

IN THE MARION MUNICIPAL COURT FOR MARION COUNTY, OHIO

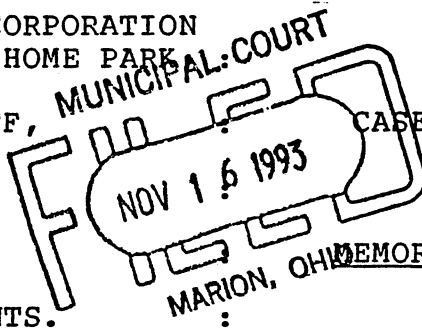
PROPERTIES LTD. AN OHIO CORPORATION
DBA INDIAN TRAILS MOBILE HOME PARK

PLAINTIFF,

vs

JOHN COFFEE, et. al.,

DEFENDANTS.



CASE NO. 93 CVG 8597

MEMORANDUM OF OPINION

On November 12, 1993, this cause came on for trial upon the Complaint filed in this action. The Plaintiff was represented by Attorney Jay D. Wagner, and the Defendants were present and represented by Attorney Marcia A. Hollins. Thereupon, testimony was heard and evidence taken.

Based upon the testimony, it is uncontroverted that the Defendants have failed to pay rent due for the months of August, September, October and November for the Lot 209, 6605 Marion Agosta Road, in Marion County. The Defendants raised the defenses that certain charges made by the Plaintiff earlier during the rental term were not authorized by law, and were unconscionable.

The Court agrees that the \$15 per month surcharge imposed by the Plaintiff in approximately April, 1993, for water service was not a proper charge, for Ohio R. C. Section 3733.11(B) requires a park operator to fully disclose in writing all fees, charges, and assessments prior to a tenant executing a rental agreement, and that no fee, charge or assessment shall be increased during the term of any tenants rental agreement.

The Court also agrees that the late charges imposed under the Rental Agreement between the parties, is unconscionably large, as such

fees can constitute as much as 61% of the basic rent charge, and the Plaintiff did not demonstrate why such a large late fee should be imposed upon a \$115 per month basic rental charge. The Court, pursuant to authority granted by Ohio R. C. Section 3733.16(A) shall limit the application of said late charge to a maximum of 25% of the \$115 per month base rent, or \$28.75 per month.

After computing the amounts paid by the Defendants to the Plaintiff over the term of the leased agreement, the Court finds that as of the filing date of the Complaint in this action, October 29, 1993, the Defendants owed the Plaintiff the amount of \$431.25 in past due rent and late charges for the months of August, September and October. The Court further finds that the Defendants are entitled to a credit totaling \$247.50 for excess late charges paid by the Defendants, and payments on the unauthorized water surcharge. As the date of the filing of the Complaint in this action, therefore, the Court finds that the Defendants were, in fact, in arrears on rent payments in the amount of \$183.75.

The Court makes the finding that the Plaintiff is entitled to judgment for restitution of the premises. The Plaintiff should also be granted a money judgment in the amount of \$289.16, which represents prorated rent and enforceable late charges through November 22, 1993, which will be the set out date.

The Counterclaim of the Defendants against the Plaintiff remains pending, and should be set for Case Management Hearing.


JUDGE WILLIAM R. FINNEGAN

cc: Jay D. Wagner, Attorney for Plaintiff
/ Marcia A. Hollins, Attorney for Defendants