



the Defendant in this case has put into controversy in the Common Pleas Court his entitlement to continued possession of the residential premises involved herein at 522 Fair Avenue N.W., Apartment B, New Philadelphia, Ohio. Defendant Hall alleges himself to be a tenant in that case, which term connotes some possessory interest in residential premises. The interest of a tenant is, of course, terminable through a Forcible Entry and Detainer Action. In the Common Pleas action, Bill Hall has sought permanent injunctive relief prohibiting the landlord from "selling, encumbering, or otherwise transferring" the residential premises. The Complaint also asks for declaratory Judgment of Plaintiff's "rights" in the residential premises. William Hall has also obtained a preliminary injunction from the Common Pleas Court prohibiting the Plaintiff in this action from interfering with the tenant's peaceful use and enjoyment of the rental property. It is the opinion of this Court that the claims or causes of action in the Common Pleas Court include Mr. Hall's claim for continued possession of the premises sought in restitution by the Plaintiff in this case.

FINDS that the jurisdiction of the Common Pleas Court concerning ongoing possession of the residential premises involved herein was invoked by Defendant William Hall, and therefore this Court must refrain from exercising jurisdiction.

This Court would parenthetically note that Plaintiff Dale Lacheta's claim for restitution of the premises is not barred by res judicata. It appears to this Court that, after assertion of a Forcible Entry and Detainer Action in Common Pleas Case No. 90-CV-090286, William Hall may be compelled by the Court of Common Pleas to pay into Court all or part of the past due rent and rent becoming due during the pendency of this action, pursuant to Revised Code Section 1923.061(B) in order to escape a summary Eviction proceeding and to have an adjudication of all claims following one (1) Trial. This Court concludes that the legislature did not intend a tenant to be deprived of his opportunity for continued possession of the premises, pursuant to Section 1923.061, in a situation like this where the

tenant brings his claims to Court first under Chapter 5321, thus preventing him from filing the same claims over again as a redundant Counterclaim to the landlord's Eviction action.

Therefore, it is

ORDERED, ADJUDGED, AND DECREED that the Complaint filed September 10, 1990 is hereby dismissed inasmuch as these matters are currently before the Common Pleas Court in Case No. 90-CV-090286. All costs to Plaintiff.

IT IS SO ORDERED.

  
Edward Emmett O'Farrell, Judge

APPROVED:

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David Worth, Referee

cc: Attorney Thomas Fox  
Attorney Richard Renner