

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4325-10T2

1820 AMWELL, L.L.C.,

Plaintiff-Respondent,

v.

GAETANO NELLO PATTI,

Defendant-Appellant.

Submitted December 13, 2011 - Decided April 30, 2012

Before Judges Espinosa and Kennedy.

On appeal from Superior Court of New Jersey,
Law Division, Special Civil Part, Somerset
County, Docket No. LT-659-11.

Paul J. Sica, attorney for appellant.

David Kessler & Associates, L.L.C.,
attorneys for respondent (Michelle Conroy,
on the brief).

PER CURIAM

Defendant Gaetano Nello Patti appeals from an order requiring him to pay \$14,400 in rent to respondent 1820 Amwell, L.L.C. (Amwell).¹ We affirm.

Defendant tenant entered into a five-year lease with landlord Paolo Patti, for a house in Somerset. The term of the lease ran from January 1, 2008 to December 31, 2012. The monthly rental was \$1200, with a late charge of \$75 payable if payment was not made by the tenth of the month.

On April 13, 2010, the property was sold at a sheriff's sale to Amwell for \$149,000. Although Amwell paid an initial deposit of 20% of the purchase price bid, it did not tender the balance of the purchase price until October 29, 2010. As a result of the delay, a motion to vacate the sheriff's sale was filed but was rendered moot when the balance was paid. The Sheriff's Deed was delivered to Amwell and recorded in the Somerset County Clerk's office on November 3, 2010.

It is undisputed that defendant failed to pay any rent for the period from April 2010 through October 2010. Amwell filed a summary dispossess complaint against defendant for non-payment of rent pursuant to N.J.S.A. 2A:18-61.1(a). After the parties stipulated to essential facts, one legal issue remained for

¹ The parties represent that a judgment of possession was entered but one has not been included in the appendix.

disposition. Defendant argued that he had no obligation to pay rent to Amwell until the sale was consummated and the sheriff's deed was obtained. Amwell argued that upon delivery of the sheriff's deed, it was vested with a fixed and legal right to the rent, retroactive to the date of the sheriff's sale.

The trial court agreed with Amwell's position, and ordered defendant to pay \$14,400 for the unpaid rent, with \$6,000 to be paid that day and the balance to be paid by May 6, 2011. In his appeal, defendant argues that the successful bidder at a sheriff's sale is not entitled to possession or rent until the full purchase price is paid and the deed is delivered. However, as the successful bidder, Amwell stood in the position of an equitable and beneficial owner who succeeded to the right to receive the benefits of that ownership once the deed was delivered.

[T]he doctrine of equitable conversion applies to foreclosure sales. . . . Simply stated, the resulting rule is that the purchaser is the equitable owner, and the vendor retains the legal title to the land "only as a trustee for the vendee, who becomes the equitable and beneficial owner"

[Midfirst Bank v. Graves, 399 N.J. Super. 228, 233 (Ch. Div. 2007) (quoting Cropper v. Brown, 76 N.J.Eq. 406, 422 (Ch. 1909)).]

Any increase or decrease in the value of the property during the period between successful bid and delivery of the deed inures to

the purchaser as the equitable and beneficial owner of the property. Cropper, supra, 76 N.J.Eq. at 419. It is only when "it is apparent from the contract that the parties intended that it should not operate as an equitable conversion" that the doctrine will not apply. Midfirst Bank, supra, 399 N.J. Super. at 233 (quoting Cropper, supra, 76 N.J.Eq. at 421). The contract here does not reveal such an intention.

Moreover, non-payment of rent is one of the enumerated grounds for the removal of tenants in N.J.S.A. 2A:18-61.1(a). Defendant has not cited any authority to support his implicit argument that he should be entitled to the windfall of living rent-free throughout the period between the sheriff's sale and delivery of the deed.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION