

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

CUYAHOGA METROPOLITAN
HOUSING AUTHORITY

Plaintiff

VS.

Willie Humphries

Defendant

) CASE NO. 93 CVG 06480

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) TENANT-LANDLORD

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) OPINION & JUDGMENT ENTRY

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STATEMENT OF THE CASE:

This opinion will rule on the plaintiff's motion to dismiss the defendant's counterclaims. Plaintiff asserts that this court lacks jurisdiction over the federal counterclaims that defendant's rights were violated, as codified in the Federal Rehabilitation Act of 1973, at 29 U.S.C. §794, the Federal Fair Housing Act at, 42 U.S.C. §3601, and First Amendment rights guaranteed in the United States Constitution and actionable pursuant to 42 U.S.C. §1983.

In the first cause of action, this court ruled that based on the Federal Rehabilitation Act, the plaintiff had breached its duty to accommodate the defendant's handicap. Plaintiff was denied the writ of restitution of the premises. At no time during the first cause of action did the plaintiff raise the issue of subject matter jurisdiction. Plaintiff did not object to the first cause findings and no appeal was taken.

CONCLUSION OF LAW AND FACT:

Whether this court has jurisdiction over claims which arise from these federal statutes is important, not only for this case, but also because it will bear upon what claims tenants may or may not use as defenses to eviction actions. Although O.R.C. §1923.081 provides that a forcible entry and detainer action may be unified, it is generally a bifurcated proceeding, such as it was in this case. If this court has subject matter jurisdiction over a claim raised in the first cause of action, then it must also have subject matter jurisdiction over an identical claim asserted in the second cause of action. Although the issue of subject matter jurisdiction was not explicitly dealt with, implicit in the judgment for the first cause of action is that the court has jurisdiction over the claim based on the Federal Rehabilitation Act of 1973, 29 U.S.C. §794, which the court recognized as a defense to the eviction action.

Of course, a court's subject matter jurisdiction cannot be waived and, therefore, may be challenged at any time. However, challenges to findings of fact, if not objected to or appealed can be waived. Thus, based on the principle of collateral estoppel, what has been adjudicated in the first cause of action cannot be redjudicated in the second cause of action. For example, in Palomba v. Hayes, no. 65781 & 66714 (April 13, 1995, Ct.App. of Cuyahoga County), the defendant sought to assert a counterclaim of racial discrimination in the second cause of action. The court held that collateral estoppel barred defendant's claim because a factual finding of

racial discrimination had been rejected as a defense to the first cause of action.

Thus, if this court has subject matter jurisdiction over defendant's federal claims, the plaintiff will be bound to the factual and legal ruling of the first cause of action that plaintiff breached the duty owed the defendant as mandated by the Federal Rehabilitation Act.

Dealing with the lack of subject matter jurisdiction, plaintiff's motion to dismiss rests on the authority of two cases: Cleveland v. A.J. Rose Mfg. Co., 89 Ohio App. 3d 267, 624 N.E.2d 245 (1993) and Boyd v. United States Postal Service, 752 F.2d 410 (9th Cir. 1985). It is A.J. Rose which is most problematic to the case at hand and will be dealt with extensively. A cursory look at Boyd is all that is necessary to see that the holding is inapplicable to this case.

Boyd deals with a party who initiates suit in federal district court, seeking to assert his rights pursuant to the Rehabilitation Act, 29 U.S.C. §§791 & 794. The Court of Appeals upheld the dismissal of Boyd's claim because he failed to exhaust the administrative remedies which the U.S. Postal Service provided to its employees.

This case, however, is distinguishable from Boyd because the defendant has been thrust into court and can no avail himself to administrative remedies. Further, defendant faced the dilemma of not asserting a defense in the first cause of action or waiving claims in the second cause of action which would otherwise be compulsory counterclaim.

In A.J. Rose, a forcible entry and detainer action which was appealed from this court, the defendant raised its federal claims as permissive counterclaims to the second cause of action in which plaintiff sought to recover a judgment for back rent. The defendant did not raise the federal claims as a defense to the first cause of action. The court stated:

"Patently, the federal law claims set out in the occupants' counterclaims cannot be heard by municipal court since it is devoid of subject matter jurisdiction over them. There is no authority for maintaining a 1983 action or an aviation case, as proposed, in the municipal courts because they are not courts of general jurisdiction." Id., at 273.

One of defendant's counterclaims in this case is, likewise, based on his rights as guaranteed by the United States Constitution and actionable pursuant to 42 U.S.C. §1983. Defendant argues that the holding in A.J. Rose can be distinguished or narrowly construed. In order to determine how A.J. Rose must be interpreted, the eviction process and the statutory provisions concerning the court's jurisdiction must be examined.

There are two relevant sections O.R.C. §1901.131 and O.R.C. §1901.181. O.R.C. §1901.131 envisions Housing Court as a forum in which an entire dispute concerning the rights of landlord and tenants can be resolved. Its language suggests that the objective is to vest Housing Court with sufficient jurisdiction that cases could be disposed of without spawning new suits in other forums. O.R.C. §1901.131 provides:

"Whenever an action or proceeding is properly brought in the housing or environmental division of a municipal court, the division has jurisdiction to determine, preserve, and enforce all rights involved in the action or proceeding, to hear and determine all legal and equitable remedies necessary

or proper for a complete determination of the rights of the parties, including, ... and to render any judgments and make any findings and orders in same manner and to the same extent that the court of common pleas can render a judgment or make a finding or order in a similar action or proceeding."

Thus, from O.R.C. §1901.131 the court's subject matter jurisdiction is a two part test. First, the case must be "properly brought" in Housing Court. Second, its jurisdiction cannot be greater than that of the Court of Common Pleas.

Plaintiff having been the party who instituted this action, obviously does not argue that the suit was improperly brought. As for whether the court of common pleas has jurisdiction specifically over claims based on 42 U.S.C. §1983, the Ohio Supreme Court held in Cooperman v. University Surgical Associates, Inc., 32 Ohio St.3d 191. 513 N.E.2d 288 (1987) that individuals in their state capacity may be sued based on 42 U.S.C. §1983 in the Court of Common Pleas instead of the Court of Claims, which has exclusive jurisdiction in actions brought against the state.

The other statutory provision which deals explicitly with the court's subject matter jurisdiction and counterclaims is O.R.C. §1901.181(B). The section states:

"A counterclaim or cross-claim does not affect the jurisdiction of the housing or environmental division even if the subject matter of the counterclaim or cross-claim would not be within the jurisdiction of the division as authorized by this section if it were filed as an original action."

As stated above, both of these sections appear to intend for a suit, which meets the minimum criteria of having been

properly brought, to remain in Housing Court for final disposition, regardless of the claims or defenses that are raised. The rationale for this statutory scheme which grants greater jurisdiction to Housing Court than to Municipal Court is multi-fold. Principally, however, this statutory scheme reduces the likelihood that judicial resources would be applied to multiple lawsuits, all of which were spawned from the same landlord-tenant dispute.

Assuming, arguendo, this court does not have jurisdiction over claims which arise from federal law, then the only way a tenant could assert the protection of federal law would be to seek removal of the case to federal district court and a stay from Housing Court. Eviction proceedings would be unnecessarily complicated. This would defeat the summary nature of forcible entry and detainer actions.

Likewise, if it were that Housing Court does not have jurisdiction over federal claims, in anticipation of a landlord seeking possession of the premises, a tenant could best protect federal claims by first filing a suit in Common Pleas or federal district court. Requiring tenants to go to other courts to assert their federal rights would hardly best serve the interests of landlords, tenants or the state and federal judiciaries.

Another concern of construing Housing Court's jurisdiction narrowly is the potential that multiple lawsuits, in different forums, could lead to inconsistent verdicts. Since consistency is one of our talismans for justice, any schemata

that increases the risk of inconsistency, also increases the risk of harm to the integrity of the judicial process.

Presumably the principles of collateral estoppel and res judicata reduce the risk of inconsistent verdicts, but in Housing Court, since the first cause of action is a summary proceeding, written findings of fact are rare. It could prove problematic for another court to apply the findings of fact of Housing Court.

Furthermore, the principles of collateral estoppel and res judicata do not resolve the problem of one dispute spreading to multiple forums, probably to everyone's disadvantage. For example, if Housing Court did not have jurisdiction to rule on the federal claims in the first cause of action, the defendant would have been faced with either waiving his defense or seeking removal of the case to federal court. This would require a level of sophistication and ability to pay filing fees that most tenants in our community simply do not have. Not to mention that seeking to remove cases to federal court would stymie landlords' desire to obtain quick control of the premises.

Moreover, defendants' federal statutory rights and constitutional rights should follow them to whatever court they are thrust into, unless explicitly limited by the statute. Otherwise, such protection would ring hollow. Again, it must be stated that ruling that this court is without jurisdiction to adjudicate defendant's federal counterclaims also would mean that this court would be without

jurisdiction to accept defendant's federal statutory rights as a defense to the eviction. As Society National Bank v. Kienzle, 11 Ohio App.3d 178, at 180, 11 Ohio B. 271, 463 N.E.2d 1261 (1983) states: "The Constitution, laws and treaties of the United States are as much a part of the law of every state as its own local laws and constitution." Hopefully, the Civil War was enough of a lesson that the federal constitution is sovereign in every state, no structuring of local courts' jurisdiction should nullify a federal right.

In the case at bar, the defendant had to raise his federal claims, not only as a defense to the first cause of action, but also because they are compulsory counterclaims. Maduka v. Parries, 14 Ohio App.3d 191, 470 N.E.2d 770 (1984), holds that a tenant's claim, in fact, cannot be pursued in a subsequent separate lawsuit once the landlord has begun eviction proceedings, because the tenant's claims constituted compulsory counterclaims. In A.J. Rose, supra, on the other hand, the tenant did not raise its federal claim as a defense to the eviction nor was it a compulsory counterclaim. In this case, however, the defendant successfully established that his rights, as protected in the Federal Rehabilitation Act, had been violated, and plaintiff was denied the eviction.

Under a narrow interpretation of the A.J. Rose holding, this court could find that lack of subject matter jurisdiction only applied to defendant's claims based on 42 U.S.C. §1983, as this was the only federal statute with which A.J. Rose

dealt. However, this would be a disingenuous result. What, if anything, could distinguish 42 U.S.C. §1983 from the Federal Rehabilitation Act or the Federal Fair Housing Act? All of the federal statutes permit suits in local courts. Moreover, as argued above, one's federal rights seemingly should apply in whatever forum, especially a forum not of the party's choosing. Therefore, this court construes A.J. Rose narrowly, as only applicable to its facts: a non-compulsory counterclaim, raised only in the second cause of action.

Thus, as set forth in O.R.C. §1901.131, for all matters properly brought, this court's jurisdiction extends the same as the court of common pleas, and this court may adjudicate all defendant's federal counterclaims. Further, this court asserts that O.R.C. §1901.181(B) grants it jurisdiction over the federal counterclaims, even if the court would otherwise not have original subject matter jurisdiction because such is consistent with the jurisdiction of Courts of Common Pleas. Cooperman v. University Surgical Association, supra, at 293.

The court wishes to recognize the assistance of Magistrate Maria A. Smith in the writing of this opinion.

JUDGMENT:

For the foregoing reasons, this court denies plaintiff's motion to dismiss for lack of subject matter jurisdiction. Further, the court makes the following ruling:

As the principle of collateral estoppel prohibits this court from retrying the issue of plaintiff's liability pursuant to the Federal Rehabilitation Act, the court finds

for the defendant on the issue of liability. A hearing on this claim to proceed exclusively on the issue of damages.

Defendant's counterclaims pursuant to the Federal Fair Housing Act and 42 U.S.C. §1983 to be set for hearing on their merits.

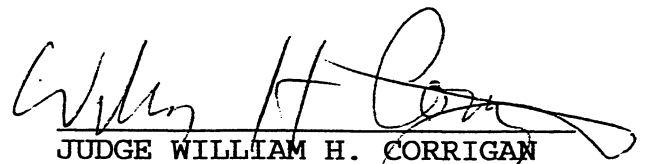
Case set for pre-trial on plaintiff's second cause of action and defendant's counterclaims as noted above on 2/9/96 at 1:45 p.m., courtroom 13-B.

SERVICE

A copy of the Opinion & Judgment Entry was sent by ordinary United States mail to the plaintiff's attorney M. Neal Cox, 1411 West 25th Street, Cleveland, Ohio 44113 and to the Defendant's Attorney Edward G. Kramer, 3214 Prospect Avenue, Cleveland, Ohio 44115-2600 this 3rd day of

~~December, 1995.~~

January, 1996


JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION