

**CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO**

**CUYAHOGA METROPOLITAN  
HOUSING AUTHORITY,** )

Plaintiff(s) )

-V- )

**JANE COLEY,** )

Defendant(s) )

Date: January 27, 2004

Case No.: 2001 CVG 19335

**JUDGMENT ENTRY**

This case is before the court on the Plaintiff's Objections to the Magistrate's Decision and Conclusions of Law dated June 24, 2003. For the following reasons, Plaintiff's objections are overruled, and the Magistrate's Decision is affirmed.

A default hearing on Plaintiff's second cause of action was convened in this case on June 16, 2003. Defendant did not file an answer, and was not present, either personally or through counsel at the default hearing. Plaintiff presented testimony and evidence that Defendant owes Plaintiff unpaid rent in the amount of \$4,650.00.

The \$4,650 that Plaintiff seeks is comprised of 23 months and 16 days of unpaid rent, at amounts that vary from \$380.00 to \$28.00 per month. But Plaintiff's *Complaint* prays for \$28 and ongoing rent at \$28 per month. Plaintiff did not seek leave to amend its complaint.

The Magistrate's Decision limited Plaintiff's recovery based upon Civ.R. 54 (C), which limits a default judgment to the amount prayed for in the complaint, that is, rent at the rate of \$28.00 per month. Civil Rule 54 (C) states:

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings.

Applying Civ.R. 54 (C) to this case, the Court concludes that the magistrate properly determined that Plaintiff's complaint limited Plaintiff's recovery to \$28.00 per month.

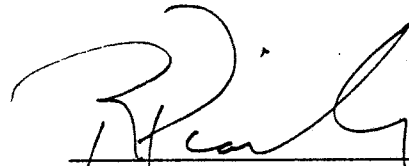
This conclusion is supported by the finding in *Buckley v. Lucas*, 1999 WL 436838 (*Ohio App.5 Dist. June 8, 1999*), citing *Glazier v. Hall*, 1994 WL 477994 (*Ohio App. 5 Dist.*). In *Buckley*, plaintiff, upon a finding that the defendant was in default, sought to recover damages that he did not plead in his complaint. The trial court awarded plaintiff the un-pled damages.

The Fifth District Court of Appeals reversed that award on appeal, holding that the trial court erred in awarding the plaintiff un-pled damages.

Civ.R. 54 (C) is clear on its face that a judgment is limited to the dollar amount prayed for in the complaint. Plaintiff has not argued here but could argue that Civ.R. 1(C)(3), which limits the application of the Civil Rules in forcible entry and detainer actions, makes Civ.R. 54(C) inapplicable to this action. But this Court agrees with the conclusion of the Fifth District Court Of Appeals in *Glazier v. Hall*, 1994 WL 477994, that Civ.R. 54(C) is not "clearly inapplicable" under Civ.R. 1(C)(3) to a second cause monetary claim in a forcible entry and detainer action. The "clearly inapplicable" standard in Civ.R. 1(C)(3) applies when the civil rules would frustrate the purpose of the forcible entry and detainer statute, the goal of which is to provide an expedited hearing on the issue of possession. *Id.* Thus, when a court has already ruled on the first cause issue of possession and continued a second cause money claim to be heard separately, Civ.R. 54(C) cannot be said to be "clearly inapplicable."

Plaintiff relies on *Smolik v. Andrews Custom Bldrs., Inc.*, 62 Ohio App. 3d 872 (1990). Plaintiff's reliance is misguided, however. *Smolik* involved a contested trial, and not a default hearing. Thus, the Civ.R. 54 (C) limit was not applicable. The present case was heard as a default, and thus Civ.R. 54 (C) applies, barring the plaintiff from recovering more than the amount it prayed for.

Plaintiff's objections are overruled. The Court adopts and affirms the Magistrate's Decision.



JUDGE RAYMOND L. PIANKA

**SERVICE**

A copy of this judgment entry was sent via regular U.S. Mail to the following on

1/28/04: CLK

**COUNSEL FOR PLAINTIFF**

Dale Bugaj, Esq.  
Cuyahoga Metropolitan Housing Authority  
1441 West 25<sup>th</sup> Street  
Cleveland, Ohio 44113

**COUNSEL FOR DEFENDANT**

Stephanie Jackson, Esq.  
1223 West Sixth Street  
Cleveland, Ohio 44113