

JUDGMENT ENTRY RECEIVED
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**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PIANKA**

MAR - 8 2010

EARLE B. ... CLERK

FEDERAL NATIONAL MORT. ASSOC.,
Plaintiff(s)

DATE: MARCH 2, 2010

-VS-

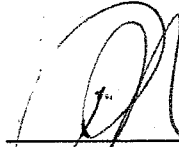
CASE NO. 10-CVG-02141

DARNELL TAYLOR,
Defendant(s)

JUDGMENT ENTRY

Upon review, the Magistrate's Decision is approved and confirmed.

Judgment for defendant.



JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on
3/3/10. WPL

CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

MAR - 8 2010
EARLE B. TURNER, CLERK

FEDERAL NATIONAL MORT. ASSOC.,
Plaintiff(s)

DATE: MARCH 2, 2010

-VS-

CASE NO. 10-CVG-02141

DARNELL TAYLOR,
Defendant(s)

MAGISTRATE'S DECISION

Case called for pretrial hearing on the plaintiff's first cause of action before Magistrate Heather A. Veljković, to whom it was referred by Judge Raymond L. Pianka pursuant to Civil Rule 53. Plaintiff was represented by counsel. Defendant was neither present, nor represented by counsel.

FINDINGS OF FACT:

{¶1.} Plaintiff is the owner of the premises described in the Complaint, by virtue of a Sheriff's Sale confirmed by the Cuyahoga County Court of Common Pleas on September 23, 2009. Plaintiff's Exhibits A and C.

{¶2.} Plaintiff caused to be served upon the defendant a notice pursuant to R.C. 1923.04. Plaintiff's Exhibit B.

{¶3.} No other notices were served.

CONCLUSIONS OF LAW:

{¶4.} The Protecting Tenants at Foreclosure Act of 2009 ("PTFA") was signed into law on May 20, 2009. S. 896, Pub. L. No. 111-22, §§ 701-704. It applies to tenants living in premises where a Sheriff's Sale resulting from a foreclosure is confirmed on or after May 21, 2009. The PTFA applies in this case because the Confirmation of Sale occurred on the underlying matter in September 2009.

{¶5.} Section 702 of the PTFA provides, "In the case of any foreclosure on a * * * dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to - (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure -- * * * (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1).

{¶16.} Here, counsel for plaintiff argues that no 90-day notice was required because the tenant was not "bona fide." Counsel asserts that no written agreement existed between the prior owner of the premises and the defendant in the instant case. Further, counsel for plaintiff argues that her client sends out a written communication to the occupants at premises it purchases at Sheriff's Sales seeking out information from the occupants, and that nothing was sent back.

{¶17.} A tenancy is considered bona fide only if: "(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy." Id. 702(b).

{¶18.} The magistrate notes that there was no natural person present on behalf of the plaintiff corporation. Keith McDermott was present to testify with respect to the service of the R.C. 1923.04 notice; however, no one from the business entity was present to testify with regard to the reasoning behind the determination of a lack of bona fide tenancy. Since the attorney for plaintiff cannot be both witness and advocate, the Court can only take her statements as legal argument.

{¶19.} The Complaint alleges¹, as grounds for the eviction, that defendant is in possession of the premises without color of title. However, the provisions of the PTFA give bona fide tenants a possessory right to the premises, unless or until the successor in interest terminates in accordance with the terms of the Act. The Complaint fails to allege that defendant is not a bona fide tenant. Indeed, defendant herein can be a bona fide tenant, even assuming he did not have a written rental agreement with the prior owner of the premises. Id. 702(a)(2)(B).

{¶10.} Plaintiff has the burden of proving that the defendant is not a bona fide tenant. Without a witness present to establish the basis for its failure to serve a 90-day notice in conformance with the PTFA, plaintiff cannot establish the essential elements of its claim. Plaintiff has failed to prove its case for non-color of title by a preponderance of the evidence.

RECOMMENDATION:

{¶11.} Judgment for defendant.


MAGISTRATE HEATHER A. VELJKOVIĆ
HOUSING DIVISION

¹ The Complaint also alleges that "the Defendants [sic] have ever since the 8th day of September, 2009, unlawfully and forcible detained, and do still unlawfully and forcibly detain from Plaintiff, possession of the following described premises..." The magistrate notes that it is not legally possible for the defendant to have forcibly detained the premises since September 8, 2009, since the Confirmation of Sale was not journalized until September 25, 2009.

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Magistrate's Decision was sent by regular U.S. mail to the parties on

3/3/10 UPV