

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

CMHA,

Plaintiff

-vs-

SHEREE MATTHEW,

Defendant

DATE: APRIL 28, 2008

CASE NO.: 2007 CVG 16146

JUDGMENT ENTRY

This matter is before the Court on defendant's timely filed Objections to the Magistrate's Decision ("Objections") regarding the plaintiff's first cause of action. Defendant also timely filed a transcript of the proceedings. Plaintiff did not file a response to the Objections.

Plaintiff commenced this action in forcible entry and detainer on July 19, 2007. The first cause of action came for trial, and judgment was awarded to plaintiff. Defendant filed a motion for relief from that judgment, which ultimately was resolved by the parties through an Agreed Settlement Entry ("Settlement") dated November 6, 2007. In the Settlement, the parties agreed that defendant owed plaintiff \$617.75 as of that date, which included rent for the months of May 2006 through November 2007. The Settlement established a payment schedule, as well as a series of status hearings to ensure compliance with the terms of the agreement. The first payment, in the amount of Four Hundred Six Dollars and Forty Cents (\$406.40) was due on November 23, 2007.

In December 2007, defendant filed a Motion to Enforce Agreed Settlement Entry, and a Motion for Relief from Judgment, indicating that a third party had agreed to provide \$600 to the defendant, satisfying nearly her entire financial obligation under the Settlement, but that plaintiff was refusing to accept payment because it was tendered later than the due dates agreed upon in the Settlement. The Court set this motion for a hearing, and referred it to a Magistrate to take evidence and testimony on the issues. The Magistrate, in his Decision, recommended denial of the defendant's motions for relief from judgment and to modify the agreed settlement entry; the Court adopted the Magistrate's Decision. It is this Decision to which defendant objects.

In her Objections, defendant argues that the Magistrate misinterpreted the foreseeability standard established in *Rufo v. Inmates of Suffolk County Jail* (1992), 502 U.S. 367.

The *Rufo* decision stands for the proposition that a party seeking modification of a consent decree must establish that a significant change in facts or law warrants revision of the decree, and that proposed modification is suitably tailored to changed circumstance.

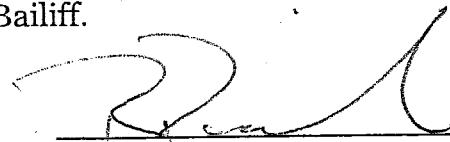
According to *Rufo*, "modification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree." Id. at 385. The Court notes that the *Rufo* decision specifically mentioned that modification is, "appropriate when a decree proves to be unworkable when enforcement of the decree without modification would be detrimental to the public interest." Id. at 384.

In reviewing the transcript, the Court finds that the defendant did not foresee that she would not be able to get an appointment with a social service agency, and thus be unable to pay plaintiff, by a date certain. The Court is compelled to note that Cleveland, Ohio has been particularly hard hit by the foreclosure crisis. In 2007, there were nearly 15,000 foreclosures filed in Cuyahoga County – more than any other county in the State of Ohio. Defendant's first payment was due on November 23, 2007; she was able to tender the entire amount due on December 12, 2007. The Court finds that, in light of the recent strain put upon social service agencies, the defendant was unable to foresee that she would be unable to receive financial assistance within the period of time agreed.

Defendant's Objections are sustained. Accordingly, the Magistrate's Decision is rejected, and the prior Judgment Entry approving and confirming same is vacated.

The Court now grants defendant's motions for relief from judgment and to modify the agreed settlement entry. **Defendant is ordered to tender full payment of all past due amounts to the plaintiff within fourteen (14) days from the journalization of this Judgment Entry.**

Sua sponte, this matter is set for status hearing on **May 19, 2008 at 10:30 a.m.** in Courtroom 3-A. If defendant has made payment as indicated above, neither party need be present, and the Court will dismiss both of plaintiff's causes of actions without prejudice. If defendant fails to make payment as indicated above, plaintiff must be present. Upon the Court finding that defendant failed to make payment as ordered above, judgment shall be granted in favor of the plaintiff, a writ of restitution shall issue, and a move-out may be scheduled with the Bailiff.



JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

SERVICE

A copy of this judgment entry was sent by Regular U.S. Mail to parties/counsel on

4/28/08. AMP