COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

Cynthia Mayes	:	
Plaintiff	:	CASE NO: 91-CV-000871
vs	:	DECISION IN RE PRELIMINARY INJUNCTION
Grandview Apartments	:	
Defendants	:	

Sandra Scott and Stephen Olden, Legal Aid Society, Attorneys for Plaintiff, P.O. Box 47, 550 Kilgore Street, Batavia, Ohio 45103.

Daniel Hannon, Attorney for Defendant, 10 S. Third Street, Batavia, Ohio 45103.

This matter came before the Court on plaintiff's motion for Preliminary Injunction. Evidence was adduced, exhibits admitted and stipulations and argument submitted to this Court.

This Court finds that on August 13, plaintiff, a tenant in otherwise good standing, was displaced by a fire from Grandview Apartments, a federally subsidized apartment project. Within the next several days, defendant Grandview Apartments, through its agents, made arrangements to contact all displaced tenants from the fire and see that they were put on a list to provide them with housing in Grandview Apartments as apartments became available or were repaired. On or about September 15, plaintiff was advised by

defendant's agents that no housing would be made available to her. Subsequent thereto, plaintiff has moved from location to location attempting to obtain suitable housing because she is indigent and unable to afford her own housing; her child is currently enrolled in Batavia School and arrangements are made on a day to day basis with great difficulty to see that her child continues in Batavia School.

To date all displaced tenants, with the exception of plaintiff, have been placed on a list, and, all with the exception of two other tenants have either moved back to their original apartments or moved into apartments which have been made or become available at Grandview or other housing locations due to the efforts of defendants. Of the two tenants that have not been relocated one refused to move back into Grandview Apartments and the other person is medically unable. Although argueably defendants have no duty to find other available housing for displaced tenants they have voluntarily attempted to do so for all but plaintiff.

The Court further finds that no eviction has been filed against plaintiff, however, the reason that no apartment has been made available to plaintiff until her apartment (116) has been repaired is that defendants believe that the fire was due to the negligence of plaintiff.

The Court further finds that based upon the evidence adduced that insufficient evidence exists that the fire was caused by the negligence of plaintiff and that no evidence exists that the fire was caused by any intentional act or

willful or wanton act of plaintiff. The Court further finds that while all reasonable efforts are being made to repair the apartments including plaintiff's apartment but that with such reasonable efforts her apartment will not be made habitable for two months.

The Court further finds that plaintiff has no remedy at law as to available housing and would be irreparable harmed by defendant's unwillingness to provide housing; in weighing the benefits and harm that the benefit to plaintiff far outweighs any harm to defendants.

Therefore, this Court finds that plaintiff's Motion for Injunctive Relief is well taken, in part, to the extent that defendant is to provide the first available one bedroom apartment in Grandview Apartments to the plaintiff, so that she be on equal footing and status with the other displaced tenants who were placed upon a waiting list. Plaintiff should be placed on the waiting list in the order and priority of one whose name was submitted as of August 15, 1991. This would permit the next one bedroom apartment unit in Grandview Apartments available for one whose name is on the waiting list after August 14, 1991 to be eligible for occupancy. The availability and requirement that plaintiff be placed in that unit is subject to HUD agreeing to begin resubsidizing her rent. Plaintiff is to also pay her monthly portion of the rent into an escrow account held by the Clerk of Courts.

It is the intention of this decision that while

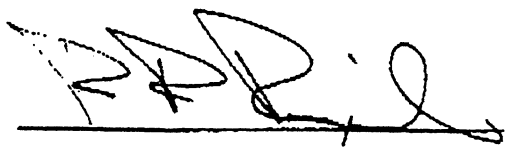
defendants are not required to find like housing outside Grandview Apartments, nevertheless they are required to place her on the waiting list in the same manner as all other displaced parties were placed so that she will receive an apartment in the same manner as all other parties displaced.

Inasmuch as plaintiff is indigent this Court requires as a bond a $5000. signature bond to be placed with the Clerk of Court.

Upon her apartment (116) being made available by defendants continued diligent repairs plaintiff shall, unless otherwise agreed upon by both parties, be permitted to move into her original apartment.

This decision is also intented to in no way bar or estop the respective parties from seeking their legal remedies in Clermont County Court under Title 5321 or Section 1923 of the Ohio Revised Code, or any other court of competent jurisdication. This matter to be set for pre-trial within thirty days.

Plaintiff is to prepare an Entry accordingly effectuating this decision.



Judge Robert P. Ringland

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

Cynthia Mayes :

Plaintiff : CASE NO: 91-CV-0871

vs : DECISION

Grandview Apt. et al :

Defendants :

Sandra M. Scott, Attorney for Plaintiff, 550 Kilgore Street, P.O. Box 135, Batavia, Ohio 45103.

Stephen H. Olden, Attorney for Plaintiff, 901 Elm Street, Cincinnati, Ohio 45202.

Kelly Farrish, Attorney for Defendants, 601 Main St., Third Floor, Cincinnati, Ohio 45202.

C. Bernard Brush, Attorney for Defendants, Showe Realty co. and H. Burkley Showe, 5530 Columbia Rd. S.W., Pataskala, Ohio 43062.

This matter came before the Court pursuant to Defendant Showe Realty Company's Motion to Dismiss Party Defendants, to Strike and for Judgment on the Pleadings, as well as Defendants Grandview Apartments' and Joan Holbert's Motion for Summary Judgment and Defendants' Motion for Rule. Showe Realty's Motion to Dismiss was converted into a Motion for Summary Judgment, and the Court took the matter under advisement.

In support of Showe Realty's motion, it is asserted, inter alia, that Showe cannot be liable for any dealings with plaintiff, inasmuch as "Showe Realty Company" no longer

exists as a corporation, nor does it have any management contract with Grandview Apartments at the present time. In opposition, plaintiff produces evidence which suggests that Showe Realty may have some connection with the management of Grandview.

Aside from the issue of whether Showe Realty Corporation is properly named as a party defendant in this action, defendants assert that they are entitled to summary judgment, since they, pursuant to the Court's previous order, have provided an apartment where the plaintiff can reside within the Bella Vista Complex. Defendants contend that plaintiff is not entitled to any further remedies, including being placed back in her original apartment. Somewhat related to this contention is the Defendants' Motion for Rule, wherein the defendants seek a court ruling that defendants have complied completely with the Court's previous order. Plaintiff opposes the Motion for Rule, and still seeks to be placed back in her original apartment.

The plaintiff wishes to return to her original apartment for various reasons. Plaintiff prefers her old apartment over the one in which she currently resides because the old apartment was on the ground floor, while the new apartment is located on the second floor. The location of plaintiff's apartment makes it more difficult for plaintiff to carry out her routine activities, such as bringing in groceries and doing laundry, inasmuch as the steps are hard for her to manage since she has physical disabilities stemming from

cerebral palsy. Plaintiff also complains that her current neighbors are unfriendly towards her, being of the belief that she in some way was responsible for starting the fire at Bella Vista.

Finally, defendant Joan Holbert seeks summary judgment on the ground that she was merely acting within the scope of her employment at all times that she had contact and/or dealings with the plaintiff. Holbert asserts that no liability can be imposed upon her unless there is some proof that she was acting outside the scope of her employment, and that plaintiff has not provided any evidence to this effect.

As far as Showe Realty Company's contentions are concerned, i.e., that it no longer exists as an entity, or has any relationship with Grandview Apartments, the plaintiff offers evidence suggesting that Showe Realty Company is still involved to some degree in the management of Grandview Apartments. Both the managers and tenants of Grandview believe defendant Showe is responsible for the operation and management of Grandview. Under such circumstances, where the status of Showe Realty Company has not been resolved, the Court would be remiss to grant a dismissal to defendant Showe Realty Co.

The defendant's Motions for Summary Judgment are denied for reasons as set forth below and the defendants Motion for rule is denied at this time. Civ.R. 56 provides that a motion for summary judgment will be granted where it appears "that there is no genuine issue as to any material fact and

that the moving party is entitled to judgment as a matter of law." Summary judgment is to be denied where reasonable minds could come to differing conclusions after having considered the evidence most strongly in favor of the nonmoving party. Civ.R.56(C), Harless v Willis Day Warehousing Co. (1978) 54 Ohio St.2d 64.

There are still issues of fact to be resolved in this controversy concerning whether or not defendants have an obligation to continue providing housing to the plaintiff, and whether such housing should include the defendants making plaintiff's old apartment available to her once again, and the term of any lease that plaintiff may be entitled to enjoy. Defendants have previously suggested that they are not under any obligation to maintain plaintiff as a tenant, primarily because they believe plaintiff poses a threat to defendants' other tenants. Although the Court stated in the Preliminary Injunction that there was no evidence that plaintiff's negligence caused the fire, or that she acted in any willful or wanton manner, thereby causing the fire, the Court's statement does not preclude the defendants from bringing forth proof, if any exists, that plaintiff's presence in the Grandview Complex would pose a threat to the other tenants, and that defendants therefore, have no obligation to continue providing Section 8 housing to plaintiff. The Court must still resolve the issue of whether plaintiff is entitled to a one-year lease (as other displaced tenants have) because Plaintiff currently enjoys only a

month-to-month tenancy. In light of the fact that reasonable minds could come to differing conclusions on these somewhat novel issues, summary judgment is not appropriate.

Plaintiff's complaint alludes to damages in the form of expenses, emotional distress, and physical hardship suffered due to the acts of defendants. These damages are presumably based upon actions sounding in contract, and/or tort, and are recoverable under Ohio law. See e.g.1 OJI 23.01 et seq. While plaintiff has not set forth a clear-cut claim of emotional distress, her allegations are sufficient to put defendants on notice that such a claim may be involved. The defendants have failed to show that plaintiff cannot recover any damages, since they have not foreclosed the possibility that they were acting intentionally or negligently, e.g., by initially denying her a substitute apartment, placing her in an apartment where she would have to deal with stairs, or just treating her differently than the other displaced tenants, thereby making plaintiff's routine activities more difficult to perform. The Court is not ready to foreclose plaintiff's action altogether, yet is not prepared to order that plaintiff be returned to her original apartment immediately where plaintiff has not shown that other displaced tenants have as of yet been restored to their original apartments.

Regarding Joan Holbert's Motion for Summary Judgment, the Court recognizes that an employer will be liable for the tortious acts of its employers acting within the scope of

their employment; however, the doctrine of respondeat superior does not foreclose the possibility of an employee being liable for her own acts as well. As a general rule, an employee may be held accountable for tortious activity which causes injury to third persons, regardless of the fact that the wrongful act was within the scope of the employee's duties. French v Central Construction Co. (1907), 76 Ohio St.509; Jeffrey v Johnson (1970), 23 Ohio Misc. 338. If plaintiff succeeds on a claim of emotional distress against defendant Joan Holbert, then Joan Holbert will be held accountable for her actions regardless of the fact that she was acting within the scope of her employment. For this reason, the Court denies defendant Joan Holbert's Motion for Summary Judgment.

The Court cannot provide the ruling sought by defendants pertaining to their compliance with the preliminary injunction. The court recognizes that equity can rarely place a litigant in the exact position he/she previously enjoyed, but an attempt should be made to restore the party to her previous position, and the theories of tort and contract law may be considered by this Court at a later point if defendants fail to allow plaintiff to move back into her original apartment. However defendants may be able to show at a later time that plaintiff has suffered no damages as a result of their actions. Here the defendants were ordered to put plaintiff on a waiting list and treat her the same as other displaced tenants were being treated. Insufficient

evidence exists at this time to require defendants to allow plaintiff to move back into her original apartment. Thus while equity may not require plaintiff to be placed back in her original apartment, plaintiff is not foreclosed from establishing a cause of action at law for defendants' argueable negligent or intentional failure to have her so placed.

Upon consideration of the foregoing, the Court finds there to be genuine issues of material fact yet to resolved; therefore the defendants' Motions to Dismiss summary judgment are denied, and the defendants' Motion for Rule will likewise be denied.

Judge Robert P. Ringland