

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

ANTHONY LAKOTA  
Plaintiff (s)

Date: November 25, 2014

-VS-

2014 CVG 003743

AYANNA L MCEL RATH  
Defendant (s)

MAGISTRATE'S DECISION

This matter came before the Court for status hearing pursuant to an Agreed Judgment Entry ("Agreement"), as well as on Defendant's Motion to Show Cause and Motion to Prohibit Re-Rental<sup>1</sup> on November 7, 2014 before Magistrate Heather A. Veljković, to whom it was referred by Judge Raymond L. Pianka pursuant to Ohio Rule of Civil Procedure 53.

Plaintiff was not present, but was represented by counsel; additionally, Jolene Lakota, Plaintiff's wife and property manager, was present. Defendant was present, and was represented by counsel.

Prior to the commencement of hearing, counsel for Plaintiff stipulated not to re-rent the premises located at 2032 W. 101<sup>st</sup> Street, Cleveland, Ohio until such time as the items listed in the Notice of Violation issued by the City of Cleveland Department of Building and Housing have been corrected. Counsel for the parties also stipulated that Defendant has vacated the premises, thus eliminating the need for a status hearing. Therefore, the matter proceeded to hearing only on Defendant's Motion to Show Cause.

Counsel for Plaintiff made an oral motion for continuance, which the undersigned Magistrate denied prior to moving forward with hearing.

FINDINGS OF FACT:

{¶1.} The parties entered into an Agreed Judgment Entry ("Agreement"), with the assistance of the Court's ADR Specialist, C. David Witt, on or about October 2, 2014.

{¶2.} Specifically, Plaintiff agreed "to restore operating of the heating system promptly." See Para. 7.

{¶3.} The original malfunction of the heating system stems from November 21, 2013.

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<sup>1</sup> Ms. McElrath also filed these Motions in a companion case, 2014 CVG 3517; however, this case has been dismissed as a result of the Agreed Judgment Entry discussed infra.

- {¶14.} The City of Cleveland Department of Building and Housing issued a Notice of Violation to Plaintiff regarding the HVAC system.
- {¶15.} Plaintiff has administratively appealed the Notice of Violation and has been granted additional time to repair the HVAC system.
- {¶16.} To date, neither Plaintiff, nor any other person or entity, has obtained permits from the City of Cleveland to repair the furnace.
- {¶17.} Plaintiff attached to his Response to Defendant's Motion to Prohibit Re-Rental and Motion to Show Cause a copy of a receipt from work that was purportedly completed in or about January 2014, but no receipts of any work that has been done to the HVAC system since the date of the signed Agreement.
- {¶18.} While it appears that not one witness can state with certainty the problem with the furnace system, it appears that the chief concern is that the blower constantly runs.
- {¶19.} There was no testimony that would indicate the *heat* was not working; rather, Defendant testified that it was cool in the property due to the constantly moving air.
- {¶10.} Defendant additionally testified credibly that her electric bills were increased because of the constantly running fan.
- {¶11.} When a private inspector hired by Defendant inspected the property on the day before hearing, he found that the furnace did not have a cover, that it was very dirty and had no filter inside it.
- {¶12.} Upon offering the testimony of Jolene Lakota, Plaintiff attempted to admit evidence relating to a recent HUD inspection, for the purpose that the home "passed" the inspection. However, no one from the agency appeared to authenticate the report; the report appeared to be incomplete, and counsel for Plaintiff failed to move the exhibit into evidence at the close of hearing and counsel for Defendant objected to its admission.

#### CONCLUSIONS OF LAW:

- {¶13.} Counsel for Plaintiff argues that Paragraph 11 of the Agreement precludes Defendant from pursuing an Order to show cause, since it states that the parties waived "all other claims arising out of the landlord tenant relationship through the date and time of execution of this agreement." Counsel for Defendant argues, and the Magistrate finds, that the last clause of that paragraph controls: the parties waived only those claims *through the date and time of execution of the Agreement*. Plaintiff's breach came at a point in time that occurred after the execution of the Agreement. It defeats the entire purpose of the Agreement if one

of the parties is not able to enforce a term to which the other party has agreed, and not fulfilled.

- {¶14.} While the Agreement did not specify a date certain by which Plaintiff had to repair the heating system, there were more than thirty days between the execution of the Agreement and the date of the status hearing.
- {¶15.} The fact that Plaintiff has administratively appealed the Notice of Violation regarding the HVAC system does not excuse Plaintiff's obligation to comply with the terms of the Agreement in the instant case.
- {¶16.} The HUD inspection report is deemed inadmissible due to the fact that it was not properly authenticated, it appears to be incomplete, and was not admitted into evidence.
- {¶17.} The Magistrate therefore concludes that Plaintiff has failed to abide by the terms of the Agreement, by failing to restore the heating system promptly.
- {¶18.} Although generally described as *sui generis*, contempt may be classified as either civil or criminal, depending on the sanction imposed. *Jeffers v. Jeffers*, 7<sup>th</sup> Dist. No. 07 BE 36, 2008-Ohio-3339. The order setting this matter for hearing on Defendant's Motion to Show Cause did not specify whether the matter was set for a civil or criminal contempt proceeding—or both.
- {¶19.} Civil contempt orders seek to coerce compliance with an order of the Court, while criminal orders punish the party who offends the Court. *Porter v. Porter*, 4<sup>th</sup> Dist. No. 07CA3178, 2008-Ohio-5566, slip copy. At hearing, counsel for Defendant maintained that she did not seek an order of criminal contempt.
- {¶20.} In a proceeding for criminal contempt, the same procedural safeguards that apply to ordinary criminal proceedings also are in place. This includes a defendant's right to be present at the hearing. *Doerfler v. Doerfler*, 9<sup>th</sup> Dist. No. 06CA0021, 2006-Ohio-6960. Plaintiff having failed to appear personally, the matter proceeded with respect to the civil contempt only.
- {¶21.} Typically, a sanction for civil contempt must allow the offender an opportunity to purge himself of the contempt. *Id.* The burden of proof in a civil contempt hearing is clear and convincing evidence. *Id.*
- {¶22.} Compensation of an injured party is a traditional function of civil contempt. *Oak Hills Bank v. Ison*, 4<sup>th</sup> Dist. No. 03CA5, 2003-Ohio-5547. "[J]udicial sanctions in civil contempt proceedings may be employed to compensate the complainant for losses sustained where it can be proven that the damages were a direct result of the contempt." *First Bank of Marietta v. Mascrote, Inc.* (Ohio App. 4 Dist., 1998), 125 Ohio App.3d 257, 265, 708 N.E.2d 262, 268

{¶23.} Plaintiff, despite having entered voluntarily into the Agreement, in which he specifically agreed to restore the heating service, failed to do one bit of work since he entered into the Agreement.

{¶24.} The Magistrate concludes that Defendant incurred attorney's fees and private inspector fees in association with Plaintiff's breach of the Agreement.

RECOMMENDATION:

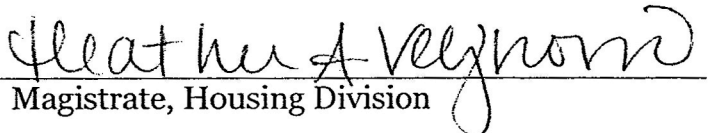
{¶25.} Defendant having vacated the premises as agreed, pursuant to paragraph five of the Agreement, Plaintiff's first cause of action is dismissed with prejudice.

{¶26.} As stipulated by Plaintiff through counsel, **Plaintiff is prohibited from re-renting the premises located at 2032 W. 101<sup>st</sup> Street, Cleveland, Ohio 44102.**

{¶27.} **This order shall remain in effect** until such time as the Court grants relief from it. Plaintiff may file a motion for relief from this order, after completing all necessary repairs and remedying all existing code violations. Plaintiff must secure written confirmation from the City of Cleveland Housing Inspector that all violations have been repaired, and must attach that written confirmation to the motion for relief. The motion for relief must be filed under this case number with the Second Floor Clerk of Court's Office.

{¶28.} **A bailiff of the Housing Division** shall post a copy of this order at the premises. The bailiff shall make a copy of this entry available to the residents of the property adjoining the above described premises.

{¶29.} The Court therefore grants Defendant's motion to show cause, and finds that Plaintiff is in civil contempt of this Court, by failing to comply with paragraph seven of the Agreement. Case is set for hearing on Defendant's attorney fees and private inspector fees associated with bringing the Motion to Show Cause on **January 15, 2015 at 2:30 PM** on the Thirteenth Floor of the Justice Center.

  
Magistrate, 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(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.

SERVICE

A copy of this Magistrate's Decision was sent by regular U.S. mail to the parties on

11 / 25 / 14.

