

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

CMHA	)	DATE: NOVEMBER 4, 2003
	)	
Plaintiff	)	CASE NO. 03-19864
	)	
vs.	)	<u>MAGISTRATE'S DECISION</u>
	)	<u>AND JUDGMENT ENTRY</u>
YULONDA HOLLIMAN	)	
	)	
Defendant	)	

This matter came to be heard before Magistrate Myra Torain Embry to whom it was referred by Judge Raymond L. Pianka, to take evidence on all issues of law and fact regarding plaintiff's motion for relief from the first cause judgment rendered in favor of plaintiff. Both plaintiff and defendant were present, with counsel.

FINDINGS OF FACT

1. At all times relevant to this action, plaintiff was the owner of the federally subsidized, residential premises located at 4931 Woodland Avenue, Cleveland, Ohio.
2. At all times relevant to this action, defendants were tenants in unit #1234 of the subject premises.
3. On August 5, 2003 plaintiff filed the within forcible entry and detainer action alleging nonpayment of the July 2003 rental payment.
4. Plaintiff through counsel and defendant, pro se appeared at the August 26, 2003, first cause hearing. The first cause hearing was continued to September 9, 2003 at 10:30 a.m.
5. Plaintiff through counsel appeared at the September 9, 2003 hearing. Defendant did not appear, and plaintiff received a judgment on the first cause of action, writ to issue.
6. Defendant failed to appear at the September 9, 2003 hearing because defendant was incarcerated from September 8, 2003 through September 17, 2003.

CONCLUSIONS OF LAW

This matter is before the Court on defendant's motion for relief from judgment. Defendant argues that she is entitled to relief from the first cause judgment against her pursuant to Ohio Rule of Civil Procedure 60(B). Plaintiff argues that defendant is not entitled to relief from judgment. For the reasons set forth below, defendant's motion for relief from judgment is granted.

Ohio Rule of Civil Procedure 60(B) gives a court the power to relieve a party from a final judgment. "To prevail on a motion brought under Civ.R. 60(B), the plaintiff must demonstrate that: (1) he has a meritorious defenses or claim to present if relief is granted; (2) he is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time" GTE Automatic Elec., Inc. v. ARC Industries, Inc. (1976), 47 Ohio St.2d 146.

As to her meritorious defense for nonpayment of the July 2003 rent, defendant asserts that CMHA management was on notice that her Supplemental Security Income (SSI) and Aid to Families with Dependant Children (AFDC) check for the month of July 2003 was sent to an incorrect address and therefore a duplicate check had to be issued. Defendant argues that she attempted to pay her July 2003 rent when she received the duplicate check, but CMHA management refused to accept it because it was after the rental due date and the case had already been referred to the legal department. Defendant argues that because her nonpayment situation was due to circumstances beyond her control, it is not good cause to terminate the tenancy.

Plaintiff argues that defendant failed to show good cause as the circumstances, which created the nonpayment situation, were well within the defendant's control. However, on a motion for relief from judgment, movant's burden is only to assert meritorious claim or defense supported by operative facts and not necessarily to prevail with respect to the truth of the claim or defense. McCann v. Lakewood (Cuyahoga Cty. 1994) 95 Ohio App.3d 226 change. Therefore, the Court finds that defendant has asserted a meritorious defense to the eviction action. The Court further finds that defendant having filed her motion two weeks after her release date, and less than one month after journalization of the entry granting judgment to plaintiff, said motion was filed within a reasonable time.

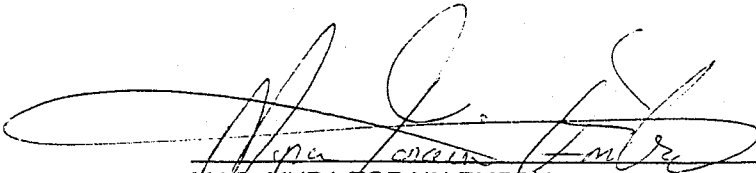
Where timely relief is sought from a default judgment and the movant has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits. GTE, Supra at 151. In the within matter, defendant was incarcerated a day before her hearing, therefore, it is questionable whether defendant had sufficient time to arrange for transportation to her hearing or acquire an attorney to represent her. Nonetheless, defendant sent her boyfriend to the hearing to inform the Court of her incarceration and to attempt to pay the rent. Given defendant's efforts to remain involved in her case despite incarceration, coupled with a meritorious defense and the timely filing of her motion for relief, the Court finds that under the specific circumstances presented in this case doubt should be resolved in favor of the motion to set aside judgment, and defendant's motion for relief from judgment is granted.

### **RECOMMENDED JUDGMENT**

Defendant having demonstrated that she is entitled to relief from judgment pursuant to Civil Rule 60(B), the judgment entry dated September 9, 2003 and journalized on September 12, 2003 is hereby vacated.

Case is set for first cause hearing on **November 13, 2003 at 10:30 a.m.** in Courtroom 3A. Parties and counsel are to report to the security bailiff at that time.

Recommended:



MAG. MYRA TORAIN EMBRY

**JUDGMENT**

The Magistrate's report is approved and confirmed. Defendant having demonstrated that she is entitled to relief from judgment pursuant to Civil Rule 60(B), the judgment entry dated September 9, 2003 and journalized on September 12, 2003 is hereby vacated.

Case is set for first cause hearing on **November 13, 2003 at 10:30 a.m.** in Courtroom 3A. Parties and counsel are to report to the security bailiff at that time.

---

JUDGE RAYMOND L. PIANKA

A copy of this entry was served on parties/counsel by regular U.S. mail on  
11/16/03.  
RW