

Illinois Court Decisions Involving Housing Cooperatives

Maier v. Harris Trust and Savings Bank, 506 F.3d 560 (7th Cir. 2007)

Procedural History: Judgment creditor sued to collect on judgment, and moved for turnover of judgment debtor's shares in cooperative apartment that he owned with his wife as tenants by the entirety. After initially granting motion, the United States District Court for the Northern District of Illinois (*see* 2006 WL 2524136 for district court's memorandum opinion) granted judgment debtor's motion for reconsideration and denied turnover. Judgment creditor appealed.

Issue(s): Whether a tenant-owner's shares, owned jointly by husband and wife, in a cooperative housing corporation are held in tenancy by the entirety thus protecting shares from judgment creditors.

History: In *Maier v. Harris Trust and Savings*, a housing cooperative tenant-owner individually owed money to a creditor. The creditor obtained a judgment and sought to require tenant-owner to turn over his shares to a housing cooperative, which he owed jointly with his wife. The tenant-owner claimed that he was protected from turning them over based upon the state's homestead exemption (735 ILCS 5/12-901 – protecting up to \$15,000 of homestead's value from judgment creditors) and the state's statutory prohibition on requiring property held as tenancy by the entirety to be used to satisfy a judgment (735 ILCS 5/12-112). The judgment creditor claimed that the statutes did not protect the property because it was in the form of shares, which are personal property not real property. The court of appeals did not agree with the creditor's argument.

West Headnotes/Reasoning:

Federal Courts

District court's turnover order is a final judgment reviewed de novo.

Federal Courts

When state supreme court has not ruled on the issue of state law before federal court, federal court looks to decisions of state appellate courts unless there are persuasive indications that state supreme court would decide issue differently.

Statutes

Under Illinois law, statutes are to be interpreted according to their plain language, affording them their plain and ordinary meaning.

Statutes

Under Illinois law, statutes dealing with the same subject under the doctrine of *pari materia* are to be interpreted with reference to one another to give them harmonious effect.

**Homestead
Husband and Wife**

Under Illinois law, as predicted by Court of Appeals, since husband's interest in cooperative apartment qualified as homestead and was maintained as homestead by both husband and wife, estate created was deemed to be "tenancy by the entirety." S.H.A. [735 ILCS 5/12-112](#); S.H.A. [765 ILCS 1005/1c](#).

**Homestead
Husband and Wife**

Under Illinois law, as predicted by Court of Appeals, ownership interest in cooperative apartment of judgment debtor and his non-debtor wife, which was held in tenancy by the entirety, constituted real property for purposes of state statute establishing what property was liable to enforcement, and therefore such interest was excluded from satisfaction of judgment, given nature and characteristics of ownership in cooperative apartment, including proprietary lease, fact that such ownership could be held in tenancy by the entirety under Illinois Tenancy Act, and purposes of Illinois homestead and tenancy by the entirety exclusion from judgment statutes. [Fed.Rules Civ.Proc.Rule 69\(a\)](#), [28 U.S.C.A.](#); S.H.A. [735 ILCS 5/12-112](#); S.H.A. [765 ILCS 1005/1c](#).

Holding: The court of appeals held that (1) judgment debtor's interest in cooperative apartment was deemed to be tenancy by the entirety, and (2) judgment debtor's interest in cooperative apartment was excluded from satisfaction of judgment. Affirmed.

1242 Lake Shore Drive Corp. v. Mitchell, No. 1-04-2144, 2005 WL 4052861 (Ill. App. Ct. Aug. 1, 2005)

Procedural History: Tenant-owner appealed from trial court's determination and award of attorney's fees to the cooperative association.

Issue: Whether the trial court properly interpreted the lease in awarding attorney's fees to the association.

History: In *1242 Lake Shore Drive Corp.*, Mitchell (coop. tenant-owner) appealed from the trial courts award of \$500,000 in attorney's fees, costs, and interest to the coop. association. The coop. association in turn cross appealed claiming that the trial court should have awarded an additional \$50,000 in attorney fees.

For years Mitchell occupied the 27th floor of the cooperative. In 1998 he acquired the 28th floor and began occupying both units. The previous residents had enclosed the unit's terraces and Mitchell tiled the floors without permission of the coop. association. When the coop. association informed Mitchell that he needed to make repairs he refused. Later the city told him that repairs

were necessary. Mitchell again refused to make the repairs claiming that it was the association's responsibility.

The lease agreement stated that tenant-owners are responsible for the repair and maintenance of their units for damage caused by his act, neglect, or carelessness. The agreement further stated that the association will be awarded fees and costs if it brings a successful action against a tenant-owner to enforce the lease agreement.

The association filed a complaint seeking a declaratory judgment that Mitchell was responsible for the repairs. Mitchell responded by filing a counter claim seeking declaratory relief and an award for the alleged damage the association caused to his units when repairing the building's façade. Mitchell then stopped paying "rent" (carrying charges) and assessments.

Next, the association amended their complaint to seek monetary damages for repairs to the building, unpaid rent and assessments, late fees, attorney fees, and costs. The complaint further alleged that Mitchell's predecessor enclosed the terraces without permission and in a manner that did not comply with the city's building code, and that this caused the association to have to take the addition's roof off in order to repair the buildings façade. The complaint also alleged that Mitchell's new tile was installed without proper flashing, which lead to water damage on the 26th floor. The corporation paid for repairs but claimed that Mitchell was required to reimburse it.

Mitchell filed an amended counter claim seeking declaratory relief and breach of the lease (for both unit 27 and 28).

The association then moved for summary judgment (on all counts except for the count one which alleged that Mitchell was responsible for building repair costs). The court granted the motion on all counts except for Mitchell's counterclaims and count one of the association's complaint reserving those claims for trial along with a determination of attorneys fees for the counts included in the summary judgment. Mitchell paid the unpaid rent and assessments (\$231,766.01) and a release of the judgment was entered.

At trial the court awarded the association \$500,000 in attorney fees with very little explanation of how it arrived at that number.

West Headnotes/Reasoning:

Appeal and Error

Trial court's failure to specify grounds for \$500,000 fee award to ... association ... and court's failure to interpret fee provision in lease at fee hearing or by written order,

required remand with directions to court to interpret lease provisions, conduct an evidentiary hearing on the issue of attorney fees and costs, and make specific findings as to what fees should be awarded.

Common Interest Communities

Cooperative residential association was not entitled to \$53,000 in attorney fees it incurred prior to time resident began withholding rent, as lease language required that a default occur and that a suit be initiated before attorney fees were properly authorized.

Common Interest Communities

Cooperative residential association was entitled to recover fees incurred after resident began withholding rent but before date on which association amended its complaint to enforce lease based on resident's unpaid rent and assessments; lease stated that if a resident was in default and the association instituted an action at law based on the default, the resident was required to reimburse the association for "any and all costs" incurred.

Common Interest Communities

Resident in cooperative building cured default under lease by paying the unpaid rent and assessments, and thus resident was not liable for any fees which cooperative residential association incurred after the cure pursuant to lease provision which required resident to reimburse association for "any and all costs" incurred in an action at law based on a default; lease provision was intended to apply to fees generated for the purpose of collection and payment of the default balance, and association was able to specify amount it spent prior to resident's cure.

Common Interest Communities

Cooperative residential association was not entitled to attorney fees incurred in connection with breach of lease claim against resident which referred to breach of lease provision that required resident to "repair all injury to said building caused by his act, neglect or carelessness" and which indicated a default under the lease, as claim was withdrawn and association never established a default based on physical damage claims under the lease at time the fee award was adjudicated.

Costs

Cooperative residential association was not entitled to attorney fees for original declaratory judgment action against resident regarding damage to building, as action did not enforce lease provisions which provided for attorney's fees but instead only declared rights, and association abandoned the declaratory judgment action when it amended its complaint.

Common Interest Communities

Lease between cooperative residential association and resident which allowed association to recover attorney fees in an action instituted to enforce the lease terms based on a default did not authorize any award for attorney fees and costs incurred by association in responding to residents's affirmative defenses and defending against resident's counterclaims.

Common Interest Communities

Lease paragraph which authorized interest in the event that rent or "any other sums due" were not paid allowed cooperative residential association to recover interest from resident for unpaid rent and assessments.

Appeal and Error

Cooperative resident objected to cooperative residential association's fee petition at least four times and thus did not waive his right to appeal amount of attorney fees awarded to association.

Common Interest Communities

Lease between cooperative residential association and resident did not contain any fee-shifting provision which would entitle association to attorney fees as the prevailing party in dispute with resident.

Common Interest Communities

Cooperative residential association was not entitled to attorney fees incurred in resident's appeal of \$500,000 award of attorney's fees, costs, and interest to association; association was only entitled to fees under lease from the time of default until resident cured the default, and appeal was not part of an effort to enforce the lease.

Holding: The case was remanded to the lower court because it did not properly interpret the lease and provide enough support for its award of \$500,000 in attorney's fees

Harper Square Hous. Corp. v. Hayes, 713 N.E.2d 666 (Ill. App. Ct. 1999)

Procedural History: Tenant-owner appealed circuit court's decision in action brought by housing cooperative under the Forcible Entry and Detainer Act holding that the cooperative housing association had legal right to possession of the cooperative unit.

Issue(s): Whether cooperative association and tenant-owner's relationship is that of a landlord and tenant which would allow for actions to be brought under the state's Forcible Entry and Detainer Act (similar to a Summary Eviction in Michigan).

History: Housing cooperative filed action pursuant to the Forcible Entry and Detainer Act, seeking possession of member/occupant's unit. The Circuit Court entered an order for possession in favor of cooperative, and tenant-owner appealed.

West Headnotes/Reasoning:

Forcible Entry and Detainer

Forcible Entry and Detainer Act provides the sole means for settling a dispute over the possession of real property. S.H.A. [735 ILCS 5/9-102\(a\)](#).

Judgment

Evidence not introduced at trial could be considered at post-judgment hearing on defendant's motion to vacate for lack of jurisdiction, even absent a showing of due diligence, the unavailability of the evidence at trial, or that it was newly discovered.

Common Interest Communities

Housing cooperative's bylaws and occupancy agreement established that the nature of the relationship between the cooperative and a member/occupant was that of landlord and tenant, such that the trial court had subject matter jurisdiction over cooperative's action under the Forcible Entry and Detainer Act for possession of member/occupant's

unit; while the agreement did not contain an express statement that a landlord/tenant relationship existed, the language used throughout the agreement, which discussed the member's "tenancy and occupancy" and provided that the cooperative could "re-let" the unit, showed that such a relationship was in fact created. S.H.A. [735 ILCS 5/9-101 et seq.](#)

Common Interest Communities

Evidence before the trial court in housing cooperative's action pursuant to the Forcible Entry and Detainer Act, that member occupied an apartment owned by cooperative, and that member paid consideration to cooperative for that occupancy, supported conclusion that landlord/tenant relationship existed.

Common Interest Communities

In a usual cooperative situation, the relationship between the cooperative and its members is that of a landlord and tenant, thus bringing cooperatives within the purview of the Forcible Entry and Detainer Act and giving cooperatives access to the remedies available to a landlord against a delinquent tenant. S.H.A. [735 ILCS 5/9-102\(a\)\(4\)](#).

Common Interest Communities

Evidence established that member/occupant of housing cooperative paid consideration for the use of cooperative's property, i.e., "rent," representing member/occupant's proportionate share of the operating expenses for the building, such that Forcible Entry and Detainer Act section governing landlord's demands for rent applied, despite member/occupant's claim that she never agreed to pay rent, but rather, that she only agreed to pay monthly carrying charges. S.H.A. [735 ILCS 5/9-209](#).

Common Interest Communities

Pursuant to Forcible Entry and Detainer Act, housing cooperative could treat lease with member/occupant as terminated and seek possession where member/occupant did not make any payment to housing cooperative within the five days following service of a notice, despite member/occupant's suggestion that she was unable to pay any amount because her bank account had been frozen by court order in a separate action; there was no evidence as to what, if any, account was frozen, and no court order imposing a freeze was introduced into evidence. S.H.A. [735 ILCS 5/9-209](#).

Common Interest Communities

Trial court did not improperly shift the burden of proof to member/occupant of housing cooperative in Forcible Entry and Detainer Act suit; evidence presented by housing cooperative at trial was sufficient to meet its burden to prove right to possession. S.H.A. [735 ILCS 5/9-101 et seq.](#)

Forcible Entry and Detainer

In forcible entry and detainer action, plaintiff has burden to prove his or her right to possession. S.H.A. [735 ILCS 5/9-101 et seq.](#)

Appeal and Error

Trial court's judgment will not be overturned unless it is against the manifest weight of the evidence; judgment is "against the manifest weight of the evidence" only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.

Common Interest Communities

City's residential landlord tenant ordinance, by its own terms, did not apply in Forcible Entry and Detainer Act suit brought by housing cooperative for possession of member/occupant's unit; ordinance expressly excluded from its coverage "dwelling unit in

a cooperative occupied by a holder of a proprietary lease.” S.H.A. [735 ILCS 5/9-101 et seq.](#)

Holding: The appellate court held that the relationship between the cooperative and the tenant owner was that of a landlord and tenant therefore the Forcible Entry and Detainer Act section governing landlord’s demands for *rent* applied.

Chicago v. Mich. Beach Hous. Coop., 696 N.E.2d 804 (Ill. App. Ct. 1998)

Procedural History: Trial court granted summary judgment for defendants on misrepresentation and breach of contract claims and the city appealed. Much of this case was decided in *Chicago v. Mich. Beach Hous. Coop.*, 609 N.E.2d 877 (Ill. App. Ct. 1993) where several counts were dismissed followed by interlocutory appeal.

Issue(s): Whether trial court erred in requiring city to pay final loan installment. Whether trial court erred in finding that city failed to establish the damage element necessary to prove a misrepresentation claim. Whether trial court erred in granting summary judgment for defendants on claim alleging that they breach their contractual duties by allowing the city’s loan funds to be misappropriated which ultimately led to HUD fining the city.

History: City sued cooperative to which it had loaned money to transform high-rise rental apartment building into cooperative, project's developers, and limited partnership which subsequently obtained ownership of building and building's senior mortgagee, claiming misrepresentation and breach of contract. Partnership counterclaimed for city to advance last of loan proceeds.

West's Headnotes/Reasoning:

Appeal and Error

Appellate Court reviews summary judgment de novo.

Municipal Corporations

City remained obligated under contract to loan money to cooperative to transform high-rise rental apartment building into cooperative, notwithstanding developers' misrepresentation that 51% presale requirement of cooperative memberships had been satisfied, where city did not promptly rescind contract once it learned of the misrepresentation, but instead continued to disburse loan monies and awarded tax credits in attempt to save project.

Contracts

If defrauded party does not disaffirm or abandon the transaction with all reasonable diligence and conducts himself as though contract were still subsisting and binding, he waives his right to rescind and must continue to perform his obligations under contract.

Fraud

Elements of tort of fraudulent misrepresentation are: (1) false statement of material fact, (2) known or believed to be false by party making it, (3) intent to induce other party to act, (4) action by other party in justifiable reliance on truth of the statement, and (5) damage to other party resulting from such reliance.

Fraud

Torts of negligent and fraudulent misrepresentation differ only in mental state element: defendant who makes negligent misrepresentation need not know the statement was false; rather, plaintiff must show that defendant owes duty to plaintiff to communicate accurate information and that defendant was negligent in ascertaining truth of statement.

Fraud

Damage is an essential element of fraud.

Fraud

Absolute certainty about amount of damage is not necessary to justify recovery in fraud case if damage is shown, but damages may not be predicated on mere speculation, hypothesis, conjecture or whim.

Fraud

To recover in fraud case, evidence must show basis for computing damages with a fair degree of probability.

Fraud

Fact that city's goal of converting low-income rental housing into cooperative housing was frustrated by developers' misrepresentation that 51% of cooperative units had been sold, which had been prerequisite to city dispersing loan proceeds to cooperative to transform high-rise rental apartment building to cooperative, did not constitute pecuniary damage necessary to support misrepresentation claim against developers.

Fraud

City failed to establish that it lost benefit of its bargain, in connection with its agreement to loan cooperative money to transform high-rise rental apartment building into cooperative, as a result of developers' misrepresentation that 51% of cooperative units had been sold, which had been prerequisite to city dispersing loan proceeds, and therefore city failed to establish damage element for misrepresentation claim, where city only speculated that loan would never be repaid and that this possibility of nonpayment affected value of loan.

Fraud

In misrepresentation case, benefit-of-the-bargain damages are developed by assessing the difference between the actual value of the property sold and the value the property would have had if the representations had been true.

Fraud

To show injury in misrepresentation case, plaintiffs must allege facts which show the value of what they received was not equal to the value of what they were promised.

Appeal and Error

Arguments raised for first time on appeal are waived.

Judgment

While plaintiff need not prove his case at summary judgment, he must come forward with enough evidence to create genuine issue of material fact.

Fraud

Although developers' misrepresentation that 51% of cooperative units had been sold induced city to loan cooperative money to transform high-rise rental apartment building into cooperative, city was not entitled to recover as consequential damages the amount of Department of Housing and Urban Development's (HUD's) sanction against city resulting from spending of loan funds on items not eligible for reimbursement with rental rehabilitation program funds under HUD regulations. [24 C.F.R. § 511.10\(f\)](#).

Fraud

As general rule, plaintiff in misrepresentation case may recover damages for injuries proximately caused by defendant's representations.

Fraud

In action for fraud, damages must be a proximate, and not remote, consequence of the fraud.

Fraud

Proximate causation limits recovery in fraud case to those damages which might foreseeably be expected to follow from character of the misrepresentation itself.

Fraud

Although developers' misrepresentation that 51% of cooperative units had been sold induced city to loan cooperative money to transform high-rise rental apartment building into cooperative, city was not entitled to recover as damages the \$300,000 worth of tax credits it had issued in effort to save the project, as tax credits had no independent value when issued, and they only became valuable as benefit to investors after syndication.

Fraud

Fraud damages are measured by plaintiff's loss, not the defendant's gain

Fraud

If party proves all elements of fraud or negligent misrepresentation, including essential element of damage, nominal damages can be recovered.

Municipal Corporations

City failed to show that senior mortgagee of rental apartment building had contractual obligation, in connection with city's loan to cooperative to transform the building into cooperative, to ensure that city loan proceeds were spent only on items eligible for reimbursement with rental rehabilitation program funds under Department of Housing and Urban Development (HUD) regulations.

Appeal and Error

Appellate Court may affirm summary judgment based on any grounds supported by record.

Judgment

Genuine issues of material fact as to whether cooperative, to which city had loaned money to transform high-rise rental apartment building into cooperative, had performed its contractual obligation to spend city loan funds in compliance with Department of Housing and Urban Development (HUD) regulations precluded summary judgment on city's breach of contract claim against cooperative and related entities.

Holding: The Appellate Court held that: (1) city remained obligated under loan contract despite developers' misrepresentation; (2) city failed to establish damage element of misrepresentation

claim; (3) city failed to show that senior mortgagee had contractual obligation to ensure that loan proceeds were spent in compliance with Department of Housing and Urban Development (HUD) regulations; and (4) genuine issues of material fact precluded summary judgment on city's breach of contract claim against cooperative and others.

Quality Mgmt. Servs., Inc. v. Banker, 685 N.E.2d 367 (Ill. App. Ct. 1997)

Procedural History: Defendant, tenant-owners, appealed circuit court order in favor of housing cooperative in forcible entry and detainer action.

Issue(s): Whether the relationship between a cooperative housing association and its tenant-owners is that of a landlord and tenant thus bringing it under the purview of the state's Forcible Entry and Detainer Act.

History: In *Quality Management Services, Inc. v. Banker*, the cooperative association's agent filed a forcible entry and detainer action against tenant-owners of the cooperative. The tenant-owners (Mr. and Mrs. Banker) argued that (1) because the statutory definition of common interest community expressly excludes cooperatives the Forcible Entry and Detainer Act does not apply to cooperatives and (2) the court of appeals held in *Central Terrace Cooperative v. Martin*, 569 N.E.2d 944 (Ill. App. Ct. 1991) that the act does not apply to cooperatives. The court of appeals did not agree with either argument. First, the court reasoned that the exclusion of cooperatives from the definition of common interest communities only served to exclude them from the requirements of section 9-102(b) of the act. The court also reasoned that this case was not analogous to *Central Terrace* because the defendant tenant-owners in this case occupied their unit pursuant to a proprietary lease whereas the tenant-owners in *Central Terrace* occupied their unit pursuant to a mutual ownership contract which made in an unusual cooperative situation.

West Headnotes/Reasoning:

Common Interest Communities

Forcible Entry and Detainer Act applies to cooperatives; lease in usual cooperative apartment organization creates relation of landlord and tenant between corporation and shareholder-occupant. S.H.A.735 ILCS 5/9-101 et seq., 9-102(a)(8), 9-102(c)(1).

Common Interest Communities

Occupancy agreement executed by members of cooperative corporation carried sufficient indicia of landlord-tenant relationship to bring cooperative within coverage of Forcible Entry and Detainer Act, even though occupancy agreement was paired with ownership interest in corporation; cooperative was formed to acquire, own, and operate cooperative, members had right to occupy dwelling units under specified terms and conditions,

members leased particular dwelling units from cooperative, and, upon default, cooperative had right to take any suitable action at law or in equity or by any other proceedings applicable to eviction of tenants by force or otherwise, and to repossess dwelling unit. S.H.A. [735 ILCS 5/9-101 et seq.](#), 9-102(a)(8), 9-102(c)(1).

Holding: The Forcible Entry and Detainer Act applies to usual cooperative situations and this was a usual situation and cooperatives are not excluded from the purview of the act. Affirmed.

Chicago v. Mich. Beach Hous. Coop., 609 N.E.2d 877 (Ill. App. Ct. 1993)

Procedural History: City appealed circuit court's ruling dismissing counts I-V of its seven count complaint.

Issue(s): Whether syndication funds obtained by the cooperative after city obtained security interest on cooperative's property constitutes collateral for the city's loan. Whether city's security interest includes tax credits awarded to the defendant limited partnership. Whether city waived its right to declare default.

History: City sued cooperative to which it loaned money in exchange for security interest in building and other related assets, limited partnership which subsequently obtained ownership of building (after cooperative reorganized) and assets and general partners seeking to recover syndication funds and to accelerate repayment of its loan on ground of default and alleging fraud and breach of contract. The Circuit Court dismissed several counts of city's complaint based upon court's previous denial of city's motion for preliminary injunction and ruled that there was no just reason to delay enforcement or appeal of dismissal. City appealed. The Appellate Court held that: (1) dismissal was final and appealable even though based on agreed order; (2) syndication funds were not "income, rents, issues, proceeds or profits accruing from real estate," so as to be covered by city's security agreement; (3) syndication funds were not "proceeds" of city's collateral consisting of income tax credits given to partnership; and (4) income tax credits were not "intangible personal property," subject to security interest under Article 9.

West Headnotes/Reasoning:

Appeal and Error

Trial court's order dismissing counts of complaint was final and appealable, even though dismissal was based on agreed order, where trial court's decision to dismiss was based on its earlier denial of preliminary injunction on ground that city could not establish the probability of success on merits and agreement between parties, made in interest of judicial economy, was simply that court would rule same way on motion to dismiss as it

did on motion for preliminary injunction. [S.H.A. ch. 110, ¶ 2-615](#); ch. 110A, ¶¶ 304(a), 307(a)(1).

Secured Transactions

Security interest is limited under Article 9 to the property described in the security agreement. [S.H.A. ch. 26, ¶¶ 9-105\(1\)\(c\), 9-110, 9-110](#) comment.

Secured Transactions

Determination of whether creditor's security interest encompasses property acquired after date of security agreement is governed by intent of parties as expressed in agreement. [S.H.A. ch. 26, ¶¶ 9-105\(1\)\(c\), 9-110, 9-110](#) comment.

Secured Transactions

Syndication funds obtained by limited partnership from sale of interests in limited partnership to syndicator who in turn sold such interests to investors were not "income, rents, issues, proceeds and profits accruing from the real estate" so as to be covered by city's security interest in property pursuant to loan agreement; only nexus between real estate and transaction under discussion was that limited partnership owned real estate and title to realty itself remained unaffected, and city's security interests and its rank vis-a-vis other security interests in property remained unchanged. [S.H.A. ch. 26, ¶¶ 9-105\(1\)\(c\), 9-110, 9-110](#) comment.

Secured Transactions

Funds obtained by limited partnership from sale of interests in limited partnership to syndicator who in turn sold such interests to investors were not "proceeds" of city's "collateral" consisting of income tax credits granted by city to limited partnership; income tax credits were at best only remotely as well as indirectly connected to building in which city held security interest in the sense that only entity which owned the building could use the tax credits to attract potential investors, and city's security interest in personal property "used or useful in connection with the real estate" was indisputably confined to narrower interpretation which limited security interest to personal property that had some physical connection to building. [S.H.A. ch. 26, ¶ 9-306\(2, 3\)](#).

Secured Transactions

Under Article 9, as long as creditor has perfected security interest in underlying collateral, he will also have perfected security interest in identifiable proceeds of sale of collateral, even if term "proceeds" is absent from security agreement or financing statement. [S.H.A. ch. 26, ¶ 9-306\(2, 3\)](#).

Secured Transactions

Income tax credits granted by city to developer were not "intangible personal property," subject to security interest under Article 9; tax credits had no independent value in and of themselves but instead were incidental benefit that investors received when they purchased security evidencing their interest in limited partnership. [S.H.A. ch. 26, ¶ 9-106](#).

Taxation

Unlike income tax refunds, tax credits do not constitute right to payment of money, have no independent value, and are not freely transferable upon receipt.

Secured Transactions

Even if city had right to declare default when developers resyndicated real estate project and transferred building to limited partnership, it had no right to syndication funds obtained by limited partnership from sale of interests in limited partnership to syndicator since funds did not constitute city's collateral under security agreement.

Mortgages

City waived its right to enforce default provision in mortgage when it granted mortgagor tax credits with knowledge that mortgagor was going to transfer building subject to mortgage to another entity which would use those credits; by granting tax credits, city knew that some sort of reorganization, including resyndication, refinancing and transferability to new entity was necessary prerequisite to use of credits and fact that it later objected to precise type of reorganization did not negate fact that city consented to some form of reorganization that would be inconsonant with default provision of its mortgage.

Mortgages

City's waiver of its right to declare default on mortgage by granting tax credits by which city consented to some form of reorganization inconsonant with default provision of mortgage was not revived by city's letter to developer-taxpayer stating that it was reserving all of its rights; once ground for forfeiture had been waived, it could not be revived.

Holding: The appellate court held that (1) the syndication funds did not constitute collateral for the city's loan, (2) the city's security agreement did not implicate the tax credits, and (3) the city impliedly waived its right to declare a default by granting tax credits to the building after the cooperative reorganized (which city alleged was the action giving rise to default).

Central Terrace Coop. v. Martin, 569 N.E.2d 944 (Ill. App. Ct. 1991)

Procedural History: Trial court held that member and cooperative association had entered into a landlord tenant relationship and therefore the forcible entry and detainer statute was applicable and that the association was entitled to possession of the member's cooperative housing unit. The member appealed the trial court's ruling.

Issue: Whether forcible entry and detainer statute is applicable in this instance.

Facts: When the cooperative member's daughter moved out he informed the association that his niece would be moving in, in order to help him cook and clean. The association informed him that he must fill out a sublease application. The member ignored the request. Later the association became suspicious that the niece was living alone in the unit. The board issued a "notice of termination and intention to institute forcible entry and detainer." The notice alleged that the member was not occupying the unit and had sublet his unit without the association's approval.

The board then filed its complaint and a bench trial was held. The trial court held that the "cause was properly brought under the Forcible Entry and Detainer Statute in that a landlord

tenant relationship was created by the *Cooperative lease agreement*.” The trial court ruled that the association should recover possession of the unit.

West Headnotes/Reasoning:

Forcible Entry and Detainer

Forcible entry and detainer statute is in derogation of common law, and recovery under statute is confined to cases clearly within its provisions; however, if case falls within parameters of statute, court should liberally construe its provisions to effectuate remedy it provides. S.H.A. ch. 110, ¶ 9-101 et seq.

Common Interest Communities

Condominiums and common interest communities fall within parameters of forcible entry and detainer statute. S.H.A. ch. 110, ¶ 9-102(a), pars. 7, 8.

Common Interest Communities

Landlord-tenant relationship was not created by “mutual ownership contract” signed by member and cooperative and thus, forcible entry and detainer statute did not apply in cooperative’s action to terminate member’s rights; cooperative gave possessory rights to members based upon ownership interests rather than lease agreements. S.H.A. ch. 110, ¶ 9-102(c).

Forcible Entry and Detainer

Forcible entry and detainer action is summary in nature, and litigation is limited to issue of who is entitled to possession of property; question of title cannot be litigated.

Holding/Reasoning: Although condominiums and common interest communities usually create landlord tenant relationships this instance did not. First, this is because cooperatives are excluded for common interest communities in the act. And secondly, the member and the association did not enter into a Cooperative lease agreement as the trial court mistakenly referred to it. Rather they entered into a “Mutual Ownership Contract.” For these reasons the court of appeals held that a landlord/tenant relationship did not exist and because the association gave possessory rights to units based on ownership interest and not based on a lease. The Forcible Entry and Detainer Statute is not applicable because it is intended to determine possessory rights not ownership rights. Reversed.

Moss v. Elofsson, 550 N.E.2d 1228 (Ill. App. Ct. 1990)

Procedural History: Defendant, a tenant-owner of a cooperative housing unit appealed from the circuit court’s judgment, in bench trial of forcible entry and detainer action, in favor of trustees requiring tenant owner to sell her ownership interest and vacate premises due to her supposed breach of the proprietary lease.

Issue(s): Whether a tenant-owner breached the lease provision requiring tenant-owners to allow trustees or trustees' agents to have access to inspect units at reasonable times by not allowing the trustees access after a fire occurred in her unit.

History: In *Moss v. Elofsson*, when a fire occurred in Ms. Elofsson's sauna in her cooperative unit she promptly notified the fire department and the building's engineer. The engineer arrived but could not eliminate the fire. The fire department successfully put the fire out before it spread beyond the sauna. After the fire occurred and the fire department had left, several trustees tried to inspect the damage. When they knocked on her door Ms. Elofsson told them that they would have to wait because she was not dressed. After several minutes she allowed them to enter, but not to progress past the kitchen because of the mess. At this point the trustees grew frustrated and stormed out. Later in the day Ms. Elofsson allowed the doorman/elevator operator to inspect the damage at his request. Forty-five days later Ms. Elofsson received notice that her proprietary lease had been terminated for her failure to allow the trustees to inspect the fire damage. Ms. Elofsson tried to contact the trustees several times to rectify the situation but her attempts were to no avail. There was some evidence that one of the trustees hoped to obtain Ms. Elofsson's unit as a personal residence for himself. The trustees then brought forcible entry and detainer action against Ms. Elofsson.

West Headnotes/Reasoning:

Trusts

Trustee which managed trust and held legal and equitable title to residential cooperative apartment building pursuant to terms of trust indenture was "fiduciary" to residential unit owner of one floor in the building, as a matter of law.

Trusts

Regardless of nature of trust, obligation of trustee to beneficiary is the same: trustee is charged with equitable duties toward the beneficiary, and trustee has duty to serve interest of the beneficiary with complete loyalty, excluding all self-interest.

Common Interest Communities

Record failed, as a matter of law, to show willful breach of lease provision requiring lessee to permit access to cooperative apartment at reasonable hours; lessee made it clear, before notice of termination had been sent, that premises were available for inspection, and premises were inspected by employees of trustees, who managed trust and held legal and equitable title to residential cooperative apartment building pursuant to terms of trust indenture.

Landlord and Tenant

Any doubts in language of lease will be construed in favor of lessee.

Common Interest Communities

Tenant's good-faith efforts to disabuse trustees, who managed trust and held legal and equitable title to residential cooperative apartment building pursuant to terms of trust indenture, of any notion that tenant was denying trustees access to apartment were sufficient to cure lease breach which allegedly occurred when tenant denied trustees access to apartment on day of fire in the apartment.

Landlord and Tenant

Party seeking to enforce forfeiture provision in lease had burden of proving that right to forfeiture clearly and unequivocally exists and that exercise of forfeiture would not result in injustice.

Holding: The appellate court reversed the holding of the circuit court holding that Ms. Elofsson did not breach her lease because the trustees did not seek entry at a reasonable time and Ms. Elofsson may have been justified in thinking that the engineer and elevator operator's inspection was enough to fulfill her obligation.

Winfield Vill. Coop. v. Ruiz, 537 N.E.2d 331 (Ill. App. Ct. 1989)

Procedural History: Plaintiff, cooperative association, appealed from circuit court's dismissal of forcible entry and detainer action due lack of jurisdiction over matters involving radio frequency interference.

Issue(s): Whether Federal courts have exclusive jurisdiction over matters involving radio frequency interference even when the matter is based on a private dispute.

History: In *Winfield Village Cooperative v. Ruiz*, the cooperative association sought to evict a tenant-owner (through forcible entry and detainer action) due to interference caused by his operation of a short wave radio. The tenant-owner claimed that the FCC has exclusive jurisdiction over claims arising out of radio frequency interference. The appellate court did not agree.

West Headnotes/Reasoning:

Telecommunications

Federal Communications Commission does not have exclusive jurisdiction over radio frequency interference incidents. Communications Act of 1934, § 1 et seq., as amended, [47 U.S.C.A. § 151](#) et seq.

Telecommunications

State courts retain jurisdiction to resolve private disputes of FCC licensees even though disputes may affect field regulated by FCC. Communications Act of 1934, § 1 et seq., as amended, [47 U.S.C.A. § 151](#) et seq.

Courts

State court had jurisdiction over forcible entry and detainer action in which landlord alleged tenant breached occupancy agreement by operating short wave radio transmitter,

despite tenant's argument that FCC had exclusive jurisdiction under Communications Act of 1934; dispute was private. S.H.A. ch. 110, ¶ 9-102(a), par. 2; [U.S.C.A. Const. Art. 6, cl. 2](#); Communications Act of 1934, § 1 et seq., as amended,⁴⁷ [U.S.C.A. § 151](#) et seq.

Holding: The appellate court held that the FCC does not have exclusive jurisdiction of claims arising out of radio frequency disputes and that association could bring forcible entry and detainer action to evict tenant-owner for the interference caused by his operation of a shortwave radio.

In re McNair, 90 B.R. 912 (Bankr. N.D. Ill. 1988)

Procedural History/History: Previous tenant-owner's (creditors), who sold their shares in cooperative housing association to new tenant-owners (debtors), attempted to foreclose on the property after debtors became \$8,008.02 in arrears. Debtors then filed for bankruptcy. Creditors claimed that they are entitled to property and debtors are not entitled to cure default through bankruptcy because they foreclosed before debtors filed for bankruptcy. Debtors claim that although creditors hold a security interest in their stock, they do not have a security interest in their proprietary lease and therefore are not entitled to foreclose. Creditors also brought a forcible entry and detainer action to recover property, but the court held that secured creditors are not able to bring an action under the act.

Issue(s): Whether creditors with security interest in cooperative tenant-owner's stock also have security interest in the proprietary lease, which would allow them to foreclose.

West Headnotes/Reasoning:

Bankruptcy

Chapter 13 debtor may cure prepetition default in residential mortgage note, so long as debtor retains meaningful interest in property at time petition is filed. Bankr.Code, [11 U.S.C.A. § 1322\(b\)\(3\)](#).

Secured Transactions

Illinois Forcible Entry and Detainer Act was not applicable to dispute between debtors and creditors from whom they had purchased cooperative apartment, for purpose of determining whether debtors retained interest in purchase contract following creditors' prepetition notice of default, in that default was not under purchase agreement, but under collateral note; note was not contract to purchase land or tenements, within meaning of Act, but rather was subject to Illinois law of secured transactions. Ill.S.H.A. ch. 110, ¶¶ 9-104.1, 9-110.

Secured Transactions

Under Illinois law, creditors with security interest in cooperative apartment owners' stock in cooperative corporation and long-term proprietary lease did not have article 9 security interest in lease which could be strictly foreclosed, and thus owners retained interest in apartment at time they filed Chapter 13 case and could cure default in note to creditor in

Chapter 13 plan, even though creditors had complied with strict foreclosure procedures prepetition. Bankr.Code, [11 U.S.C.A. § 1322\(b\)\(3\)](#); Ill.S.H.A. ch. 26, ¶¶ 9–104(j), 9–505(2).

Secured Transactions

Creditors' attempted strict foreclosure of security interest in debtors' cooperative apartment corporation stock was ineffective to transfer stock in that "proposal" to retain collateral in satisfaction of obligation, as required by Illinois law, included collateral which was not subject to strict foreclosure, and thus was defective. Ill.S.H.A. ch. 26, ¶ 9–505(2).

Holding: The court held that under Illinois law, creditors with a security interest in a cooperative apartment owners' stock in a cooperative corporation and corresponding long-term proprietary lease did not have article 9 security interest in the lease which therefore could not be strictly foreclosed. Therefore the owners retained interest in apartment at time they filed for Chapter 13 bankruptcy and could cure default in note to creditor in Chapter 13 plan, even though creditors had complied with strict foreclosure procedures pre-petition.

Kaplan v. 442 Wellington Coop. Bldg. Corp., 567 F.Supp. 53 (N.D. Ill. 1983)

Procedural History/History: When the cooperative housing board denied prospective purchasers' offer on cooperative housing unit, the prospective purchasers brought suit under 42 U.S.C. 1982 (Civil Rights Act of 1866) and 42 U.S.C. 3604 (Fair Housing Act) alleging that their offer was denied because the wife was a Cuban immigrant (naturalized U.S. citizen). The board claimed that they denied the offer because of reports of the prospective purchasers' failed and distasteful business dealings. The prospective purchasers did not present any evidence that the board had a discriminatory intent and did not attempt to refute the board's claim that they were denied due to their past business dealings. The judge therefore granted the board's motion for summary judgment.

Issue(s): Whether summary judgment is proper at this juncture considering that the plaintiffs have not presented any evidence of discriminatory intent on behalf of the board..

West Headnotes/Reasoning:

Federal Civil Procedure

Burden of showing, on summary judgment motion, the absence of genuine issue as to any material fact is especially heavy when intent and motivation play major role in claims presented. [Fed.Rules Civ.Proc.Rules 56,56\(e\), 28 U.S.C.A.](#)

Federal Civil Procedure

Mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is genuine need for trial. [Fed.Rules Civ.Proc.Rules 56, 56\(e\), 28 U.S.C.A.](#)

Federal Civil Procedure

Prospective purchasers of stock and leasehold of cooperative apartment failed to establish that corporate titleholder to apartment building and its officers and directors acted with discriminatory intent in refusing to permit sale to them on basis of Hispanic nationality of one of the prospective purchasers; mere allegation that purchaser was member of minority group and that offer to purchase had been rejected was insufficient to establish such intent, under either civil rights or fair housing statute, particularly in light of unchallenged evidence that refusal was based solely on adverse reports of prospective purchaser's investment failures, past conduct as cotenant, and nature of non-Hispanic purchaser's medical practice. [U.S.C.A. Const.Amend. 14](#); Civil Rights Act of 1968, § 804, [42 U.S.C.A. § 3604](#).

Holding: The court granted the cooperative's motion for summary judgment because the prospective purchasers failed to establish that defendants acted with discriminatory intent in refusing to permit sale to them on basis of Hispanic nationality of one of the prospective purchasers, and mere allegation that purchaser was member of minority group and that offer to purchase had been rejected was insufficient to establish such intent, under either civil rights or fair housing statute, particularly in light of unchallenged evidence that refusal was based solely on adverse reports of prospective purchasers' investment failures, past conduct as cotenants, and nature of non-Hispanic purchaser's medical practice.

Sinnissippi Apartments, Inc. v. Hubbard, 448 N.E.2d 607 (Ill. App. Ct. 1983)

Procedural History: Association brought small claim action to recover unpaid carrying charges on the 175 additional shares issued to the tenant-owner for improvements he made to his apartment. Trial court held that association was not authorized to require tenant-owner to accept 175 additional shares. Plaintiff association appealed.

Issue(s): Whether a cooperative association may require tenant-owners to accept additional shares for improvements made to their apartment units.

History: In *Sinnissippi Apartments, Inc. v. Hubbard*, when a tenant-owner added an elevator to his cooperative unit at his own expense (costing \$32,437 but only increasing property value by approximately \$5,000) the association issued him 175 additional shares valued at \$183 each (\$32,025). When the tenant owner refused to pay the carry charges on this additional stock (78 cents per month per share) the association brought small claim action to recover unpaid carrying charges.

West Headnotes/Reasoning:

Common Interest Communities

A cooperative apartment is somewhat of a legal hybrid in that the stockholder possesses both stock and a lease, and the relationship between the tenant shareholder and owner cooperative is largely determined by reading together the certificate of incorporation, stock offering prospectus, stock subscription agreement, and proprietary lease.

Common Interest Communities

Primary interest of every stockholder in a cooperative apartment is the long-term proprietary lease and the stock is incidental to such purpose and merely affords the practical means of combining an ownership interest with the method of sharing proportionately the assessments for maintenance and taxes.

Common Interest Communities

Owner cooperative had no authority to require tenant shareholder of cooperative apartment to accept additional shares on account of shareholder's construction, at his own expense, of an elevator for the sole and exclusive use of his apartment, since no provision in corporate bylaws authorized owner cooperative to impose upon its shareholders the obligation to accept additional stock on account of shareholders' contribution to owner's capital, and no provision in the proprietary lease required shareholders to accept such shares when tendered.

Holding: The appellate court held that the association did not have authority to require tenant-owner to accept additional stock due to improvements made at his own expense since no provision of corporate bylaws or proprietary lease authorized such action.

Brandzel v. Koretzky, 384 N.E.2d 128 (Ill. App. Ct. 1978)

Procedural History: Defendant tenant-owner appealed trial court's ruling that he owed plaintiff tenant-owner his share of the cooperative's tax savings from plaintiff's homestead tax exemption.

Issue: Whether four-unit land trust is considered a cooperative in Illinois and whether each tenant-owner can recover for their individual tax exemptions.

History: The parties lived in a four unit building, which was formed as a land trust. Two of the tenant-owners were over 65 years of age. According to Ill. Rev. Stat. 1971, par. R500.23-1 a person over 65 years old is granted a homestead tax exemption. The agreement among the co-owners provided "that each co-owner's 'proportionate share of general expenses is 25%,' and that the 'above stated proportionate share of general expenses apply to taxes.'" The plaintiff, having claimed the homestead exemption on his taxes, went to all three neighbors for payment based on the money they saved on their taxes due to his exemption.

West Headnotes/Reasoning:

Taxation

With regard to over 65 cooperative building homestead tax exemption, whether title is in land trust or held by corporation is merely matter of convenience of parties; essence of cooperative is agreement among co-owners. S.H.A. ch. 120, § 500.23-1.

Corporations and Business Organizations

Under agreement among owners of apartments in four-unit building, owners were “co-owners” of cooperative even though title to such building was held in land trust and not by corporation.

Corporations and Business Organizations

Where agreement among co-owners of four-unit apartment building provided that each co-owner’s “proportionate share of general expenses is 25%,” that “above stated proportionate share of general expenses apply to taxes,” and that “each party shall bear his proportionate share of taxes * * * levied, assessed, or imposed against the real estate and buildings * * *,” over 65 co-owner was not entitled to recover \$94.01 portion of tax savings resulting from his homestead tax exemption on the apartment building from other co-owner, since to allow recovery would cause taxes not to be shared proportionately. S.H.A. ch. 120, § 500.23-1.

Corporations and Business Organizations

Where agreement among co-owners of four-unit apartment building provided that each co-owner was obligated to pay 25% of real estate taxes, co-owner could not collect from fellow co-owner one half of homestead tax exemption payments erroneously made by two other co-owners to such fellow co-owner. S.H.A. ch. 120, § 500.23-1.

Holding: The court held that under agreement among owners of apartments in four-unit building, owners were “co-owners” of cooperative even though title to such building was held in land trust and not by corporation and that defendant co-owner was not required to pay plaintiff co-owner because doing so would mean that each co-owner did not pay his proportionate share.

Logan v. 3750 N. Lake Shore Drive, 308 N.E.2d 278 (Ill. App. Ct. 1974)

Procedural History: Plaintiff, a tenant-owner of a cooperative housing unit, appealed from the circuit court’s dismissal of her suit brought to declare her right to sublet her apartment unit.

Issue(s): Whether a tenant-owner with a proprietary lease allowing for subletting with board approval may bring action in circuit court to declare right to sublet when denied right by the board, and whether tenant-owner must exhaust all internal remedies prior to doing so.

History: In *Logan v. 3750 North Lake Shore Drive*, a tenant-owner of a cooperative apartment building wished to sublet her apartment. She therefore sought permission from the board pursuant to the terms of her proprietary lease. The board denied approval without explanation. She then requested a meeting of the shareholders pursuant to the lease provision stating that a

tenant-owner *may* appeal to the shareholders when permission to sublet is refused. According to the plaintiff the board refused to call the shareholders to a meeting; according to the board the tenant-owner revoked her request for a shareholder meeting. The circuit court dismissed the suit reasoning that the tenant-owner failed to exhaust all internal remedies by failing to appeal to shareholders and because the board was allowed to deny permission to sublet. Plaintiff tenant-owner appealed.

West Headnotes/Reasoning:

Associations

Members of voluntary associations are required to exhaust their internal remedies prior to instituting legal action to enforce certain rights, though under exceptional circumstances a court may intervene without aggrieved party having exhausted his organization's remedies.

Associations

Member of voluntary association necessarily agrees to reasonable rules and regulations of the order.

Common Interest Communities Corporations and Business Organizations Declaratory Judgment

Where proprietary lease of cooperative apartment specifically stated that shareholder lessee could sublet apartment, right to sublet, as limited by discretionary power vested in corporation's board of directors, was proprietary right, rather than matter of discipline, policy or doctrine, and shareholder lessee whose application for approval to sublet was denied "in accordance with the long-established policy of the building" was not required to exhaust internal remedies provided in lease and could apply to court for declaratory judgment and damages without appeal to stockholders.

Appeal and Error Judgment

Trial court at trial could not, nor could reviewing court, consider documents which were part of summary judgment proceedings but were never offered or received as evidence at trial.

Common Interest Communities Corporations and Business Organizations

Evidence that board of directors of cooperative apartment corporation which had granted stockholder's proprietary lease to plaintiff, under terms of which she had right to sublease on board's approval of subtenant as acceptable occupant of apartment denied approval of proposed sublease "in accord with the long-established policy of the building," made prima facie case that board's refusal to consent to the sublease was arbitrary and unreasonable.

Corporations and Business Organizations Declaratory Judgment

Where proprietary lease granted to shareholder lessee of cooperative apartment provided that lessee on refusal of proposed sublease "may" appeal to corporate shareholders, she was not required to exhaust remedies by requesting board to call special meeting, though president was required to call special meeting on receipt of written notice of appeal, nor was shareholder lessee required to bring action for

mandamus to compel board to call such meeting, before bringing action for declaration of her rights and for damages.

Holding: The appellate court reversed the holding of the circuit court holding that (1) plaintiff was not required to exhaust internal remedies therefore her application to the court without appealing to shareholders was proper and (2) plaintiff's evidence supports claim that board's denial of sublease was arbitrary and unreasonable.

Mowatt v. 1540 Lake Shore Drive Corp., 385 F.2d 135 (7th Cir. 1967)

Procedural History: Plaintiff tenant-owner appealed from district court's judgment in favor of defendant cooperative association holding that board's rejection of proposed sublessees and assignees was not arbitrary and did not breach the proprietary lease.

Issue(s): Whether board's refusal of several sublessees and assignees proposed by the plaintiff tenant-owner was a violation of the lease agreement provision requiring board approval of subleases and assignments.

History: Tenant-owner sued to recover damages from cooperative housing association and its directors which had on several occasions refused to give their consent as required under lease to assignments negotiated by tenant-owner on basis of insolvency of proposed assignees, their association with people of disreputable character, or their tendency to act out in public.

West Headnotes/Reasoning:

Perpetuities

Provision in lease between stockholder-lessee and corporation engaged in cooperative apartment enterprise against assigning or subletting without corporation's consent would not be invalid on grounds that it constituted an unreasonable restraint on alienation if power to withhold consent must be reasonably exercised in the light of the purposes of the arrangement, but would be void if it need not be.

Common Interest Communities

Evidence, in suit by stockholder-lessee of corporation engaged in cooperative apartment enterprise to recover damages from corporation and its directors which had on several occasions refused to give their consent as required under lease to assignments negotiated by stockholder-lessee on basis of insolvency of proposed assignees or their association with people of disreputable character, sustained finding that actions by board of directors in passing upon proposed assignees were not arbitrary nor were the reasons for rejection inconsequential.

Holding: The court of appeals held that the evidence sustained the district court's finding that actions by board of directors in passing upon proposed assignees were not arbitrary nor were the reasons for rejection inconsequential.

Gale v. York Ctr. Cmty. Coop., Inc., 171 N.E.2d 30 (Ill. 1961)

Procedural History: Tenant-owners appealed circuit court's decision ordering them to reconvey property deeds to the cooperative association.

Issue(s): Whether cooperative housing association may partially restrain the alienability of the tenant-owners ownership interest.

History: Action by cooperative housing association for a reconveyance to the association of properties by members to whom association had deeded properties pursuant to membership agreement in order that members might obtain their own mortgage financing and deal with their mortgagees as individual fee owners.

West Headnotes/Reasoning:

Perpetuities

Public policy is the cause for the rule against restraints on the power of alienation of property, making such attempted restraints void even though limited in time, mode, persons, and whether placed against alienation of a fee, a life estate, or a vested future interest, but where such a restraint is reasonably designed to attain or encourage accepted social or economic ends, such as to protect a divorced wife or a charity, restraints may be upheld, and the test is whether the utility of the restraint compares favorably with any injurious consequences that flow from the enforcement of a restraint.

Perpetuities

Where members of housing co-operative could not sell their interest until co-operative had an opportunity to bid and where association could redeem a membership sold on the open market and where association could convey title to members who sought to obtain their own financing but where, when such mortgage relationship was completed, member had to reconvey to association, such restraints upon the alienability of the property interest of members of co-operative housing association would not produce injurious consequences to the public, and restraints did not render agreement between members and association void under the rule against restraints upon the alienability of property interests and association was entitled to a reconveyance from members upon completion of mortgage financing arrangement. S.H.A. ch. 32, § 163a3.

Contracts

In order for a contract to be binding it must be definite and certain in all of its terms, but it is sufficiently definite and certain if the court is able from the terms and provisions, under proper rules of construction and applicable rules of equity to ascertain what the parties have agreed to do.

Action

Contracts

Agreement between owners of property interest in co-operative housing association, spelling out right of association members in disposing of their property interest was sufficiently definite and certain, and court would not undertake to construe, in the abstract, terms of the agreement which might, at some future date, require interpretation by a court of equity.

Corporations and Business Organizations

Where, under agreement between co-operative housing association and its various members, title to property was held by association, but, if member sought to obtain mortgage financing, association would give a deed and member would procure his own financing, but following completion of such arrangement, member would reconvey property to association, fact that association permitted members to make their mortgage payments to the mortgagees, rather than through the association, did not preclude association's right to a reconveyance. S.H.A. ch. 32, § 163a3.

Holding: The Supreme Court, held that where membership agreement provided that members could not transfer their interest until association had a chance to purchase and that association could redeem membership within 90 days if member sold his membership on the open market, such restraints upon the alienability of the property interest of members of co-operative housing association were not injurious to the public, and did not prevent any property owner from liquidating his interest and did not render membership agreement void under the rule against restraints upon the alienability of property, and that association was entitled to a reconveyance as provided for in the agreement between association members and association.

Brothers v. McMahon, 115 N.E.2d 116 (Ill. App. Ct. 1953)

Procedural History: Trial court dismissed counts in prospective tenant-owner's complaint alleging that developer violated Illinois Blue Sky Laws by comingling project funds and failing to perform contract. Trial court held that state's securities statutes did not apply. Prospective tenant-owners appealed.

Issue: Whether a down payment for a housing cooperative unit or land-trust unit is subject to the state's securities laws (i.e. Blue Sky Laws).

History: In *Brothers*, the prospective tenant-owners paid a developer a down payment of \$1600 to build and deliver a cooperative housing unit (or land-trust unit). The developer comingled the funds with other project funds and subsequently went bankrupt. The prospective tenant-owner's filed suit claiming, in part, that the developer violated the state's Blue Sky Laws.

West Headnotes/Reasoning:

Contracts

Where construction company covenanted to convey good title to buyer of realty and to construct upon realty conveyed an apartment dwelling unit, for which buyer was to pay in accordance with terms of contract, and purchaser agreed to execute agreement with other purchasers who would reside in the same co-operative dwelling unit so that entire unit would be managed on co-operative basis, entire transaction would be taken together,

and, if transaction was illegal it would be illegal in its entirety.

Securities Regulation

Contract, which had been made between purchaser and construction company for purchase of housing unit in co-operative apartment to be built by company, and by which purchaser made down payment to company, which promised to convey good title to purchaser and to construct apartment dwelling unit upon realty conveyed, did not constitute a "security" within meaning of the Blue Sky Law.

Securities Regulation

Where purchaser of housing unit in co-operative apartment to be built by construction company was not sharing in profits of company nor buying anything other than interest in realty with other joint owners, and medium of land trust or corporation was to be used for convenience and protection of parties purchasing interest in such apartment building, trust provision in contract did not constitute a "security" within meaning of Illinois Security Act. S.H.A. ch. 121½, § 97(1).

Holding: The court of appeals affirmed the lower court's ruling, holding that the state's securities laws do not apply to down payment and contract to purchase cooperative unit.

Drueck v. Peterson, 91 N.E.2d 124 (Ill. App. Ct. 1950)

Procedural History: Trial court ruled that cooperative housing located in a family residence use district was in violation of zoning ordinances. Decree was ordered enjoining building's use as a housing cooperative. Cooperative housing association appealed.

Issue(s): Whether multiple-unit cooperative housing is permitted in family residence use district.

History: Drueck brought injunction suit based on alleged violation of Chicago zoning ordinance against Peterson and United Cooperative Projects, Inc., a nonprofit corporation. City of Chicago was permitted to file a petition adopting plaintiff's second amended complaint. Drueck owned a home next to housing cooperative in a family residence use district. Over thirty people lived in the housing cooperative. Drueck claimed that the cooperative lowered her property value, was a health and safety hazard, and disturbed her peace and quiet.

West's Headnotes/Reasoning:

Municipal Corporations

City is authorized to institute any appropriate action to prevent a zoning violation. S.H.A. ch. 24, § 73-9.

Appeal and Error

Where no question of laches was raised in injunction suit based on alleged violation of city zoning ordinance in trial court, the question could not be raised for first time on appeal.

Zoning and Planning

Evidence supported finding that defendant's violation of zoning ordinance had adverse effect on individual plaintiff's property, so as to authorize individual plaintiff to bring injunction suit to restrain the alleged violation.

Injunction
Zoning and Planning

City was not required to show special damage in order to maintain injunction suit to restrain alleged violation of city zoning ordinance. S.H.A. ch. 24, § 53-3.

Injunction
Zoning and Planning

Use of a residence in family residence use district under Chicago zoning ordinance by cooperative association for housing of its members would be restrained as a violation of the zoning ordinance. D.C.Code 1940, § 29-801 et. seq.

Constitutional Law
Zoning and Planning

Chicago zoning ordinance under which defendant's property was placed in a family residence use district was not void, as applied to defendant's property, for denial of due process and equal protection of the law.

Holding: Court of Appeals held that cooperative housing was in violation of zoning ordinances by being located in family residence use district. The judgment of the court below was affirmed.

Kenny v. Thompson, 87 N.E.2d 229 (Ill. App. Ct. 1949).

Procedural History: New shareholder of cooperative housing unit appealed trial court's ruling that the Federal Housing and Rent Act of 1947 prohibited him from obtaining possession of his cooperative housing unit by not renewing sublessee's month to month lease which was entered into by the previous shareholder. The trial court reasoned that the new shareholder did not possess sufficient title to the unit to enable him to prevail in this action.

Issue(s): Whether shareholders are precluded from obtaining possession of their cooperative units from sublessees based upon the Federal Housing and Rent Act of 1947.

History: In *Kenny v. Thompson*, the previous cooperative housing shareholder subleased his unit to the defendant. The new shareholder (plaintiff), who had just returned home from WWII and wished to occupy the unit with his family, bought his shares from the previous shareholder and gave the sublessee (defendant) 30 days notice that his lease would not be renewed. When the sublessee failed to vacate the unit, the new shareholder brought a forcible entry and detainer action to obtain possession. The sublessee claimed that the Federal Housing and Rent Act of 1947 precluded the new shareholder from not renewing the lease and the trial court agreed.

West Headnotes/Reasoning:

**Landlord and Tenant
War and National Emergency**

In determining whether purchasers of individual units in cooperative apartment house were purchasers of housing accommodations within the Housing and Rent Act, substantial nature of rights of purchasers rather than in form of transaction by which purchasers acquired their interests was to be considered. Housing and Rent Act of 1947, §§ 1 et seq., 202, 209(a)(2, 3), and as amended, 50 U.S.C.A. Appendix, §§ 1881 et seq., 1892, 1899(a)(2, 3).

**Landlord and Tenant
War and National Emergency**

The effect of housing and Rent Act of 1947 was to eliminate necessity for certificates of eviction as basis for eviction proceedings and to repeal regulations governing grounds for eviction. Housing and Rent Act of 1947, §§ 1 et seq., 202, 209(a) (2, 3), and as amended, 50 U.S.C.A. Appendix, §§ 1881 et seq., 1892, 1899(a) (2, 3).

**Landlord and Tenant
War and National Emergency**

Where one owning a proprietary lease to apartment in cooperative apartment building, and shares of stock in the corporation which owned the building, sub-leased the apartment and some time later sold his stock and proprietary lease to a third person, the third person had sufficient title to enable him to sustain forcible detainer action to obtain possession of apartment for his own use, notwithstanding prohibitions of the Federal Housing and Rent Act of 1947. Housing and Rent Act of 1947, §§ 1 et seq., 202, 209(a)(2, 3), and as amended, 50 U.S.C.A. Appendix, §§ 1881 et seq., 1892, 1899(a)(2, 3).

Appeal and Error

Defendant may not abandon in the Appellate Court the position he took in the trial court.

Holding: The appellate court reversed the holding of the trial court. The court held that the Act did not prohibit the new shareholder from failing to renew the lease and compelled the lower court to enter a judgment in favor of the new shareholder.