

Cleveland Municipal Court
Housing Division
Judge Raymond L. Pianka

CINDY SMITH,
Plaintiff(s)

Date: June 24, 2011

-v-

Case No: 2010 CVH 18860

AKARUI ENTERPRISES, LLC;
AND

GRAIG BROWN A.K.A. GREG
BROWN AND A.K.A. CRAIG
BROWN; AND

JUDGMENT ENTRY

DEREK BROWN A.K.A.
DERRICK BROWN AND
A.K.A. DERECK BROWN,

Defendant(s)

The Court, having reviewed the *Magistrate's Decision* of June 24, 2011 under Ohio Rule Of Civil Procedure 53(D), adopts that decision.

The Court grants judgment to Plaintiff against Defendant Derek Brown and Defendant Akarui Enterprises, LLC in the amount of \$484,282 plus court costs with interest from the date of judgment.

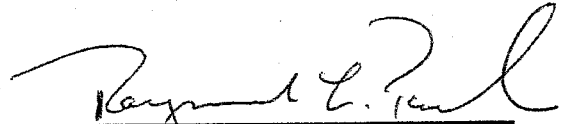
Plaintiff may continue to attempt to perfect service on Defendant Graig Brown.

The Court has never, in its 31 year history, heard proof in so many cases of a landlord or landlords engaging in such repeated, ongoing, deliberate, cruel, harmful and illegal conduct. The Court concludes that it is in the public interest that the decision in this case should be shared with the parties listed below. Accordingly, the Court orders that a copy of the *Magistrate's Decision* and this *Judgment Entry* be sent to:

The Cuyahoga County Court of Common Pleas
The Cleveland Municipal Court, General Division
The Cleveland Police Department
The Cleveland Public Utilities Police
Cleveland Public Power
The Illuminating Company
The Cleveland Water Department
The Cuyahoga County Prosecutor's Office

The City of Cleveland Law Department, Chief Prosecutor
The Cleveland Legal Aid Society
The Cleveland Tenants Organization

IT IS SO ORDERED



Raymond L. Pianka
Judge

SERVICE

A copy of this judgment entry and order was sent by regular U.S. mail to the addresses of record for parties/counsel on ____/____/____ by ____.

Cleveland Municipal Court
Housing Division
Judge Raymond L. Pianka

CINDY SMITH,
Plaintiff(s)

Date: JUNE 24, 2011

-v-

Case No: 2010 CVH 18860

AKARUI ENTERPRISES, LLC;
AND

MAGISTRATE'S DECISION

GRAIG BROWN A.K.A. GREG
BROWN AND A.K.A. CRAIG
BROWN; AND

DEREK BROWN A.K.A.
DERRICK BROWN AND
A.K.A. DERECK BROWN,

Defendant(s)

Plaintiff filed this action for damages, alleging, among other claims, that Defendants had violated her rights under the Ohio landlord tenant law. After several unsuccessful attempts to serve the complaint upon Defendants, Plaintiff informed the Court's bailiffs that they would be able to serve Defendants at a criminal hearing held in the Common Pleas Court of Cuyahoga County. The Court's bailiffs were able to serve Defendants Derek Brown and Akarui Enterprises, LLC at that hearing.

Defendants Derek Brown and Akarui Enterprises, LLC did not file any answer or responsive pleading.

The Court set the case for default hearing February 22, 2011. Plaintiff appeared with counsel before Magistrate David D. Roberts, Judge Raymond L. Pianka having assigned Magistrate Roberts to hear all questions of law and fact.

Because Plaintiff has proved that Defendant Derek Brown and Akarui Enterprise engage in a deliberate and vicious campaign of terror against her intended to force her and her children out of her home, and because this Court has repeatedly found, in a series of cases over the past decade, that these defendants, and Defendant Graig Brown, continually engage in such practices, the Court awards Defendant her actual damages of \$15,622 and an award of punitive damages of \$468,660, for total damages of \$484,282 against these Defendants. Plaintiff may continue to try to perfect service on Defendant Graig Brown.

Findings Of Fact

1. Plaintiff Cyndy Smith is a single mother with two small children. Her children were three years old and five years old when Ms. Smith moved into a property owned and controlled by Defendants in June 2010.
2. Plaintiff met with both Defendant Derek Brown and Defendant Graig Brown in May 2010. She gave Defendants a security deposit of \$425 and pro-rated rent for the month of June 2010 for rental of a house at 3394 W. 120th St., Down in Cleveland, Ohio ("the property").
3. Plaintiff moved into the property June 12, 2010.
4. Plaintiff asked for a written lease. Defendants assured her that they would prepare one but they never did.
5. The property had no refrigerator and stove, so Plaintiff purchased a refrigerator and stove.
6. The property had some defects. The sink in the bathroom was coming loose from the wall. One ceiling had a hole. The value to Plaintiff of the property for 19 days in June was \$200. Given the circumstances stated below, the value to Plaintiff of the property for July was \$0.
7. On July 3, 2010, Plaintiff found herself without hot water. She called Defendant Graig Brown. He told her that the lack of hot water might be a minor problem and asked immediately when Defendant would be paying her July rent.
8. Three days later, Plaintiff found that her water was shut off altogether.
9. Plaintiff contacted the City of Cleveland Department of Building and Housing. Inspector Rhonda Derreck informed Plaintiff that the City had issued a Notice of Violations in May 2010 condemning the house and ordering it to be demolished unless all building code violations at the property were repaired.
10. Plaintiff told Defendants that she had learned the house was condemned. Defendants denied that this was true.
11. A few days later, Plaintiff found that her electricity was turned off. She contacted Cleveland Public Power to come to the property. Representatives of Cleveland Public Power came to the property and discovered that someone had removed the electrical meter. The representatives installed a temporary fix that allowed Plaintiff to have electric power.

12. The representatives told Plaintiff that someone had smeared feces on the electrical breakers in the basement and showed her the scene, which she later took a photograph of, submitted into evidence as Plaintiff's Exhibit 4.
13. Some days later, Plaintiff found herself without electric power again.
14. Some days after that, Plaintiff returned to the property after having gone out and found that she had been locked out of the property.
15. Plaintiff retrieved some of her belongings by forcing entry to the property through a window and carrying the belongings out of the window. The value of the property that Plaintiff had to abandon was \$2350.
16. Plaintiff moved with her two small children into a homeless shelter.
17. During the time when she was still occupying the property, Plaintiff frequently saw both Defendant Derek Brown and Defendant Graig Brown at the property. Based on their demeanor and words to her she always understood clearly that they were deliberately cutting off her hot water, water and electricity.
18. Plaintiff found the experience of being forced out of the property and ending up in a homeless shelter the worst thing she had even been through.
19. Defendants Graig and Derek Brown have been found by this Court to have engaged in similar conduct in other cases:

Mary Skinner v. Allen Enterprises IV, LLC; and Derek Brown and Graig Brown, 2005 CVH 24144, award of \$68,907.

Walker v. Tomi Enterprises, Graig Brown a.k.a. Craig Brown, Gary Brown; and Margaret Brown, 2006 CVH 4305, *Magistrate's Decision and Judgment Entry* of September 26, 2006, award of \$185,804, including punitive damages for malicious conduct.

Graig Brown v. Rose Marie Ray, 2008 CVG 25314, *Magistrate's Decision and Judgment Entry* of February 26, 2009 granting judgment against Graig Brown in the amount of \$14,123.

Daeshanae Wright v. Nikagi Enterprises, et al. 2009 CVH 6953 (Defendants including Graig Brown, Derek Brown and Allen Brown).

These cases may not be an exhaustive list of cases against Defendants Graig and Derek Brown since they use aliases and operate through various limited liability companies with different names. Joan M. Simpson brought an action, *Simpson v. Brown et al.*, 2010 CVG 24018 against the Defendants in this case, including Akarui Enterprises, LLC with the Browns apparently using aliases Craig Brown and Dereck Brown. In another case, *Chandler v. Brown*, 2009 CVG 6331,

also against Derek and Graig Brown and Akarui Enterprises, LLC, Plaintiff sued Derek Brown under the alias Derrick Brown.

20. Defendant Graig Brown has been charged four times with criminal conduct for disrupting public services under 2909.04 and other crimes:

State of Ohio v. Graig Brown, CR-04-454522-B
State of Ohio v. Graig Brown, CR-07-496316-B
State of Ohio v. Graig Brown, CR-08-507447-B
State of Ohio v. Graig Brown, CR-10-047908-A

21. The charges in the first case were dismissed for want of prosecution. Graig Brown admitted his guilt in the second two cases and entered a pre-trial diversion program which he completed in September 2010.

The charges in the fourth case are for criminal conduct in December 2010, three months after Graig Brown's diversion program ended. There is a pending warrant for Graig Brown's arrest on the charges. Graig Brown's conduct toward the Plaintiff in this case occurred during his participation in the diversion program.

22. Defendant Derek Brown has been charged six times with disrupting public services and other crimes.

State of Ohio v. Derek Brown, CR-03-437958-ZA
State of Ohio v. Derek Brown, CR-04-454522-B
State of Ohio v. Derek Brown, CR-07-496315-B
State of Ohio v. Derek Brown, CR-07-496316-B
State of Ohio v. Derek Brown, CR-07-496317-B
State of Ohio v. Derek Brown, CR-08-507447-B

The first two cases were dismissed for want of prosecution. Derek Brown admitted his guilt in the next four cases and entered a pre-trial diversion program which he completed in September 2010. Derek Brown's conduct toward the Plaintiff in this case occurred during his participation in the diversion program

Conclusions of Law

Plaintiff's claims against Defendant Derek Brown and Akarui Enterprises, LLC (hereinafter Defendants) find their legal support in contract law, tort law, the Ohio Revised Code and the Cleveland Codified Ordinances.

Plaintiff proved damages from breach of contract. Defendants knowingly defrauded Plaintiff by renting her a condemned house. Though they should not have rented her a house declared unfit for habitation, Defendants nevertheless entered into a contract with her and so were bound to it. Defendants immediately breached the rental

agreement by failing to meet their obligation to repair the defects at the property, and then breached it, and violated Ohio's landlord tenant statute, by deliberately turning off the hot water, then the water, then the electricity, and then the restored electricity, and finally by locking Plaintiff out of the property. Plaintiff's damages from breach include the money she paid to Plaintiffs less the value to her of the time she spent in the property in June 2010. This amount is \$537.

Plaintiff also proved fraud. The Court concludes that her damages from the fraud must include the \$200 value of the property for June 2010. Defendants should not have rented to Plaintiff a house they knew the City had condemned. Plaintiff's damages of \$537 and \$200 total to \$737.

Plaintiff's principal claim is for damages from Defendants intentional acts in violation of O.R.C. §5321.15(A) and C.C.O. §375.07 and the common law of torts. Her consequential damages from these acts include her \$2350 in lost property. Plaintiff is also entitled to damages for her pain and suffering. The Court concludes that Plaintiff suffered intensely from the stress of battling to maintain a home for herself and her two children. The Court concludes that \$10,000 is a fair measure of these damages. Defendants' unrelenting campaign of cruelty could easily have driven Plaintiff to have had long lasting psychological damage. She did not testify that she had any lasting psychological problems due to her experience. When she testified, she clearly felt great emotion. But she also showed great strength, a strength that enabled her to endure the worst experience of her life. Were it not for her strength, she would be entitled to an award of damages for her ongoing suffering.

Plaintiff's consequential damages of \$737, \$2350 and \$10,000 total \$13,087.

Plaintiff is also entitled to an award of reasonable attorney fees because of Defendant's violation of O.R.C. §5321.15 by using illegal means to drive her out of possession. Her attorney testified that he spent 16.9 hours on the case, which his firm took pro bono, and that his usual hourly rate is \$150 per hour. The Court therefore awards Plaintiff \$2535 in attorney fees.

Plaintiff's damages without punitive damages are consequential damages of \$13,087 and \$2535 in attorney fees for a total of \$15,622.

Plaintiff is also entitled to an award of punitive damages. Defendants' campaign of willful acts in violation of O.R.C. §5321.15(A) supports an award of punitive damages because Defendants acted malice. *Brookridge Party Center, Inc. v. Fisher Foods, Inc.* (1983), 12 Ohio App.3d 130, 12 OBR 451, 468 N.E.2d 63; *Allen v. Lee* (1987), 43 Ohio App.3d 31, 538 N.E.2d 1073. Malice is shown by evidence of hatred, ill will, revenge, or "a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty* (1987), 32 Ohio St.3d 334, 336, 512 N.E.2d 1174, 1176; *Villella v. Waikem Motors, Inc.* (1989), 45 Ohio St.3d 36, 37, 543 N.E.2d 464, 466. Defendants showed contempt for Plaintiff by smearing feces on the circuit breakers when they cut the power to her home. They showed a conscious disregard for her rights and her safety and the rights and safety of her children. They

knew, and indeed intended, that their actions would cause harm. Their actions were the very definition of malice.

The determination of the amount of punitive damages is within the discretion of the trier of fact as long as the award is not based upon passion and prejudice. *Saberton v. Greenwald* (1946), 146 Ohio St. 414, 32 O.O. 454, 66 N.E.2d 224; *Levin v. Nielsen* (1973), 37 Ohio App.2d 29, 66 O.O.2d 52, 306 N.E.2d 173. The Court may consider a variety of factors, including but not limited to:

- the relationship between the parties,
- the probability of recurrence unless the conduct is deterred,
- the harm that is likely to occur from similar conduct,
- the harm that actually occurred,
- the reprehensibility of the conduct,
- the nature of the wrong,
- the removal of any financial profit so that future conduct results in a loss,
- the financial status of the parties,
- the deterrence value,
- a reasonable relationship between compensatory and punitive damages,
- whether the wrong is a single occurrence or a pattern of wrongful conduct.

Myer et al. v. Preferred Credit, Inc. (2001), 117 Ohio Misc.2d 8, ¶66 (Harrison County Court of Common Pleas). The trier of fact can make an award without information about the financial status of the party if the party does not provide it. *Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, 186, 459 N.E.2d 561. *Burns v. Prudential Securities, Inc.* (2006), 167 Ohio App.3d 809, 855, 857 N.E.2d 621; *See also Columbus Homes Ltd. v. S.A.R. Constr. Co.* (April 10, 2007), Franklin App. 06AP-759, 2007-Ohio-1702. *General Environmental Science Corp. v. Horsfall* (1992) 800 F.Supp. 1497 at 1506 (N.D. Ohio); *Dick v. Tab Tool & Die Co., Inc.* (2008), 2008 WL 4444765 at ¶ 37

Each of these factors supports a larger, not smaller, award of punitive damages against Defendants Akarui Enterprises, LLC and Derek Brown. Defendants' relationship to Plaintiff was one of landlord to tenant, giving Defendants greater power and greater responsibility and making their intentional violation of that power reprehensible. The evidence in this case alone demonstrates that Defendants intentionally engaged in a conscious pattern of mistreating Plaintiff, their tenant, suggesting that only a sizeable award of punitive damages will stop Defendants from doing the same thing again to other tenants. The evidence from other civil actions brought by other tenants against these same Defendants overwhelmingly supports the same conclusion. Defendants' malicious conduct in this case is, for them, typical.

The type of conduct in this case, using force to drive a tenant from the tenant's home, is likely to cause great harm to future tenants and did cause great harm to Plaintiff. It made her homeless and caused her emotional distress. It put her children at risk. The conduct was completely reprehensible. It seems only a larger award of damages than those this Court has granted before will prevent Defendants from using abusive self-help tactics to illegally evict their tenants. The financial status of the

Defendants, owners of a variety of properties in Cleveland, also supports a larger award. The punitive damages should bear a reasonable relationship to Plaintiff's damages of \$15,622 but need not be limited to any particular multiple of this amount. *TXO Prod. Corp. v. Alliance Resources Corp.* (1993), 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366.

Considering all these factors, the Court awards punitive damages of \$468,660. At thirty times the amount of Plaintiff's other damages, the award is reasonably related to those damages. The judgment of \$68,907 for similar conduct in 2005 did not deter Defendants from engaging in the same conduct. Nor did the judgment of \$185,804 in 2006. Punitive damages are intended to "punish and deter, but not to vanquish or annihilate the defendant." *Petefish v. Haselberger*, Ashland App. No. 2005-COA-012, 2005-Ohio-5638, at ¶ 37. But Defendants, having chosen not to answer this lawsuit, have not produced any evidence showing that damages of \$468,660 will annihilate them.

In conclusion, each and every factor to be considered when awarding punitive damages supports a larger, not smaller, award of damages in this case. Defendants committed exactly the abuse that O.R.C. §5321.15(A) and punitive damages under the law of intentional torts is meant to prevent.

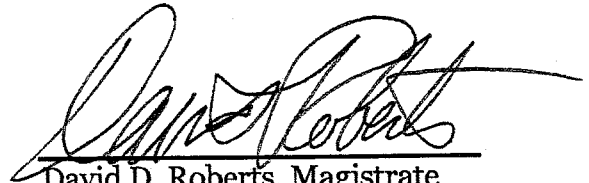
The Court notes that Defendants Graig and Derek Brown have also admitted that they engaged in criminal conduct through the disruption of public services. The Cuyahoga County Common Pleas Court allowed them, as first time offenders, to enter a diversion program, expecting them to complete the program without committing any criminal offenses during their participation in the program, particularly not the same type of offenses. The docket of those criminal cases does not indicate the specific conduct that supported the criminal charge. In addition, the two men successfully completed the diversion program. The Court therefore will not increase the award of punitive damages against Defendant Derek Brown based on his conviction. But the Court notes with concern that Defendants Graig and Derek Brown engaged in the conduct at issue in this case even while participating in the Common Pleas Court diversion program. Since all diversion programs include the requirement not to re-offend, it would appear that Graig and Derek Brown concealed their conduct from the judge of the Common Pleas Court and the judge's staff, including the assigned probation officer.

Plaintiff's total damages are \$484,282, \$15,622 in actual damages and attorney fees and \$468,660 in punitive damages.

Decision

The Court grants judgment to Plaintiff against Defendant Derek Brown and Defendant Akarui Enterprises, LLC in the amount of \$484,282 plus court costs with interest from the date of judgment.

Plaintiff may continue to attempt to perfect service on Defendant Graig Brown.


David D. Roberts, Magistrate

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(D). 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 addresses of record for parties/counsel on ____/____/____ by ____.