

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
JUDGE RAYMOND L. PIANKA

JUDGMENT ENTRY RECEIVED  
FOR JOURNALIZATION

DEC 17 2008

EARLE B. TURNER, CLERK

GRAIG BROWN,

Date: December 17, 2008

Plaintiff(s)

-VS-

Case No.: 08-CVG-25314

ROSE MARIE RAY,

Defendant(s)

JUDGMENT ENTRY

Upon review, the Magistrate's Decision is approved and confirmed.

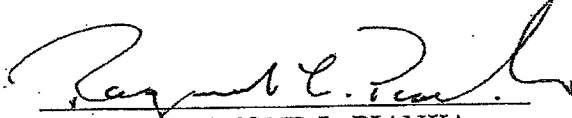
The following orders are made:

1. The Court grants counsel for plaintiff's Motion to Withdraw.
2. The Court grants defendant's motion to show cause. Plaintiff Graig Brown is **ORDERED** to appear before this Court in Courtroom 13-B of the Justice Center, 1200 Ontario Street, Cleveland, Ohio on **December 30, 2008 at 10:30 a.m.**, to show cause why he should not be punished for civil or criminal contempt of this Court's order to restore defendant's access to the premises; restore defendant's electrical service; appear personally before this Court; and to supply the Court with an address that meets the requirements of Local Rule 6.022(A).

Plaintiff Graig Brown is advised that, in connection with this contempt proceeding, he has the following rights:

1. To be represented by an attorney;
2. Because the Court may impose a sentence of indefinite confinement for civil contempt or definite confinement in jail for criminal contempt, to have an attorney appointed for him at no cost to him, if he cannot afford an attorney.
3. To compel defendant to prove her case by a preponderance of the evidence as to civil contempt, and beyond a reasonable doubt with respect to criminal contempt;
4. To obtain the presence of witnesses in his own behalf by compulsory process if necessary; *and*

6. All prior orders of this Court remain in full force and effect.

  
JUDGE RAYMOND L. PIANKA  
HOUSING DIVISION

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on 12 / 16 / 08  
mpv

service via facsimile to Jane Messmer, defendant's  
counsel, on 12/17/08. JMW.

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

GRAIG BROWN,

Date: December 17, 2008

Plaintiff(s)

MAGISTRATE'S REPORT FILED

-VS-

DEC 17 2008

Case No.: 08-CVG-25314

EARLE B. TURNER, CLERK

ROSE MARIE RAY,

Defendant(s)

MAGISTRATE'S DECISION

This matter is before the Court as the result of two hearings, and a number of pleadings and motions; Judge Raymond L. Pianka referred the matter to Magistrate Heather A. Veljković for the hearings, and determination on all outstanding issues.

***Status Hearing***

Case was called for status hearing on December 2, 2008, to determine whether plaintiff had complied with this Court's preliminary injunction issued, requiring him to provide defendant access to her rental premises, and to restore electricity to the unit. Plaintiff was not present, but was represented by counsel. Defendant was present, and represented by counsel.

At hearing, counsel for plaintiff indicated that she would file a Motion to Withdraw upon conclusion of the hearing.

Defendant indicated that she still remains without access to the premises, despite this Court's injunction requiring that the plaintiff restore same; as such, she is not in a position to determine whether or not the electrical service has been restored. In addition, plaintiff failed to appear personally at the hearing, despite an order of this Court to do so.

***Counsel for Plaintiff's Motion to Withdraw***

Upon review, the Court grants counsel for plaintiff's Motion to Withdraw.

***Defendant's Motion to Show Cause***

Also pending before the Court is defendant's motion to show cause. Defendant asks this Court to order a hearing at which the plaintiff must show cause why he should not be held in contempt for failing to comply with the Court's order dated November 26, 2008, requiring him to provide defendant access to the premises and to restore the

electrical service. For good cause shown, defendant's motion is granted. In addition, and on the Court's own motion, the defendant is also ordered to demonstrate why he should not be held in contempt for failure to abide by this Court's order requiring him to appear personally at the status hearing, and to supply the Court with an address that meets the requirements of Local Rule 6.022(A).

Plaintiff Graig Brown is **ORDERED** to appear before this Court in Courtroom 13-B of the Justice Center, 1200 Ontario Street, Cleveland, Ohio on **December 30, 2008 at 10:30 a.m.**, to show cause why he should not be punished for civil or criminal contempt of this Court's order to restore defendant's access to the premises; restore defendant's electrical service; appear personally before this Court; and to supply the Court with an address that meets the requirements of Local Rule 6.022(A).

Plaintiff Graig Brown is advised that, in connection with this contempt proceeding, he has the following rights:

1. To be represented by an attorney;
2. Because the Court may impose a sentence of indefinite confinement for civil contempt or definite confinement in jail for criminal contempt, to have an attorney appointed for him at no cost to him, if he cannot afford an attorney.
3. To compel defendant to prove her case clear and convincing evidence as to civil contempt, and beyond a reasonable doubt with respect to criminal contempt;
4. To obtain the presence of witnesses in his own behalf by compulsory process if necessary; *and*
5. To cross-examine the witnesses against him.

A Housing Court Bailiff is ordered to deliver a copy of this Judgment Entry to plaintiff at the following addresses:

59 John Street  
Bedford, Ohio 44146

3307 E. 149<sup>th</sup> Street  
Cleveland, Ohio 44120

3125 Eastwick Drive  
Cleveland Heights, Ohio 44118.

If plaintiff is unable to be served by personal or residence service, a copy of same shall be posted on the door. The Bailiff is to file service returns.

### ***Warrant Docket Hearing***

This case also was called for hearing on the Housing Division's Warrant Docket on December 5, 2008. The matter was referred to the Warrant Docket due to plaintiff's failure to appear to answer charges made against him in a criminal case also pending in the Housing Division.

Plaintiff was neither present, nor represented by counsel. Defendant was present, and was represented by counsel.

Plaintiff having failed to proceed with the first cause of action, same is hereby dismissed without prejudice for want of prosecution at plaintiff's costs, for which judgment is rendered.

### ***Defendant's Amended Answer and Counterclaim***

Defendant having filed an Amended Answer and Counterclaim, this matter is scheduled for settlement conference with respect to all pending claims on **January 21, 2009 at 1:30 p.m.** on the 13th floor of the Justice Center. Parties should be prepared to make vigorous effort to achieve settlement. As part of the settlement conference process, it is the intent of the conference manager to review with the respective parties the facts of the case, the strengths and weaknesses of the respective positions, and the consequences of proceeding to trial. At least two hours time has been allocated for the settlement conference.

***Both parties and counsel are required to attend.*** Additionally, a party should bring to the conference evidence or documentation that may aid in achieving settlement. ***Failure of a party or counsel to attend may result in dismissal of a party's claims or immediate hearing of the opposing party's claims.*** Questions concerning the settlement conference should be directed to C. David Witt, Magistrate's Department, Alternative Dispute Resolution Specialist, telephone: 216.664.6105.

### ***Defendant's Emergency Motion for Court Enforcement of Preliminary Injunction***

Defendant's most recently filed motion seeks an emergency order of this Court requiring a Housing Court bailiff, accompanied by a locksmith and the defendant, to 1) meet at the rental premises at 10:00 a.m. on the morning of Thursday, December 18, 2008; 2) take the illegal locks off; 3) enter the unit; and 4) allow defendant and her family to remove her possessions; and 5) secure the premises by either re-installing the illegal lock or replacing the lock and providing the keys to plaintiff via certified mail or hand-delivery.

The defendant's Affidavit, attached to the motion as Exhibit B and dated December 12, 2008, indicates that defendant still is without access to her rental

premises. As previously found by this Court, defendant's personal belongings – including birth certificates, social security cards, and medication – remain in the unit.

In addition, defendant states that a notice to vacate was posted on the door to her rental unit, a copy of which was attached to the emergency motion as Exhibit A. As previously discussed, the plaintiff's first cause of action has been dismissed for want of prosecution; any attempt by plaintiff, or his agents or persons acting in concert with him, are enjoined from acting on this notice, without first filing a subsequent case in forcible entry and detainer.

For good cause shown, defendant's emergency motion is granted. A Housing Court Bailiff shall meet defendant at the premises located at **2980 South Moreland, Apartment #3, Cleveland, OH 44120** on Thursday, **December 18, 2008** at **10:00 a.m.** to allow defendant access to remove her belongings from the premises. Defendant must secure the premises upon exiting, and may cause the prior lock to be reinstalled, for which plaintiff has a key; or, may replace the lock and provide keys to plaintiff via certified mail or hand-delivery, at the defendant's option.

All prior orders of this Court remain in full force and effect.

  
MAGISTRATE HEATHER A. VELJKOVIĆ

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on

12/16/08

RPV

— service via facsimile to Jane Messmer on 12/17/08. JMS.  
defendant's counsel