

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Cuyahoga Metropolitan Housing Authority

DATE: November 7, 2006

Plaintiff

-vs-

CASE NO.: 2006 CVG 10893

Natesha Moon

Defendant

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of November 7, 2006 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

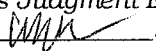
The Court dismisses Plaintiff's first cause of action with prejudice.



JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on

11/8/06 

Attorney for Plaintiff

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JUDGMENT ENTRY

The Court set this case for trial November 6, 2006 at 1:30 p.m. on the 13th floor of the Justice Center. Defendant appeared with her attorney. Plaintiff failed to appear through its attorney. No property manager for Plaintiff appeared. One CMHA police officer appeared, Officer Blakemore, badge #12. The Housing Court receptionist informed the magistrate that Plaintiff's attorney had telephoned to state that he would be present after he had completed cases set for default hearing at the same time in Courtroom 3A of the Justice Center. The parties appeared before Magistrate David D. Roberts, Judge Raymond L. Pianka having assigned Magistrate Roberts to take evidence on all issue of law and fact.

Magistrate Roberts called Court to order at approximately 1:50 p.m. Defendant made an oral motion to dismiss for want of prosecution. Defendant's attorney informed the Court that he had not received a trial statement from Plaintiff. The Court noted that the Court's journal shows no trial statement filed by Plaintiff. The Court's file contained no trial statement from Plaintiff. Plaintiff's attorney appeared at 2:10 p.m. after court had adjourned. He informed the Court that he did not have a property manager ready to testify.

Recommended Decision

The Magistrate recommends that the Court dismiss Plaintiff's first cause of action for want of prosecution for three reasons.

First, Plaintiff's attorney should have filed a motion to continue if he had a conflict between cases set for Courtroom 3A and this case. The Court has no policy to allow attorneys to expect to appear later in one action because they are before the Court in an action set for the same time. The Court has on occasion allowed attorneys to do this and the magistrate hearing the default cases did tell Plaintiff's attorney that the Court would send notice to the magistrate in this trial that Plaintiff's attorney was delayed.


Were this Plaintiff's only failing, the Court might not dismiss this action, understanding that its past practice of accommodating Plaintiff's attorney might have led him to assume that the Court would always accommodate him in the same way in future. But Plaintiff's other failures, combined with this failure, support dismissal.

Plaintiff's second failing was its failure to file a trial statement as required by the Court's *Judgment Entry* of October 11, 2006. Plaintiff knew that Defendant was preparing for trial and planned to present a defense. Plaintiff's trial statement would have informed Defendant of the witnesses that would be testifying and the documents that would be offered into evidence. Of particular note in this case would be the officer who allegedly found marijuana in Defendant's unit and the documentation that the single spent roach did contain marijuana. Had the Court proceeded to trial, Defendant could have objected to both witnesses and documentation based on surprise.

Plaintiff's third failing was its failure to have a property manager present to testify concerning Defendant's tenancy. Plaintiff's counsel informed the Court that the property manager's testimony was necessary to the presentation of his case. Thus, even if the Court had waited to 2:10 p.m. for Plaintiff's attorney and excused Plaintiff's failure to file a trial statement, Plaintiff would have been unable to prove its case against Defendant.

For these reasons, the Court dismisses Plaintiff's first cause of action for want of prosecution. Because Defendant was present with her attorney, fully prepared for trial, the Court's dismissal will be with prejudice.

The Court dismisses Plaintiff's first cause of action with prejudice.


Magistrate David D. Roberts

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 Magistrate's Decision was sent via regular U.S. Mail to the following on
11/18/06. ajp

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