

EXAMINERS' ANALYSIS OF QUESTION NO. 11

1. In Michigan, the summary proceedings act (the "act") governs civil actions to recover possession of real property. MCL 600.5701 et seq. "A tenancy from month-to-month, which is to last for an uncertain duration, is a tenancy at will and is terminable at the desire of either party upon the tender of sufficient notice." *Frenchtown Villa v Meadors*, 117 Mich App 683, 688-689 (1982). However, the act specifically precludes entry of a judgment of possession in certain instances that amount to retaliation by the plaintiff landlord in response to particular actions by the defendant tenant to advance rights under the tenancy. The act states in pertinent part:

(1) A judgment for possession of the premises for an alleged termination of tenancy shall not be entered against a defendant if 1 or more of the following is established:

(a) That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States.

(b) That the alleged termination was intended primarily as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of a health or safety code or ordinance.

(c) That the alleged termination was intended primarily as retribution for a lawful act arising out of the tenancy, including membership in a tenant organization and a lawful activity of a tenant organization arising out of the tenancy.

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MCL 600.5720 (1)(a)-(c).

The facts in the instant case do not suggest any problematic issues between Marvin as tenant and Renee as landlord. The several-years-long, month-to-month tenancy was

incident free. None of the illegal reasons for terminating a tenancy as set forth in the act applies to the tenancy between the two. It is obvious that at worst, Renee's decision to cut tenancy ties with Marvin was a reaction to her disagreements with Mary and a desire to retaliate against Mary in some way. This is evidenced by Renee's angry retort about "fixing" Mary, and then promptly and unexpectedly beginning the process to sever the tenancy relationship with Marvin. While Renee's alleged termination of Marvin's month-to-month tenancy by serving a notice to quit could be characterized as misguided, unkind or unfair, it was not illegal. *Frenchtown* at 688-689. Accordingly, Marvin's retaliation defense will not succeed, and a judgment for possession in favor of Renee may issue.

2. Mary and Ashley owned the mansion as tenants in common.

Tenants in common are persons who hold land or other property by unity of possession. When two or more persons are entitled to land in such a manner that they have an undivided possession, but separate and distinct freeholds, they are tenants in common. Not only is the possession of one the possession of all, but the tenants respectively have the present right to enter upon the whole land, and upon every part of it, and to occupy and enjoy the whole. [*Merritt v Nickelson*, 80 Mich App 663, 666 (1978)].

Accordingly, each tenant in common has the right to sell her own undivided interest in the real property without knowledge or permission of the other cotenant(s). *Albro v Allen*, 434 Mich 271, 282 (1990). Thus, Ashley's property interest sale to Renee cannot be rescinded on the basis that it was illegal. Renee became a tenant in common with Mary upon the sale of Ashley's property interest. *Id.*