

THOMAS L. HARMON, CLERK
CANTON MUNICIPAL COURT

92 APR -2 AM 10: 14

IN THE CANTON MUNICIPAL COURT

STARK COUNTY, OHIO

JOHN STEINER APT.
MANAGERS,

CASE NO. 91 CVG 8356

Plaintiff,

vs.

JUDGMENT ENTRY

GEORGE NADAL,

Defendant.

STATEMENT OF FACTS

Plaintiff is the apartment manager of property owned by Edward Baier. The defendant is the tenant in an apartment owned by Mr. Baier at 6660 Baier Circle N.E., Canton, Ohio. The lease was executed between defendant, George Nadal, and Diana Duncil as tenants and Mrs. Ed Baier as landlord. Mrs. Baier has passed away.

An eviction action was filed by the plaintiff, John Steiner, the apartment manager and non-attorney, and a first cause of action was scheduled for December 30, 1991. An agreement was entered into at the hearing by the parties which was written into the referee's report. The agreement provided for a conditional writ of restitution. The plaintiff agreed not to execute on the writ as long as the defendant(s);

- 1) Removed dogs from property by January 30, 1992;
 - 2) defendant(s) timely pay rent through March, 1992.
- If defendant(s) fail to comply, plaintiff may execute said writ.

Referee recommends issuance of Conditional Writ of Restitution on plaintiff's First Cause of Action.

Second Cause of Action continued.

The agreement was executed by both parties on December 30, 1991, and approved and confirmed by the Court on January 8, 1992. Plaintiff, John Steiner, then filed a motion on February 6, 1992, alleging that the defendant had not complied with the agreement of December 30, 1991, in that the dogs were not out of the apartment by January 30, 1992. Both dogs were out of the home on February 10, 1992, when they were taken to the humane society. The plaintiff accepted the February, 1992, payment knowing that the defendant had not relocated the dogs.

The Court sustains the objection to the report of the referee. Ohio Civil Rule 17(A) provides that "Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his name as such representative without joining with him the party for whose benefit the action is brought. * * * No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party of interest. * * *"

The plaintiff is not the real party in interest in this matter and the action cannot be maintained in his name. The hearing could have been continued to allow the plaintiff to bring the action in the name of the real party in interest, Mr. Ed Baier.

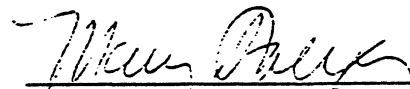
In addition, O.R.C. 4507.01 provides that no person shall be permitted to commence any action in which he is not a party concerned unless he has been admitted to the bar. An action commenced by a non-attorney on behalf of another party cannot be permitted to proceed.

It is not necessary for the Court to review the issue of waiver as it is the decision of the Court that the action cannot be maintained by the plaintiff who is not the real party in interest.

It is, therefore, ORDERED, ADJUDGED, AND DECREED that the objection of the defendant to the report of the referee is sustained and plaintiff's action is dismissed pursuant to O.R.C. 4705.01.

April 1, 1992

cc: Ptlf.
Redinger



Judge Mary A. Falvey