

FILED
LUCAS COUNTY

2009 APR 27 P 3:42

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

**THIS IS A FINAL
APPEALABLE ORDER**

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Central Residents Council,

*

Case No. CI 200902483

Plaintiff,

*

Judge Ruth Ann Franks

-vs-

*

OPINION AND JUDGMENT ENTRY

Lucas Metropolitan Housing Authority,

*

*

Defendant.

*

This cause is before the Court upon Defendant Lucas Metropolitan Housing Authority's Motion to Dismiss. Upon consideration of the pleadings, memoranda of counsel, and applicable law, the Court grants the motion.

I. Facts

Plaintiff Central Residents Council filed a complaint for the abatement of a public nuisance and motion for injunction pursuant to R.C. 3767.41.¹ Plaintiff's complaint alleges that Defendant Lucas Metropolitan Housing Authority is a public housing authority that provides low

¹ The public nuisance statute

income housing to residents by way of several buildings which are public nuisances.² Because Defendant has failed, thus far, to remedy the problems with the buildings, Plaintiff requests the following relief: a hearing on its complaint for abatement and, upon a determination by the Court that the properties are indeed nuisances, an injunction against Defendant for abatement. Plaintiff also requests "additional orders" to ensure the abatement.

Defendant has filed a motion to dismiss Plaintiff's complaint pursuant to Civ.R. 12(B)(1) and 12(B)(6). Plaintiff opposed the motion, and Defendant filed a reply. The matter is decisional and the arguments are discussed herein.

II. Standard

When ruling on a motion to dismiss, the complaint is to be construed in a light most favorable to the plaintiff, and material allegations are taken as admitted. Mitchell v. Lawson Milk Co. (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753. To sustain a motion to dismiss it must appear beyond doubt from the complaint that no set of facts exists which may entitle the plaintiff to the relief requested. See O'Brien v. Univ. Community Tenants Union (1975), 42 Ohio St.2d 242, 327 N.E.2d 753.

The standard of review for a dismissal pursuant to Civ. R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. State ex rel. Bush v. Spurlock (1989), 42 Ohio St.3d 77, 80, citing Avco Financial Services Loan, Inc. v. Hale (1987), 36 Ohio App. 3d 65, 67, and Steffen v. General Tel. Co. (1978), 60 Ohio App. 2d 144. In determining whether the plaintiff has alleged a cause of action sufficient to withstand a Civ.R.12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint and it may consider

² Plaintiff states the properties are public nuisances due to mold and structural problems.

material pertinent to such inquiry without converting the motion into one for summary judgment. Southgate Dev. Corp. v. Columbia Gas Transm. Corp. (1976), 48 Ohio St. 2d 211, paragraph one of the syllabus.

A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of the complaint. Bratton v. Couch, Morgan App. No. CA02-012, 2003-Ohio-3743, at ¶8, citing State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs. (1992), 65 Ohio St.3d 545, 605 N.E.2d 378. The Court is required to examine only the four corners of the complaint. Ferraro v. B.F. Goodrich Co., (2002) 149 Ohio App.3d 301, 777 N.E.2d 282, citing Thompson v. Cent. Ohio Cellular (1994), 93 Ohio App.3d 530, 538, 639 N.E.2d 462.

III. Discussion

Before the Court is Defendant's motion to dismiss Plaintiff's complaint for reasons including this Court's lack of subject matter jurisdiction, Plaintiff's failure to state a claim upon which relief can be granted, and Plaintiff's failure to file the required bond with its action. Defendant also seeks sanctions pursuant to Civ.R. 11.

As an initial note, R.C. 3767.41 is dedicated to buildings constituting public nuisances, and the means by which regulations regarding the same are to be enforced. Defendant first argues that the public housing owned by it does not fall into the definition of "subsidized housing" as set forth in the statute, and therefore the statute is inapplicable. The Court disagrees. Even presuming for purposes of argument, that Defendant's alleged public housing is not of the type defined in the statute as "subsidized housing" (therefore making the "public nuisance" definition at R.C. 3767.41(A)(2)(b) inapplicable), Defendant does not escape possible inclusion in the general

definition at R.C. 3767.41(A)(2)(a).³ The statute clearly issues a definition for "public nuisance," and a definition for "public nuisance as it applied to subsidized housing." Defendant does not show where the statute *excludes* buildings such as its own. Moreover, this finding is not fatal to portions of Plaintiff's complaint that appear to rely on the statutory definition of "subsidized housing" (and Defendant's inclusion in that category), because even excising those portions from the complaint would not cause it to suffer dismissal given the other allegations.⁴

Defendant next argues that the Toledo Municipal Court's Housing and Environmental Division has exclusive jurisdiction over public nuisance abatement issues brought pursuant to R.C. 3767.41. The Court agrees that the Toledo Municipal Court's Housing Division has exclusive jurisdiction over the matter subjudice.⁵

R.C. 1901.18 addresses subject matter jurisdiction of the municipal court. It states, in pertinent part:

(A) Except as otherwise provided in this division or section 1901.181 [1901.18.1] of the Revised Code, **subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions or proceedings** and to perform all of the following functions:

(10) If the municipal court has a housing or environmental division, in any action over which the division is given jurisdiction by section 1901.181 [1901.18.1] of the Revised Code, provided that, except as specified in division (B) of that section, no judge of

³ Defendant's inclusion is characterized as "possible" simply because it has been alleged as such.

⁴ It is worth noting that this opinion goes on to ultimately find this Court without jurisdiction over the matters in Plaintiff's complaint. However, because Defendant's statutory interpretation argument as detailed above is inextricable from its other jurisdictional argument, the Court found it appropriate and necessary to address.

⁵ Pursuant to R.C. 1901.011, the Toledo Municipal Court has a housing division.

the court other than the judge of the division shall hear or determine any action over which the division has jurisdiction; . . .

(12) In any civil action as described in division (B)(1) of section 3767.41 of the Revised Code that relates to a public nuisance, and, to the extent any provision of this chapter conflicts or is inconsistent with a provision of that section, the provision of that section shall control in the civil action. (Emphasis added)

The clear statutory language indicates that the municipal court has original jurisdiction over public nuisance actions brought under R.C. 3767.41, subject to the monetary jurisdiction of the court. Subjudice, Plaintiff's public nuisance action does not seek monetary damages in an amount that exceeds the jurisdiction of the municipal court. Accordingly, R.C. 1901.18.(A)(12) indicates that the municipal court has original jurisdiction over the matter within.⁶

R.C. 1901.181 addresses exclusive and concurrent jurisdiction of the municipal court divisions and states: "[e]xcept as otherwise provided in division (A)(2) of this section and subject to division (B) of this section, the housing or environmental division of a municipal court also has exclusive jurisdiction within the territory of the court in any civil action as described in division (B)(1) of section 3767.41 of the Revised Code that relates to a public nuisance. Hence, this section assigns exclusive jurisdiction over this suit to the housing division within the municipal court.

Both of the above quoted statutes advise, however, that insomuch as any provision therein is inconsistent with R.C. 3767.41, then 3767.41 controls.⁷ Plaintiff argues that there *is* a conflict between the statutes because R.C. 3767.41(B)(1)(a) "clearly vests subject matter jurisdiction over

⁶ And further, pursuant to R.C. 1901.18(A)(10), the housing judge in the municipal court must hear the case.

⁷ The public nuisance statute trumps inconsistencies when applied specifically to civil cases brought under R.C. 3767.41(B)(1), such as the complaint subjudice.

claims brought pursuant to [the public nuisance statute] with a court of common pleas." Plaintiff relies upon the following language:

(B) (1) (a) In any civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings, **that is commenced in a court of common pleas, municipal court, housing or environmental division of a municipal court, or county court**, or in any civil action for abatement commenced in a court of common pleas, municipal court, housing or environmental division of a municipal court, or county court, by a municipal corporation in which the building involved is located, by any neighbor, tenant, or by a nonprofit corporation that is duly organized and has as one of its goals the improvement of housing conditions in the county . . . (Emphasis added).

The Court disagrees with Plaintiff that (1) the above section conflicts with the jurisdictional statutes already discussed, and (2) that it confers jurisdiction with the court of common pleas under the circumstances subjudice. Had Plaintiff additionally prayed for monetary damages in excess of the municipal court's jurisdictional limit, this Court would agree that it might have had jurisdiction to hear the matters within.⁸ As the complaint stands, however, the municipal court's housing division has exclusive jurisdiction, and Plaintiff may be afforded full relief there.⁹

As added support on its point, however, Plaintiff offers the Ohio Supreme Court case of State ex rel McGraw v Gorman (1985), 17 Ohio St. 3d 147, 478 N.E.2d 770. Plaintiff asserts that the McGraw court found that the exclusive jurisdiction of the housing court vested by R.C.

⁸ This Court's jurisdiction would still be questionable and have to be analyzed given the language of R.C. 1901.17, which says: "a municipal court shall have original jurisdiction only in those cases in which the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed fifteen thousand dollars, except that this limit does not apply to the housing division or environmental division of a municipal court."

⁹ Plaintiff, in a footnote, disagrees that it can be afforded full relief in municipal court because that court cannot adjudicate a foreclosure claim against Defendant. However, this Court finds no foreclosure component to the complaint before it.

1901.181(A) meant "exclusive" only as to other municipal court divisions, not to other courts with concurrent jurisdiction. McGraw is not dispositive of the case subjudice, however, because the McGraw plaintiff sought monetary damages in excess of the municipal court's jurisdiction. Moreover, McGraw preceded the 1997 version of R.C. 1901.17 that excluded the housing and environmental division from the jurisdictional limits of the municipal court. The statute now states: "A municipal court shall have original jurisdiction only in those cases in which the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed fifteen thousand dollars, except that this limit does not apply to the housing division or environmental division of a municipal court." See, Davet v City of Cleveland (2006), 456 F.3d 549, 554 (6th Cir. Ohio).¹⁰ Accordingly, when the Court subjudice considers the clear language of R.C. 1901.17, 1901.18, and 1901.181, it finds that it does not have jurisdiction to hear Plaintiff's complaint. Further, the Court finds that the provisions of R.C. 3767.41 do not conflict with the jurisdictional statutes as relied upon by the Court.


Based on this Court's lack of jurisdiction to hear the matters in Plaintiff's complaint, the Court dismisses the same, and finds it unnecessary to address Defendant's additional bases for dismissal.

¹⁰ Plaintiff also cited to Davet at 452 F.3d 507, for support that 1901.181 does not establish exclusive jurisdiction of the municipal court as against federal courts or other Ohio courts. Davet was amended and reprinted at 456 F.3d 549, however, and more clearly explains that "the provision [R.C. 1901.181] is best interpreted as vesting jurisdiction in the Housing Division of the Cleveland Municipal Court 'exclusive' of other state courts, but not exclusive of a federal court otherwise properly exercising jurisdiction over the case." [Like Toledo, Cleveland is vested with a housing court.] Hence, Davet is contrary to Plaintiff's argument.

JUDGMENT ENTRY

It is therefore ORDERED, ADJUDGED, and DECREED that Defendant Lucas Metropolitan Housing Authority's Motion to Dismiss is found well taken and granted.

April 27, 2009



Ruth Ann Franks, Judge

cc: Robert Cole, Esq.
Aneel L. Chablani, Esq.
Joshua Murnen, Esq.
Timothy R. Cleary, Esq.
Thomas S. Amato, Esq.
Robert G. Stiefvater, Esq.