

Fink v. Standard Bread Co., 110 N.Y.S. 248 (1908)

110 N.Y.S. 248 (Mem)
Supreme Court, Appellate Term, New York.

FINK
v.
STANDARD BREAD CO.

May 15, 1908.

Synopsis

Appeal from Municipal Court, Borough of Manhattan, Sixth District.

Action by **Louise Fink** against the Standard Bread Company. From a judgment for plaintiff, rendered in the Municipal Court, defendant appeals. Reversed, and new trial ordered.

Attorneys and Law Firms

*248 Frederick W. Hamberg, for appellant.

George L. Donnellan, for respondent.


Argued before GILDERSLEEVE, P. J., and GIEGERICH and GREENBAUM, JJ.

Opinion

GREENBAUM, J.

The provision in the agreement between plaintiff's husband and defendant that the latter would lease of the plaintiff the premises in question for a term of years at a yearly rental of \$3,300, payable monthly in advance, was not evidence as

between the parties to this action of any lease or agreement to lease. The agreement with plaintiff's husband related to his acquisition of an *249 interest in defendant's business, and the legal effect of the provision as to leasing which was incidental to the main purpose of the agreement, need not now be considered.

It seems to me that this case radically differs from such cases as  Laughran v. Smith, 75 N. Y. 205, 209, and Coudert v. Cohn, 118 N. Y. 309, 312, 23 N. E. 298, 7 L. R. A. 69, 16 Am. St. Rep. 761, relied upon by the learned counsel for the respondent, in which the doctrine is recognized that, where the tenant enters into occupancy of premises under a void lease, its provisions will nevertheless regulate "the terms on which the tenancy subsists in all respects, except as to the duration of the term," for the reason that in those cases the tenant's occupancy was under a supposedly valid lease between the parties, whereas here there is a total absence of proof of any understanding for any lease between plaintiff and defendant. At most, one may indulge in the assumption that plaintiff did not object to the defendant's occupancy of the premises, in view of her husband's agreement with the defendant. The right to a recovery would therefore not rest upon an implied agreement of a leasing from month to month or from year to year, but upon a claim for use and occupation.

The judgment must be reversed, and a new trial ordered, with costs to appellant to abide the event.

All concur.

All Citations

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