

**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PIANKA**

JUDGMENT ENTRY RECEIVED
FOR JOURNALIZATION

JAN 23 2012

EARLE B. TURNER, CLERK

FEDERAL NATIONAL MORT. ASSOC.,

DATE: January 4, 2012

Plaintiff(s)

-VS-

CASE NO. 11-CVG-15320

PETER MOORE, ET AL.,
Defendant(s)

JUDGMENT ENTRY

Upon review, the Magistrate's Decision is approved and confirmed.

Judgment for Defendants.



JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on
1/12/12

CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

REPORT OF MAGISTRATE'S FILED

JAN 23 2012

EARLE B. TURNER, Clerk

FEDERAL NATIONAL MORT. ASSOC.,
Plaintiff(s)

DATE: January 4, 2012

-VS-

CASE NO. 11-CVG-15320

PETER MOORE, ET AL.,
Defendant(s)

MAGISTRATE'S DECISION

Case called for hearing on Plaintiff's Complaint before Magistrate Heather A. Veljković, to whom it was referred by Judge Raymond L. Pianka pursuant to Civil Rule 53. Plaintiff was represented by counsel. Defendants were neither present, nor represented by counsel.

FINDINGS OF FACT:

{¶1.} Plaintiff is the owner of the premises described in the Complaint, by virtue of a Sheriff's Deed recorded on July 11, 2011. Plaintiff's Exhibit A.

{¶2.} Plaintiff caused to be served upon Defendants a notice pursuant to R.C. 1923.04. Plaintiff's Exhibit B.

{¶3.} No other notices were served.

CONCLUSIONS OF LAW:

{¶4.} The Protecting Tenants at Foreclosure Act of 2009 ("PTFA") was signed into law on May 20, 2009. S. 896, Pub. L. No. 111-22, §§ 701-704. It applies to tenants living in premises where a Sheriff's Sale resulting from a foreclosure is confirmed on or after May 21, 2009. The PTFA applies in this case because the Confirmation of Sale occurred on the underlying matter in September 2009¹.

{¶5.} Section 702 of the PTFA provides, "In the case of any foreclosure on a * * * dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to – (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure -- * * * (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1).

¹ While a copy of the Judgment Entry confirming the sale was not admitted at hearing, the Magistrate notes that the Sheriff's Deed references a Confirmation of Sale date of June 9, 2011.

{¶6.} A tenancy is considered bona fide only if: "(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy." Id. 702(b).


{¶7.} The Complaint, at paragraph 7, references the service of a 90-day notice and indicates that it has been attached to the Complaint as Plaintiff's Exhibit C. However, upon review of the Complaint, there is no such attachment. Further, no 90-day notice was admitted at hearing.

{¶8.} The provisions of the PTFA give bona fide tenants a possessory right to the premises, unless or until the successor in interest terminates in accordance with the terms of the Act. The Complaint fails to allege that Defendants are not a bona fide tenant; to the contrary, it would appear that Plaintiff may have had reason to believe that Defendants were in fact bona fide tenants, since it alleges it served upon them a 90-day notice.

{¶9.} Plaintiff having failed to provide proof of service of the 90-day notice at hearing, it has failed to prove its case by a preponderance of the evidence.

RECOMMENDATION:

{¶10.} Judgment for Defendants.



MAGISTRATE HEATHER A. VELJKOVIĆ
HOUSING DIVISION

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 by regular U.S. mail to the parties on

1/12/12.

WV