

Cleveland Municipal Court  
Housing Division  
Judge Raymond L. Pianka

CMHA,  
Plaintiff(s)

Date: March 22, 2013

-v-

Case No: 12 CVG 20068

STEWART,  
Defendant(s)

Magistrate's Decision

This matter came for hearing on plaintiff's claim for possession on January 9, 2013 with Magistrate Sandra R. Lewis, to whom it was assigned by Judge Raymond L. Pianka pursuant to Ohio Rule of Civil Procedure 53, to take evidence on all issues of law and fact. Plaintiff's representative, Ms. Purdy, present and represented by Mr. McGuire. Defendant present pro se. Trial had.

After hearing was completed, plaintiff sought leave to file a brief in support of its claim for possession in light of a previous matter between the parties. The parties were given leave to brief the matter. Plaintiff has filed its brief. Defendant has not responded.

#### RELEVANT HISTORY

This matter was initially set for hearing on December 26, 2012. Though there is no entry journalized from that date, apparently plaintiff and defendant appeared and agreed to a continuance of the hearing to the January 9<sup>th</sup> date.

In early 2006, plaintiff filed an eviction asserting a violation of the written rental agreement due to defendant's status as a sexual predator (case number 2006 CVG 3698, captioned CMHA v. Lindsey Stewart). Relevant Findings of Fact from that matter indicate that (i) [o]n or about December 2005 plaintiff's property manager, Marilyn Applewhite, was informed by the Cuyahoga County Sheriff's Office that defendant was convicted of a sexually orientated offence, and was determined to be a sexual predator, Case Number CR-82-170928, and (ii) [i]n its rental application and background check procedure, plaintiff failed to discover defendant's past criminal record through no fault of defendant. The 2006 case resulted in judgment for defendant Stewart.

#### FINDINGS OF FACT

1. At all times relevant to this action, plaintiff has been the owner of the federally subsidized residential rental premises known as 1300 Superior Avenue, Cleveland, OH.
2. In December 2005, the parties entered into a written rental agreement for unit #1901 of the above mentioned premises.

3. Exhibit A to the complaint is a fair and accurate copy of only part of the written rental agreement.
4. The written rental agreement renews automatically from year to year.
5. Defendant must be "recertified" annually in order to continue to participate in the subsidy program.
6. Plaintiff recertified defendant most recently in September of 2012.
7. On or about October 1, 2012, plaintiff's property manager was informed that defendant is a registered sex offender.
8. On or about October 4, 2012, plaintiff served defendant with the notice of termination admitted as plaintiff's Exhibit B.
9. On or about November 5, 2012, plaintiff served defendant the statutory three-day notice admitted as plaintiff's Exhibit C.

### CONCLUSIONS OF LAW

Plaintiff seeks to terminate defendant's tenancy due to alleged lease violations. Specifically, plaintiff's property manager testified that because of defendant's status as a sexual predator, he is ineligible for the subsidy program. Plaintiff presented a print out from the Cuyahoga County Sheriff's website as evidence of defendant's status.

Defendant noted that plaintiff had brought an unsuccessful eviction action on this basis before. And as noted above, the Court has reviewed the previous case file and decision in defendant's favor due to the possibility of res judicata.

Res judicata involves both claim preclusion and issue preclusion. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381, 653 N.E.2d 226. A claim is precluded if there has already been a valid, final judgment rendered upon the merits. *Id.* at syllabus. Claim preclusion bars the relitigation of the same cause of action between the same parties. *Balboa Ins. Co. v. S.S.D. Distrib. Sys., Inc.* (1996), 109 Ohio App.3d 523, 672 N.E.2d 718, citing *Grava*.

An issue is precluded (collaterally estopped) where it has been "actually and necessarily litigated and determined in a prior action". *Krahn v. Kinney* (1989), 43 Ohio St.3d 103, 107, 538 N.E.2d 1058; *Balboa Ins. Co.* For preclusion to apply, the court must find (1) the party against whom preclusion is sought was a party (or in privity with a party) to the previous case; (2) there was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue; (3) the issue was admitted or actually tried and decided and was necessary to the final judgment; and (4) the current issue is identical to the issue involved in the previous case. *Davet v. Mikhli*, 8th Dist. No. 97291, 2012-Ohio-1200.

The parties to both past and present cases are identical and in the same posture (plaintiff and defendant) as in the previous litigation. The magistrate's decision in 2006 CVG 3698 demonstrates that there was a full and fair opportunity to litigate the merits of whether defendant had violated the written rental agreement. Thus it appears that the claim would be barred unless it is based upon newly discovered facts or newly arising violation of the written rental agreement.

The determinative issue in the prior case was whether defendant's status as a predator/lifetime registrant violated the written rental agreement. In the present matter, the determinative issue remains whether defendant's status violates the written rental agreement.

In the previous case, there was no evidence that plaintiff failed to discover defendant's status because of any act or omission of defendant. In fact, the magistrate noted that "[i]n its rental application and background check procedure, plaintiff failed to discover defendant's past criminal record through no fault of defendant."


In the present matter, again there was no evidence to suggest that defendant had concealed his status from plaintiff. In fact, plaintiff has been aware of defendant's status since the filing of the first eviction case in early 2006. The rental agreement renewed automatically each year. And, plaintiff continued to recertify defendant each year. There was no new evidence of conduct that would present a new factual issue to the court.

As in the previous case, plaintiff's explanation was simply that this situation "slipped through the cracks." Certainly, the Court is mindful of the concerns plaintiff may have regarding defendant's past. But, the Court is limited to the issues raised in the complaint and to the application of relevant law to those issues. Therefore, based upon the above, the Court concludes that the claim for possession is precluded.

The magistrate recommends the following orders:

1. Nunc pro tunc the hearing for December 26, 2012 was continued to January 9, 2013 at 10:30 AM in courtroom 3A
2. Judgment for defendant on the claim for possession.
3. Defendant having filed an answer, matter is to be set for pretrial on all remaining claims.

Recommended:

  
Magistrate Sandra R. Lewis

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 parties/counsel this 22 day of March 13. CPV

Cleveland Municipal Court  
Housing Division  
Judge Raymond L. Pianka

CMHA,  
Plaintiff(s)

Date: March 22, 2013

-v-

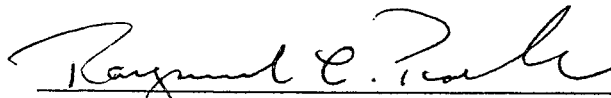
Case No: 12 CVG 20068

STEWART,  
Defendant(s)

JUDGMENT ENTRY AND ORDER

Upon review, the Magistrate's Report is approved and confirmed. The Court makes the following orders:

1. Nunc pro tunc the hearing for December 26, 2012 was continued to January 9, 2013 at 10:30 AM in courtroom 3A
  2. Judgment for defendant on the claim for possession.
  3. Defendant having filed an answer, the default money hearing date is cancelled and the matter is set for pretrial on all remaining claims on **June 5, 2013 at 2:30 PM on the 13<sup>th</sup> floor**. Parties are to report to the security bailiff at that hour.
- A pretrial is a court-supervised meeting at which the Court will determine whether the parties can resolve their dispute by agreement, without a trial. If the case cannot be settled, the Court will use the pretrial to limit or narrow the issues to be heard at trial. The Court may also ask the parties to stipulate to undisputed facts.
  - All parties **MUST** attend the pretrial. If a party has an attorney, the attorney should be present. Witnesses are not required to attend the pretrial. Parties may wish to bring any records or receipts in their possession to the pretrial. **PURSUANT TO OHIO RULE OF CIVIL PROCEDURE 41(B), NOTICE IS HEREBY GIVEN THAT FAILURE TO ATTEND PRETRIAL MAY RESULT IN DISMISSAL OF THE FAILING PARTY'S CLAIMS, IMMEDIATE HEARING OF OPPOSING PARTY'S CLAIMS, AND/OR OTHER APPROPRIATE SANCTIONS.**



Judge Raymond L. Pianka  
Housing Division

SERVICE: A copy of this Judgment Entry was sent via regular U.S. Mail to parties/counsel this 22 day of March 2013. RAV.