

to take away his propriety lease (index numbers 434/88 and 500/88).

August 20, 2007.
Verified Answer in
Madden v.
Elong
Sasso
#1502/07

AS AND FOR RESPONDENT'S SEVENTH AFFIRMATIVE DEFENSE
Implied Contract, Detrimental Reliance & Fraud

* TWENTY-THIRD: Notwithstanding the federal suit ended in 1993, adverse to respondent, petitioner did not then or thereafter seek her eviction by reason thereof or otherwise clarify the basis of her occupancy, as he readily could have done. To the contrary, he fostered in respondent the belief that he was honoring the terms of the October 30, 1987 occupancy agreement and contract of sale.

TWENTY-FOURTH: For 8-1/2 years petitioner knowingly and deliberately entered into no yearly sublet agreements with respondent for her continued occupancy of the apartment and to submit same to the Co-Op board for approval, as required by Co-Op rules and procedures (Exhibit B-1). Instead, he maintained, intact, the \$1,000 monthly occupancy charge fixed by the occupancy agreement.

TWENTY-FIFTH: Such is all the more significant if, as petitioner's ¶13 purports, the apartment is not subject to any rent regulation. Upon information and belief, the Co-Op increased charges to shareholders during this 8-1/2 years from 1993 to 2001.

TWENTY-SIXTH: No alteration was made in the occupancy agreement by petitioner until November 2001, when he sent respondent a letter unilaterally announcing that "Due to the increased costs associated with Apartment 2C" there would be a \$60 increase in the monthly occupancy (Exhibit C-1).

TWENTY-SEVENTH: Trusting in petitioner's good faith, respondent paid, without question, this first increase in the monthly occupancy (effective January 2002: \$1,060).

TWENTY-EIGHTH: Likewise, respondent paid, without question, petitioner's subsequent increases: an additional \$140 monthly (effective January 2004: \$1,200) (Exhibit C-

2); an additional \$400 monthly (effective January 2005: \$1,600); an additional \$60 monthly (effective February 2006: \$1,660) (Exhibit C-4).

TWENTY-NINTH: None of these monies were sought by petitioner to defray costs of repair of the apartment. Petitioner never inquired of respondent as to the condition of the apartment and – even upon notice from respondent in July 2003 and thereafter that the cheaply constructed original kitchen cabinets were sagging to such a degree that she had to remove her dishes and that over the previous 15 years the living room air conditioner had never worked and the apartment was sweltering in the summer (Exhibit D-4) – he made no offer to make repairs.

THIRTIETH: In 2005 and 2006, petitioner sent respondent his ballot so that she could vote as she saw fit at the Co-Op's annual shareholders meeting.

THIRTY-FIRST: From April 2003 onward, petitioner affirmatively knew that respondent was ready to submit to the Co-Op board another application to purchase the apartment (Exhibits D, E, F, G). However, not until December 2006 did he inform Respondent that he did “not intend at this time or at any time in the future to enter into any discussions regarding [her] buying the apartment.” (Exhibit G-4).

THIRTY-SECOND: Upon respondent’s immediate request that petitioner identify:

- (1) when he decided that he would “not 'at any time in the future ...enter into any discussions regarding [her] buying the apartment'”;
- (2) “the basis therefor”; and
- (3) “why [he] did not inform her of this material fact at any time previously so that [she] could be guided accordingly” (Exhibit G-5),

petitioner replied with pretenses (Exhibit G-6) whose falsity respondent documentarily exposed by a January 11, 2007 letter annexing an 11-page “Attachment of Specifics” (Exhibit G-7).

THIRTY-THIRD: Thereafter, petitioner never answered these questions, despite

respondent's reiterated notice that she had received no response from him to that letter (Exhibits G-8, G-9, G-10, G-11, G-12).



AS AND FOR RESPONDENT'S EIGHTH AFFIRMATIVE DEFENSE
Extortion & Malice

THIRTY-FOURTH: Following petitioner's last unilaterally-announced \$115 increase in the monthly occupancy charge of \$1,660, which he did by letter dated October 1, 2006 (Exhibit G-1), respondent requested that he advise as to his monthly Co-Op charges for the apartment since January 1, 2002 – the effective date of his first unilaterally-announced increase in the \$1,000 occupancy fixed by the October 30, 1987 occupancy agreement (Exhibits G-2).

THIRTY-FIFTH: Petitioner wilfully ignored respondent's request for this information (Exhibit G-4, G-6), refused to credit her with the \$1,700 she laid out in 1998 and 1999-2000 for replacement of the nearly 30-year-old stove and refrigerator in the "good faith belief" that it would come off the apartment price when they renegotiated the contract of sale, and threatened her with "appropriate action" unless she paid his unilateral \$1,775 monthly occupancy charge (Exhibit G-6).

THIRTY-SIXTH: Petitioner also wilfully ignored respondent's requests that they amicably resolve their differences by sitting down to discuss matters so that their respective rights and responsibilities might be clearly defined, including who was to make and pay for the needed repairs of which respondent had notified petitioner long before. Likewise, he ignored respondent's offer that she would put the additional \$115 monthly into escrow pending such clarification (Exhibit G-7, G-8, G-9).

THIRTY-SEVENTH: On April 20, 2007, petitioner served respondent with a notice purporting to terminate respondent's "tenancy" on May 31, 2007, and threatening to initiate summary proceedings to remove her from the apartment if she had not vacated as of that date.

Petitioner's notice identified no factual or legal basis for his action.

THIRTY-EIGHTH: By letter to petitioner dated April 29, 2007 (Exhibit G-11), respondent stated that it should have been obvious to him that she could not possibly comply with his notice:

“Like most people, I am already overburdened with professional and personal obligations, which do not allow me to devote myself to moving within six weeks from my home of nearly 20 years, requiring, as it does, my locating and securing another home for myself – which, since I wish to purchase, not rent, could not be done within that time frame.”

Additionally, respondent's letter to petitioner stated:

“If you have a legal basis for your notice, please set it forth so that I might be guided accordingly. As always, I am ready to meet with you and your attorney to discuss our respective legal positions and avoid litigation. To that end, I am also willing to turn to a mediator.”

THIRTY-NINTH: Petitioner did not respond and the summary proceeding he commenced by service upon respondent on July 9, 2006 is by a petition which is knowingly false and misleading in all material respects.

AS AND FOR RESPONDENT'S NINTH AFFIRMATIVE DEFENSE
Breach of Covenant of Good Faith & Fair Dealing

FORTIETH: From April 2003, petitioner knew that respondent believed that the Co-Op board would approve her purchase of the apartment upon her resubmission of the contract of sale (Exhibit D-1). With his knowledge, she made inquiries of the Co-Op board as to whether she might be approved for the apartment purchase – and received an encouraging response (Exhibit D-2).

FORTY-FIRST: In June and July 2003, petitioner wrote respondent that he was not ready to sell the apartment “at this time” (Exhibit D-3) and that before he would renegotiate the sale price he would require from the Co-Op board a pre-approval letter accepting respondent for

AS AND FOR RESPONDENT'S FIRST COUNTERCLAIM
Prior Proceedings

EIGHTY-FIRST: Respondent repeats, realleges, and reiterates paragraphs FIRST through EIGHTIETH, as if fully set forth herein, and especially paragraphs SIXTEENTH through TWENTY-SECOND.

EIGHTY-SECOND: Respondent and her mother, Doris L. Sassower, as contract-vendees of the subject premises, had a meritorious federal action against the Co-Op and other defendants, which petitioner knowingly and deliberately compromised, undermined, and sabotaged, both while he was their co-plaintiff therein and after his withdrawal. Such included collusion with the Co-Op both with respect to his initiation and pursuit of eviction proceedings against them in White Plains City Court, timed to be the most prejudicial, and his wilful and repeated failure to assign his shareholder rights to respondent and her mother so as to maintain their corporate non-compliance causes of action.

EIGHTY-THIRD: Respondent seeks compensatory and punitive recovery from respondent for all ensuing damages, including, but not limited to, the legal fees, costs, and disbursements expended by her and her mother in the aforesaid federal action, as well as in defending against petitioner's harassing City Court proceedings during the pendency thereof.

AS AND FOR RESPONDENT'S SECOND COUNTERCLAIM
Fraud from April 2003 Onward & Extortion

EIGHTY-FOURTH: Respondent repeats, realleges, and reiterates paragraphs FIRST through EIGHTY-THIRD, as if fully set forth herein, and especially paragraphs TWENTY-THIRD through FORTY-SIXTH.

EIGHTY-FIFTH: Petitioner is liable for his fraud upon respondent from April 2003 to December 2006, when, following notification from her that she was ready, willing, and able to

proceed with purchase of the apartment, he concealed his true intent. Such intent was not to sell the apartment to her, but, rather, to keep her in occupancy, paying monthly occupancy charges in excess of the amount fixed by the 1987 occupancy agreement, until such time as he was ready to make a disposition of the apartment that did not include her. In so doing, petitioner wrongfully prevented respondent from taking steps during this 3-1/2 year period to enforce her rights under the contract of sale and occupancy agreement. He also wrongfully deprived her of countless opportunities to locate and buy another apartment suitable for her at a time and in a manner that would minimize the disruption to her personal and professional life.

EIGHTY-SIXTH: By reason thereof, respondent seeks recovery from petitioner of the monthly occupancy charges she paid him in the good faith belief that he would be renegotiating with her the contract of sale for submission to the Co-Op board.

EIGHTY-SEVENTH: Additionally, respondent seeks \$135,000 in punitive damages for petitioner's malicious, bad-faith behavior, including, but not limited to, his refusal to identify:

(a) when he decided that he would “not 'at any time in the future ...enter into any discussions regarding [her] buying the apartment'”;

(b) “the basis therefor”; and

(c) “why [he] did not inform her of this material fact at any time previously so that [she] could be guided accordingly” (Exhibits G-5, G-7),

combined with his attempt to extort from her a unilateral and unexplained increase in the monthly occupancy on threat of legal action (Exhibit G-6), which he then actualized by terminating her “tenancy” with a six-week notice and thereafter commencing this eviction proceeding – all the while ignoring respondent's reasonable offers for clarification of the situation and amicable resolution of their differences (Exhibits G-7, G-10, G-11, G-12, G-14).