

NEW PHILADELPHIA
IN THE NEW PHILADELPHIA MUNICIPAL COURT
NEW PHILADELPHIA, OHIO
1988 DECEMBER 12 1988

WILLIAM P. MARINO, JR., :
PLAINTIFF : CASE NO. 7-88-CVG-510
V. :
STEVEN & VIVIAN SMART, : JUDGMENT ENTRY
DEFENDANTS :

These matters were considered by Edward Emmett O'Farrell, Judge, New Philadelphia Municipal Court, New Philadelphia, Ohio on December 12, 1988.

The Court

FINDS that William P. Marino Jr. owns premises known as 865½ East High Avenue, New Philadelphia, Ohio and on October 21, 1988 filed a Forcible Detainer Action against Steven and Vivian Smart, tenants at that location. A First Claim Hearing was scheduled in the New Philadelphia Municipal Court on November 4, 1988 but was cancelled upon the representation of the agent for the Plaintiff that the Defendant had vacated the premises as of November 4, 1988. A Second Claim Hearing was scheduled for February 10, 1989 at 3:30 P.M. That Second Claim Hearing was scheduled by Notice of Court proceedings mailed on November 7, 1988.

FINDS that on November 8, 1988, in behalf of the Defendants, Southeastern Ohio Legal Services filed Motions seeking a prohibition against re-rental of the subject matter premises or for inspection thereof and for dismissal of the Second Claim.

FINDS that by Journal Entry of November 14, 1988 the Plaintiff William P. Marino Jr. was Ordered not to re-rent the premises at 865½ East High Avenue, New Philadelphia, Ohio until violations listed in an August 11, 1988 letter from the Tuscarawas Metropolitan Housing Authority had been corrected. The Court Ordered this ban or bar against re-renting to remain in effect

until modified or vacated by the Court. The Court, on November 14, 1988, also allowed the Plaintiff fourteen (14) days from November 14, 1988 within which to file and serve an amended Complaint complying with Rules 10(D) and 11, Ohio Rules of Civil Procedure. The proviso was entered that the Complaint was to be dismissed (Second Claim therein) should the Amendment not be effected by the Plaintiff.

FINDS that on November 28, 1988 the Plaintiff, through his attorney, James A. Range, Johnson & Johnson Company L.P.A., Attorneys at Law, New Philadelphia, Ohio filed a Motion seeking vacation of the November 14, 1988 Journal Entry prohibiting re-renting of the premises known as 865½ East High Avenue. A Memorandum in Support was filed contemporaneously with the Motion of November 14, 1988. Plaintiff contended in the Memorandum, to which reference has just been made, that the Court was without authority to prohibit re-renting of the premises based solely on the letter from the Tuscarawas Metropolitan Housing Authority of August 11, 1988 to the Plaintiff. Plaintiff argues that the Defendants did not properly apply for inspection of the premises justifying an Order of the Court prohibiting re-renting.

FINDS that on November 28, 1988 the Defendant filed a "Application for Inspection of Premises" and a supporting Memorandum. The Defendants seek inspection of the premises known as 865½ East High Avenue, New Philadelphia, Ohio pursuant to the authority of Section 1923.15, Ohio Revised Code. The Defendants rely upon the "numerous defects in the premises requiring repair by the landlord" to which reference was made in the August 11, 1988 letter from the Tuscarawas Metropolitan Housing Authority to the Plaintiff.

FINDS that on November 28, 1988 the Defendants filed a Memorandum in Opposition to Plaintiff's Motion of November 28, 1988 independent of the Memorandum in Support of the Application for Inspection of Premises and requesting an oral Hearing in order

to resolve these competing requests.

FINDS that the Motion to Dismiss the Complaint is well taken and should be granted and all costs should be taxed to the Plaintiff.

FINDS that independent of the dismissal of both Claims against the Defendants, the Court has jurisdiction and specific authority pursuant to Section 1923.15, Ohio Revised Code to order an appropriate governmental agency to inspect the premises known as 865½ East High Avenue, New Philadelphia, Ohio.

It is therefore

ORDERED, ADJUDGED, AND DECREED that the Complaint filed in this case on October 21, 1988 is dismissed with prejudice to refileing and all costs assessed to the Plaintiff.

ORDERED, ADJUDGED, AND DECREED that pursuant to the authority of Section 1923.15, Ohio Revised Code the New Philadelphia Health Department shall inspect the premises known as 865½ East High Avenue, New Philadelphia, Ohio and report in writing to the Court within ten (10) days of said inspection any possible violations of applicable health and/or safety codes or alleged violations of Sections 5321.04, Ohio Revised Code. Copies of inspections and reports of alleged violations shall be supplied to James Range, Johnson & Johnson Company L.P.A., Attorneys at Law, New Philadelphia, Ohio and Richard Renner, Southeastern Ohio Legal Services, 131 Fair Avenue N.E., New Philadelphia, Ohio.

ORDERED, ADJUDGED, AND DECREED that the Plaintiff shall cooperate with the New Philadelphia Health Department to ensure the inspection of the premises within ten (10) days of the filing of this Order.

ORDERED, ADJUDGED, AND DECREED that this Court's prohibition against re-renting the premises of November 14, 1988 shall con-

tinue during the pendency of the inspection Ordered supra.

IT IS SO ORDERED.


Edward Emmett O'Farrell
Edward Emmett O'Farrell, Judge

cc: Attorney Range
Attorney Renner
New Philadelphia Health Department

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WILLIAM P. MARINO., JR., PLINTIFF *
Plaintiff, * Case No. 7-88-CVG-510
against, *
STEVEN AND VIVIAN SMART, * JOURNAL ENTRY
Defendants. *

Upon motion of the Defendant Vivian Smart, and for good cause shown, the Plaintiff, William P. Marino, Jr., is ordered not to re-rent the premises at 865 1/2 East High Avenue, New Philadelphia, Ohio, until the violations listed with the August 11, 1988, letter from Tuscarawas Metropolitan Housing Authority have been corrected. This order shall remain in effect until modified or vacated by this Court.

Edward Emmett O'Farrell
Edward Emmett O'Farrell, Judge

cc: William P. Marino, Jr.
Richard R. Renner