

**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka**

Adrienne Calhoun

DATE: March 26, 2007

Plaintiff

-vs-

CASE NO.: 2006 CVG 27001

Marcella Ivey

Defendant

JUDGMENT ENTRY

Defendant filed her *Motion To Stay Move-Out and Objections To Magistrate's Decision* March 19, 2007. In this case, the Court grants the motion to stay until March 28, 2007, allowing a court supervised move-out March 29, 2007. The Court will consider a renewed motion to stay if Defendant files such a motion before March 28, 2007 and, by that day, has supplemented her objections with the transcript or affidavit required by Civ.R. 53(D)(3)(b)(iii). Her current objections attack the magistrate's findings of fact but without including a transcript or affidavit.

I. The Court's Discretion To Grant A Stay Of Execution

The filing of objections to a magistrate's decision granting judgment in forcible entry and detainer does not operate as an automatic stay under Civil Rule 53(D)(4)(e)(1) because such a stay would frustrate the goal of forcible entry and detainer actions to provide a prompt summary proceeding. *Miele v. Ribovich* (2000), 90 Ohio St. 3d 439, 441-44, 739 N.E.2d 333, 335-37 [interpreting equivalent former Civ.R. 53(E)(4)(c)]; *Colonial Am. Dev. Co. v. Griffith* (1990), 48 Ohio St. 3d 72, 73, 549 N.E.2d 513, 515 [interpreting equivalent former Civ.R. 53(E)(7)]; *State, ex rel. GMS Mgmt. Co., Inc. v. Callahan* (1989), 45 Ohio St. 3d 51, 54, 543 N.E.2d 483, 487. Instead, the Court retains its discretion to grant a stay while it reviews objections.

This Court therefore has discretion to grant or deny Defendant's stay while it reviews her objections. To the extent that Defendant objects to the magistrate's conclusions of law, the Court finds no merit in her objections and overrules them, making any stay unnecessary. To the extent that Defendant objects to the magistrate's findings of fact, the Court finds itself unable to determine if Defendant's objections have merit because Defendant has not provided a transcript or affidavit to support them. Prior to July 1, 2006, this Court would deny objections filed without a required transcript or affidavit. Since July 1, 2006, the Court cannot deny objections filed without a transcript or affidavit because new Civ.R. 53(D)(3)(b)(iii), effective July 1, 2006, allows a party filing objections to a magistrate's findings of fact to provide the required transcript or

affidavit within 30 days of the filing of the objections. But defendants in forcible entry and detainer cases use this 30 day period at their peril. This Court is unlikely to grant a discretionary stay merely to allow a defendant 30 days to provide the required transcript or affidavit. The Court is more likely to grant a discretionary stay because a transcript or affidavit filed with objections shows that the objections may have merit. The Court can protect a plaintiff's interest in prompt execution of judgment by ruling promptly on objections when it has granted a discretionary stay.

In this case, the Court grants Defendant's motion to stay until March 28, 2007. The Court will consider a renewed motion to stay if Defendant files such a motion before March 28, 2007 and, by that day, has supplemented her objections with the transcript or affidavit required by Civ.R. 53(D)(3)(b)(iii).

II. Defendant's Objections

If construed as objections to the magistrate's conclusions of law only, the Court finds no merit in Defendant's objections. The magistrate found that Plaintiff and Defendant entered into a written purchase agreement that by its terms had to be performed by August 8, 2006, that Defendant did not perform under the agreement, and that the parties did not amend the agreement. *Magistrate's Decision* at ¶¶2-4. Defendant therefore has no right to possession of the property based on a right to purchase it. Even if Defendant is right that the parties made oral amendments to the purchase agreement, or a new oral agreement to purchase, those amendments or the new oral agreement, are unenforceable under the statute of frauds because they are not in writing. O.R.C. §§1335.04, 1335.05.

If Defendant is alleging that the parties did enter into written amendments to the purchase agreement or entered into a new written purchase agreement, then Defendant is objecting to the magistrate's finding of fact and, under Ohio Rule Of Civil Procedure 53(D)(3)(b)(iii), must provide a transcript or affidavit supporting her objections. Defendant has not yet done so. In particular, she had not produced a written purchase agreement that could be performed after August 8, 2006. To support a stay of execution, Defendant must at least meet her obligation to provide with the required transcript or affidavit an indication of what documents she offered into evidence at trial that demonstrate that she did perform all her obligations under a valid purchase agreement.

III. Conclusion

Defendant's objections do not entitle her to an automatic stay. The Court stays execution of through March 28, 2007, allowing a court supervised move-out March 29, 2007. The Court will consider a renewed motion to stay if Defendant files such a motion before March 28, 2007 and, by that day, has supplemented her objections with the transcript or affidavit required by Civ.R. 53(D)(3)(b)(iii). Any such transcript or affidavit

will allow the Court to rule promptly on Defendant's remaining objections if the Court does grant a renewed motion to stay.

VISITING JUDGE
GERALD FRANCIS SWEENEY

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on
____/____/____.

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