

IN THE MUNICIPAL COURT OF CLARK COUNTY, OHIO

GS HOLDINGS BROOKSIDE LTD

PLAINTIFF

-VS-

JAMIE L. RUTHERFORD & MARK CAMPBELL

DEFENDANT

CASE NO. 13-CVG-1535

JOURNAL ENTRY

FINAL APPEALABLE ORDER

13 JUL 10 PM 12:34
GUY A. FERGUSON, CLERK
MUNICIPAL COURT

BY JS DEPUTY

Having thoroughly reviewed the Findings and Decision of the Magistrate, finding no error of law or other defect on the face of such Decision, the same is hereby approved and adopted by the Court in accordance with Rule 53, Ohio Rules of Civil Procedure.

___ Judgment of Restitution is hereby entered and the Defendant is ORDERED to return all incidents of possession of the subject premises to the Plaintiff forthwith/as of _____. A writ of restitution shall issue and be executed pursuant to O.R.C. Sec. 1923.14.

___ Judgment is hereby awarded in favor of the Defendant, the Plaintiff having failed to prove any material violation of the landlord-tenant agreement or tenant's obligation under O.R.C..

___ It is ORDERED that the first cause of action be dismissed without prejudice because of Plaintiff's failure to appear.

___ It is ORDERED that the first cause of action be dismissed without prejudice because of Plaintiff's failure to comply with O.R.C. Sec. 1923.04.

___ It is ORDERED that the first/all cause(s) of action be dismissed at the request of the Plaintiff.

___ It is ORDERED that the first/all cause(s) of action be dismissed on the agreement of the parties.

DEFENDANT'S MOTION TO DISMISS IS GRANTED.

JUDGE *[Signature]*

GS HOLDINGS BROOKSIDE LTD

PLAINTIFF

-VS-

JAMIE L. RUTHERFORD & MARK CAMPBELL

DEFENDANT

FINDINGS OF FACTS

____ Owner of Premises ____ Landlord under O.R.C. Sec. 1923.01
____ Park Operator under O.R.C. Sec. 3733.01
Testified Affidavit Did not appear

Tenant under O.R.C. Sec. 1923.01			
Resident of manufactured home park under O.R.C. Sec. 3733.01			
Other			
Testified	Did not testify	Did not appear	

___ Residential ___ Nonresidential ___ Government subsidized
Mobile Home Park

☐ Written ☐ Copy in file
☐ Oral; ☐ monthly ☐ weekly ☐ other

___ 30 day notice to comply served on defendant(s), date: ___
 ___ 10 day notice to vacate served on defendant(s), date: ___
 ___ 3 day notice to vacate served on defendant(s), date: ___
 ___ Other _____

____ Served on Defendant(s) at least seven (7) days before hearing
Defendant(s) waived seven (7) day notice period on the record

_____ Rent \$ _____ per month, week, other _____
 _____ Date last rent paid: _____
 _____ Defendant in default for payment of rent
 _____ Other breach of rental agreement by defendant or basis of
 _____ restitution: _____
 _____ Defendant not found to be in default for payment of rent.
 _____ Defendant not found to be in default for breach of rental agreement.

CONCLUSIONS OF LAW

- ☐ Plaintiff is entitled to restitution of the premises.
☐ Plaintiff is not entitled to restitution of the premises.

FILED

13 JUL 10 PM 12:34

GUY A. FERGUSON, CLERK
MUNICIPAL COURT

RECOMMENDATION

BY PS DEPUTY

- ☐ Issue a Writ of Restitution effective: _____.
☐ Deny Writ of Restitution.
☐ Dismiss first cause of action without prejudice because of Plaintiff's failure to appear.
☐ Dismiss first/all cause(s) of action at Plaintiff's request.
☐ Dismiss first cause of action for failure to comply with Section 1923.04 O.R.C.

✓ D's motion to Dismiss is granted. 13/

Date: 7/10/13

[Signature]
Magistrate

[Signature]
Plaintiff
[Signature]
Defendant

IN THE CLARK COUNTY MUNICIPAL COURT
Springfield, Ohio

FILED
13 JUL -2 PM 2:31
CITY A. FERGUSON, CLERK
MUNICIPAL COURT
BY [Signature] DEPUTY

GS HOLDINGS BROOKSIDE LTD.
Dba BROOKSIDE VILLAGE
MOBILE HOME COMMUNITY

*

CASE NO.: 13 CVG 01535

*

Plaintiff,

*

Magistrate Phillips

v.

*

JAMIE L. RUTHERFORD,

*

MEMORANDUM IN

SUPPORT OF

And

*

MOTION TO DISMISS

MARK CAMPBELL

*

AND TRIAL MEMORANDUM

Defendants.

I. INTRODUCTION

Plaintiff, GS Holdings Brookside LTD, a park owner, brought this action against Defendants Jamie L. Rutherford and Mark Campbell, the manufactured home park residents, for unlawfully and forcibly holding over their term solely because Plaintiff intended to terminate defendants' purported month-to-month tenancy. Plaintiff did not allege that Defendants had failed to pay rent when due nor that Defendants had violated any term or condition of the lease agreement of the manufactured home park. Plaintiff contends that Defendants can be evicted because they are holdover tenants. Plaintiff bases its argument on the fact that it served Defendants a thirty (30) day Notice to Vacate

the premises by May 29, 2013. When Defendants did not vacate, Plaintiff served a three (3) day notice to leave the premises as required under R.C. Section 1923.04 prior to the commencement of this action. The sole ground stated on the notice to leave premises was "We have chosen not to renew your lease." (Exhibit C to Plaintiff's Complaint)

As will be discussed below, there is no provision in R.C. Chapter 4781 for a manufactured home park owner or operator to terminate a month to month tenancy of a resident in a manufactured home park. Moreover, Plaintiff did not offer Defendants the opportunity to have a year lease as required under R.C. 4781.40. As will be discussed below, Plaintiff is not entitled to evict Defendants and this matter should be dismissed.

II. FACTS

Approximately one year ago, Defendant Jamie Rutherford purchased a manufactured home in Brookside Village Mobile Home Park. Plaintiff, doing business as Brookside Village Mobile Home Community, never offered Jamie Rutherford the opportunity to enter into a year long lease. On May 17, 2012, the only lease agreement Plaintiff offered Jamie Rutherford was a month-to-month tenancy which she signed on May 17, 2012. (Attached as Exhibit A to Plaintiff's complaint)

For no known reason, on April 29, 2013 Plaintiff sent Defendant Jamie Rutherford a 30 day notice to leave the premises. When Defendants did not leave, Plaintiff served a three day notice to leave on June 4, 2013.

Defendants offered to pay lot rent for May and June 2013, but Plaintiff refused the lot rent for both months.

Defendants have limited income and it would be cost prohibitive for them to move Jamie Rutherford's manufactured home.

III. LAW AND ARGUMENT

- A. A park owner may not evict a month-to-month a tenant on the grounds that a thirty-day notice of termination terminated the tenancy. Additionally a park owner is required to offer a manufactured home park resident a year long lease that may be renewed.

R.C. 4781.40 (A)(1) states that:

The park operator shall offer each home owner a written rental agreement for a manufactured home park lot for a term of one year or more that contains terms essentially the same as any alternative month-to-month rental agreement offered to current and prospective tenants and owners. The park operator shall offer the minimum one-year rental agreement to the owner prior to installation of the home in the manufactured home park or, if the home is in the manufactured home park, prior to the expiration of the owner's existing rental agreement.

R.C. 4781.40 (A)(2) states in part that:

The park operator shall deliver the offer to the owner by certified mail, return receipt requested, or in person. If the park operator delivers the offer to the owner in person, the owner shall complete a return showing receipt of the offer...

While R.C. 5321.17(B) provides that a month-to-month tenancy can be terminated with a thirty (30) day notice, R.C. Chapter 5321 does not govern the relationship between a manufactured home park owner and their tenants. R.C. Chapter 4781 (formerly R.C. Chapter 3733) governs that relationship and R.C. Chapter 4781 has no provision for the termination of a month-to-month tenant. It was not an accident or an oversight that the state legislature failed to include this provision. There is recognition today by both the state legislature and the Supreme Court of Ohio that mobile homes are

not mobile. The Supreme Court of Ohio stated in *Schwartz v. McAtee* (1986), 22 Ohio St. 3d. 14, at 18 (Attachment 1) that:

The history of R.C. Chapter 3733 [the predecessor of R.C. Chapter 4781] makes clear that the General Assembly was undoubtedly aware of the immobile nature of today's "mobile" homes. The legislature not only created obstacles to the landlord's authority to evict, but even changed the statute's terminology from "trailer," which describes a portable structure, to "manufactured home," which describes a permanent structure. We must remain mindful of this legislative history when considering the arguments of the parties herein. Furthermore, we know that R.C. Chapter 3733 is a remedial statute and, therefore, must be liberally construed in order to promote its object and assist the parties in attaining justice. R.C. 1.11.

The Supreme Court of Ohio in its opinion provided a chart (*Id.* pp 17,18) which listed the similarities between R.C. Chapter 5321 and R.C. Chapter 3733 (currently Chapter 4781). The chart demonstrates that all but one of the provisions in R.C. Chapter 5321 are in R.C. Chapter 3733. The only provision that is not in R.C. Chapter 5321 is R.C. 5321.17 dealing with termination of periodic tenancies.

The Supreme Court of Ohio explained with regard to this provision:

The General Assembly chose not to put a similar provision in R.C. Chapter 3733 and instead created formidable restrictions on the ability of manufactured home park operators to evict tenants. These restrictions were made necessary by the fundamental differences between apartment or conventional house tenants and manufactured home tenants. When an apartment or home tenant is evicted, the tenant simply needs to move his belongings to his new home. While this may present some difficulties, they are insignificant when compared to the dilemma faced by the manufactured home tenant who may be unable to find another park and who faces expensive storage or prohibitive moving costs. Clearly, in many instances "mobile" homes are not mobile at all. In reality, they are immobile homes. Once they are put in place, they require a considerable amount of disassembly before they can be transported to a new location. (Emphasis in original) *Id.* 18.

The *Schwartz* decision has been followed by numerous lower courts and the decision was never modified or overruled either by the Supreme Court of Ohio or the Ohio Legislature. In *May v. Sampsel*, 5th Dist. No 06-CA-000034, 2007-Ohio-2805, 2007 WL 1651851, (attachment 2) the park owner had a dispute with the mobile home owner about outside items not being put into storage. The park owner terminated the mobile home owner's month-to-month tenancy by a letter. The mobile home owner did not move and the park owner filed an eviction action. The trial court granted the eviction stating that, "A landlord can terminate a month-to-month tenancy by giving the tenant a minimum of 30 day notice..." *Id.* ¶ 23. The mobile home owner appealed and the Fifth Appellate District reversed and stated that a park owner must have a ground for cause under R.C. 3733.091 [currently R.C. 4781.36] in order to terminate the rental agreement. Since the trial court applied R.C. 5321.17 (termination of periodic tenancies), the trial court improperly applied the wrong statute.

In a similar case in *Ramm v. Shreves*, Athens M.C. No 2004-CVG-00845 (May 4, 2005), (attachment 3) the park owner terminated the manufactured home owner's month-to-month tenancy with a 30 day notice before the beginning of the periodic tenancy. The manufactured home owner did not move and the park owner filed an eviction action. The trial court dismissed the eviction and stated that:

[T]his Court would find R.C. § 5321.17 merely a codification of common law that all periodic leases can be terminated without cause by either party giving one full period's notice to the other. Such may be common law, but it is not the current law of Ohio as applicable to manufactured home park operators and manufactured home owners. *Schwartz v. McAtee*, supra; R.C. § 3733.11 (currently R.C. 4781.40). *Id.* ¶ H.

Applying *Schwartz* to the present case, Plaintiff must plead and prove cause for eviction. A manufactured home park lot periodic lease will never expire on its

own or with mere notice. In the absence of cause, Plaintiff's only recourse may be to offer Defendants a lease for at least one year in accordance with R.C. § 3733.11. *Id.* ¶ 1.

In *Daniels v. Decker*, Harrison C.C. No 08-CVG-00042 (June 10, 2008), (attachment 4) the plaintiff was not a park owner. The plaintiff purchased property that had three mobile homes on it. The mobile home owners had a month-to-month lease with the previous owner of the property. The plaintiff attempted to terminate a mobile home owner's month-to-month tenancy with a 30 day notice. The mobile home owner did not move and the plaintiff filed an eviction action. The trial court dismissed the eviction and stated that:

In *Schwartz v. McAtee*, (1986) 22 Ohio St. 3d. 14, the Supreme Court held that the landlord of premises occupied by a mobile home owned by the tenant could not terminate a month-to-month tenancy without first establishing grounds to do so.

Thus, a tenant in a manufactured home park cannot become a holdover tenant unless: (a) he fails to fulfill an obligation imposed by R.C. 3733.101, (currently R.C. 4781.39) provided it materially affects health and safety; (b) the park operator gives the tenant written notice of noncompliance in accordance with R.C. 3733.13 (currently R.C. 4781.45); and (c) the tenant fails to remedy the noncompliance by the date specified in the notice which shall not be less than thirty days.. *Id.* p 19.

Those requirements extend not only to mobile homes in a mobile home park but to every mobile home owned by a tenant. *Id.* p 2.

Consequently, a park owner/operator may not terminate a month-to-month tenant using a thirty day notice of termination which is provided for in R.C. 5321.17. A park owner may only terminate a mobile home tenancy under R.C. 4781.45 (formerly R.C. 3733.13), which discusses violation of public health and safety codes.

In the present case, there are no allegations in Plaintiff's complaint that there were any such violations. There was only an attempt by the park owner to unlawfully terminate the month-to-month tenancy, which is plainly prohibited under Ohio law. In addition Plaintiff failed to offer Defendants the opportunity to have a year lease as required under R.C. 4781.40. This Court should not allow an eviction in this case. To hold otherwise would reward Plaintiff for its unlawful activity.

Plaintiff's attempt to evict Defendants based on termination of Defendants' periodic tenancy is groundless and this case should be dismissed

- B. A balancing of the equitable interest will relieve the tenant of the harsh consequences of forfeiture.

In this case, Defendants have raised the defense of equity. This Court has the power to prevent an eviction or a forfeiture of leasehold interest by balancing the equities involved; that is, by balancing each party's interest. The Court should look at the interest of the landlord in terminating the lease and the interest of the tenant in not having the lease terminated. Finally, the Court must balance these interests and decide in whose favor the balance weighs.

In *Gorsuch Homes, Inc. v. Wooten*, (1992), 73 Ohio App. 3d 426, the tenant Wooten's son participated in painting graffiti in the apartment complex. The lease provided that material non-compliance would justify termination of the tenancy; including, the failure to reimburse the landlord within thirty (30) days for damages. The tenant failed to pay within the thirty days and an eviction action was filed. The trial court granted the eviction and failed to consider any equitable issues. The Second District

Court of Appeals reversed for, among other reasons, the trial court's failure to consider equitable interest. The court of appeals stated:

... when a party raises an equitable defense, it is the responsibility of the court to weigh the equitable considerations before imposing the forfeiture. Among the factors to be considered are Wooten's income; her presumed inability to pay \$907.00 in one month, which can be inferred from 100% rent subsidy and utility rebate; the fact that she personally did not cause the damage; removal of her son from the apartment complex; the fact that money damages will compensate the landlord; and the hardship if she is evicted, including Wooten's probable difficulty in obtaining other subsidized housing. *Id.* at 13:

It is well established under Ohio law that a clause in the lease which provides for forfeiture of the lease is only for the purpose of securing payment of rent. See *Zanetos v. Sparks*, 13 Ohio App. 3d at 244, 468 N.E. 2d at 940.

In *Richards v. Eckelberry*, Licking M.C. No 00-CVG-01232 (Nov. 9, 2000), (attachment 5) the manufactured home park lease provided that it would become a month-to-month tenancy after a year. After a year, the park owner claimed that she sent the Defendant on two occasions a notice of the violation of the park rules and that the manufactured home owner's tenancy would terminate. The park owner then followed up after 30 days with a three day notice to leave the premises. The Defendant did not move and the park owner filed an eviction action. At trial the Plaintiff introduced evidence of the Defendant's children being on other people's lots in the park. The trial court dismissed the eviction and stated that:

The Court first wishes to note that the Defendant cannot be evicted because she was on a month-to-month lease and was given a thirty-day notice to leave the premises by the landlord. *Schwartz v. McAtee*, (1986) 22 Ohio St. 3d. 14 provides that a tenant cannot become a holdover tenant unless that tenant fails to fulfill an obligation imposed by R.C. § 3733.101 (currently R.C. 4781.39) which affects health and safety in a material way; the park operator gives the resident written notice of non-compliance in accordance with Ohio Revised Code

Section 3733.13 (currently R.C. 4781.45), and the tenant fails to remedy the non-compliance by the date specified, which shall not be less than thirty days. *Id.* p. 2.

The court further addressed the equity issues and stated:

The Ohio Supreme Court in *McAtee* went to great lengths in that opinion to point out the enormous economic hardship that results when manufactured homes are ordered removed. This Court will not cause that to occur based upon the quality and quantity of the evidence presented regarding rule violations in this case. *Id.* p. 2.

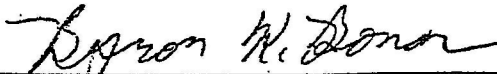
In the present case, Plaintiff's only interest or harm is unknown. Even if Defendants were late with rent, which is not the case, Plaintiff could be more than adequately compensated by the payment of a penalty with a late payment of rent. On the other hand, Defendant Jamie Rutherford has a substantial interest in maintaining her manufactured home in the manufactured home park. She has limited income and to move the manufactured home would be cost prohibitive for her. She would lose her home she paid for a year ago and the home of her children, who are living with her. With this eviction, it would be doubtful that she could get another park to accept her. An eviction from the manufactured home park would cause an obvious hardship to Defendants.

Plaintiff has essentially no damages and there is no reason for forfeiture of the lease.

IV. F. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant a judgment dismissing this case.

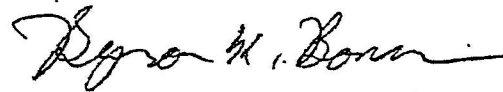
Respectfully submitted:
LEGAL AID OF WESTERN OHIO.
Attorney for Defendants
20 S. Limestone Street, Suite #220
Springfield, Ohio 45502
Phone (866) 837-8847
Fax (937) 323-0291



Byron K. Bonar 0002602

PROOF OF SERVICE

I hereby certify that a copy of the foregoing motion to dismiss with the attached memorandum was served on Kurt S. Hasselbach, Attorney for the Plaintiff, by personally delivering a copy to his office at 8 North Limestone St., Ste. C, Springfield, Ohio this 2nd day of July 2013.



Byron K. Bonar 0002602
Attorney for Defendants