Marcus Brown Holding Co., Inc. Vs. Feldman

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Appeal No. : 256 U.S. 170

Appellant : Marcus Brown Holding Co., Inc.

Respondent : Feldman

Judgement :

Marcus Brown Holding Co., Inc. v. Feldman - 256 U.S. 170 (1921)
U.S. Supreme Court Marcus Brown Holding Co., Inc. v. Feldman, 256 U.S. 170 (1921)

Marcus Brown Holding Co., Inc. v. Feldman

No. 731

Argued March 3, 7, 1921

Decided April 18, 1921

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. In view of the emergency declared by the legislature and found by the district court in this case and in like cases by the highest court of the state, the New York laws enacted on September 27, 1920, to be in effect only until November 1, 1922, and regulating rights and remedies in respect of real property occupied for dwelling purposes in and about the City of New York, do not exceed the police power of the state in requiring that only reasonable rents shall be exacted or in denying the right to maintain actions to recover possession except upon the grounds that the occupant is holding over and is objectionable, or that the owner of record, being a natural person, seeks in good faith to recover for immediate occupancy by himself and family as a dwelling, or that the action is to recover possession for the purpose of demolishing the building with intention to construct a new one. P. 256 U. S. 198 . *Block v. Hirsh, ante,* 256 U. S. 135 .

2. *Held* that such regulation, as applied in favor of tenants holding over under an expired lease in disregard of their covenant to surrender, did

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not deprive the landlord of rights under the Fourteenth Amendment or the Contract Clause of the Constitution, although the lease was executed before and expired soon after the date of the legislation and the landlord, before the enactment, had entered into a new lease with a third party to go into effect shortly after the expiration of the old one. P. 256 U. S. 198 .

3. The legislation does not unduly discriminate in not including cities of less than a specified population, or buildings occupied otherwise than for dwelling purposes, or buildings in course of construction. P. 256 U. S. 198 .

4. Chapter 951 of the Laws of New York of 1920, insofar as it makes it a misdemeanor for the owner of an apartment house, or his agents, etc., willfully and intentionally to fail to furnish to the tenant of an apartment such water, heat, light, elevator, telephone, or other service as may be required by the terms of the lease and necessary to the proper and customary use of the building, cannot be said to

impose involuntary service in violation of the Thirteenth Amendment. P. 256 U. S. 199 .

269 F. 306 affirmed.

This was a direct appeal, under 266 of the Judicial Code, from a decree of the district court in a suit brought by the owner of an apartment house in New York City for the purpose of ousting certain holding-over tenants through a mandatory injunction, and of restraining the District Attorney of the County of New York from taking criminal proceedings against the plaintiff or its agents for failure to furnish water, heat, light, elevator, and other service. The defendants relied on recent legislation of New York, referred to in the opinion, * regulating the

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tights and remedies of landlords and tenants in New York City and vicinity -- which the plaintiff assailed as unconstitutional. The district court sustained the legislation as it applied to the case, and dismissed the bill. *See* 269 F. 306. The facts are given in the opinion, *post,* 256 U. S. 196 .

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill in equity brought by the Marcus Brown Holding Company, the appellant, owner of a large apartment house in the City of New York, against the tenants of an apartment in the house and the District Attorney of the County of New York. The tenants are holding over after their lease has expired, which it did on September 30, 1920, claiming the right to do so under cc. 942 and 947 of the Laws of New York of 1920. The object of the bill is to have these and other connected laws declared unconstitutional. The district attorney is joined in order to prevent his enforcing by criminal proceedings cc. 131 and 951 of the acts of the same year, which make it a misdemeanor for the lessor or any agent

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or janitor intentionally to fail to furnish such water, heat, light, elevator, telephone, or other service as may be required by the terms of the lease and necessary to the proper or customary use of the building. The case was heard in the district court by three judges upon the bill, answer, affidavits and some public documents, all of which may be summed up in a few works. The bill alleges at length the rights given to a lessor by the common law and statutes of New York before the enactment of the statutes relied upon by the tenants, a covenant by the latter to surrender possession at the termination of their lease, and due demand, and claims protection under Article I, Section 10 and the Fourteenth Amendment of the Constitution of the United States. An affidavit alleges that, before the passage of the new statutes, another lease of the premises had been made, to go into effect on October 1, 1920. The answer of the tenants relies upon the new statutes and alleges a willingness to pay a reasonable rent and any reasonable increase as the same may be determined by a court of competent jurisdiction. It also alleges that they made efforts to obtain another suitable apartment, but failed. The District Attorney moved to dismiss the bill. The judges considered the case upon the merits, upheld the laws, and ordered the bill to be dismissed.

By the above mentioned cc. 942 and 947, a public emergency is declared to exist and it is provided by c. 947 that no action

"shall be maintained to recover possession of real property in a city of a population of one million or more or in a city in a county adjoining such city, occupied for dwelling purposes, except an action to recover such possession upon the ground that the person is holding over and is objectionable, . . . or an action where the owner of record of the building, being a natural person, seeks in good faith to recover possession of the same or a room or rooms therein for the immediate

and personal occupancy by himself and his family as a dwelling; or an action to recover premises for the purpose of demolishing the same with the intention of constructing a new building. . . ."

The earlier c. 942 is similar, with some further details. Both acts are to be in effect only until November 1, 1922. It is unnecessary to state the provisions of c. 944 for disputes as to what is a reasonable rent. They are dealt with in the decisions of the Court of Appeals cited below and in *Edgar A. Levy Leasing Co., Inc. v. Siegel,* 230 N.Y. 634, by the same court. In this as in the previous case of *Block v. Hirsh, ante,* 256 U. S. 135 , we shall assume, in accordance with the statutes, the finding of the Court below and of the Court of Appeals of the state in *People ex rel. Durham Realty Corp. v. La Feltra,* 230 N.Y. 429, and *Guttag v. Shatzkin,* 230 N.Y. 647, that the emergency declared exists. *Hebe Co. v. Shaw,* 248 U. S. 297 , 248 U. S. 303 ; *Hairston v. Danville & Western Ry. Co.,* 208 U. S. 598 , 208 U. S. 607 .

The chief objections to these acts have been dealt with in *Block v. Hirsh.* In the present case, more emphasis is laid upon the impairment of the obligation of the contract of the lessees to surrender possession and of the new lease which was to have gone into effect upon October 1, last year. But contracts are made subject to this exercise of the power of the state when otherwise justified, as we have held this to be. *Manigault v. Springs,* 199 U. S. 473 , 199 U. S. 480 ; *Louisville & Nashville R. Co. v. Mottley,* 219 U. S. 467 , 219 U. S. 482 ; *Chicago & Alton R. Co. v. Tranbarger,* 238 U. S. 67 , 238 U. S. 76 -77; *Union Dry Goods Co. v. Georgia Public Service Corporation,* 248 U. S. 372 , 248 U. S. 375 ; *Producers Transportation Co. v. Railroad Commission of California,* 251 U. S. 228 , 251 U. S. 232 . It is said, too, that the laws are discriminating, in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property, or buildings now in course of erection, etc.

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But as the evil to be met was a very pressing want of shelter in certain crowded centers, the classification was too obviously justified to need explanation, beyond repeating what was said below as to new buildings, that the unknown cost of completing them and the need to encourage such structures sufficiently explain the last item on the excepted list.

It is objected, finally, that c. 951, above stated, insofar as it required active services to be rendered to the tenants, is void on the rather singular ground that it infringes the Thirteenth Amendment. It is true that the traditions of our law are opposed to compelling a man to perform strictly personal services against his will, even when he had contracted to render them. But the services in question, although involving some activities, are so far from personal that they constitute the universal and necessary incidents of modern apartment houses. They are analogous to the services that, in the old law, might issue out of or be attached to land. We perceive no additional difficulties in this statute, if applicable as assumed. The whole case was well discussed below, and we are of opinion that the decree should be affirmed.

Decree affirmed.

* The following summary of the chief features of these New York "housing acts" is added for the convenience of those who desire a quick view.

C. 942, Law of 190, declares a public emergency to exist, and provides that summary proceedings shall not be maintainable to recover the possession of real property occupied for dwelling purposes in a city of a population of one million or more or in a city in a county adjoining such a city, except (1) where the person holding over is objectionable, (2) where the owner of record, being a natural person, desires the premises for immediate and personal occupancy by himself and his family as a dwelling, (3) where the owner intends to demolish the premises and rebuild, or (4) where the building is to be taken over by a cooperative ownership group. The landlord must show that the proceeding is one mentioned in the enumerated exceptions. The act is inapplicable to buildings in course of construction or commenced after the date of the act, and is to be in effect only until November 1, 1922.

C. 945, Laws of 1920, regulates stays on appeals from final orders in summary dispossession proceedings.

C. 944, Laws of 1920, amending c. 156, Laws of 1920:

Section 1, after reciting the existence of a public emergency, declares that it shall be a defense to an action for rent accruing under an agreement for premises in a city of the first class, etc., occupied for dwelling purposes, that such rent is unjust and unreasonable and that the agreement under which the same is sought to be recovered is oppressive.

Section 2 requires the landlord, where the defense of unreasonable rent is set up, to file a bill of particulars setting forth certain material facts relevant to the issue of the reasonableness of the rent.

Section 3 provides that, where it appears that the rent has been increased over the rent as it existed one year prior to the time of the agreement under which the rent is sought to be recovered, such agreement shall be presumptively unjust, unreasonable and oppressive.

Section 4 permits the landlord to plead and prove in such action a fair and reasonable rent and to recover judgment therefor, or to institute a separate action for the recovery thereof.

Section 5. Where, in an action for rent or rental value, the landlord secures judgment by default, he shall, in addition to a money judgment, be put in possession if payment be not promptly made.

Section 6. If, in such action for rent or rental value, the issue of reasonableness of the amount demanded be raised by the defendant, he must deposit in court a sum equal to the amount paid as last month's rent or the rent reserved as the monthly rent in the agreement under which he obtained possession, such deposit to be applied to the satisfaction of the judgment rendered, or otherwise disposed of as justice requires. Where judgment is rendered for the plaintiff, if the same be not fully satisfied from the deposit or otherwise within five days after entry, the plaintiff shall be entitled to the premises and a warrant shall issue commanding the sheriff, etc., to remove all persons therefrom.

Section 7 relates to the vacation of default judgments, to vacation and amendment of process, etc., and granting of new trials.

Section 8.

"In case of an appeal by the defendant, the execution of the judgment and warrant shall not be stayed unless the defendant shall deposit with the clerk of the court the amount of the judgment and thereafter monthly until the final determination of the appeal an amount equal to one month's rental computed on the basis of the judgment. The clerk shall forthwith pay to the plaintiff the amount or amounts so deposited."

Section 9 renders the act inapplicable to hotels containing 125 rooms or more or to lodging or rooming houses occupied under a hiring of a week or less.

Section 10 exempts buildings in course of construction or commenced after the date of the act. The act is to be in force only until November 1, 1922.

C. 945, Laws of 1920, allows summary dispossession proceedings for nonpayment of rent only where the petitioner alleges and proves that the rent is no greater than the amount for which the tenant was liable for the month preceding the default, and provides for testing the reasonableness of the rent in substantially the same manner as in an action for rent, which is regulated by c. 944, *supra.* In effect only until November 1, 1922.

C. 947, Laws of 190, limits until November 1, 1922, the action of ejectment, in substantially the same manner as c. 942, *supra,* limits summary proceedings.

C. 951, Laws of 190, amending 2040 of the Penal Law, makes it a misdemeanor for any lessor or his agents, etc., wilfully or intentionally to fail to furnish necessary hot or cold water, heat, light, power, elevator service, telephone or any other service, required by the lease, or willfully and intentionally to interfere with the quiet enjoyment of the leased premises by the occupant.

MR. JUSTICE Mc KENNA, THE CHIEF JUSTICE, MR. JUSTICE VAN DEVANTER, and MR. JUSTICE Mc REYNOLDS dissent.

This case was submitted with *Block, etc. v. Hirsh,* No. 640, *ante,* 256 U. S. 135 .

Like that case, it involves the right of a lessee of property -- in this case, an apartment in an apartment house in New York City, to retain possession of it under a law of New York after the expiration of the lease. This case is an emphasis of the other, and the argument in that applies to this. It may be more directly applicable,

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for, in this case, the police power of the state is the especial invocation, and the court's judgment is a concession to it, and, as we understand the opinion, in broader and less hesitating declaration of the extent of the potency of that power. "More emphasis," it is said, "is laid upon the impairment of the obligation of the contract," than in the *Hirsh* case. In measurement of this as a reliance, it is said: "But contracts are made subject to this exercise of the power of the state *when otherwise justified, as we have held this to be.* " The italics are ours, and we estimate them by the cases that are cited in their explanation and support. We are not disposed to a review of the cases. We leave them in reference, as the opinion does, with the comment that our deduction from them is not that of the opinion. There is not a line in any of them that declares that the explicit and definite covenants of private individuals engaged in a private and personal matter are subject to impairment by a state law, and we submit, as we argued in the *Hirsh* case, that, if the state have such power -- if its power is superior to Article I, 10, and the Fourteenth Amendment, it is superior to every other limitation upon every power expressed in the Constitution of the United States, commits rights of property to a state's unrestrained conceptions of its interests, and any question of them -- remedy against them -- is left in such obscurity as to be a denial of both. There is a concession of limitation, but no definition of it, and the reasoning of the opinion, as we understand it, and its implications and its incident, establish practically unlimited power.

We are not disposed to further enlarge upon the case or attempt to reconcile the explicit declaration of the Constitution against the power of the state to impair the obligations of a contract or, under any pretense, to disregard the declaration. It is safer, saner, and more consonant with constitutional preeminence and its

purposes

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to regard the declaration of the Constitution as paramount, and not to weaken it by refined dialectics, or bend it to some impulse or emergency "because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment." *Northern Securities Co. v. United States,* 193 U. S. 197 , 193 U. S. 400 .

We therefore dissent.