State of New York
Court of Appeals

2 No. 48
In the Matter of Notre Dame Leasing, LLC,
Respondent,
v.
Alexandra Rosario, et al.,
Appellants.

OPINION

Carl O. Callender, for appellants.
Denise M. May, for respondent.

ROSENBLATT, J.:

On this appeal, we must determine the circumstances under which Social Services Law § 143-b (5) (a) (the "Spiegel Law") allows a social services tenant to withhold rent based on dangerous violations in the building.

I.

Alexandra Rosaio ("tenant") resides with her husband and children in a Queens apartment owned by Notre Dame Leasing, LLC ("landlord"). The tenant, who receives public assistance, pays only a portion of her monthly rent, with the Human Resources Administration ("HRA") paying the balance.

On January 4, 2000, the landlord commenced a summary proceeding against the tenant in Civil Court to recover $1,454.43 in unpaid rent for October 1999 through January 2000. Relying on Social Services Law § 143-b (5), the tenant moved for summary judgment dismissing the proceeding. She asserted that because conditions in her building were "dangerous, hazardous or detrimental to life or health," the law excused her from paying rent. In support, she submitted records from the New York City Department of Housing Preservation and Development ("HPD") indicating that there were 33 Class "B" and "C" violations in the building.[1]

Notwithstanding these violations, the HRA did not withhold rent from the landlord, although it could have, pursuant to its powers under § 143-b (2). The tenant contended, however, that under § 143-b (5) of the "Spiegel Law" the mere presence of such violations justified her nonpayment of rent, even without

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[1] A Class "B" violation is "hazardous," whereas a Class "C" violation is "immediately hazardous" (22 NYCRR § 27-2115[c][2]-[3]).

previous withholding by the HRA. In response, the landlord introduced proof that HPD had re-inspected the building, dismissed 13 of the violations and marked 19 other violations "pending." As the pivotal issue on this appeal, the landlord argued that the tenant could not invoke § 143-b (5) unless the HRA first withheld its share of the rent payments.

Civil Court found that the tenant had made a prima facie showing that § 143-b (5) authorized her to withhold rent, but stayed the matter until the landlord submitted proof that it had remedied the violations. The landlord appealed to the Appellate Term, which reversed Civil Court and denied the tenant's motion for summary judgment. The Appellate Term concluded that a tenant could not invoke the § 143-b (5) defense because the "public welfare department" -- here, the HRA -- had not also withheld its share of rent payments to the landlord, pursuant to its authority under Social Services Law § 143-b (2). The Appellate Term later granted the tenant's motion for reargument and, following reargument, reaffirmed its earlier decision and granted the tenant leave to appeal to the Appellate Division.

By a divided court, the Appellate Division affirmed the Appellate Term's reading of § 143-b (5). Two Justices, however, concluded that the language of § 143-b (5) supported the tenant's claim. The Appellate Division granted the tenant permission to appeal to this Court. We now affirm.

II.

Social Services Law § 143-b (5) (a) provides that it "shall be a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent to show existing violations in the building wherein such welfare recipient resides which relate to conditions which are dangerous, hazardous or detrimental to life or health as a basis for non-payment." The tenant contends that she should be able to invoke this defense whenever there is a qualifying violation in her building, regardless of whether the "appropriate social services agency" -- here the HRA -- has first withheld rent on that basis. We conclude that the structure, language, history and legislative intent of the Spiegel Law negate the tenant's interpretation of § 143-b (5).

As we stated in People v Mobil Oil Corp. (48 NY2d 192, 199 [1979]), "[i]t is a well-settled principle of statutory construction that a statute or ordinance must be construed as a whole and that its various sections must be considered together and with reference to each other" (see also McKinney's Cons Laws of NY, Book 1, Statutes, § 97). Although § 143-b (5) might be read to allow a defense untethered to the actions of the public welfare department, such an interpretation undermines the statutory scheme. Section 143-b (5) is a constituent provision of a statute that primarily addresses the rights and responsibilities of the "public welfare department" and "public

welfare official[s]," and is best read that way.

Thus, § 143-b (1) authorizes the public welfare department to make direct rent payments to the landlord. Subsection two authorizes public welfare officials to

> "withhold the payment of any such rent in any case where he has knowledge that there exists or there is outstanding any violation of law in respect to the building containing the housing accommodations occupied by the person entitled to such assistance which is dangerous, hazardous or detrimental to life or health."

The statute further obligates the "department or agency having jurisdiction over violations" to report them to the "appropriate public welfare department." Subsection three empowers public welfare officials to initiate rent reduction proceedings "whenever such official has knowledge that essential services * * * are not being maintained by the landlord or have been substantially reduced by the landlord." Subsection four, in turn, permits the public welfare department to "obtain and maintain current records of violations in the buildings where welfare recipients reside." Finally, subsection six allows the public welfare department to pay withheld rent "upon satisfactory proof * * * that the condition constituting a violation was actually corrected."

The dissent argues that the public welfare departments are apparently not using their powers under the Spiegel Law to withhold rent when violations are present. But it is for those agencies, not for us, to decide when their powers should be used.

And if, indeed, the agencies are not doing enough, the proper remedy is for them to do more, not for us to rewrite the statute.

The dissent's reading of § 143-b (5) is simply incompatible with the Spiegel Law's framework. Section 143-b designates the public welfare department and its officials as the principal enforcement actors under the statute. Given this context, it would be anomalous for the Legislature to fashion subsection five as a private defense that could be invoked by tenants independent of any agency action. Rather, § 143-b (5) is best understood as a means of shielding tenants from eviction when the public welfare department chooses to withhold rent, pursuant to its discretion under § 143-b (2). Indeed, the language of subsection five itself suggests that agency action under § 143-b (2) is a condition precedent to a tenant's invoking the § 143-b (5) defense. The Spiegel Law defense applies only when a building violation relating to "conditions which are dangerous, hazardous or detrimental to life or health" is the "basis for nonpayment." For the purposes of the Spiegel Law, however, agency action is required to determine the existence of a violation. Section 143-b (5) (c) provides that the "defenses provided herein * * * shall apply only with respect to violations reported to the appropriate public welfare department by the appropriate department or agency having jurisdiction over violations."

The tenant's proposed interpretation of § 143-b (5)

not only conflicts with the complex statutory scheme but also ignores the Spiegel Law's history and purpose. According to amicus Legal Aid Society, at the time the Spiegel Law was enacted, public welfare department payments covered a tenant's entire rent. The Legislature's intent in promulgating Social Services Law § 143-b was to end the State's "subsidizing of landlords who abuse and exploit welfare tenants, but nevertheless receive guaranteed monthly rent checks * * * from the Dept. of Welfare" (Letter to Hon. Robert MacCrate from Assemblyman Samuel A. Spiegel, dated April 6, 1962, Bill Jacket, L 1962, ch 997). In the words of § 143-b's sponsor, the Legislature sought to "attack[] the 'jugular vein' of the slumlord by temporarily withholding payments of rent until hazardous and dangerous violations are cleared" (id.).[2] Elsewhere, Assemblyman Spiegel explained that, under the proposed law, "it would be a good defense in any action for non-payment of rent that there are dangerous or hazardous violations on a building and that public funds should not be permitted to be used to further the continuance of any building which is substandard" (Statement by Assemblyman Samuel A. Spiegel, dated March 31, 1962, Bill Jacket, L 1962, ch 997 [emphasis added]).

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[2] See also Attorney General's Memorandum to the Governor, dated April 21, 1962, Bill Jacket, L 1962, ch 997, which states, "[t]his bill seeks to correct the anomalous condition wherein one municipal department seeks to prevent slum and dangerous conditions from being maintained at the same time that another governmental unit is financially rewarding such maintenance."

In enacting § 143-b, the Legislature wanted to end government subsidies to landlords who failed to provide safe and habitable housing. As part of this effort, it created a defense that tenants could invoke when the public welfare department identified a violation in the building and withheld rent accordingly. The Legislature did not intend, however, to make this defense available to individual tenants when public welfare officials themselves recognized no imperative to suspend payment.

Although the tenant's interpretation of § 143-b would, in certain instances, promote the Legislature's objective of encouraging landlords to curb substandard conditions, it would also permit tenants to avoid paying rent for violations having no effect on them. As amended in 1997, RPAPL 745 (2) requires tenants seeking to adjourn an eviction proceeding to "deposit with the court within five days sums of rent or use and occupancy accrued from the date the petition and notice of petition are served upon the respondent, and all sums as they become due for rent and use and occupancy." Section 745 (2) exempts from this undertaking provision tenants who claim actual eviction, actual partial or constructive eviction, as well as those who interpose a defense pursuant to the Spiegel Law.

Thus, as the tenant would have it, public assistance tenants subject to eviction proceedings could cite any violation in their buildings -- even those having no effect whatsoever on them -- as a basis for interposing a § 143-b (5) defense and

paying no rent during the pendency of the proceedings.[3] By contrast, in an action for eviction or unpaid rent, tenants claiming a breach of warranty of habitability under RPL § 235-b (1)[4] or who seek an abatement of rent under Multiple Dwelling Law § 302-a for a "rent impairing" violation[5] must nevertheless deposit with the court the amount of rent sought to be recovered. We note that both RPL § 235-b and Multiple Dwelling Law § 302-a permit tenants to withhold or abate rent for deficient conditions that, while outside their individual apartments, impair their occupancy and enjoyment of the building generally.

The Legislature designed Social Services Law § 143-b as

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[3] We note, however, that § 143-b (2) does give the public welfare department discretion to withhold rent for any apartment in a building with a qualifying violation, regardless of the given apartment's nexus with the violation.

[4] In pertinent part, RPL § 235-b provides that a "landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety." We note that the tenant has raised breach of warranty of habitability as an affirmative defense in this case.

[5] Multiple Dwelling Law § 302-a (1) defined a "rent impairing" violation as "a condition in a multiple dwelling which * * * constitutes, or if not promptly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof."

a "weapon in the fight against slum housing in general" (Matter of Farrell v Drew, 19 NY2d 486, 490 [1967]). While we share the dissent's concern over the importance of the Spiegel Law as a means of remedying substandard housing conditions, it would be improvident for us to rewrite the statute in furtherance of this objective.

Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

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CIPARICK, J. (dissenting):

Because a plain reading of Social Services Law § 143-b (5) -- the "Spiegel law" -- allows a recipient of public assistance, under certain circumstances, to interpose a defense to an action or summary proceeding for the nonpayment of rent, where a "public welfare" agency has not previously withheld its share of the rent, I respectfully dissent.

The statute provides that "[i]t shall be a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent to show existing violations in the building wherein such welfare recipient resides which relate to conditions which are dangerous, hazardous or detrimental to life or health as the basis for non-payment" (Social Services Law § 143-b [5] [a]). It also provides that a landlord will not be entitled to a monetary award against the tenant or to possession of the premises where these types of hazardous violations are present (see Social Services Law § 143-b [5] [b]).

It is well-established that statutory interpretation begins with the plain language of the statute (see Leader v Maroney, Ponzini & Spencer, 97 NY2d 95, 104 [2001]; Majewski v Broadalbin-Perth Central School District, 91 NY2d 577, 583

[1998]). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (Majewski, 91 NY2d at 583). This primary rule of statutory interpretation has been eschewed by the majority in favor of a construction that considers the statute as a whole and sets forth some "equivocal evidence of legislative intent" (Desiderio v Ochs, 100 NY2d 159, 169 [2003]). I prefer a literal reading and look to the unambiguous language of the statute.

The unambiguous language of Social Services Law § 143-b (5) makes no mention of the public welfare official or agency. There is nothing in the provision requiring that the agency must act first to withhold rent on the tenant's behalf. Thus, the plain language of the statute permits a tenant to invoke the Spiegel law defense for nonpayment of rent, regardless of whether there has been a prior withholding of rent by the public welfare agency, here the New York City Human Resources Administration. Further, as this Court has previously noted, section 143-b is remedial in nature (see Matter of Farrell v Drew, 19 NY2d 486, 493-494 [1967]). As such, it must be liberally construed to accomplish its intended purpose (see Matter of New York County DES Litigation, 89 NY2d 506, 514 [1997]). The statute should not be read to imply a restriction that does not appear on its face.

However, even construing the statute as a whole and applying the canon of construction urged by the majority, does

not lead to the conclusion that it is the public welfare agency who must first withhold rent in order for the tenant to be able to invoke the Spiegel law defense. As the dissenting Appellate Division Justices most aptly observed, the absence of any reference to public welfare officials in subsection five lends itself equally well to the interpretation that the Legislature -- which referenced either the public welfare department or public welfare official in subdivisions one through four -- intentionally omitted such reference and intended to allow tenants to withhold their own rent where appropriate in subdivision five (308 AD2d 164, 175-176 [2003] [Luciano, J. dissenting]).

Generally, the purpose for reading provisions of a statute as a whole is to accurately determine the legislative intent (see McKinneys Cons Laws of NY, Book 1, § 97). But here, the legislative intent was clear -- to attempt to ameliorate the poor housing conditions faced by many tenants receiving public assistance. The "Declaration of purpose and necessity" states that:

> "[t]he legislature hereby finds and declares that certain evils and abuses exist which have caused many tenants, who are welfare recipients, to suffer untold hardships, deprivation of services and deterioration of housing facilities because certain landlords have been exploiting such tenants by failing to make necessary repairs and by neglecting to afford necessary services in violation of the laws of the state"

(1962 McKinneys Session Laws of NY, at 3207; see also Farrell, 19 NY2d at 490 [indicating that the legislation was intended to combat "slum housing"]). The provision was clearly enacted because existing remedies were insufficient to combat the problems faced by tenants receiving public assistance. Allowing tenants to withhold rent themselves continues to further the purpose of the statute, especially in light of the present situation where public welfare officials apparently are not using their statutory power to withhold rent when violations are present. Welfare officials typically do not withhold payments before an action or a special proceeding is commenced (see Lebovits, Landlord-Tenant Practice Reporter, The So-Called Spiegel Defense, at 5 [May 2001]). In light of this inaction, the majority's interpretation of the statute essentially thwarts its purpose -- taking away the threat of nonpayment of rent to offending landlords and the incentive to make repairs. A plain reading of the statute is neither an attempt to undermine the statutory scheme nor to rewrite it, (see majority opn at 5, 6 & 10) but preserves for all recipients of public assistance a defense conferred by the Legislature.*

The prevailing practice at the time the statute was

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* It certainly is an anomaly to have two different groups of welfare tenants, one where the public welfare agency has previously withheld the payment of rent, with access to a Spiegel law defense, and a second group where this "condition precedent" has not been met, without the benefit of such defense.

enacted was for a public welfare agency to pay the entire amount of the tenant's rent. The rent payments would ordinarily be made to the tenant, who would then pay the landlord, in the absence of habitual delinquency or certain other circumstances (see Joint Legislative Committee on Housing and Multiple Dwellings Mem in Support, Bill Jacket, L 1962, ch 997, at 21). For this reason, it is not surprising that the legislative history reflects a desire to stop the use of public funds to support substandard housing (see majority opn at 7). This is in contrast to the current practice, where the agency pays only a portion of the rent in the form of a shelter grant and the tenant pays the difference. However, the broad language of section 143-b (5)(a) has remained unchanged.

In addition, a statutory safeguard is in place to protect against abuses. Section 143-b (5)(c) requires that the Spiegel law defense will only be available where the existing violations have been reported to the welfare officials by an appropriate agency, here the New York City Department of Housing Preservation and Development. Thus, only documented violations would qualify. This dispels the concern that the defense can be abused by tenants attempting to avoid paying rent (see majority opn at 8). It is perhaps debatable whether hazardous conditions or conditions harmful to one's life or health existing in the building -- although not in the tenant's own apartment -- would have no effect on the tenant. However, as the majority observes

in a footnote, the statute allows for the defense where violations exist in a building "regardless of the given apartment's nexus with the violation" (majority opn at 9, n 3).

Further support for the position that a tenant does not have to await action by a public welfare official to invoke the Spiegel law defense can be found in Real Property Actions & Proceedings Law § 745. This relatively recent 1997 enactment -- part of the Rent Regulation Reform Act (L 1997, ch 116) -- requires a tenant in a summary proceeding wherein an adjournment is requested by the tenant to deposit a sum with the court sufficient to cover the amount of rent or use and occupancy from the date of the commencement of the action unless, among other things, the tenant can demonstrate that he or she has properly interposed a Spiegel law defense (see Real Property Actions & Proceedings Law § 745 [2] [a] [iii]). The provision does not differentiate between sums paid by the tenant and sums paid by a public welfare agency. It makes clear only that the tenant is not required to deposit any portion of the rent. Certainly if the intent was otherwise, the Legislature could have said so. Neither does the availability of other remedies such as Real Property Law § 235-b -- the warranty of habitability statute -- or Multiple Dwelling Law § 302-a which defines a rent impairing violation lead to the conclusion that the Legislature intended a requirement of prior withholding of rent by a public welfare agency as a pre-condition to a tenant's invocation of the Spiegel

law defense.

In conclusion, the plain language of section 143-b does not require a public welfare agency to withhold rent before a tenant can assert the Spiegel law defense in an action or summary proceeding for nonpayment of rent. In light of the remedial nature of the statute and the broad legislative purpose to correct the unique problems faced by tenants receiving public assistance living in substandard housing, such a restriction should not be read into the provision. The legislative intent is best served by a plain reading of the statute, authorizing tenants receiving public assistance to withhold rent when documented hazardous violations exist on the premises that are dangerous to life or health. If the public policy in this area has changed over the last 40 years, then it is for the Legislature to redraft the statute to reflect it. It cannot be done by ignoring the plain language of the statute and its overriding purpose and intent "which is to ensure decent housing for economically fragile individuals" (308 AD2d at 176 [Luciano, J. dissenting]).

Therefore, I would reverse the order of the Appellate Division and grant appellant's motion for summary judgment dismissing the petition.

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Order affirmed, with costs, and certified question answered in the affirmative. Opinion by Judge Rosenblatt. Chief Judge Kaye and Judges Graffeo, Read and R.S. Smith concur. Judge Ciparick dissents and votes to reverse in an opinion in which Judge G.B. Smith concurs.

Decided May 11, 2004