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FILED LUCAS COUNTY

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JUDICIAL CENTER
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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

)	Case No. 89-1709
)	
Ruby McDowell, et al.,)	Judge Charles J. Doneghy
)	
Plaintiffs,)	<u>JUDGMENT ENTRY (BY CONSENT)</u>
)	
v.)	Keith A. Wilkowski, Director of Law
)	Edward M. Yosses, General Counsel (0014728)
City of Toledo, et al.,)	City of Toledo Law Department (8928)
)	One Government Center, Suite 2250
Defendants.)	Toledo, Ohio 43604-2293
)	Telephone: (419) 245-1020
)	
)	Attorney for Defendants

1. The individual Plaintiffs and Defendants represent, through respective counsel, that all matters in controversy are resolved by the terms of this Judgment Entry.

2. A permanent injunction is hereby granted in favor of Plaintiff Ruby McDowell residing at 1433 Norwood, Toledo, Ohio, against Defendant, City of Toledo, precluding the termination of water service for lack of a contract or other written agreement for such services with the owner of the designated property. This injunction is furthermore conditioned upon Ruby McDowell satisfying the quarterly water and sewer fees for said premises generated on a quarterly basis by Defendant, City of Toledo, in a timely manner. This injunction is for the benefit of Ruby McDowell, individually, and is intended to terminate upon her failure to reside at the captioned premises, the nonpayment of the quarterly water and sewer bills, or further Order of this Court.

3. Plaintiffs' request for certification of the proposed class action, pursuant to Ohio Rules of Civil Procedure 23(a) and 23(b)(2), is withdrawn and thereby moot.

A. Non-Payment Termination

4. Defendant, City of Toledo, through the Department of Public Utilities, shall provide not less than eight (8) working days prior notice to occupant of a pending water shut-off when service is to be terminated for nonpayment. The first day of this eight-day period shall be the day upon which the notice is mailed. This notice requirement and the following obligations are established for two or fewer dwelling units.

5. In those cases where water service has been terminated and an occupied premises has not received prior notice of termination, service shall be restored within twenty-four (24) hours, at no charge to the occupant, and the termination rescheduled to occur after at least eight (8) working days. Notice shall be sent to the premises as required by the immediately preceding paragraph. Said notices shall be the substantial equivalent to Exhibit A or B attached, as appropriate.

6. A resident of the premises in question at the time the notice is sent may take one of the following options to maintain or restore service:

a. Pay that part of any outstanding charges to the premises as required by Defendant to restore water service;

b. Deposit the rent into escrow with the appropriate Court of competent jurisdiction, and supply a copy of the filing to the City of Toledo, Department of Public Utilities, Suite 1500, One Government Center, Toledo, Ohio 43604.

c. Deposit an amount equal to 1-1/3 quarter's (4 months) average billing for the premises into the Department of Public Utilities' water deposit trust fund or other appropriately designated account with Defendant.

7. Upon selection of the deposit option, Defendant shall establish a new account in the titleholder's name and a copy of the quarterly bill will thereafter be sent to the service address in care of the resident. Only subsequent charges against resident's service address and not paid by the titleholder shall be satisfied from the deposited amount. Upon such expenditure from the deposit, Defendant shall be entitled to require depositor to deposit, within thirty (30) days, an equal amount to the amount withdrawn to satisfy said future charges. Titleholder shall be notified of this action. This deposit procedure is not intended to relieve the titleholder of ultimate responsibility of payment for utility services to the property. The amount deposited, or the balance thereof, shall be returned to the resident on termination and finalization of the account.

B. Owner-Ordered Termination

8. Upon a request of an owner of property for termination of utility service at premises occupied by another, Defendant will provide not less than eight (8) calendar days notice of the proposed turnoff. This notice of the pending turnoff shall be sent to the premises eight (8) calendar days prior to the scheduled turnoff. Notice shall be the substantial equivalent to Exhibit C, attached.

C. Land Contract Terminations

9. In the event that a land contract vendor refuses to initially contract for water service for a vendee, or defaults in payment of a water bill at any location owned by titleholder, the vendee will be permitted to contract, on behalf of the vendor, providing the following conditions are met:

a. Defendant is provided with a copy of the recorded land contract, and the land contract agreement specifically states that the land contract vendee shall be responsible for paying the utility bills.

b. A deposit equal to 1-1/3 quarter's average usage at the premises is provided to Defendant to provide adequate assurance of payment for future service. This deposit is to be maintained according to paragraph 7 above.

D. General

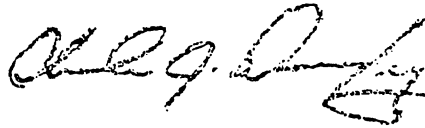
10. All non-emergency terminations of utility service, including termination based upon the death of the owner, will be preceded by written notice when the service address differs from the billing address. This notice shall include the summary of procedures available to the occupant to avoid termination of water service as covered by Exhibits "A", "B" and "C" attached.

11. Defendant, through the Department of Public Utilities, reserves the right to terminate service immediately if the field representative believes that an emergency situation exists and the property or the general public is endangered by maintaining service to the premises.

12. The issue of attorneys' fees and costs is specifically reserved.

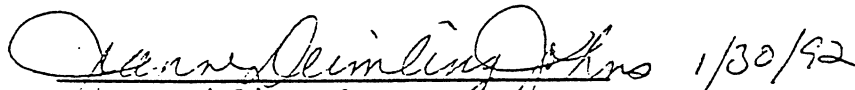
13. The Clerk of this Court is hereby ordered to release any and all funds on deposit to Defendant, City of Toledo, in care of Department of Public Utilities, Suite 1500, One Government Center, Toledo, Ohio 43604, posted in this case by Plaintiff Marsha E. Moore, pursuant to a Temporary Restraining Order issued July 1, 1989, and ordered dissolved on March 5, 1990.


14. The Temporary Restraining Order issued against Defendant in favor of Plaintiffs Roberson and Coleman is hereby dissolved.




Judge, Lucas County Common Pleas Court

APPROVED:


Jeanne Deimling Johns 1/30/92
Attorney for Plaintiffs,
McDowell, Coleman, and Moore


Keith L. Mitchell 1-30-92
Attorney for Plaintiff, Roberson


Edward M. Yosses, General Counsel
Attorney for Defendants

NOTICE TO OCCUPANT - NONPAYMENT

Your water service will be terminated without further notice on (date) due to non-payment. To avoid termination of water service, you must either: pay part of the outstanding charges to the premises, give the Utilities Department a deposit for future service, or give notice to the landlord that you will be paying your rent into escrow.

EXHIBIT "A"

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NOTICE TO OCCUPANT - OWNER-ORDERED TURN-OFF

Your water service will be terminated without further notice to you on (date) due to the turn-off requested by the owner. Please contact the property owner if you have any questions concerning this matter. If you are unable to resolve this question with the owner, you may wish to consult an attorney about your rights as a tenant. You may be able to have your water service continued by seeking a Temporary Restraining Order from the Toledo Municipal Court, 555 North Erie Street, Toledo, Ohio 43624.

EXHIBIT "C"

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NOTICE TO OCCUPANT - LAND CONTRACT

Your water service will be terminated because the titleholder has not paid/contracted for water service. To avoid termination of service you must: bring a copy of the recorded land contract and a security deposit to the Department of Public Utilities within eight (8) days.

EXHIBIT "B"

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