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special circumstances, such as the case when the premises are a department store, will justify a no-solicitation rule at any time on the company's property. However, they differ on whether it amounts to an unfair labor practice when an employer, taking advantage of special circumstances, gives a speech on company time without allowing the union equivalent opportunity to reply. The Sixth Circuit Court says the employer's right to speak is protected by Section 8(c), and is not limited because the employer has a solicitation rule. The Second Circuit Court says such conduct violates Section 8(a)(1) and is an interference with the right of employees to organize.

*Douglas H. Pendleton*

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#### LANDLORD AND TENANT—RIGHTS AND OBLIGATIONS OF AN OCCUPANT AFTER TERMINATION OF A LEASE BY LAW

Is it possible, as a matter of law, and in the absence of an agreement to do so, that a tenant who pays a prior landlord rent in advance may be required to pay a subsequent landlord for the same period of occupancy? What is the effect of a mortgage foreclosure on the interest of a "tenant" who has paid his rent in advance to the mortgagor?

These questions have recently been passed on in *United Security Corporation v. Suchman*.<sup>1</sup> The United Security Corporation foreclosed a mortgage on an apartment house and became owner by purchase at the foreclosure sale. Isadore Suchman was in possession of one of the apartments. He had been named party defendant in the foreclosure action but defaulted by failing to appear in his own defense. Although his rights under a lease granted by the former owner had been barred by judgment of foreclosure and sale, he remained in possession, refusing to pay rent from August 1, 1949 to June 30, 1950. Suchman defended his failure to pay rent to the corporation upon the ground that he had already paid the rent; he claimed, and it does not appear to have been disputed, that when he moved into the apartment in 1948, he paid the then landlord three years' rent in advance.

Subsequently, United Security Corporation, as landlord, brought a nonpayment summary proceeding to evict Suchman and obtain a personal judgment for rent under the New York Civil Practice Act, § 1411 subdivision 6, L. 1942, ch. 185. This statute affords a purchaser at a sale under judgment of foreclosure the remedy of summary proceedings to remove a person holding over who has been made a party to the foreclosure suit, and who has never attorned to the purchaser.<sup>2</sup>

The rule is that the relationship of landlord and tenant must be established to maintain summary proceedings.<sup>3</sup> Under the New York State Residential Law

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<sup>1</sup> *United Security Corporation v. Suchman*, 306 N.Y. 858, 119 N.E.2d 881 (1954).

<sup>2</sup> The purpose of § 985 of the New York Civil Practice Act is to provide a method whereby a purchaser at a foreclosure sale may acquire possession. *Holmes v. Gravenhorst*, 263 N.Y. 148, 188 N.E. 285 (1933). "Civil Practice Act Article 83 Summary Proceedings to Recover Possession of Real Property, § 1410: In either of the following cases, a tenant or lessee at will, or at sufferance, or for part of a year, or for one or more years, or real property, may be removed therefrom, as prescribed in this article. § 1411 subdivision 6: Where the property has been sold under judgment of foreclosure against him or a person under whom he claims, and a sale pursuant to the judgment has been completed, and the deed delivered pursuant to such sale has been exhibited to him."

<sup>3</sup> For summary proceedings to be brought the relationship of landlord and tenant must exist. *Dodin v. Dodin*, 32 Misc. 208, 65 N.Y.Supp. 851 (1900)

a tenant is defined by subdivision 7 of section 2 as "tenant, subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodation." Subdivision 1 of section 5 of the same act provides:

"So long as the tenant continues to pay rent to which the landlord is entitled, no tenant shall be removed from any housing accommodation with respect to which a maximum rent is in effect pursuant to this act . . . notwithstanding the fact that the tenant has no lease or that his lease, or other rental agreement has expired or otherwise terminated."

The Municipal Court of the City of New York, Borough of Manhattan, 5th Division, dismissed the petition on its merits. Plaintiff appealed. The Supreme Court, Appellate Term,<sup>4</sup> reversed on the basis that Suchman by virtue of his continued occupancy after the foreclosure judgment and sale, became a statutory tenant. This status justified the maintenance of a nonpayment summary proceeding by the corporation. Defendant appealed. The Supreme Court, Appellate Division,<sup>5</sup> affirmed the determination of the Appellate Term, and granted leave to appeal. The Court of Appeals reversed the order of Appellate Division and Appellate Term and affirmed the order of the Municipal Court, dismissing the petition.

The Court of Appeals, speaking through Judge Fuld, held that since defendant, though continuing in possession after the foreclosure sale, refused to pay rent, he was not a "tenant" within the State Residential Rent Law, and the summary proceeding would not lie. The traditional landlord and tenant relationship had been terminated by the foreclosure judgment and sale. That is, the emergency rent laws did not "abrogate" the rule "requiring landlord and tenant relationship to be shown to maintain summary proceedings." The court further states:

"Prior to the enactment of the emergency housing legislation, if the tenant remained in possession without making any new agreement with the new owner, the latter had but one remedy, namely, a writ of assistance or—after 1942 when subdivision 6 was added to section 1411 of the Civil Practice Act—its *substitute* (emphasis added) a holdover summary proceeding."<sup>6</sup>

It should be remembered that the State Residential Law subdivision 7 section 2 defines a tenant as a person "entitled to the possession or to the use or occupancy of any housing accommodation," and subdivision 1 section 5 provides: "So long as the tenant continue to pay rent . . ." Suchman did not pay rent but steadfastly refused to do so and was, therefore, not within the statute's definition of "tenant."<sup>7</sup> The Court of Appeals further held that there being no offer and acceptance, no attornment of occupant to owner, the relation of landlord and tenant did not exist here. The purchaser may still apply to the Supreme Court for a writ of assistance,<sup>8</sup> or to the Municipal Court for a warrant of eviction.<sup>9</sup> The court

<sup>4</sup> *United Security Corporation v. Suchman*, 113 N.Y.Supp.2d 137 (1952).

<sup>5</sup> *United Security Corporation v. Suchman*, 282 App.Div. 661, 122 N.Y.Supp.2d 794 (N.Y. 1953).

<sup>6</sup> New York Civil Practice Act § 1410 and § 1411 have been construed as permitting a remedy in certain cases where the conventional relation of landlord and tenant does not exist. *Lawyer's Title Guaranty Co. v. Tausig*, 149 Misc. 594, 268 N.Y.Supp. 815 (1933).

<sup>7</sup> *Commonwealth Mtg. Co. v. De Waltoff*, 135 App.Div. 33, 119 N.Y.Supp. 781 (1909), *Stern v. Equitable Trust Co.*, 238 N.Y. 267, 144 N.E. 578 (1924), *Metropolitan Life Ins. Co. v. Childs Co.*, 230 N.Y. 285, 288, 289, 130 N.E. 295, 14 A.L.R. 658 (1921).

<sup>8</sup> N. Y. CIV. PRAC. ACT § 985.

<sup>9</sup> N. Y. CIV. PRAC. ACT § 1411, sub. 6.

states that § 1411 subdivision 6 substitutes the summary proceeding for a writ of assistance, then states that United Security Corporation must seek its remedy by a writ of assistance or warrant of eviction. Under Civil Practice Act § 1410 summary proceedings are not brought for the recovery of rent but solely for the recovery of demised premises,<sup>10</sup> but Civil Practice Act § 1425 seems sufficiently broad enough to permit a judgment for rent in these circumstances.<sup>11</sup>

Judge Desmond, in a well-reasoned dissent, argues that by the judgment in the mortgage foreclosure action to which defendant as tenant was a party, the tenant's lease expired just as if its term had run out, and, were it not for the emergency rent laws, there would thereafter have been no landlord and tenant relationship.<sup>12</sup> Hence, summary proceedings would not have been available.<sup>13</sup> The emergency rent laws gave an occupant with an expired lease the status of a "tenant" if he chose to remain in possession.<sup>14</sup> When defendant continued in possession after foreclosure, he was a "tenant" within the definition of the emergency rent control law.<sup>15</sup> With the benefits of that relationship went its burdens, including the burden of summary proceedings in event of nonpayment of rent under article 83 of the Civil Practice Act. The obligation to pay rent was not "imposed" on the defendant, he assumed it by his continued occupancy.

One might wonder what right Suchman had to remain in the premises after the foreclosure action. The primary purpose of the emergency rent laws passed during the acute housing shortage was to prevent wholesale eviction of tenants who were willing to pay a reasonable rent, but who could not agree with their landlords

<sup>10</sup> Summary proceedings are not brought for the recovery of rent but solely for the recovery of demised premises. *People ex rel. Terwilliger v. Chamberlain*, 140 App.Div. 503, 125 N.Y. Supp. 562 (1910).

<sup>11</sup> Under § 1414 the application for summary proceedings may also be made by the purchaser upon the execution or foreclosure sale. N. Y. CIV. PRAC. ACT § 1418: "The judge or justice to whom the petition is presented must issue a precept directed to the person or persons designated in the petition and requiring them forthwith to remove from the property, describing it, or to show cause why possession of the property should not be delivered to the petitioner." § 1425. "If the court finds that a defense or counterclaim has been established in whole or in part, it shall, upon rendering a final order, determine the amount of rent due to the petitioner or make such other proper disposition as shall determine the rights of the parties, and may give affirmative judgment for the amount found to be due on the counterclaim."

<sup>12</sup> *Greene v. Geiger*, 46 App.Div. 210, 61 N.Y. Supp. 524 (1899), *Commonwealth Mtg. Co. v. De Waltoff*, *supra* note 7. A foreclosure purchaser has been held to acquire all of the mortgagor's rights against tenants under leases not terminated by the foreclosure and may maintain an action for the rent on such a lease; but it has also been held that he takes subject to the tenant's rights, and that, where in accordance with the lease the tenant paid the mortgagor the rent in advance for a period subsequent to the foreclosure and the tenant was *not* made a party to the foreclosure action, the purchaser must recognize such payment. Under a lease antedating the mortgage, it has been held that it is not necessary that the tenant attorn to the purchaser in order to give the purchaser a right to rents accruing after the foreclosure sale. *Dold Packing Corp. v. N. L. Kaplan Inc.*, 265 App.Div. 1032, 39 N.Y. Supp.2d 766 (1943), *Stellar Holding Corp. v. Berns*, 143 Misc. 781, 257 N.Y. Supp. 369 (1933). In the *Suchman* case whether his lease was made prior to subsequent to the mortgage is immaterial since, as a party defendant in the foreclosure action, his rights were terminated by the foreclosure and sale.

<sup>13</sup> *Wasservogel v. Meyerowitz*, 300 N.Y. 125, 132, 98 N.E.2d 712, 715 (1949).

<sup>14</sup> *Harlem Savings Bank v. Cooper*, 199 Misc. 1110, 1116, 101 N.Y. Supp.2d 641, 647 (1950).

<sup>15</sup> *Farmhan Realty Corp. v. Posner*, 200 App.Div. 827, 193 N.Y. Supp. 788 (1922), *Stern v. Equitable Trust Co.*, *supra* note 7.

as to the amount to be paid.<sup>16</sup> A tenant remaining in possession under the protection of an emergency rent law after expiration of his lease which has not been renewed is a statutory tenant,<sup>17</sup> acting by leave of the statute.<sup>18</sup> The statute does not renew the agreement,<sup>19</sup> but continues the tenancy under the essential terms and conditions which existed during the life of the agreement, except as to the duration of the term and the rent to be paid.<sup>20</sup> The tenant remains in possession, not by virtue of any agreement, express or implied, either as to the duration of the term or the amount of rent, but by virtue of the compulsion which the law exerts on the landlord to allow him to remain.<sup>21</sup> He is not a holdover tenant for a definite term at a reasonable rental,<sup>22</sup> but he is liable for the reasonable rental only for such time as he remains in possession.<sup>23</sup>

Under New York Business and Commercial Rent Stabilization Laws no tenant "continuing" to pay rent to which the landlord is entitled under such law may be removed by summary proceedings except under specified conditions.<sup>24</sup> The intent of the legislature was to bring the statutory landlord and tenant within the operation of the summary proceeding statute in a proceeding for nonpayment of rent as set forth in Civil Practice Act § 985, 1410, and 1411.

In the present case the tenant had been in possession for about ten months after the cancellation of his lease by the foreclosure sale to which he was a party. He refused to pay rent for such occupation. The Civil Practice Act affords the purchaser summary proceedings for nonpayment of rent in these circumstances when the landlord and tenant relationship is established, and, under § 1411, in certain cases where the relationship is not established. The court should have found the statute applicable here.

In *Wasservogel v. Meyerowitz*,<sup>25</sup> another New York decision under the emergency rent laws, the tenants held over after the expiration of their leases and the landlord brought summary proceedings for nonpayment of rent. The court held they were statutory tenants within the rent laws. In the *Suchman* case the tenant held over after his lease was cancelled by the foreclosure sale to which he was a party and did not defend. His lease ended as though it had expired. The court in *Wasservogel v. Meyerowitz* held the occupants were statutory tenants and that:

" . . . each tenant-respondent was in the landlord's property not by virtue of any agreement, express or implied, either as to duration of term or amount of rent, but by the compulsion which the law exerts on the landlord to allow him to remain. A tenant under a lease may, when that express lease ends, move or stay. If he stays he is exercising a privilege granted by law, and with the benefits thereof he must bear the burdens, . . . ."

<sup>16</sup> *Paterno Inv. Corp. v. Katz*, 193 App.Div. 897, 183 N.Y.Supp. 954 (1920). Persons or tenants not within the purview of emergency statutes are not entitled to the benefits granted by emergency rent laws. Such statutes have been held not to apply to persons out of possession seeking to become tenants, or to tenants bound by the terms of an unexpired agreement or lease executed prior to the enactment of such legislation. *Stern v. Equitable Trust Co.*, *supra* note 7; *Farmhan Realty Corp. v. Posner*, *supra* note 15.

<sup>17</sup> 1239 Madison Ave. Corp. v. Neuberger, 208 App.Div. 87, 203 N.Y.Supp. 137 (1924).

<sup>18</sup> *Weed v. Carswell*, 177 Misc. 542, 191 N.Y.Supp. 580 (1921).

<sup>19</sup> 551 Fifth Ave. v. Masch, 185 Misc. 142, 57 N.Y.Supp.2d 554 (1945).

<sup>20</sup> See note 20 *supra*.

<sup>21</sup> See note 7 *supra*.

<sup>22</sup> See note 7 *supra*.

<sup>23</sup> See note 17 *supra*.

<sup>24</sup> *Royce Haulage Corp. v. Bronx Terminal Garage*, 185 Misc. 792, 57 N.Y.S.2d 760 (1945).

<sup>25</sup> See note 13 *supra*.