FORT PECK TRIBAL COURT OF APPEALS
FORT PECK INDIAN RESERVATION
ASSINIBOINE AND SIOUX TRIBES
POPLAR, MONTANA

FORT PECK HOUSING AUTHORITY,
Plaintiff/Appellee

vs. **Appeal No. 230**

ARTIS BEAUCHAMP
Defendant/Appellant

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O P I N I O N

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This appeal arises from an Order of Eviction issued by the Honorable Leland Spotted Bird on April 18, 1995. Mary L. Zemyan, Esq. of Wolf Point, MT for the Defendant/Appellant. John Fredericks III, Esq., FREDERICKS, PELCYGER, HESTER & WHITE, LLC. of Boulder, CO for the Plaintiff/Appellee.

Justice Sullivan writes for a unanimous Court.

STATEMENT OF THE CASE

On April 14, 1994 the Fort Peck Housing Authority (herein "FPHA") sent a notice to Jeff Clark Ferraira (herein "Jeff") terminating the lease entered into between the FPHA, Jeff and Artis Beauchamp (herein "Appellant") for a dwelling in Wolf Point, MT. The reason stated for the termination was a violation of the Drug Elimination Policy which, in turn, constituted a violation of the terms of their lease. Appellant filed a grievance on a date not disclosed in the record . At a meeting of the Board of the FPHA on June 28, 1994, with Appellant in attendance, the FPHA heard and considered her grievance. On August 2, 1994, the FPHA denied her grievance. Appellant refused to vacate the premises and the FPHA, on November 10, 1994, filed a complaint in Tribal Court for Eviction. The trial came on February 23, 1995, before the Honorable Leland Spotted Bird. On April 18, 1995, the Court issued an Order for Eviction, which was filed on April 19, 1995, finding *inter alia* that the defendants were both residing in the Low Rent Unit at the time of the illegal drug sales; that both of the defendants signed the lease agreement and knew of its contents; and that according to testimony at trial there was no grounds for the "Innocent Bystander" defense. The Tribal Court went on to Order the eviction of both defendants, giving them ten (10) days from the receipt of the Order to vacate the premises.

On May 2, 1995, Appellant filed this appeal.

ISSUES PRESENTED

Appellant raises two (2) issues for this Court to address:

1. **Whether Appellant was improperly evicted inasmuch as her co-tenant Jeff Clark Ferraira was neither a "family member" nor a "resident" *at the time of his conviction* for selling illegal drugs.**
2. **Whether Appellant was improperly evicted inasmuch as she was an "innocent tenant", i.e., she had no knowledge of the illegal activities.**

For the reasons set forth below, we find that Appellant and her co-tenant Jeff were properly evicted in accordance with the terms of the lease and the FPHA's anti-drug policy, and further, that the so-called "innocent tenant" or "innocent bystander" rule is not applicable.

STANDARD OF REVIEW

Title I CCOJ Section 201 provides: "The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review *de novo* all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence"*.*

While we review the Tribal Court's legal conclusions de novo, we will not set aside the Tribal Court's factual determinations unless they are clearly erroneous.

FACTUAL OVERVIEW

On September 30, 1992, Appellant and Jeff entered into a lease agreement with the FPHA for low rent housing. On the agreement form, approximately 2 or 3 inches above their signatures, the form asked for "Head of Household" and "Spouse". In the blank immediately following "Head of Household", written by someone's hand, the name "Jeff" appeared. In the blank immediately following "Spouse", also written by someone's hand, the name "Artis" appeared. Both defendants signed and dated the lease agreement.

Both Appellant and Jeff lived in the dwelling until approximately February 14, 1993, at which time, according to testimony of Appellant, she left the residence to seek custody of her four (4) children, none of whom were related to Jeff.

On or about February 15, March 9, and March 10, 1993, Jeff allegedly sells marijuana from the dwelling. On or about March 11, 1993, Appellant returns from her travels. On or about August 9, 1993, Appellant's four children come to live with Appellant and Jeff. About one month after the children arrive, Jeff vacates the premises.

On January 28, 1994, Jeff is arraigned on charges of selling illegal drugs on the dates set forth

above. On March 16, 1994, Jeff pleads guilty to the charge of selling illegal drugs on February 15, 1994. The Tribal Court accepts Jeff's plea and sentences him on the same day.

On April 14, 1994, the FPHA sends a written notice terminating the lease held by him and Appellant. On a date not shown in the record, Appellant files a grievance with the FPHA.

On June 28, 1994 the Board of the FPHA hears Appellant's grievance and on August 2, 1994, the FPHA issues its' denial. On November 10, 1994, the FPHA files a Complaint for eviction of Jeff and Appellant in Tribal Court.

DISCUSSION

The pertinent sections of the FPHA's Rules of Occupancy provide:

> "GUIDELINES FOR OCCUPANCY INTO HOUSING. IF NOT FOLLOWED, YOU ARE IN VIOLATION OF YOUR LEASE. AFTER TWO (2) LEASE VIOLATIONS, IT IS SUFFICIENT GROUNDS FOR EVICTION...
>
> Rule 28: Any person who resides in a dwelling unit under the control and management of the Housing Authority shall be immediately evicted if they or a resident family member admit to or are convicted of… (illegal drug activities).
>
> I, HEREBY CERTIFY THAT I HAVE READ AND UNDERSTAND THE ABOVE RULES OF OCCUPANCY AND WILL ADHERE TO THEM, WHILE RESIDING IN HOUSING OF THE FORT PECK HOUSING AUTHORITY"

Both Appellant and Jeff signed the FPHA's Rules of Occupancy.

Issue 1: Which date is the operative date for determining *who* is a "tenant" and a "resident family member": the "date of the illegal activity" or the "date of conviction"?

Appellant's first issue attempts to make the "date of conviction" the operative time for determining who is a tenant, or a resident family member of a tenant. Appellant suggests that Jeff did not "admit" nor was he "convicted" until January 28, 1994, and that he had vacated the premises several months previously, therefore Jeff was not a tenant, nor was he a resident family member, on the *date of conviction*. This contention is wholly without merit.

In the first instance, the purpose of the anti-drug policy is to rid our complexes and neighborhoods of all illegal drugs, thus making them a place where everyone can enjoy their accommodations in a safe, peaceful, and friendly environment. This policy was enacted by Congress in **The United States Housing Act of 1937 (42 U.S.C. 1427 et.seq.)** and is made applicable to Indian Country by **The Indian Housing Act of 1988 (42 U.S.C. 1437aa, et.seq.)** See also **24 C.F.R. 950.101 et.seq.** Accordingly, the FPHA was required to adopt the anti-drug policy when they agreed to offer federally assisted public housing. Thus, the FPHA requires that each tenant sign and strictly adhere to its Rules of Occupancy and Drug Elimination Policy

Appellant is correct in contending that no eviction for violation of the anti-drug policy can take place until there is an "admission" by, or a "conviction" of, a tenant, or a resident family member. If this were not true, serious constitutional questions would arise. However, once the admission or conviction is made, the *"operative" date* for determining who is a tenant, or resident family member, is the *time of the offense.* To suggest otherwise would allow those who are involved in illegal drug activity to play "musical dwellings", moving out at any time *they selected* but *before* the admission or conviction is made, and then moving back in again, also *at a time they select.* After analysis, this argument collapses upon itself for want of a logical foundation. We hold that the operative time for determining *who* is a tenant, and *who* is resident family member, is the *date of the illegal drug activity.*

Additionally, we feel compelled to point out that Jeff was a tenant *at all relevant* times, in that his name was not removed from the lease, nor did Appellant, by agreement with the FPHA, enter into a new and different lease than the one she and Jeff signed on September 30, 1992. Although there is some evidence that Appellant attempted to enter into a new lease, or alternatively, to have Jeff's name removed from the September 30, 1992 lease, the record is void of any such modification or novation.

While the issue of *who is* a *family member* is not directly before us, we also feel compelled to address the issue of whether the tenancy of Appellant and Jeff constitutes a "family" or "Household". As noted in the first paragraph of the **FACTUAL OVERVIEW** section, supra, Appellant and Jeff held themselves out as a "household" and/or family. Jeff was denominated as "Head of Household" while Appellant was denominated as "Spouse". Neither sought to correct this information on the lease agreement. Their failure to do so may have been intentional, in that, it may have been advantageous to them. This Court takes judicial notice of the Admissions Policy of the FPHA and the federal guidelines for allowing preferences to certain groups in public housing. Families with dependent children, Heads of Households, elderly, and disabled are all given preference over single people who have no children. Appellant's children did not come to live in the dwelling until August 9, 1993, almost one full year *after* Appellant and Jeff took occupancy and five (5) months *after* the illegal drug activity. Thus, if Appellant and Jeff had correctly lined out the "Head of Household" and "Spouse" inquiries and in lieu thereof denominated their relationship as "friends" or "not related", they may not have been able to obtain housing at that particular point in time.

Therefore, even though our law does not recognize common-law marriages, we hold that where a man and a woman, neither of whom have dependent children living with them at the time of application, seek to occupy a public housing dwelling as co-tenants, holding themselves out as "Head of Household" and "Spouse", they will be considered a "family" within the meaning of the FPHA anti-drug policy and for all purposes related to the Rules of Occupancy arising from their tenancy in an FPHA unit. To allow an issue to be used both as a sword and a shield does not comport with our sense of fair play and justice.

Issue 2: Whether Appellant was an "innocent tenant"?

Appellant contends that she is an "innocent tenant" in that she did not know anything about the illegal drug activity, nor did she participate in such activity. Implicit in this argument is the notion that termination of her lease amounts to punishment of an innocent party for the acts of another person over which she has no control. Appellant attempts to support this contention by citing **U.S. v. The Leasehold Interest in 121 Nostrand Avenue, Apartment 1-C, Brooklyn, New York, Defendant and Clara Smith, on behalf of herself, et.al. (1991) 760 F.Supp 1015**.

In **Nostrand** the United States filed a civil forfeiture action pursuant to **21 U.S.C. §881(a)(7)** against a 51 year old matriarchal great grandmother who, living with two of her adult daughters and several grandchildren and great-grandchildren, had been a resident of the leasehold for 32 years In **Nostrand** the defendant's 19 year old granddaughter, who lived with the defendant, was convicted of selling two vials of crack cocaine to an undercover police officer from the subject leasehold premises. The **Nostrand** Court, citing the "innocent owner" rule, held that the tenant could not be evicted for the actions of her granddaughter.

21 U.S.C. §881 is a civil drug forfeiture statute which creates an in rem cause of action for violations of the narcotics laws. Appellant apparently bases this so-called "innocent tenant" rule on a 1988 amendment to **21 U.S.C. §881** which states:

> "(7) All real property, including any right, title, and interest *(including any leasehold interest)* in the whole of any lot or tract of land and any appurtenance or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, *except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."* **21 U.S.C. §881(a)(7)** *(our emphasis)*

While we found the **Nostrand** opinion instructional and compelling for a variety of non-related reasons, it does not have any application to Appellant's case. We acknowledge that **21 U.S.C. §881(a)(7)** provides for an "innocent owner" rule which was applied to a tenant in **Nostrand**. However, in **Nostrand**, the government was not suing the tenant for eviction for violating covenants in a lease agreement. The tenant is **Nostrand** was being sued pursuant to a civil forfeiture statute that had as one of its own provisions the "innocent owner" defense. The message by the **Nostrand** Court to the United States was simply, "If you live by the statute, you may also die by the statute". In **Nostrand** the United States died by the statute.

There are no equivalent or similar provisions to the "innocent owner" defense in the **Fort Peck CCOJ**, in **The United States Housing Act of 1937**, in **The Indian Housing Act of 1988**, or the FPHA policies and guidelines. Therefore, to hold that this defense is available to tenants in public housing on the Fort Peck Reservation would be an exercise of authority that does not belong to this Court. If such a defense is to be made available, it must be made by our Tribal Council or another law making body with the authority to do so.

Accordingly, we hold that the so-called "innocent tenant" defense promulgated by the Appellant in Tribal Court was not available to her. The Tribal Court's finding that there was no basis for Appellant's "innocent bystander" defense was superfluous and, in our opinion, constituted harmless error.

Finally, we reject Appellant's implicit argument that it is unfair and unjust to "penalize" her for the act of another. It should be noted that Appellant has neither been "penalized", nor has she suffered a "forfeiture". *She willfully* entered into that lease with Jeff and the FPHA, knowing and understanding *from the outset*, before she ever took occupancy, that if she *or* Jeff were involved in any illegal drug activity, they would *both* be subject to eviction. While we do not suggest that she is *her brother's keeper*, we certainly support the notion that she, as well as Jeff, had a duty to maintain a drug free dwelling, not only for themselves, but for the benefit of the entire neighborhood. Moreover, she and Jeff *both* agreed with the FPHA that they would maintain a drug free environment. Without question, Jeff intentionally breached his duty. Whether or not Appellant intentionally breached her duty, the best that can be said of Appellant is that she negligently failed to eliminate drugs in the only place on earth over which she had full dominion and control: *her own home*. Accordingly, who should suffer for her breach? The neighborhood? The neighbors who cannot experience the peaceful enjoyment of their accommodations? In our opinion, it is fair and just for Appellant to suffer the consequences of *her* own breach.

The Order of Eviction issued by the Tribal Court is affirmed.

Dated: October 19, 1996

BY THE COURT OF APPEALS:

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GARY P. SULLIVAN

Associate Justice

CONCUR:

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GARY M. BEAUDRY
Chief Justice

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GERALD M. SCHUSTER
Associate Justice