

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RONALD J.H. O'LEARY, JUDGE

LOKAL REAL ESTATE
Plaintiff (s)

Date: August 20, 2018

-VS-

2017 CVG 004609

C [REDACTED] et al
Defendant (s)

JUDGMENT ENTRY

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

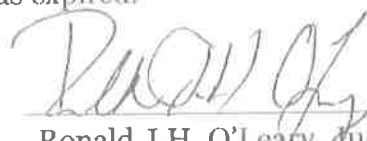
The case is one of first impression with the Cleveland Municipal Court, Housing Division; it appears to be the first case involving a request for the sealing of a civil eviction record in Ohio, at least among reported cases.

As such, it is worth expanding upon the Magistrate's Decision to stress the significance of creating a precedent for permitting the sealing of an eviction record. The Court is mindful of the importance of maintaining open public records.

In approving and confirming the Magistrate's Decision, the Court notes that the precedent created is limited strictly to the facts and posture of this case: the parties entered into an agreed judgment entry expressly permitting the sealing of the record, the Defendants' motion to seal was not opposed (in writing, or at hearing) by Plaintiff, and Defendants have demonstrated "unusual and exceptional circumstances" as discussed in *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446, (2013).

Defendants' Motion to Seal is granted.

Clerk of Court is ordered to take any necessary step to seal the record of this case, and specifically is instructed to ensure that Defendants names are no longer available in any case index search on the computerized docket. The Clerk of Court shall seal the record after the appeal time for this matter has expired.



Ronald J.H. O'Leary, Judge
Housing Division

SERVICE

A copy of this judgment entry and order was sent by regular U.S. mail to the addresses of record for parties/counsel on 8 / 23 / 18 by VAW.

☒ Clerk to issue notice of Final Appealable Order

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MAGISTRATE'S DECISION

Case called for hearing on Defendants' Motion to Seal Record on March 15, 2018. Plaintiff was neither present through a representative, nor represented by counsel. Defendants both were present, and were represented by counsel. Cleveland Municipal Court Interpreter Catherine Piña-Arrieta was present in Court to provide interpretation services.

FINDINGS OF FACT:

The Defendants and Members of their Household

- {¶1.} Defendants G [REDACTED] R [REDACTED] ("G [REDACTED]") and B [REDACTED] R [REDACTED] ("B [REDACTED]"), daughter and father, were tenants at the property located at 3296 W. 17th Street, Cleveland, Ohio ("premises").
- {¶2.} Defendants both speak Spanish and required the use of a Spanish interpreter for the proceedings.
- {¶3.} G [REDACTED]'s first language is Spanish. She has spoken Spanish her entire life, and speaks Spanish with her father and her children. It is the main language spoken in her home. Her command of the English language is limited.
- {¶4.} G [REDACTED] prefers to conduct her affairs in Spanish because she is more comfortable with that language, and she prefers to communicate in Spanish so that she does not make any mistakes in oral communication.
- {¶5.} G [REDACTED] suffers from asthma; she has had a leg amputated and wears a prosthetic; she appeared at the hearing in a wheelchair.
- {¶6.} G [REDACTED] needs, and receives, dialysis; currently, she is receiving dialysis treatments four times per week.
- {¶7.} G [REDACTED] has a prosthetic eye; she has difficulty reading and filling out forms.

- {¶8.} G[REDACTED] suffers from migraines, vomiting, and incontinence.
- {¶9.} B[REDACTED] is seventy-eight years old. He has diabetes, issues with his kidneys, and high blood pressure, among other medical concerns. He walked with a cane at the proceedings, and had difficulty standing to be administered the oath before testifying.
- {¶10.} He has applied for senior housing; but has not yet received a response from either of the two units for which he has applied. He does not know why he has not had a response.
- {¶11.} G[REDACTED] has two minor children who live with her and her father. They are ages eight and three.
- {¶12.} One of the children had surgery from her main vein in her neck to her heart; she is not well, but is doing better.
- {¶13.} The other child had surgery nine times before he was five months old, for his trachea. He receives nutrition through a gastrointestinal tube.
- {¶14.} G[REDACTED] and her family were participants in the Housing Choice Voucher Program ("HCVP")—the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. See 24 CFR 982, et seq.

Defendants' Tenancy at the Premises

- {¶15.} Enrique Gandarilla was the former owner of the premises. He spoke Spanish.
- {¶16.} Defendants initially rented the premises from Gandarilla. They had lived as tenants at the premises for six years, when Gandarilla sold the property.
- {¶17.} G[REDACTED] was a participant in the HCVP for approximately fourteen years, and used her voucher at the premises both during the time that they were tenants of Gandarilla, as well as when he sold the property.
- {¶18.} When he sold the property, Gandarilla did not introduce Defendants to anyone from Plaintiff's organization.
- {¶19.} Five and one half months went by and Defendants did not pay their portion of the rent, because no one came by to collect it, and they did not know whom to pay.
- {¶20.} In March 2017, Plaintiff commenced the instant action on the basis of non-payment of rent.

- {¶21.} The premises was infested with roaches; it failed HUD-required inspections three times because of the roaches. The conditions of the premises caused health issues for Defendant G■■■■'s child with the gastrointestinal tube.
- {¶22.} Based on the failed inspections, the contract was terminated. CMHA instructed G■■■■ to move right away, and gave her a voucher to move to a new home.
- {¶23.} At some unspecified time between the filing of the Complaint and the end of July 2017, Defendants vacated the premises.
- {¶24.} Plaintiff filed a Notice of Dismissal with respect to the first cause of action only on July 31, 2017.
- {¶25.} The remaining claims resolved by the parties filing an Agreed Judgment Entry ("AJE") with the Court on November 21, 2017¹.
- {¶26.} At paragraph five of the AJE, Plaintiff agreed "** * * to the sealing of this record in order to avoid prejudice to the Defendants' future housing opportunities and/or to Defendants' credit."

Denial of New Housing

- {¶27.} Due to the children's disabilities—as well as her own—G■■■■ prefers to reside close to the hospital where they all receive services, which is on the west side of Cleveland.
- {¶28.} Due to her physical disabilities, G■■■■ seeks an accessible unit, in which she could use a wheelchair, and that also has a first floor bedroom, and no basement.
- {¶29.} After she vacated the premises, G■■■■ began to look for new housing. G■■■■ found a unit that met her specifications through the CHN Housing Partners (formerly known as Cleveland Housing Network; "CHN").
- {¶30.} She obtained an application packet from CHN ("Application Packet"). A copy of the Application Packet was admitted as Defendants' Exhibit A.
- {¶31.} Keith Moore, who has been employed by CHN for approximately seventeen months, is a property manager for units on the west side of Cleveland. In his role with CHN, he reviews applications for housing, and obtains information needed to qualify for HUD subsidies.

¹ Upon review, the AJE was forwarded to the Judge for review and signature; Judge O'Leary signed the AJE, but it appears that the Clerk of Court did not enter the signed document on the docket. Neither party has brought this issue to the attention of the Court. The AJE, with original signatures, shall be forwarded forthwith to the Clerk of Court for journalization, nunc pro tunc.

- {¶32.} Page one of the Application Packet is called “Application Instructions”. Among other requirements, the instructions state, “**NO eviction judgments within the past 2 years**”. [Emphasis in original].
- {¶33.} G■■■■ submitted her Cleveland Housing Network Application (“Application”) to CHN. A copy of the Application was admitted as Defendants’ Exhibit B.
- {¶34.} On page two of the Application, there is a section about “General Information”. It asks “Are you currently in the process of becoming evicted or have you or any member of your household been evicted?” G■■■■ answered “NO”.
- {¶35.} In September 2017, Mr. Moore reviewed G■■■■’s Application; on October 5, 2017, Mr. Moore additionally looked at the Cleveland Housing Court docket on his own initiative—and came across the instant case. A copy of the docket Mr. Moore reviewed was admitted as Defendants’ Exhibit C.
- {¶36.} The docket entry for July 31, 2017 states, “ON APPLICATION OF THE PLAINTIFF THIS CASE IS DISMISSED WITHOUT PREJUDICE AT PLAINTIFF’S COSTS FOR WHICH JUDGMENT IS RENDERED. AS TO 1ST CAUSE ONLY.”
- {¶37.} G■■■■ had never been evicted before.
- {¶38.} Mr. Moore denied G■■■■’s application on the basis that an eviction had been *filed* against her; he only reviewed the caption, and did not ask G■■■■ for any additional explanation.
- {¶39.} The fact that the matter ultimately was dismissed did not affect Mr. Moore’s decision².
- {¶40.} Due to her inability to obtain new housing within the timelines established by the HCVP, the voucher expired, and G■■■■ no longer is a participant in the HCVP.
- {¶41.} If she wanted to participate in the HCVP again, G■■■■ would need to re-apply, a process that typically takes four to five years on a waitlist.
- {¶42.} Because CHN denied their housing, Defendants currently are living in market-rate housing. It is difficult for G■■■■ and B■■■■ to afford their rent.
- {¶43.} The public record of the instant case, showing that an eviction was filed against Defendants, makes it more difficult for Defendants to secure housing.

² Counsel for Defendant additionally argued at the motion hearing that she had sent Mr. Moore electronic mail correspondence explaining the circumstances, but that G■■■■’s application still was denied.

CONCLUSIONS OF LAW:

- {¶44.} Plaintiff has not filed an opposition memorandum to Defendants' Motion to Seal. Pursuant to Housing Div. Loc. R. 3.052, the Court may construe this as Plaintiff admitting that the motion should be granted. Additionally, Plaintiff specifically agreed "*** to the sealing of this record in order to avoid prejudice to the Defendants' future housing opportunities and/or to Defendants' credit." AJE at paragraph 5. Plaintiff did not appear at the motion hearing.
- {¶45.} Upon review of relevant law, it appears that there are no Ohio decisions or statutes relating to the sealing of an eviction record³. However, Defendants draw the Court's attention to *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446, ¶14 (2013).
- {¶46.} In *Schussheim*, the Supreme Court of Ohio examined whether a trial court has the authority to seal records relating to a dissolved civil protection order ["CPO"] without express statutory authorization to do so.
- {¶47.} The *Schussheim* Court held "that a court has the inherent authority to order the expungement and sealing of records that relate to a dissolved CPO in "unusual and exceptional circumstances." In deciding whether to grant this remedy, the court must determine whether the "interest of the accused in his good name and right to be free from unwarranted punishment" outweighs the "legitimate need of government to maintain records." [*Pepper Pike v. Doe*], 66 Ohio St.2d at 377, 421 N.E.2d 1303. And "[w]here there is no compelling state interest or reason to retain the * * * records," the applicant is entitled to this remedy. *Id.* This appears to be a case involving "unusual and exceptional circumstances," because the complainant who filed the petition for a CPO later moved to dissolve the CPO and now avers that she believes expungement is in the best interest of herself and her children.
- {¶48.} The Supreme Court reasoned that "unusual and exceptional circumstances exist because the complainant who originally filed for the CPO subsequently filed a motion to dissolve it, which the court granted, and thereafter provided an affidavit in support of the application to expunge and seal the records pertaining to it." *Id.*
- {¶49.} Defendants argue that sealing of the eviction record is the only reasonable way to protect them from further and future denial of housing, and the only way to assist them in obtaining new affordable housing.

³ In *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income & Minority Tenants*, 24 Geo. J. on Poverty L. & Pol'y 59, 77 (2016), Gold discusses the existence of statutory authority in at least two jurisdictions—Illinois and Minnesota—that permit the sealing of eviction records under certain circumstances.

RECOMMENDATION:

{¶59.} Defendants' Motion to Seal record is granted.


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
8/23/18 AE