

FILED

CLERMONT COUNTY MUNICIPAL COURT
Clermont County, Ohio

Batavia Woods LLC
Plaintiff(s)

-vs-

Jane Wainwright
Defendant(s)

-vs-

Joyce McDowell
Charles Gang
Defendant(s)

CASE NO. 2013 CV G 02183 AUG -7 PM 12:01
DECISION OF MAGISTRATE

Plaintiff's Attorney: Melanie Mize
Defendant #1 Attorney: Noel M Morgan
Defendant #2 Attorney:

Pursuant to the General Order of Reference, directing Magistrates to report generally as to their findings, the Magistrate reports his findings and recommendations as follows:

A. PARTIES APPEARING:

☒ Plaintiff DID/DID NOT appear
☒ Defendant DID/DID NOT appear

B. DECISION:

Plaintiff Batavia Woods LLC brings this action in Forcible Entry and Detainer (FED) against defendant Jane Wainwright. Wainwright filed a counterclaim for violation of the federal and Ohio Fair Housing Acts (FHAs), civil conspiracy, retaliatory eviction and for failure to maintain the premises. Wainwright also filed what she labeled as a cross-claim against two of Batavia Woods' employees, Joyce McDowell and Charles Gang, for violation of the federal and the Ohio Fair Housing Acts, emotional distress, civil conspiracy. Wainwright prays for damages in excess of \$25,000. Wainwright also applied to deposit her rent into escrow with the court, *Wainwright v. McDowell*, 2013 RE 0005.

Both parties have pending motions before the court. Wainwright moves this court to consolidate this case with the rent escrow case and to transfer the matter to the Clermont County Court of Common Pleas. Batavia Woods moves this court to bifurcate that portion of its FED action regarding restitution of the premises and allow that matter to be heard in this court.

Motion to Consolidate Cases

Civ.R. 42(A) allows a court to consolidate cases "involving a common question of law or fact." The key factors for the court to consider when ordering consolidation are the commonality of issues and whether the parties are substantially the same. *Parkstone Capital Partners v. Solon*, 2013-Ohio-3149, ¶ 14. The purpose of consolidation is convenience to promote judicial economy. *Id.* Wainwright's rent escrow application lists eight problems with the premises that she seeks to have repaired. Her counterclaim identifies violations of the federal and Ohio FHAs as well as a failure to maintain the property as causes of action. McDowell, an employee of Batavia Woods, is named as a defendant in the rent escrow application and in Wainwright's cross-claim. As a result, this case and 2013 RE 0005 share common issues and parties. Consolidation would promote convenience and judicial economy and Wainwright's motion is granted. *See Id.*

Motion to Transfer

Wainwright moves this court to transfer this action to the Clermont County Court of Common Pleas. The monetary jurisdictional limit for this court is set at \$15,000 by R.C. 1901.17. Where the amount pled accrued prior to the filing of the Complaint and is in excess of \$15,000, this court is without jurisdiction to hear this claim. See *Stan Alan Acceptance Corp. v. Chapman*, 2004-Ohio-4330, ¶ 12; *Eicher v. Eicher*, 2010 Ohio 3784, ¶ 13. Civ.R. 13(J) provides that, "[i]n the event that a counterclaim, cross-claim, or third-party claim exceeds the jurisdiction of the court, the court shall certify the proceedings in the case to the court of common pleas." Wainwright prays for damages in excess of \$25,000 in her counterclaim and cross claims. As a result, her claims exceed the jurisdiction of this court and her motion to transfer is granted. See *Id.*

Motion to Bifurcate

Finally, Batavia Woods moves this court for an order bifurcating its first cause of action and allowing it to be tried in this court. Whether to grant a motion to bifurcate lies within the discretion of the court. *Estates of Morgan v. Fairfield Family Counseling Ctr.* (1997), 77 Ohio St.3d 284, 317. Civ.R. 42(B) provides that a court may, "after a hearing, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy...order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury."

Batavia Woods argues that it would be prejudiced by any delay in a hearing on restitution of the premises. It argues that it would take a long time to schedule and conduct a jury trial in the Court of Common Pleas on all of the issues raised in the parties' pleadings. Batavia Woods also argues that restitution is urgently needed due to severe damage in the apartment in which Wainwright resides.

The issues raised in the parties' pleadings are intertwined and not easily separated. While Wainwright's counterclaim identifies violations of the federal and Ohio FHAs as well as a failure to maintain the property as causes of action, those issues could be raised as defenses in a restitution hearing. Furthermore, Wainwright demanded a trial by jury on all claims. Granting Batavia Woods' motion would lead to the highly inefficient result of forcing two courts to hold two separate jury trials with essentially the same evidence. Finally, bifurcating any of the parties' claims would deny the Court of Common Pleas the opportunity to provide complete relief to either party. As a result, holding a separate trial on restitution in this court would not be convenient or "conductive to expedition and economy" and Batavia Woods' motion is overruled. See Civ.R. 42(B).

Accordingly, Defendant's motions to consolidate and transfer are granted. The Clerk of Court is ordered to consolidate Case No. 2013 RE 0005 with this case under this case number. The Clerk of Court is ordered to certify this case to the Clermont County Court of Common Pleas along with any funds deposited by Defendant and held by the Clerk of Court. Defendant shall deposit all future rent payments of \$590, due before the first of each month, with the Clerk of Courts of the Clermont County Court of Common Pleas. Plaintiff's motion to bifurcate is overruled.

8/7/13

Date



Magistrate Christopher Bazeley

CLERMONT COUNTY MUNICIPAL COURT
CLERMONT COUNTY, OHIO

BATAVIA WOODS LLC

Plaintiff,

v.

JANE WAINWRIGHT (aka Wainright)

Defendant.

vs.

JOYCE MCDOWELL
CHARLES GANG

Defendants

CASE NO. 2013CVG02187

Judge: Brock
Magistrate: BazeleyOBJECTIONS TO DECISION
OF MAGISTRATE2013 AUG 15 PM 2:22
CLERMONT COUNTY, OHIO
CLERK OF COURT

FILED

On August 6, 2013, Plaintiff Batavia Woods and Defendant Jane Wainright appeared before the Magistrate for a hearing on pending motions. After the hearing, Plaintiff's motion was denied and Defendant's motions were granted. Now comes Plaintiff, by and through counsel, and pursuant Civ. R. 53(D)(3)(b) objects to the Magistrate's Decision filed August 7, 2013.

Plaintiff objects to the Magistrate's Decision as follows:

1. The magistrate erred in finding that the issue of the restitution of the leased premises should not be bifurcated from the other issues. Civ. R. 20(B) allows for bifurcation if hearing the matter in one trial will prejudice a party, cause delay, or put a party to expense based on joinder of parties. In this instance, Defendant Wainright has joined parties and claims. If all claims are heard in one trial, the trial will not come for over a year, maybe even two years, as it

has been removed to Common Pleas. Thus, Plaintiff will suffer a great delay. The essence of a forcible entry claim, and the legislative intent behind them, is that they are to be a speedy and efficient resolution to a single issue. *Seventh Urban, Inc. v. Univ. Circle Property Dev't, Inc.*, 423 N.E.2d 1070, n.10 (Ohio 1981). Joining all claims strips the legislative intent. Furthermore, lumping all the claims together in one trial will put Plaintiff to extreme expense. There are necessary repairs that must be done promptly. Each week that passes will cause the unit to become further dilapidated and, thus, increase costs exponentially to restore the unit to a fit and habitable condition. Finally, Plaintiff will be deeply prejudiced if the restitution claim is not bifurcated. Maintaining the residence in a fit and habitable condition is a duty imposed on a landlord by law. O.R.C. §5321.04(A)(2). Not bifurcating the restitution issue means that necessary repairs will not be completed, as the unit must be vacant for the repairs. If necessary repairs are not done and the leased premises cannot be maintained in a fit and habitable condition, Plaintiff will be in violation of the law and will be opened up to further liability. This is highly prejudicial to Plaintiff.

2. The magistrate erred in not exercising the court's discretion to bifurcate the issues. Discretion should be guided by principles including fundamental fairness and judicial efficiency. *See Darby v. A-Best Products Co.*, 811 N.E.2d 1117, 1120 (Ohio 2004) (stating that courts must consider principles of "fundamental fairness and judicial efficiency" when determining whether to order severance.). It is both fundamentally unfair to lump this single issue,

that is the issue of rightful possession of the leased premises, in with many other claims in that, while related, the claims will take years to determine. It is fundamentally unfair to force Plaintiff to violate the law and open itself up to further liability. If also strips judicial efficiency as municipal court is the best place to hear a restitution claim. It further strips judicial efficiency in that refusing to hear the restitution claim and thus allow the repairs of the leased premises will cause more claims to be filed against Plaintiff and thus more lawsuits will have to be heard by the court.

3. The magistrate erred in finding that the issues raised in Defendant's pleadings are intertwined and not easily separated from the issue of whether or not the leased premises requires repairs.
4. The magistrate erred in finding that bifurcating the eviction issue would result in two courts holding two separate jury trials with essentially the same evidence. The eviction issue and the evidence surrounding the repairs that are required is not the same as the claims raised by Defendant Wainright and the evidence required for those claims.
5. The magistrate erred in finding that bifurcating the eviction issue would deny the Court the opportunity to provide complete relief to either party. Under Ohio Revised Code 5321.02 (B), if Defendant Wainright prevails on her claims she may recover money damages which would provide complete relief. There is no argument that the particular leased premises are unique in some way that money damages would not compensate for the Defendant having to move. Further, by the time the Court of Common Pleas issues its decision

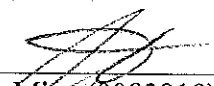
some years in the future, it is not outside the realm of possibility that they may allow Defendant Wainright to recover the leased premises.

It is submitted that these objections are based on law, and thus do not require a transcript. If the court finds these objections to be to factual findings and does require a transcript, Plaintiff reserves the ability to supplement the objections after reviewing the transcript.

It is respectfully submitted that the Magistrate has erroneously refused to bifurcate the issue of restitution of the leased premises.

Wherefore, Plaintiff requests that the Magistrate's Decision referred to above be reversed, and Plaintiff's request for bifurcation be granted.

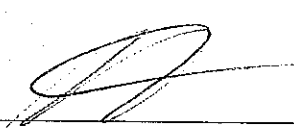
Respectfully submitted,



Melanie E. Mize (0083919)
Attorney for Plaintiff
10428 Kenwood Road, Suite 201
Blue Ash, Ohio 45242
Phone: (513) 745-9095
Fax: (513) 283-0098
mem@neyramize.com

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on Noel M. Morgan, Attorney for Defendant, 215 East Ninth Street, Suite 500, Cincinnati, Ohio 45202 by Ordinary Mail on August 15, 2013.



Melanie E. Mize
Attorney for Plaintiff