

SUPREME COURT OF LOUISIANA

No. 95-C-3058

SHIRLEY HARTMANN ET AL

Versus

BANK OF LOUISIANA IN NEW ORLEANS

LEMMON, J., Concurring

A lessee can only mortgage the lessee's rights in the lease of an immovable. La. Civ. Code art. 3286(4). At the foreclosure sale initiated by the lessee's mortgagee, the sheriff could only sell the lessee's rights in the lease -- the right of occupancy of the land.¹

Most significantly, a lessee has no right of occupancy free of the rent obligation, unless (1) the rent has been paid in full, Walker v. Dohan, 39 La. Ann. 743, 2 So. 381 (1887); or (2) the rent obligation has been merged into a judgment for rent, Ransom v. Voiron, 176 La. 718, 146 So. 681 (1933). In Walker, the lessor had been paid in full, and the lessee therefore had the right to sell the occupancy; in Ransom, the lessor had the sheriff sell the right of occupancy that the lessor owned.

Here, neither the Bank nor the lessee had paid the rent in full for the remainder of the lease, as in Walker. Therefore, the Bank did not acquire any right of occupancy free of the rent obligation. The right of occupancy was subject to payment by somebody of the lease rentals.

In my view, the Bank did not "step into the lessee's shoes" merely by foreclosing on the lessee's interest, and the Bank therefore did not become liable for

¹The sheriff also sold the building that had been constructed by the lessee upon the leased land.

rent over the entire term of the lease. However, the Bank, by exercising use and occupancy during the term of the lease, became obligated either to pay the rent or to have the rent paid monthly by the original lessee or the occupant. Both the Bank and the original lessee defaulted on their obligation. The Bank, having used and occupied the property for the remainder of the lease period, is liable for all unpaid rent during that period.

After the lease terminated (a date not entirely clear), the Bank apparently was a bad faith possessor and was bound under La. Civ. code art. 486 to restore the fruits to the owner subject to the possessor's claim for reimbursement of expenses. Accordingly, the Bank is also liable for its profits derived and rents collected from the use and occupancy after the termination of the lease, minus the Bank's necessary expenses.