

5/28/2024 - Madden to sell parties of record - just Peter Madden

KNO CV246109938

Colchester Estate Ventures

v.

Peter Madden et al
aka P. Michael Madden

SUPERIOR COURT
NEW LONDON JUDICIAL DISTRICT
AT NORWICH

MAY 28 2024

FILED

Judicial District of New
London

At Norwich

May 28, 2024

MEMORANDUM OF DECISION

This case involves a summary process action commenced by Notice to Quit dated February 22, 2024 directing the tenants to leave by March 5, 2024. The notice to quit names Peter Madden, John Doe and Jane Doe as "the tenants". The notice claims a failure of the Defendants to pay rent due under terms of an agreement for February 1, 2024. There was no testimony about any February first agreement and the Notice to Quit did not indicate either the date or the amount of any default. The Tenant has not vacated the premises and remains in possession.

A hearing was held at which the self-represented, 74 year old occupant, hereinafter called the tenant, and counsel for the landlord appeared. The landlord introduced into evidence a "Lease Agreement" (Plaintiff's Exhibit A) which by its terms began on January 1, 2022 and ended on December 31, 2022. Paragraph 17 of the lease provides "If the tenant occupies the premises after the Lease ends, the occupancy shall be as a month to month tenant. All other terms of the lease will apply to the month to month tenancy." Paragraph 2 of the lease provides for the sum of \$1,470 per month as rent, due on the first of each month. Mr. Madden testified he was paying \$1,335 per month as "the original rent."¹

Mr. Madden, in his memorandum of law, claims that his lease terminated on December 31, 2022 and thus after that date, "no rent was due." In this, the law is clear. Under Connecticut law, after the termination of a lease, the tenant becomes a tenant at

¹
By his own admission he has failed to pay the full amount of the agreed upon rent for seventeen months, or \$2,295 arrears.

sufferance. The tenant, Mr. Madden, recognized this designation in his testimony. A tenant at sufferance is obligated to pay the reasonable rental value. *Welk v. Bidwell*, 136 Conn. 603(1950). Mr Madden is wrong that “no rent was due.”

In October, 2023, some ten months after Mr. Madden’s lease had expired, he received a letter from the attorney for Colchester Estate Ventures, LLC, the owner of the property, that “the rent” was increased by \$150 per month to \$1,620 per month effective November, 2023. (Exhibit B) Mr. Madden ignored the letter and did not increase his monthly payment.

On February 22, 2024, Mr Madden was served with a notice to quit also naming John Doe and Jane Doe as occupants. Mr. Madden devotes much time to this issue of fictitious defendants. The court inquired of plaintiff’s counsel if they had reason to believe there were other tenants living in the apartment with Mr. Madden. The attorney said that his firm routinely does this in case there are unnamed people living there. This policy violates CGSA sec. 47a-23(b).

“ If the owner or lessor, or the owner's or lessor's legal representative, attorney-at-law or attorney-in-fact knows of the presence of an occupant but does not know the name of such occupant, the notice for such occupant may be addressed to such occupant as “John Doe”, “Jane Doe” or some other alias which reasonably characterizes the person to be served.”

Here the Landlord and/or the Landlord’s attorney had no knowledge of the presence of an unknown occupant and wrongfully added fictitious parties to the case. The Connecticut Supreme court “has consistently taken the view that use of fictitious names in a pending litigation causes uncertainty and possible prejudice to the named defendants. Plaintiffs... are expected to conduct some preliminary investigation to determine the legal basis, if any, for an action against a particular person or entity.” *Himmelstein v. Windsor*, Hartford Docket No CV 054013928 (May 16, 2006, Keller,J.)

Thereafter, the tenant herein filed a Motion to Dismiss, calling attention to the use of fictitious names, the plaintiff’s attorney filed a motion to withdraw John and Jane Doe as parties. Another claim of the defendant is his assertion in the motion claiming the court lacks subject matter jurisdiction. Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy before it. *In re Matthew F.* 297 Conn. 673 (2010). The tenant, in this regard makes reference to the case of *Conboy v. State*, 292

Conn. 642, 650–56, 974 A.2d 669, 676 (2009).

Trial courts addressing motions to dismiss for lack of subject matter jurisdiction pursuant to § 10–31(a)(1) may encounter different situations, depending on the status of the record in the case. As summarized by a federal court discussing motions brought pursuant to the analogous federal rule 13 “[l]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001). Different rules and procedures will apply, depending on the state of the record at the time the motion is filed.

When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, “it must consider the allegations of the complaint in their most favorable light.... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *Filippi v. Sullivan*, supra, 273 Conn. at 8, 866 A.2d 599; see also *Shay v. Rossi*, 253 Conn. 134, 140, 749 A.2d 1147 (2000), overruled in part by *Miller v. Egan*, 265 Conn. 301, 325, 828 A.2d 549 (2003); see, e.g., *Federal Deposit Ins. Corp. v. Peabody, N.E., Inc.*, supra, 239 Conn. at 99–100, 680 A.2d 1321 (deciding jurisdictional question on pleadings alone).

So the Court reviews the tenant’s claims in a manner most favorable to the plaintiff.² To begin the court notes; Connecticut General Statutes, Chapter 830, defines the Rights and Responsibilities of Landlord and Tenant which provides authority to regulate, oversee and enforce the rights and obligations of both landlords and tenants. The action before this court involves those very rights. This court has subject matter jurisdiction to enforce those rights.

Another issue raised by the tenant relates to the attorney’s failure to distinguish between rental payments and use and occupancy payments.

“After a notice to quit possession has been served, a tenant’s fixed tenancy is converted to a tenancy at sufferance. A tenant at sufferance is released from his obligations under a lease...His only obligations are to pay the reasonable rental value of the property which he occupied in the form of use and occupancy payments...and to fulfill all statutory

²It is unclear why the tenant wanted this particular citation to be included.

obligations.” *Waterbury Twin, LLC v. Renal Treatment Centers-Northeast, Inc., et al.* 292 Conn 473 n.18, 974 A.2d. 626. Thus, use and occupancy are the functional equivalent of rental payments following the termination of any rental agreements. Mr. Madden claims that there was never any agreement to pay use and occupancy. The tenant owes the reasonable monthly value of the premises by operation of law. There need not be an agreement.

In his Motion to Dismiss another claim is that the rent for February was, in fact, paid. This is not properly the subject of a motion to dismiss, but more properly a defense to the claims in the complaint.

The tenant claims the notice to quit is equivocal and thus, defective. The allegations of the complaint and those reasons set forth in the notice to quit must agree. As a condition precedent to a summary process action, a proper notice to quit is a jurisdictional necessity. Stating different claims in the notice and in the complaint renders the notice to quit equivocal and thus improper. *Centrix previously Company, LLC v Valencia* 132 Conn App 582 (2011).

A source of confusion in this case, allowing the tenant to make these claims arise from the inaccurate description of the tenancy and the inclusion of John and Jane Doe as parties, defendant. The court has previously noted the problems with the multiple fictional defendants.

The complaint alleges that “On or about January 1, 2023, the plaintiff, as Lessor and the Defendant Peter Madden entered into a month-to-month verbal agreement for the use and occupancy of 12 Balaban Road, Apt. 312, Colchester, CT 06415. Neither party offered evidence to support this claim. Paragraph two of the complaint states “The Defendants, Peter Madden, John Doe and Jane Doe took possession of the premises pursuant to the rental agreement and still occupy the same.” Mr. Madden states there was no oral or written agreement and there were no Doe occupants. A month-to-month tenancy was created both by the Lease and by operation of law. The inartful drafting of the complaint in paragraph 1, allows for this claim.

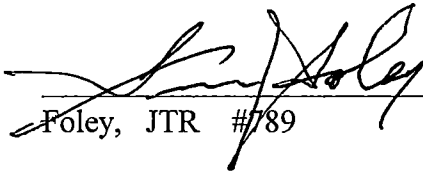
From the representations and documents entered into evidence at the hearing there was no verbal agreement and there were no phantom occupants. Plaintiff’s Exhibit A, a “Lease Agreement” provides in part that the Lease began on 1/1/2022 and ends on 12/31/2022. In paragraph 17 of the Lease provides: “if the Tenant occupies the premises after the Lease ends, the occupancy shall be as a month to month tenancy.” The lease was signed on 12/22/2021 by P. Michael Madden. So there was a written contractual agreement which is not referenced in the complaint and there were no fictional occupants as were mentioned in the complaint.

The Motion to Dismiss states that as the reason for terminating the tenancy is that the claims in the complaint and the claims in the Notice To Quit are equivocal. They both claim “Nonpayment of Rent.” While the presence of John and Jane Doe complicate the pleadings, that does not render the Notice to Quit equivocal.

Clearly, the Plaintiff has work to do to clean up the present status of the pleadings regarding the parties and the precise nature of the legal relationships dates and amounts of default, all of which could be properly addressed by the Defendant through motions in accordance with the Practice Book.

The allegations about the nature of the legal relationship of the Plaintiff and the Defendant poorly described in paragraph 1 of the complaint and the presence of unknown fictional tenants render the pleadings in need of serious repair, but they do not warrant a dismissal.

The Motion to Dismiss is denied.



Foley, JTR #789