

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PLANKA, JUDGE

CMHA
Plaintiff (s)

Date: November 25, 2014

-VS-

2014 CVG 001938

BARRY GAUNTT et al
Defendant (s)

MAGISTRATE'S DECISION

Case called for hearing on October 22, 2014 before Magistrate Myra Torain Embry, to whom it was referred by Judge Raymond L. Pianka pursuant to Civ. R. 53, to take hear argument on defendants' motion for partial summary judgment. Plaintiff and defendants were present through counsel.

In their motion, defendants seek summary judgment solely on plaintiff's claim that defendant Barry Gauntt's admission into public housing is a violation of his lease due to defendant Gauntt's sexual predator classification and lifetime registration requirement. For the reasons set forth below, defendants' motion for partial summary judgment is granted.

A party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Civ. R. 56(C). Summary judgment shall not be rendered unless it appears from the evidence that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. Id.

A moving party must "point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264. Once the moving party has satisfied its burden, the nonmoving party has "a reciprocal burden, outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial." Id. at 293.

Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party. *Welco Industries, Inc. v. Applied Cos.* (1993), 67 Ohio St.3d 344, 346, 617 N.E.2d 1129. In deciding whether an evidentiary conflict exists so as to preclude summary judgment, the trial court must view the record in the light most favorable to the party opposing the

motion. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 617 N.E.2d 1123, 1127. Because plaintiff in this matter is the nonmoving party, this Court is required to view the evidence presented in the light most favorable to plaintiff.

In the instant case, plaintiff and defendants agree to the following facts: 1) on September 11, 2013 defendants submitted to plaintiff an eligibility housing application; 2) on the application, defendant Barry Gauntt disclosed to plaintiff that he had been convicted of the crime of gross sexual imposition, and was subject to a lifetime sex offender registration program; 3) on December 4, 2013 plaintiff and defendant entered into the lease agreement admitted as plaintiff's exhibit 1; 4) on January 22, 2014 plaintiff served on defendants the Notice to Leave Premises, a copy of which was attached to plaintiff's forcible entry and detainer complaint; 5) on February 11, 2014, plaintiff filed the within forcible entry and detainer action, alleging as one of its grounds for eviction that defendant(s) violated the lease based on defendant Gauntt's sexual predator classification and lifetime registration requirement.

Defendants argue that federal law does not provide for the eviction of wrongfully admitted sex offenders from public housing. Therefore, according to defendant, there is no genuine issue of material fact and plaintiff has no basis to terminate defendants' tenancy for this reason. Plaintiff argues that it did not terminate defendants' tenancy because of Mr. Gauntt's status as a sex offender, but strictly based on a stated lease violation.

In support of its argument, plaintiff asserts that its employee inadvertently overlooked defendant Gauntt's disclosure of his sexual predator classification and lifetime registration requirement on his application for admission, and put the application through. Plaintiff further asserts that due to certain inaccuracies, through no fault of defendants, plaintiff's internal procedure(s) established to flag ineligible applicants did not work. Consequently, defendants were offered a lease agreement and admitted into the housing program in violation of 42 U.S.C.A §13663.¹ Plaintiff asserts that when it discovered its error, it terminated defendants' tenancy pursuant to both 24 C.F.R. 966.4(l)(2)(iii)(B) and Article XIII(A)(16) of the parties lease agreement, which allows plaintiff to terminate the lease for discovery of facts, after admission, that would have made the resident ineligible for housing.

Viewing the evidence in the light most favorable to the plaintiff, the Court finds that reasonable minds can come to but one conclusion, and that conclusion is that plaintiff did not discover facts after admission that would have made defendants ineligible for housing under 42 U.S.C.A §13663, as defendant Gauntt clearly and unequivocally disclosed his sex offender status and lifetime registration requirement to plaintiff prior to his admission into the housing program. Consequently, what plaintiff found were not newly discovered facts, but its mistake in overlooking the facts that were previously disclosed to it.

¹ 42 U.S.C.A §13663 prohibits the owner of federally assisted housing from admitting into its housing program an individual who is subject to a lifetime registration requirement under a State's sex offender registration program.

Had defendant failed to disclose on his application his sex offender status or lifetime registration requirement, or was otherwise dishonest about it, plaintiff's argument may be more compelling. Under that circumstance, plaintiff may not have been on notice of defendant's sex offender status and lifetime registration requirement at the time defendants' application was put through, and may have discovered said facts after defendants were admitted into housing. Nevertheless, plaintiff was on notice of the facts that made defendant ineligible for housing at the time defendants were admitted. Therefore, reasonable minds can come to but one conclusion and that conclusion is that defendants did not violate Article XIII(A)(16) of the lease agreement due to discovery of facts after admission that would have made defendants ineligible for housing. Hence, defendants' motion for partial summary judgment is hereby granted.

The case management schedule for the remaining claims is set as follows:

Case is set for final settlement conference on **January 8, 2015 at 1:30 p.m. on the 13th floor** of the Cleveland Justice Center. Parties, counsel and plaintiff's property manager are required to attend, and shall report to the Housing Court's receptionist desk at the above stated time. Parties should be prepared to make vigorous efforts to achieve settlement. Additionally, a party should bring to the conference evidence or documentation that may aid in achieving settlement. **Failure of a party, counsel or property manager to attend may result in dismissal of the failing party's claims, immediate hearing of the opposing party's claims or other appropriate sanctions.**

Case is set for trial on all claims on **January 20, 2015 at 1:30 p.m.** on the 13th floor of the Cleveland Justice Center. Parties and counsel are to report to the Housing Court's receptionist desk at that time.

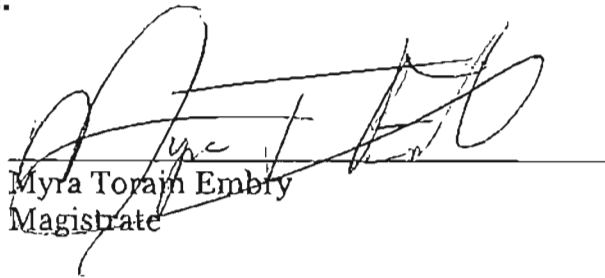
The parties shall file with the court, and serve upon counsel, trial statements, on or before end of business **January 13, 2015.** Trial statements shall contain the following:

1. A statement of facts and legal issues;
2. Requested stipulations;
3. Agreed stipulations;
4. A list of witnesses with a brief summary of expected testimony;
5. Special legal problems anticipated;
6. A statement that all documentary evidence has been marked for identification purposes and copies submitted to the opposing party;
7. A statement that describes photographs or other nondocumentary evidence which may be submitted at trial, and confirms that a copy of the list has been submitted to the opposing party or attorney, and that the opposing party or attorney has been offered a reasonable opportunity to examine the evidence before trial.

PURSUANT TO OHIO RULES OF CIVIL PROCEDURE 41(B), FAILURE TO FILE TRIAL STATEMENTS CONFORMING TO THE ABOVE CRITERIA MAY RESULT IN THE DISMISSAL OF THE FAILING PARTY'S CLAIMS, DEFAULT JUDGMENT OR OTHER APPROPRIATE SANCTIONS.

Given the amount of time this matter has been pending before the Court, the Court does not anticipate the granting of a continuance of the settlement conference or trial date.

Recommended:



Myra Torain Embry
Magistrate

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(D)(3)(b). 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.

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PLANKA, JUDGE

CMHA
Plaintiff (s)

Date: November 24, 2014

-VS-

2014 CVG 001938

BARRY GAUNTT et al
Defendant (s)

JUDGMENT ENTRY

Upon review the Magistrate's Decision is approved and confirmed. Viewing the evidence in the light most favorable to the plaintiff, the Court finds that reasonable minds can come to but one conclusion, and that conclusion is that defendants did not violate Article XIII(A)(16) of the lease agreement due to discovery of facts after admission that would have made defendants ineligible for housing. Defendant disclosed his sexual predator classification to plaintiff during the application process, plaintiff admitted defendant into public housing, and then, more than a month later, plaintiff realized that it had admitted defendant to housing despite his record. Plaintiff did not discover new facts; those facts were disclosed by defendant prior to admission. Hence, defendants' motion for partial summary judgment solely on plaintiff's claim that defendant Barry Gauntt's admission into public housing is a violation of his lease due to defendant Gauntt's sexual predator classification and lifetime registration requirement is hereby granted.

Case is set for final settlement conference on **January 8, 2015 at 1:30 p.m. on the 13th floor** of the Cleveland Justice Center. Parties, counsel and plaintiff's property manager are required to attend, and shall report to the Housing Court's receptionist desk at the above stated time. Parties should be prepared to make vigorous efforts to achieve settlement. Additionally, a party should bring to the conference evidence or documentation that may aid in achieving settlement. **Failure of a party, counsel or property manager to attend may result in dismissal of the failing party's claims, immediate hearing of the opposing party's claims or other appropriate sanctions.**

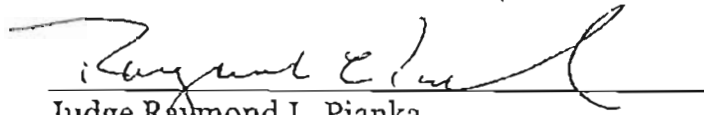
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Given the amount of time this matter has been pending before the Court, the Court does not anticipate the granting of a continuance of the settlement conference or trial date.



Judge Raymond L. Pianka
Housing Division

A copy of the Judgment Entry and Magistrate's Decision was served on parties/counsel by regular U.S. mail on 11/25/14.