

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

JUL 12 8 47 AM '02

AKRON MUNICIPAL COURT
JUL 12 2002
CLERK

AKRON METROPOLITAN HOUSING
AUTHORITY

Plaintiff

V.

HAZEL SANDERS

Defendant

CASE NO.

02 CVG 2692

Magistrate: Thomas F. Lynett

MAGISTRATE'S DECISION WITH
FINDINGS OF FACT AND CONCLUSION
OF LAW

This matter was scheduled for hearing before Magistrate Thomas F. Lynett on the 8th day of May 2002. Plaintiff was present in Court with counsel. The defendant was present in Court with counsel.

From the evidence presented by the parties the Court finds the facts to be that plaintiff is the owner of a dwelling unit situated in the city of Akron, county of Summit, state of Ohio and commonly known as 1309 Ottawa Avenue. Defendant is a long term tenant of plaintiff under a written dwelling lease signed by both parties in October 1993.

Plaintiff filed it's FD action on March 22, 2002 alleging in essence, that defendant failed to report to plaintiff increases in income as required by defendant's agreement with plaintiff.

Previously, on November 5, 1999, defendant was found guilty in Summit County Common Pleas Court of Grand Theft due to this unreported income and on December 7, 1999, defendant was sentenced.

Defendant's conviction was affirmed by the Ninth District Court of Appeals and defendant's appeal was dismissed by the Supreme Court of the State of Ohio on April 4, 2001.

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

COURT OF APPEALS
DINA TALESKI
2003 MAR 10 AM 10:49

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SUMMIT COUNTY
CLERK OF COURTS

AKRON METROPOLITAN HOUSING
AUTHORITY

C.A. No. 21259

Appellant

v.

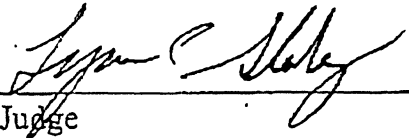
HAZEL SANDERS, et al.

Appellee

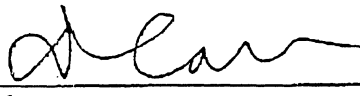
JOURNAL ENTRY

The order of the trial court, dated August 19, 2002, from which Appellant appeals is not a final appealable order. See *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 216 (stating that "the content of the judgment must be definite enough to be susceptible to further enforcement and to enable the parties to understand the outcome of the case"). The appeal is dismissed. Costs taxed to Appellant.

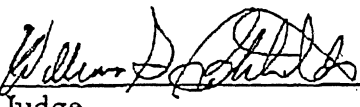
The clerk of courts is ordered to mail a notice of entry of this judgment to the parties and make a notation of the mailing in the docket, pursuant to App.R. 30.



Judge



Judge



Judge

FILED

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

AKRON MUNICIPAL COURT

CLERK

AKRON METROPOLITAN HOUSING)
AUTHORITY,)
Plaintiff,)

CASE NO. 02CVG02692

JUDGE MCCARTY

v.)

HAZEL SANDERS, et al.,)
Defendant.)

JOURNAL ENTRY

This matter is before the Court on August 19, 2002 on Plaintiff's Objection to the Magistrate's Decision. Upon reviewing the record and in conformity of the finding of facts and conclusions of law of the magistrate appointed herein, this Court hereby adopts the Magistrate's Decision. The Court hereby GRANTS judgment in favor of Defendant and against Plaintiff, costs to be paid by the Plaintiff.

IT IS SO ORDERED.


JUDGE ALISON MCCARTY

The Clerk of the Court shall comply with Civ.R. 58(B) and serve notice on all the parties of this judgment and its date of entry upon the journal.


JUDGE ALISON MCCARTY

cc: James D. Casey, Attorney for Plaintiff
Gregory R. Sain, Attorney for Defendant

On June 21, 2001, plaintiff filed its termination notice on defendant and after formal grievance hearings, plaintiff filed its three day notice to leave the premises on March 5, 2002 and filed its FD action on March 22, 2002.

Prior to the hearing, the parties addressed defendant's motion to dismiss based on the two year statute of limitation requirement as stated in Ohio Revised Code Section 1923.01(B).

Defendant's counsel argued that any fraud on defendant's part was known to plaintiff as early as September 1998. Defendant argues that any action must accrue within two years of September 1998 or at least by the November 1999 conviction in Common Pleas Court.

Counsel for plaintiff argues that the FD action was timely filed. Plaintiff argues that the statute of limitations does not begin to run until defendant exhausts her rights of due process to challenge the theft/fraud conviction, which is the basis for the eviction.

Plaintiff further argues that because of the oft-used adage "equity abhors a forfeiture", plaintiff waited to initiate the termination action until defendant's appeal rights had been exhausted.

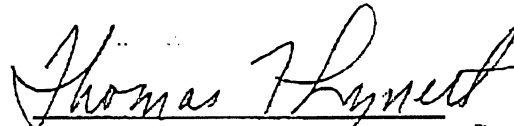
There was discussion as to when a cause of action actually accrues. Plaintiff's definition would be that the cause of action accrues at "the criminal conviction upheld on appeal", while defendant's definition would be a cause of action accrues at the date of reasonable discovery.

The Court finds that plaintiff's own procedure in fraud cases suggests not proceeding with the eviction until the conviction occurs. In the present case, defendant's conviction occurred November 5, 1999 and following plaintiff's own guidelines, the case should have been filed before November 5, 2001.

But, this Court finds that plaintiff knew of the alleged fraud in September of 1998. And having knowledge of such fraud, the cause of action accrued at that time.


According, the Court finds plaintiff's FD action was not filed in the Akron Municipal Court prior to September of 2000 and consequently, pursuant to Ohio Revised Code Section 1923.01(B), this Court has no jurisdiction to proceed.

Based on the arguments of counsel and the briefs filed, the within case is dismissed at plaintiff's costs.


Magistrate Thomas F. Lynett

The decision of the Magistrate is approved. It is the judgment of the Court that a Writ of Restitution may not issue. Cost to be paid by the plaintiff.

7/11/02
Date


Signature

cc: Akron Metropolitan Housing Authority
Hazel Sanders

AKRON MUNICIPAL COURT
JUL 12 8 42 AM '02

FILED