

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division - Landlord/Tenant Branch

ESTATE OF JANE DOE

Plaintiff

v.

SUSAN SMITH & OCCUPANTS

Defendant

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Case No. L&T 05-31881

Certified to J. Combs Greene
Next Event: Pretrial Hrng. 05/10/06

PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AGAINST DEFENDANT DONNA SMITH

COMES NOW the plaintiff, the estate of Jane Doe, and requests this Court to enter summary judgment in plaintiff=s favor as against defendant Susan Smith on the grounds that she has raised no valid defenses to this action for possession. In support thereof plaintiff states as follows.

Defendant Susan Smith Admits Lack of Tenancy

Plaintiff brought this action against the occupants of 00 S Street, NW after the former owner was killed under suspicious circumstances. At the time this action was started, Susan Smith was not residing in the house, but rather, was in a half-way house since she had been charged with killing Jane Doe (these charges have since been dismissed by the U.S. Attorney=s Office in their belief they currently have insufficient evidence to prosecute). Defendant Susan Smith was eventually served at the half-way house and her counsel filed an Answer on her behalf on November 18, 2005.

The only defense raised in Susan Smith=s verified Answer to the Complaint is in para. 7 where she states that sheAoccupies the property of 00 S Street, NW with the permission of the surviving tenant in common with a right of survivorship.@¹ The >surviving tenant in common,= referred to here is Susan Smith=s sister and co-defendant, Donna Smith.² This defense is the only defense that has been raised in defendant Susan Smith=s various pleadings filed in this action. See defendants= Motion to Modify Protective Order, filed March 30, 2006, para. 6, where she states that ADonna Smith was the legatee to the above-mentioned property with Susan Smith as her guest.@ See also Defendants= Joint Supplemental Motion for Stay of These Proceedings, filed March 29, 2006, para. 1, where she states, A[t]here was no contractual relationship between the Smiths and Ms. Doe during the Smith=s= occupancies at 00 S Street, NW; accordingly, neither a lease agreement, nor an employment agreement existed between the parties.@

There must be some type of agreement between the landlord and the occupier of a property for a landlord/tenant relationship to exist. 3 G.Thompson, *Thompson on Real Property*, ' 1029, at 87-90 (replacement ed. 1980). Susan Smith=s naked claim that she is a guest of her sister simply is not one of the factors to be considered by this Court in determining whether someone is a tenant. This Court makes a strong distinction between guests and tenants, with the former having no legal rights to possession. As stated in *Nicholas v. Howard*, 459 A.2d 1039 (DC 1983), A[a] landlord-tenant relationship does not arise by mere occupancy of the premises; absent an express or implied contractual agreement, with both privity of estate and privity of contract,

¹ While an answer to the complaint is not generally required in a landlord/tenant action, SCR-L&T 5, it is required when a jury is demanded, SCR- L&T 6.

² See the probate case filed in this action, Adm. 123-05, where Donna Smith has attempted to have a will admitted to probate that lists Donna Smith as a legatee. That Court has denied its admission to date because the notary public signature was shown to be fraudulent and has set that matter as a contested case.

the occupier is in adverse possession as a squatter. @ Similarly, in *Young v. District of Columbia*, 752 A.2d 138, 139 (DC 2000), the Court stated:

Whether a landlord-tenant relationship exists depends upon the circumstances surrounding the use and occupancy of the property. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 649 (D.C. 1989). Factors for consideration in that determination include a lease agreement, the payment of rent and other conditions of occupancy between the parties.

Defendant Susan Smith has not shown nor has she alleged any of these enumerated factors for her defense to this action.

Guest Status Not Shown

Even if this Court were to consider giving any weight to someone with guest status, defendant Susan Smith can no longer argue that she is even a guest. When someone dies in the District of Columbia, the property no longer automatically transfers to the heirs or legatees. Rather, the control of that property is vested in the personal representative during the pendency of the probate action. See D.C. Code, ' 20-105 (2001 ed.), which states that, A[e]xcept as provided in section 20-357, all property of a decedent shall be subject to this title and, upon the decedent's death, shall pass directly to the personal representative, who shall hold the legal title for administration and distribution of the estate.@ It is only when the administration has been completed and distribution has been made that the legatee or heir then becomes entitled to the property.

Since Donna Smith has no current ownership interest in this property, she cannot give her sister, or anyone else for that matter, any right to live in the premises. Plaintiff Pamela Doe is the appointed personal representative in the probate action and accordingly holds title and has full control and responsibility over this property until it is distributed. Since she has not consented to defendant Susan Smith living in the property, Susan Smith does not have guest status to live there at this time.

WHEREFORE, plaintiff requests that the defendant Susan Smith be dismissed as a party to this action.³

Respectfully submitted,

JOHNSON & PAVUK

By

Lynn H. Johnson, Esq., #955237
1413 K St., N.W., Suite 1500
Washington, D.C. 20005
(202) 371-0962
Attorney for Plaintiff

POINTS AND AUTHORITIES

- 1) 3 G.Thompson, *Thompson on Real Property*, ' 1029, at 87-90 (Replacement ed. 1980).
- 2) *Young v. District of Columbia*, 752 A.2d 138 (DC, 2000).
- 3) *Anderson v. William J. Davis, Inc.*, 553 A.2d 648 (D.C. 1989).
- 4) *Nicholas v. Howard*, 459 A.2d 1039 (DC 1983).
- 5) D.C. Code, ' 20-105 (2001 ed.)

SCR CIVIL RULE 12-I CERTIFICATE OF GOOD FAITH

Counsel for plaintiff reached defendant Susan Smith=s counsel by telephone on April 21 and asked her whether she would consent to the relief requested in the instant Motion for Summary Judgment. Such counsel declined to consent to same.

Lynn. H. Johnson, Esq.

CERTIFICATE OF SERVICE

³ If the Court decides to set this Motion for a hearing, plaintiff=s counsel requests that it be set on some date after June 1 as he will be out of town from May 10 - 31.

I hereby certify that a copy of the foregoing Plaintiff's Motion for Summary Judgment Against Susan Smith, Points and Authorities thereto, Concise Statement of Material Facts Not in Dispute, and proposed Order was personally delivered this ____ day of November 2009, to Dorothy Simpson Dickerson, Esq., 1625 Massachusetts Ave., NW, Suite 400, Washington, DC 20036 and to Gwendolyn McDowell Washington, Esq., The Public Defender Service, 633 Indiana Avenue, NW, Washington, DC 20004.

Lynn H. Johnson

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CONCISE STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

COMES NOW the plaintiff, through counsel, and sets forth the following concise statement of material facts not in dispute in support of her Motion for Summary Judgment:

- 1) There was no contractual relationship between the Smiths and Ms. Doe during the Smith=s occupancies at 00 S Street, NW.
- 2) Susan Smith was not an employee of Jane Doe.
- 3) Pamela Doe is the personal representative for the estate of Jane Doe and title to the premises at 69 S Street, NW is held by Pamela Doe.

Respectfully submitted,

JOHNSON & PAVUK

By

Lynn H. Johnson, Esq., #955237
1413 K Street, NW, Suite 1500
Washington, DC 20005
Tele. (202) 371-0962
Counsel for Plaintiff

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ORDER

On consideration of Plaintiff's Motion for Summary Judgment Against Defendant Susan Smith, the [lack of] Opposition thereto, and the record herein, it is this ____ day of _____, 2009:

ORDERED that the Motion shall be and hereby is granted; and it is further

ORDERED that defendant Susan Smith shall be and hereby is dismissed as a party defendant in this action.

JUDGE

Copies to:

Lynn H. Johnson, Esq.
Johnson & Pavuk
1413 K Street, NW, Suite 1500
Washington, DC 20005

Dorothy Simpson Dickerson, Esq.
1625 Massachusetts Ave., NW, Suite 400
Washington, DC 20036

Gwendolyn McDowell Washington, Esq.
The Public Defender Service
633 Indiana Avenue, NW
Washington, DC 20004