Appellate Term, First Department, that said well-documented, anti-social behavior by a tenant's children, including assaults on building staff, constituted a nuisance.

"The modern standard looks to whether the tenant's conduct interferes substantially with the comfort and safety of neighbors," Justice Tom wrote, citing another ruling by the Appellate Term, *301 East 69th Street Associates v. Eskin*, 156 Misc 2d 122 (1993).

Justice Tom said, however, that his "greater concern" in this ruling was the precedent the court might "inadvertently establish."

"Occasional arguments among tenants, and between tenants and building staff, are not uncommon and are all part of life in a crowded metropolis," Justice Tom wrote. "Against this backdrop, and the fact that this City continues to have a chronic shortage of affordable apartments, a ruling that three arguments over a five-year period can escalate into a basis for eviction will have a chilling effect on the tenants in this City."

Dissent Claims Contradiction

In a dissent, Justice David Friedman said the majority's attempt to "minimize" Mr. Sanders' conduct was contradicted by the record.

"In my view, the foregoing evidence raises a triable issue of fact as to whether [Mr.] Sanders' presence in the building has resulted in a recurring or continuing pattern of objectionable conduct threatening the comfort and safety of others in the building sufficient to constitute a nuisance," Justice Friedman wrote, citing *Frank v. Park Summit Realty Corp.*, 175 AD2d 33 (1991).

In *Frank*, the First Department granted a landlord summary judgment where a tenant's schizophrenic nephew, who lived with the tenant, was repeatedly seen nude on the premises, used profane language and threatened to assault other tenants. *Frank* was later modified by the Court of Appeals in 1991, but only as to the amount of rent arrears the tenant owed (79 NY2d 789).

Justice Friedman also said that the majority's concern about setting a bad precedent was "groundless."

"It seems to me that the only 'chilling effect' would be on behavior that plainly crosses the line of what residents should be required to tolerate among those living in the same building," the judge wrote. "The instances of such behavior alleged here are enough to establish a pattern of intolerable conduct supporting a reasonable inference that [Mr.] Sanders will pose a danger of similar outbursts from time to time, with the consequence of a constant risk of physical injury to others in the building, for as long as his residency continues."

Justices Angela M. Mazzarelli and Milton L. Williams concurred with Justice Tom. Justice Richard T. Andrias joined Justice Friedman in dissent.

Adele Bartlett of MFY Legal Services represented Ms. Aranovich. Ida Rae Greer of Greer & Associates represented Domen Holding Co.

Domen said in a statement it was "shocked and dismayed" by the ruling and would appeal to the Court of Appeals.