

Waterbury Twin, LLC v. Renal Treatment Centers Northeast, Inc., 051408 CTSUP, WASP-39115

**WATERBURY TWIN, LLC and 150 MH, LLC**

v.

**RENAL TREATMENT CENTERS NORTHEAST, INC. and Davita, Inc.**

**No. WASP-39115.**

**Superior Court of Connecticut, Housing Session, Judicial District of Waterbury.**

**May 14, 2008**

CRAWFORD, J.

This is a Motion to Dismiss. The plaintiff brought this summary process action (eviction) alleging the following: 1) non-payment of rent; and 2) violation of the rental agreement or lease. The defendants moved to dismiss the action asserting the following: 1) the plaintiffs failed to serve a new Notice to Quit (hereinafter NTQ) after the voluntary withdrawal of the first complaint; and 2) even if the first NTQ is sufficient, then it is defective. The plaintiff responded that the NTQ is valid and a second NTQ is unnecessary.

**FACTS:**

On January 19, 2008, the plaintiffs had the defendants served with a NTQ possession by January 23, 2008. The reasons stated were: 1) by reasons of any expressed stipulation therein; and 2) non-payment of rent when due for commercial property. (Attachment # 1.)

On January 31, 2008, the complaint was served with a return date of February 7, 2008. The marshal made a late return of the complaint to the court on February 5, 2008. On February 11, 2008, the defendants moved to dismiss the complaint on the grounds that the late return was in violation of Connecticut General Statutes § 47a-23a which requires the return to court to be at least three days before, and exclusive of the return date.

On February 15, 2008, the plaintiffs voluntarily withdrew the complaint. The next day, February 16, 2008, the plaintiffs issued a new complaint with a return date of March 4, 2008. The marshal served the complaint on February 25, 2008 and returned it to court on February 26, 2008. The plaintiffs did not issue a new NTQ.

By letter dated February 19, 2008, the plaintiffs agreed with the grounds stated by the defendants in the motion to dismiss, informed them of the withdrawal and the commencement of the new action.

By letter dated February 27, 2008, the defendants notified the plaintiff, 150 MH, LLC, of their assumption that the NTQ had been withdrawn and the lease reinstated. The defendants also enclosed a check for *rent* for the month of March.

By letter dated February 29, 2008, both plaintiffs acknowledged receiving the *rent* check, notified the defendants that the NTQ would not be withdrawn nor the lease reinstated. The plaintiffs also stated that they were unaware of the identity of Total Renal Care, Inc., the name of the party that issued the check, voluntarily accepted the check and applied it to damages owed by the defendants. The plaintiff further stated that the defendant, Renal Treatment Centers should rely on the language in the NTQ regarding payments.

The check issued by Total Renal Care, Inc. also identifies it as a subsidiary of Davita, Inc., the second named defendant. (Plaintiff's exhibit # 2).

On March 11, 2008, the defendants moved to dismiss this complaint.

### **DISCUSSION**

" The notice [to quit] is a condition precedent to the bringing of the summary process action...." *O'Keefe v. Atlantic Refining Co.*, 132 Conn. 613, 622, 46 A.2d 343 (1946); *Lampasona v. Jacobs*, 209 Conn. 724, 729, 553 A.2d 175. In *Housing Authority of East Hartford v. Hird*, 13 Conn.App. 150, 156-157, 535 A.2d 377 (1988), the court held that the withdrawal of a summary process action ... effectively erased the court slate clean as though the eviction predicated on the (prior) notice to quit possession had never been commenced. The plaintiff and the defendant are back to square one."

In this case, the voluntary withdrawal of the complaint placed the parties back to square one. " Square one" in this case, as if the eviction action had never been brought, was a revival of the written lease. Furthermore, the plaintiffs in its letter dated February 29, 2008, acknowledged receipt of the *rent* check but stated it would be applied to damages.

The Superior Court cases cited by the plaintiff can be distinguished from this case. In *Town of Stratford v. Sullivan*, 38 Conn. L. Rptr 432 (2004) and *Lombardi v. Dunning*, 14 Conn. L.Rptr 606 (1995) when the parties were returned to square one, since the lease had expired and the defendants were tenants at sufferance.

In *Hill v. Purdy*, CV188661 Judicial District of Litchfield G.A. # 18 at Bantam (Black, J.), the defendant moved to dismiss the second action alleging no lease existed so it could not be terminated for lapse of time. The plaintiff withdrew that second action. The defendants then moved to dismiss the third action alleging that the lease had been reinstated at the withdrawal. This assertion contradicted the previous argument that no lease existed. The court (Black, J.) found that there was no lease agreement and the tenancy had been converted to a tenancy at sufferance.

In *Cohen v. Thorpe*, 3 Conn. L.Rptr. 692; SPN09011-10511 (Superior Court Housing Session at Norwalk (Melville, J.), the plaintiff had served a second Notice to Quit and the court found a tenancy at sufferance.

The plaintiffs argue that where there is no adjudication on the validity of the first NTQ, the second complaint may proceed without a new NTQ. The issue in this case is whether the plaintiffs need to serve a new NTQ before proceeding on the second complaint.

" The right of a plaintiff to withdraw his action before a hearing on the merits, as allowed by Connecticut General Statutes § 52-80, is absolute and unconditional. Under (the) law, the effect of a withdrawal, so far as the pendency of the action is concerned is" strictly analogous to that presented after the rendition of a final judgment or the erasure of the case from the docket." *Housing Authority of East Hartford v. Hird*, supra.

The parties therefore are back to the status quo prior to the service of the NTQ, that is, a revival of the written lease.

The second argument raised by the defendants is that the NTQ is defective. A proper NTQ is a condition precedent to bringing this second complaint. Although the language in the NTQ " tracks" the statutory language, it fails to provide adequate notice to the defendant. (Attachment # 1) The first reason stated in the NTQ makes reference to any expressed stipulation therein. The

second reason stated references non-payment of rent when due for commercial property. The first reason stated provides absolutely no notice, and the second reason fails to, provide adequate notice since it does not specify what is due, such as base rent or additional rent. The NTQ does not specify what is due such as base rent or additional rent. Furthermore, the complaint is at variance with the terms stated in the NTQ.

A notice to quit will not terminate a lease if the notice itself is invalid. The first reason stated does not provide any notice as to why the defendants should quit possession.

### **CONCLUSION**

The court has reviewed the pleadings, the legal memoranda and has considered the arguments. In this case, the withdrawal of the complaint returned the parties to the status quo, a revival of the written lease. Additionally, the reason stated in paragraph # 1 of notice to quit provides no notice at all.

Accordingly, the Motion to Dismiss is granted.

*ATTACHMENT # 1*

### **NOTICE TO QUIT**

TO: Renal Treatment Centers-Northeast, Inc.  
Davita, Inc.  
150 Mattatuck Heights Road  
Waterbury, Connecticut

### **NOTICE**

is hereby given to you that you are to quit possession or occupancy of premises now occupied by you at 150 Mattatuck Heights Road, Waterbury, Connecticut (as specified on the attached exhibits) on or before January 23, 2008 for the following reasons: (1) by reason of any expressed stipulation therein; (2) nonpayment of rent when due for commercial property.

DATED at Meriden, Connecticut this 18th day of January, 2008.

WATERBURY TWIN LLC & 150 MH LLC LANDLORDS

By: \_\_\_\_\_

Houston Putnam Lowry for  
Brown & Welsh, P.C.  
530 Preston Avenue  
P.O. Box 183  
Meriden, CT 06450-0183  
(203) 235-1651  
FAX: (203) 235-9600  
Attorneys for the owners

### **IMPORTANT:**

Any payments tendered after this notice is served will not be accepted for rent. Such payments will be applied first to costs, attorneys fees (to the extent applicable) and then use and occupancy, *with full reservation of rights to continue with the eviction action.*

If a judicial proceeding for an eviction is instituted, you may present a defense in that proceeding.

**OFFICER'S RETURN**

STATE OF CONNECTICUT

ss: Waterbury, January 19, 2008

COUNTY OF NEW HAVEN

Then I made due and legal service of the foregoing Notice to Quit Possession by leaving a duplicate copy with and in the hands of Maria Silva, RN, who is duly authorized to accept service and who accepted service, on behalf of **RENAL TREATMENT CENTERS-NORTHEAST, INC., DAVITA, INC.**, at 150 Mattatuck Heights Road, Waterbury, CT., in said Town,

ATTEST:

MELBOURNE R. RICHARD, JR,

AN INDIFFERENT PERSON

FEE: \$72.80