

FREMONT MUNICIPAL
COURT

FREMONT MUNICIPAL COURT -6 PM 3:23
FREMONT, OHIO

Vistula Management Co.
Delaware Acres, Inc.,
Plaintiff

v.

Juanita Scott,
Defendant

*
*
*
*
*
*

FILED
JANE M. CRUZ
Case No. 92 CVG 76
CLERK

JUDGMENT ENTRY

This matter came on for hearing this 13th day of April upon the complaint of the landlord for restitution of premises located at 713 S. Buchanan St., Apt. D, in Fremont, Sandusky County, Ohio. The landlord's complaint alleges that defendant was in violation of her lease agreement to not make or permit noises or acts to disturb the rights or comfort of neighbors including, but not limited to, keeping the volume of radio, phonograph, television or musical instrument at a level which will disturb the neighbors and permit family, visitors or guests to engage in activities in violation of this general restriction. The complaint indicated defendant was to have breached the above provision, as well as an additional claim set forth in the body of a 30 day notice and 3 day notice attached to the complaint involving defendant's husband living in the residential premises, in violation of the lease and a separate contract between the parties negotiated to settle a prior planned eviction against this defendant by plaintiff.

Defendant filed her answer and cross claim on February 20, 1992, denying the allegations of the plaintiff and claiming retaliation by plaintiff. February 26, 1992, plaintiff filed his reply to the cross claim of the defendant. These matters were set for trial on April 6, 1992, at which time both parties agreed to a one week continuance with an exchange of discovery and case law pertaining to the issues raised in the complaint of plaintiff as to noise and guests. The parties agreed on April 6 that the matters to be litigated in the FED involve the claims of plaintiff with regard to unauthorized persons living at the tenant's premises and the issue of excessive noise by the tenant.

These matters came on for hearing on April 13, 1992, upon the testimony of the defendant as upon cross examination, the manager of the apartment complex, the maintenance man for the complex (who is the spouse of the manager of the complex), and the testimony of the tenant residing immediately adjacent to defendant's unit at 713 Delaware Acres, Apt. C. Plaintiff then rested. Defendant, after making her oral motion to dismiss which was denied by the court, presented her witnesses, a tenant who lives in the same apartment complex and a friend of the defendant, another tenant in the apartment complex, ^{and} the husband of the defendant.

8

The court accepted into evidence six exhibits offered by the plaintiff and requested further briefs if desired by the parties. Plaintiff filed his response to defendant's previously submitted cases pertinent to these matters. This matter is now on for decision.

1. As to the allegation that James Scott, an unauthorized person, lives with the defendant in violation of the lease, the court does not find from the evidence and testimony of the parties that Mr. Scott was an occupant of 713 S. Buchanan, Apt. D, for purposes of violation of the lease agreement of the parties which would result in the eviction of the defendant. The evidence of Mr. Scott's undisputed extended presence was explained as required in the circumstances of this case as he babysat for the defendant's six children, five of whom were his, while his estranged wife worked on a local workfare program to receive her public assistance benefits. There was testimony that Mr. Scott and the defendant have a child who has epilepsy seizures that are not always under control and Mr. Scott is uniquely qualified to take care of that child when the defendant is unavailable. Although Mr. Scott does remain overnight in violation of an agreement entered into by the parties to terminate a prior eviction action against this defendant, those times were irregular. There was no proof that Mr. Scott pays for any rent or utilities at the premises and he was generally at the unit from 5:30 in the morning until 7 to 8 o'clock in the evenings. Mr. Scott was formerly on the lease. Although he is still married to the defendant, they are separated from each other and Mr. Scott testified he sleeps at several other residences in the City of Fremont where various members of his family live.

Absent a showing of payment of rent, furniture of Mr. Scott's in the premises or other elements of proof of occupancy, the court does not find that the plaintiff has established Mr. Scott as an occupant of the premises, other than for his assistance with the children of the tenant and said presence alone is not a sufficient basis for evicting the tenant, notwithstanding the separate agreement of the parties prohibiting Mr. Scott from remaining overnight.

2. The complaint for eviction also alleges disturbances at the apartment complex involving dates in December of 1991 involving loud noises, profanity, and improper behavior by the husband of the tenant while in an intoxicated state, and loud music throughout the month of December, 1991. The case of Fairborn Apartments v. Walker, unreported, indicates that for noise to rise to the level as the basis for an eviction, it must be continuous, excessive, deliberate and/or offensive to persons of normal and/or average sensitivities. Noise associated with the activities of the defendant's children that are the normal daily noises that are associated with children and the by-product of living with them and raising them are permissible. In this case, there are six children living with the defendant and the defendant's spouse has a regular presence at the premises. The Fairborn Apartments case holds that loud playing of a stereo on limited occasions that does not rise to a level offensive to persons

of normal sensitivities is not grounds for eviction. That court states that apartment living, by its very nature, invites intrusion into the state of privacy which everyone seeks, but must occasionally sacrifice for choosing to reside in an apartment complex setting. The elements for this court to consider in the case at hand are whether the noise and other activity was continuous, excessive, deliberate and/or offensive and repeated sufficiently to rise to a violation to grant the relief requested in plaintiff's complaint.

After reviewing the exhibits and testimony of the parties, the court finds that plaintiff has met its burden of proof with regard to this element of the eviction action filed. The testimony and evidence presented demonstrates that the neighbor of the defendant, Carol Smith, complained to the defendant and management of noise and other problems emanating from the defendant's unit which were on a continuous and excessive basis and that the manager also contacted the defendant with regard to these matters with no abatement of the complained-of action.

The evidence shows the defendant purchased a stereo December 10, 1991. Numerous complaints to the defendant were admitted by the parties. The defendant stated, however, that in some cases she did not know what was happening while she was at work, which is not a defense to the complaint. There were also problems between the Smiths and defendant's family. The complained-of action consisted of banging on walls, excessive loud noises associated with persons jumping up and down, screaming and arguing, excessive loud stereo playing, television and clock radio sounds at excessive levels continuously in December and all emanating from defendant's apartment. There was testimony that persons can hear activities such as water running and people walking upstairs in other units in this apartment complex.

The neighbor, Carol Smith, testified that they had lived beside the defendant since May, 1991, and that the problem with the loud music playing was continuous, beginning in December, 1991. The witness had asked the defendant to quiet down on numerous occasions and she had filed numerous complaints with management concerning the defendant's apartment noise and disturbances. The witness indicated that the noise was such that she could not sleep on numerous occasions due to the banging noises, loud disturbances within the defendant's unit involving Mr. Scott and that there were numerous incidents of loud arguing going on in the defendant's apartment between the defendant and her husband, with her husband being in an alleged intoxicated state. Noises were described as sounding like the apartment was being torn apart.

The court has determined that the plaintiff has established sufficient credible evidence as to disturbances at defendant's apartment of a continuous, excessive or offensive nature to persons of normal or average sensibilities in granting judgment for plaintiff. Although many of these complaints did involve Mr. Scott and the witness Smith, the court finds that defendant is in violation of Exhibit A, Lease Paragraph No. 13 D, in making or permitting noises

or acts that would disturb the rights or comforts of neighbors, including but not limited to, keeping the volume of any radio, phonograph, television, or musical instrument level that would disturb the neighbors. Judgment being granted to the plaintiff on its complaint, the court does not find that the complaint of plaintiff constitutes retaliatory conduct in violation of Ohio Revised Code Section 5321.02 and, therefore, the cross claim of the defendant is hereby denied.

Costs to the defendant. Writ of restitution to issue upon request of the plaintiff.



MICHAEL L. BURKETT, JUDGE

cc: Douglas A. Wilkins, Attorney for Plaintiff
Ron Nisch, Attorney for Defendant