FEDERAL JURISDICTION OVER CLASS ACTIONS BY TENANTS

Mattingly v. Elias,
325 F. Supp. 1374 (E.D. Pa. 1971)

The tenants of a privately owned[1] housing project brought a class action against their landlord seeking a decree recognizing the existence of an implied warranty of habitability in their lease.[2] To obtain federal jurisdiction, the plaintiffs presented strong evidence that the premises were not being kept in accord with the conditions set forth in the federal mortgage.[3] Plaintiffs argued that this evidence established a deprivation of their civil rights in violation of the substantive civil rights statute, 42 U.S.C. § 1983;[4] and asserted jurisdiction on the basis of 28 U.S.C. § 1343[5] which gives jurisdiction to federal courts over actions alleging any violation of civil rights secured by an act of Congress. As an alterna-

1. Defendant Elias bought the project from the United States Government. To help finance the sale, the Federal National Mortgage Association (FNMA) provided a mortgage which had a balance of $1,500,000 at the time of the suit, 325 F. Supp. 1374, 1376 (E.D. Pa. 1971).

2. There are decisions which state that a warranty of habitability is implied from housing regulations of either state or local governments. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Whetzel v. Jess Fisher Management Co., 282 F.2d 943 (D.C. Cir. 1960); Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961). *See generally* Levine, *Warranty of Habitability,* 2 CONN. L. REV. 61 (1969); Skillern, *Implied Warranties in Leases: The Need for Change,* 44 DENVER L.J. 387 (1967); Note, *Leases and the Illegal Contract Theory,* 56 GEO. L.J. 920 (1968); Comment, *Landlord-Tenant-Implied Warranty of Habitability,* 38 FORDHAM L. REV. 818 (1970); Comment, *New Power for Tenants: The Lessee's Right to a Livable Dwelling,* 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 193 (1970).

3. The mortgage conditions which were alleged to have been breached are found in Federal Mortgage Book No. 1198 at 437-Par. 6. The mortgage provides the mortgagor "will maintain [the] property free from waste or nuisance of any kind, and in good condition, and make all repairs, replacements, improvements and additions which may be necessary to preserve and maintain said property and the value thereof." 325 F. Supp. 1374, 1381 (E.D. Pa. 1971).

4. 42 U.S.C. § 1983 (1964) provides that:

> Every person who under the color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof, *to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress of grievances.* (emphasis added).

5. 28 U.S.C. § 1343 (1964) provides in pertinent part:

> The district court shall have original jurisdiction of any civil action . . . (3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by The Constitution of the United States or by any Act of Congress *providing for equal rights of citizens* or all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. (emphasis added).

tive basis of jurisdiction, plaintiffs claimed that their cause of action presented a federal question and that jurisdiction was therefore gained by virtue of 28 U.S.C. § 1331.[6] The court held that the case presented no grounds upon which it could grant jurisdiction.[7]

The broadest statute granting federal jurisdiction in housing cases where the parties are citizens of the same state is 28 U.S.C. § 1331. This statute grants jurisdiction when there is a substantial federal question involved in the dispute and has two requirements. First, the cause of action must present a right or immunity which is based upon either the constitution or some federal act.[8] Second, the damages resulting from the alleged wrong must exceed the sum of $10,000.[9] Unless this jurisdictional amount is specifically waived by another statute,[10] jurisdiction will be denied if damages are not realistically in excess of this amount. In contrast, housing controversies which involve civil rights get into federal court as a result of the civil rights jurisdictional statute, 28 U.S.C. § 1343 which does not require any jurisdictional amount.[11] If the defendant is either the Department of Housing and Urban Development or some other administrative agency with some control over housing, the Administrative Procedure Act[12] provides federal jurisdiction under cir-

6. 28 U.S.C. § 1331 (1964) provides in pertinent part:

The district courts shall have original jurisdiction of all civil actions *wherein the matter in controversy exceeds the sum or value of $10,000,* exclusive of interest and costs, *and arises under the Constitution, laws, or treaties* of the United States. (emphasis added).

7. Mattingly v. Elias, 325 F. Supp. 1374, 1384 (E.D. Pa. 1971).

8. *See, e.g.,* Bell v. Hood, 327 U.S. 678, 681-82 (1946); Gully v. First Nat'l Bank, 299 U.S. 109, 112 (1936); Newburyport Water Co. v. City of Newburyport, 193 U.S. 561, 576-77 (1904); Starin v. New York, 115 U.S. 248, 257-58 (1885); Stanturf v. Sipes, 335 F.2d 224, 227 (2d Cir. 1964), *cert. denied,* 379 U.S. 977 (1964); Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code,* 13 LAW AND CONTEMP. PROB. 216, 223-34 (1948).

9. 28 U.S.C. § 1331 (1965). *See* note 6 *supra.*

10. McCall v. Shapiro, 416 F.2d 246, 249 (2d Cir. 1969). *E.g.,* 28 U.S.C. § 1343 (1964). *See also* 28 U.S.C. §§ 1344-48, 1350-52, 1355-58 (1964).

11. Most of these cases allege some type of racial discrimination. *See, e.g.,* Damico v. California, 389 U.S. 416 (1967); Shannon v. United States Dep't. of Housing and Urban Dev., 436 F.2d 809 (3d Cir. 1970); Holmes v. New York City Housing Authority, 398 F.2d 262 (2d Cir. 1968); Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969); Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (E.D. Ill. 1969); Thompson v. Housing Authority, 251 F. Supp. 121 (S.D. Fla. 1966). *See* Comment, 5 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 150 (1970); Comment, 83 HARV. L. REV. 1441 (1970); Comment, 118 U. PA. L. REV. 437 (1970); Comment, 79 YALE L. J. 712 (1970). *See also* Escalera v. New York City Housing Authority, 425 F.2d 853, 856 (2d Cir. 1970) where the plaintiff alleged deprivation of *procedural due process* and rights under U.S. Housing Act of 1937, 42 U.S.C. § 1401 (1962).

12. Ch. 324, §§ 1-2, 60 Stat. 237 (codified in scattered sections of 5 U.S.C.).

cumstances where the plaintiff suffered legal wrong because of agency action.[13]

Unless a civil right is involved, conflicts that arise between landlord and tenant are adjudicated by reliance upon 28 U.S.C. § 1331 with its requirements of federal question and requisite amount in order to obtain federal jurisdiction. Jurisdiction over a dispute between a landlord and tenant, where a civil right is not involved, must be sought under 28 U.S.C. § 1331.[14] The statute requires a federal question and a specific jurisdictional amount. As a result of the low probability that damages will exceed $10,000, tenants find it easier if they can obtain jurisdiction under a statute which does not require the jurisdictional amount.[15] In *Mattingly,* the plaintiff's argument, designed to avoid this problem, was that the Housing Acts of 1937 and 1949 provide a "civil right" to a decent home.[16] The Housing Act, however, is not the type of act which

13. 5 U.S.C. § 702 (1966). *E.g.*, Poweltown Civic Home Owners Ass'n v. Dep't. of Housing and Urban Dev., 284 F. Supp. 809 (E.D. Pa. 1968). The plaintiffs had standing to sue because the secretary of HUD was required to afford the residents a procedural opportunity to submit evidence before he determined the eligibility of the project for federal funds. *See also* Cappadore v. Celebrezze, 356 F.2d 1 (2d Cir. 1966).

14. Assuming that most landlords live in the same state in which the leased property is located jurisdiction based upon diversity of citizenship would be highly unlikely.

15. In situations where the case is brought against the government agency, there is no problem obtaining jurisdiction, but when the case is between landlord and tenant, the damages must be valued and this presents problems under 28 U.S.C. § 1331. Northwest Residents Ass'n v. Dep't. of Housing and Urban Development, 325 F. Supp. 65 (E.D. Wis. 1971). *See* notes 27-31 *infra* and accompanying text. In *Northwest,* homeowners had standing to challenge action by HUD alleged to be in violation of the Housing Act of 1969 since the interest of the purchasers and homeowners was within the interest sought to be protected by the statute. *See also* Krupp v. Federal Housing Administration, 285 F.2d 833 (1st Cir. 1961) where the purchaser of an apartment project sued FHA for breach of warranty. The court ruled that it had jurisdiction because federal law governed. *See* Ronfeldt & Clifford, *Judicial Enforcement of the Housing and Urban Development Acts,* 21 HASTINGS L. J. 317, 338 (1970).

16. The relevant code sections are:

42 U.S.C. § 1401 (1968) Declaration of Policy

It is declared to be the policy of the United States to promote the general welfare of the Nation by *employing its funds and credit . . . . to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income . . . .* (emphasis added).

42 U.S.C. § 1441 (1967) Congressional Declaration of National Housing Policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of sub-standard and other inadequate housing through the clearance of slums and other blighted areas, and the *realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family . . . .* (emphasis added).

42 U.S.C. § 1441a (1968) Congressional Reaffirmation of National Housing Goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal. . . of a *decent home and suitable living environment* for every American Family. (emphasis added).

has historically been held to grant civil rights.[17] Similarly, the goals of decent housing and a suitable living environment are not "civil rights" under any past court interpretation of the term.[18] The civil rights act was passed in order to enforce the fourteenth amendment;[19] predictably, it has been most frequently called upon in cases of racial discrimination. The court seems to be correct in denying the narrow question of civil rights, but this does not mean that broader federal questions are not presented.[20]

Even if it could have been established that the cause of action presented a federal question, the plaintiffs would still have had to demonstrate that the matter in controversy exceeded $10,000 to meet the requirements for federal jurisdiction under 28 U.S.C. § 1331. The philosophy behind a jurisdictional amount requirement is that it will limit the types and numbers of cases brought in federal courts.[21] Class actions as presented in *Mattingly* therefore present the additional difficulty of de-

17. Historically, civil rights have been associated with private liberty, not private property. *See* Hague v. Comm. for Indus. Organization, 307 U.S. 496, 531 (1939); Holt v. Indiana Mfg. Co., 176 U.S. 68 (1900); Tichon v. Harder, 438 F.2d 1396 (2d Cir. 1971); Ream v. Handley, 359 F.2d 728, 731 (7th Cir. 1966); Abernathy v. Carpenter, 208 F. Supp. 793 (W.D. Mo. 1962), *aff'd mem.*, 373 U.S. 241 (1963). *Cf.* McCall v. Shapiro, 416 F.2d 246, 249 (2d Cir. 1969) where the Social Security Act was held not to be an act of Congress for the protection of "a civil right."

18. Civil rights legislation is appropriate when it is adopted to carry out the objectives of the thirteenth and fourteenth amendments to the Constitution. 14 C.J.S. Civil Rights § 3 at 1161 (1939). The types of rights protected by civil rights legislation are specified in Egan v. City of Aurora, 174 F. Supp. 794, 797 (N.D. Ill. 1959). The list, as specified by the court, indicates that a right to decent housing would not be one protected by civil rights legislation.

19. Holt v. Indiana Mfg. Co., 176 U.S. 68 (1900); Davis v. Foreman, 251 F.2d 421 (7th Cir. 1958), *cert. denied*, 356 U.S. 974 (1957); Simpson v. Geary, 204 F. 507, 511 (D. Ariz. 1913); Farson v. Chicago, 138 F. 184 (N.D. Ill. 1905).

20. Since the *Mattingly* court refused to look at the federal question before exploring the jurisdictional amount it is impossible to know whether it would have held that there were other federal questions. It should be remembered that the Federal question statute is very broad and "civil rights" is just one very small group of federal questions. *See* Potrero Hill Community Action Comm. v. Housing Authority, 410 F.2d 974 (9th Cir. 1969) where it was conceded in the dicta that a federal question was presented by facts analogous to those in *Mattingly*. *See also* notes 27-31 *infra* and accompanying text.

While it is possible to find that the Housing Act does present a federal question, the more difficult problem is whether *individual* plaintiffs have standing to sue under this act. On this question *see* Mattingly v. Elias, 325 F. Supp. 1374, 1382 (E.D. Pa. 1971); Int'l Ass'n of Machinists v. Central Airlines, 372 U.S. 682, 696 (1963); Note, *Remedies for Tenants in Substandard Public Housing*, 68 COLUM. L. REV. 561, 577 (1968). Normally, no third party beneficiary rights arise as a result of federal acts unless the act has a specific provision for enforcement. *Cf.* Wyandotte Transp. Co. v. United States, 389 U.S. 191 (1967); J. I. Case Co. v. Borak, 377 U.S. 426 (1964); Wills v. Trans World Airlines, Inc., 200 F. Supp. 360, 365 (S.D. Cal. 1961); Brown v. Bullock, 194 F. Supp. 207, 220-28 (S.D.N.Y. 1961), *aff'd*, 294 F.2d 415 (2d Cir. 1961).

21. 1 J. MOORE, *Federal Practice* ¶ 0.90 (1) at 817 (2d ed. 1969).

ciding whether the claims of the plaintiffs can be aggregated to meet the $10,000 requirement. *Snyder v. Harris*,[22] the present basis for the law of aggregation, held that the 1966 amendments to the Federal Rules of Civil Procedure[23] did not change the rule, adopted in *Pinel v. Pinel*,[24] that parties can aggregate their claims only if they can show that there are "joint and common" interests. The *Snyder* decision followed many lower court decisions which reflected uncertainty as to how the 1966 changes had affected the *Pinel* rule.[25] The cases since 1969 have predictably reflected the *Snyder* decision and in some cases have extended it to

22. 394 U.S. 332 (1969).

23. FED. R. CIV. P. 23:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) . . . .

(2) . . . .

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Actions to be Maintained; Notice; Judgment: Actions Conducted Partially as Class Actions.

(1) . . . .

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) . . . .

24. 240 U.S. 594 (1916). *See also* Troy Bank v. G.A. Whitehead & Co., 222 U.S. 39 (1911); 83 HARV. L. REV. 326 (1969); 43 TUL. L. REV. 360 (1969); 24 U. Miami L. Rev. 173 (1969).

25. Gas Service Co. v. Coburn, 389 F.2d 831 (10th Cir. 1968), *rev'd* 394 U.S. 332 (1969). This case was a companion to *Snyder*. Collins v. Bolton, 287 F. Supp. 393 (N.D. Ill. 1969); Booth v. General Dynamics Corp., 264 F. Supp. 465 (N.D. Ill. 1967). *See Class Actions, A Symposium*, 10 B.C. IND. & COM. L. REV. 497 (1969); Comment, 43 N.Y.U. L. REV. 762 (1968).

class actions brought under 28 U.S.C. § 1331.[26] Each court, therefore, still must decide the difficult question of whether the particular rights sought to be enforced are "joint" or "separate."

Recent cases have held that the leasehold interests of housing project tenants are not "joint and common." In *Potrero Hill Community Action Committee v. Housing Authority*[27] the court held that although federal questions were present, it had no jurisdiction over the class action[28] because the claims were "separate" and thus could not be aggregated to meet the jurisdictional amount.[29] The *Potrero Hill* court used a group of cases[30] brought by lessees who sought relief under the emergency wartime rent control legislation as authority for its decision. The judge stated ". . . their [the tenants'] rights appear to arise only from the status of each as an individual lessee of a portion of the project premises."[31] The unquestioned adoption of this holding by the *Mattingly* court indicates that federal courts will not allow class actions brought against a landlord unless one of the tenants has sustained damages in excess of $10,000 or it is asserted that civil rights have been denied.

The result of *Mattingly* indicates the difficulty in obtaining federal jurisdiction over class actions brought by tenants against landlords when federal jurisdiction is not alleged under the civil rights jurisdictional statute, 28 U.S.C. § 1343. This problem has not gone unrecognized.[32] In the future, tenants like those in Mattingly should seek full review of their situation by HUD. If dissatisfied with HUD's actions, they should seek judicial review under the Administrative Procedure Act.[33]

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26. *See* Lung v. Jones, 322 F. Supp. 1067 (D. New Mex. 1971) which extended the *Snyder* reasoning to class actions with federal question jurisdiction. The *Snyder* decision was made only in reference to class actions brought under the diversity of citizenship jurisdictional statute.

27. 410 F.2d 974 (9th Cir. 1969). *See* note 20 *supra.*

28. *Id.* at 978.

29. *Id.* at 978. *See also* Hahn v. Gottlieb, 430 F.2d 1243, 1245 n.1 (1st Cir. 1970).

30. Miller v. Woods, 185 F.2d 499 (D.C. Cir. 1950); Koster v. Turchi, 173 F.2d 605 (3rd Cir. 1949); Fox v. 34 Hillside Realty Corp., 79 F. Supp. 832 (S.D.N.Y. 1948); Spieler v. Haas, 79 F. Supp. 835 (S.D.N.Y. 1948).

31. Potrero Hill Community Action Comm. v. Housing Authority, 410 F.2d 974, 978 (9th Cir. 1969).

32. *See* Ronfeldt & Clifford, *Judicial Enforcement of the Housing and Urban Development Acts,* 21 HASTINGS L. J. 317, 338 (1970). *See also* Herzer, *Federal Jurisdiction Over Statutorily-Based Welfare Claims,* 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 1 (1970).

33. 5 U.S.C. §§ 702, 704 (1967).