

IN THE MUNICIPAL COURT OF MIAMI COUNTY,
CIVIL DIVISION

FILED
MIAMI COUNTY
MUNICIPAL COURT
95 MAY 19 PM 3:20
CARROLL
CLERK OF COURT
BY SB

LLOYD BRUMBAUGH,
Plaintiff,

v.

JACK EPPERLEY

and

KIMBERLY BENNETT,

Defendants.

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CASE NO. 95-CVGT-728

JUDGE MICHAEL W. HEMM

ENTRY

This cause came on for hearing on May 11, 1995, on the Plaintiff's Complaint for Forcible Entry and Detainer and the Defendant's Motion to Dismiss or Motion for Summary Judgment. Prior to the hearing the Court found that the Defendant's Motion for Summary Judgment was untimely, but granted the Defendant the right to introduce evidence at the Forcible Entry and Detainer hearing that was the basis of the Motion for Summary Judgment.

After hearing the evidence, the Court finds the following facts. The Plaintiff-Landlord gave the Defendant-Tenant a Notice to Leave the Premises on April 13, 1995. On April 14, 1995, the Landlord signed and sent an application to the Miami County Chapter of the American Red Cross for assistance for the payment of \$100 which would pay only part of the Tenant Kimberly Bennett's back rent. The application contained this statement, "Payment of \$100.00 will result in above parties [Kimberly Bennett] not being evicted at this time." The Landlord filed this action on April 26, 1995. On April 30, 1995, the Red Cross issued a check to the Landlord which he cashed a few days later.

Since the Landlord did not know whether his offer was accepted, the Court finds that application of the Landlord did not form a contract when the application was signed on April 14, 1995, and sent to the Red Cross. However, it is clear that when the Landlord received and cashed the check from the American Red Cross that a third-party beneficiary contract was formed. In Ohio third parties as beneficiaries may enforce contracts between other parties. Hines v. Amole 4 O. App 3d 263 (1982). Here this tenant may enforce the third-party beneficiary contract as a defense in an eviction action.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED, that this case be dismissed at Plaintiff's costs.

MICHAEL W. HEMM

JUDGE MICHAEL W. HEMM

PREPARED AND APPROVED:

Byron K. Bonar

BYRON K. BONAR 0002602
Attorney for Defendant
Kimberly Bennett
RURAL LEGAL AID SOCIETY
33 Robin Hood Lane
Troy, OH 45373
513-339-0828

PROOF OF SERVICE

I certify that a copy of the foregoing Entry was served on Defendant Lloyd Brumbaugh, 766 South Johnson Road, Ludlow Falls, Ohio 45339, by ordinary U.S. Mail this 16th day of May, 1995.

Byron K. Bonar

BYRON K. BONAR 0002602
Attorney for Defendant
Kimberly Bennett
RURAL LEGAL AID SOCIETY