HARRISON COUNTY COURT
CADIZ, OHIO

CAROL GAY **CASE NO. CVG-00-141**
Plaintiff

v.

RONALD PARR et al. **JUDGMENT ENTRY**
Defendants

This matter came before the Court for trial the 19th day of December, 2000. Plaintiff was represented by Attorney Mark Beetham. Defendants were present and were represented by Attorneys Thomas E. Zani and Robert C. Johns of the Southeastern Ohio Legal Services Program.

The Court granted each party the opportunity to present evidence relevant to the issues before the Court. Upon the evidence adduced in open Court, the Court makes the following findings of facts and conclusions of law:

1. Plaintiff is the owner of property described as the "dwelling and grounds situate at Lots 12, 13, and 14 on West Main Street in Piedmont, Harrison County, Ohio."
2. On or about September 1, 1999 Defendants contacted Plaintiff to inquire concerning the purchase or renting of the aforesaid property. After an inspection of the property by Defendants the parties reached a verbal agreement concerning such property.
3. The parties agreed that Defendants would rent the property at the rate of $250.00 per month and that they would pay an additional sum of $150.00 each

month to be applied by Plaintiff to a down payment for the property. Once the Defendants had accumulated a down payment of $5,000.00, Defendants would have the opportunity to purchase the property for $25,000.00, less the down payment of $5,000.00. At that time, the rental payments of $250.00 per month would then be converted to payments upon the outstanding principal and interest would be assessed at the rate of 9% per annum.

4. Part of the consideration for such agreement was the willingness of Defendants to undertake repairs of the property.

5. Defendants began making payments pursuant to such agreement on or about September, 1999 and continued making payments pursuant to such agreement through August, 2000.

6. Such agreement was never memorialized by a written document acknowledged by both parties.

7. Over the course of time, a certain mutual dissatisfaction developed between the parties. The Defendants were upset that a document memorializing such agreement had not been prepared and Plaintiff was upset that repairs to the roof over the foyer had not been performed by Defendants.

8. A meeting between the parties took place on or about September 10, 2000. While the intentions of the parties going into the meeting are unknown, it is clear that as a result of the meeting, Plaintiff informed Defendants that she was revoking the "option to purchase" agreement, but that Defendants could continue to rent the property. Plaintiff informed Defendants that effective with the month of September, the rent would be $400.00 per month.

Defendants were given no assurance that the money which they had paid towards the down payment would be returned to them.

9. Subsequently, Plaintiff served a "three day notice to vacate" upon Defendants and initiated this action for restitution of the premises.

10. Defendants did not commit waste to the premises. In fact, Defendants completed substantial repairs to the premises at their own expense. Defendants repaired leaks in the plumbing at or under three sinks, replaced plumbing fixtures, replaced the water heater, removed radiators and portions of a steam heat system and installed a coal furnace and necessary ducts to provide heat throughout the house. The Court concludes that Defendants were in substantial compliance with any contractual requirement to perform repairs to the premises.

11. In the absence of a written agreement the parties had not established a 'cutoff' date for the payment of rent after which the rent would be considered as delinquent.

12. Defendants had not paid the rent for September, 2000 prior to the meeting on September 10, 2000 but were prepared to pay the rent at that time.

13. The Court concludes that the parties had established an agreement which had been confirmed by the actions undertaken by Defendants to make repairs to Plaintiff's premises, the payments of rent and installments applied to the "down payment" by Defendants and the acceptance of such rent and "down payment" installments by Plaintiff. The performance by the parties takes the

agreement outside the Statute of Frauds requirements of written memoranda. Therefore, Plaintiff could not unilaterally revoke or modify such agreement.

14. Defendants did not make any payments to Plaintiff for rent and/or down payment during September, 2000 and did not make any payment to Plaintiffs in October, 2000 except pursuant to the orders issued herein on October 16, 2000.

15. Defendants have made payments totaling $1600.00 to the Court in accordance with the orders issued herein on October 16, 2000. The sum of $500.00 has previously been released to Plaintiff as and for "rent " for the months of September and October, 2000.

16. Defendants are entitled the opportunity to carry out the agreement reached by the parties as described herein (paragraphs 2, 3, and 4) so long as they comply with the terms of such agreement.

17. Certain clarification is necessary to avoid problems in the future. The Court finds that the reasonable interpretation of the parties' agreement would require the Defendants to make the monthly payment of $400.00 to Plaintiff on or before the 5th day of each month. Payments received after the 5th day of each month would be considered delinquent. Plaintiff shall continue to maintain records of the payments received and to apply $150.00 of each payment to the "down payment" of Defendants.

18. Further involvement by the Court is unnecessary. The funds nmow held in escrow will be released to Plaintiff to be applied as follows:

a. $500.00 for rent for the months of November and December, 2000; and

b. $600.00 to be applied to the "down payment" as the installments for the months of September, October, November, and December, 2000.

WHEREFORE, the Court concludes that Plaintiff is not entitled to restitution fo the premises and the complaint filed herein is dismissed. Costs are assessed to Plaintiff and shall be paid from the deposit filed herein.

The Court specifically makes no finding concerning the rights of the respective parties in the accumulated "down payment" fund in the event of a default by Defendants in the agreement confirmed herein.

SO ORDERED.

MICHAEL K. NUNNER, JUDGE

FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default, serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with a certificate of mailing making notation of same upon case docket.

MICHAEL K. NUNNER, JUDGE

Stamped copies:
Mark Beetham (2)
Thomas E. Zani (2)

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