

IN THE FRANKLIN COUNTY MUNICIPAL COURT
Columbus, Ohio

FILED

1985 MAY -2 PM 3:53

FRANKLIN COUNTY
MUNICIPAL COURT
TED HYSSELL, CLERK

Case No. : M8502-CVG-04841

MAR-LIS PROPERTIES, :
 :
Plaintiff, :
 :
v. :
 :
RANDY RATTLIFF AND ALL :
OTHER OCCUPANTS, :
 :
Defendants. :

This cause came on for hearing before Referee Dennis R. Kimball on March 13, 1985. The plaintiff was represented by attorney David B. Pariser. Defendant Randy Rattliff was self-represented. Attorney Michael Kirkman appeared on behalf of Penny Runyon, an occupant of the property in question. Based upon the stipulated facts noted below and the Court record, the Referee makes the following Findings of Fact and Interim Conclusions of Law:

FINDINGS OF FACT

Taking judicial notice of the contents of the Court file for this case, combined with stipulations of the parties, the Referee finds the following facts: Defendant Randy Rattliff stated at the hearing on this cause that he had sublet his interest in the premises known as 4595-3D Refugee Road in Columbus, Ohio to a person by the name of Penny Runyon, who presently occupies the property with defendant Rattliff; the written lease between the plaintiff and defendant Rattliff prohibited Mr. Rattliff from subleasing to anyone else without prior written consent of the plaintiff; the plaintiff had no knowledge of this sublease; defendant Rattliff admitted at the hearing that no rent had been paid for February or March, 1985; a three day notice directed to "Randy Rattliff & all other occupants" was served at the residence on February 11, 1985 requesting vacancy by February 14th; this forcible entry and detainer action, alleging nonpayment of rent, was filed on February 20, 1985 naming "Randy Rattliff & all other occupants" as defendants; summons issued, naming "Rattliff, Randy and all occ", and was served with a copy of the Complaint by means of residential service on February 25, 1985; a second summons issued, bearing the same notations, and was sent by certified mail to the premises' address; said certified mail summons was apparently forwarded to 2016 Commons Road, Reynoldsburg, Ohio and signed by Patti Rattliff, the estranged wife of defendant Randy Rattliff, on February 26, 1985; at the hearing on this cause, defendant Randy Rattliff appeared and presented no defenses; Michael Kirkman, attorney for Penny Runyon, made a limited appearance on behalf of Ms. Runyon to contest the Court's jurisdiction as against his client.

INTERIM CONCLUSIONS OF LAW

A. After consideration of the arguments raised by briefs submitted from counsel, the Referee concludes that Chapman, et al. v. Knickerbocker Amusement Co., et al. (1949), 85 Ohio App. 215 (Ct. Apps. Franklin Cty.) and Hooper v. Seventh Urban, Inc., et al. (1980), 70 Ohio App. 2d 101 (Ct. Apps. Cuyahoga Cty.), cited by counsel for Ms. Runyon, must be distinguished from the case at bar on two crucial points. Firstly, both cited cases involve commercial leases whereas the instant case involves a residential lease. It is considerably more difficult for unauthorized entities in a business context (i.e., other corporations or business associations) to occupy commercial property while escaping the detection of a reasonably prudent lessor who could routinely visit the premises. A residential lease, as in the instant case, can quite easily involve lessees who permit others not authorized by the lease to occupy the premises, either through a sublease or otherwise. The relative ease with which individuals unknown to lessors may come to occupy leased residential property is a significant distinction from the cited cases.

B. Secondly, the parties seeking eviction in the cited cases actually knew or could reasonably have learned that other people or entities occupied the premises. However, the opportunities for lessors of residential premises to discover unauthorized occupants is significantly limited by Section 5321.04(A)(8) and (B) generally prohibiting unannounced inspections of the premises by a landlord. Since inspections of residential premises must be preceded by at least twenty-four hours notice from the lessor, such unauthorized occupants would have sufficient notice to escape detection.¹ The existence of such inspection limitations, the wisdom of which is not at all challenged, must restrict the Court from holding lessors of residential property to any standard of constructive knowledge concerning unauthorized occupants. The case herein not involving a commercial lease and the plaintiff not having actual knowledge of Ms. Runyon's occupancy before the hearing on this cause, and there being no basis for constructive knowledge, the Referee concludes that the above cited cases are not on point.²

C. The fundamental question to be decided is whether Ms. Runyon received sufficient notice of this action so as to require her appearance to prevent forfeiture of her possessory interest by default. On this point, Mullane v. Central Hanover Bank & Trust Co. (1950), 339 US 306, is the leading authority.

¹This is in no way suggesting that Ms. Runyon was engaged in any deception. However, a decision on this point in this case carries the potential of application beyond these facts. Thus, an analysis of tenants in different but analogous situations must be considered.

²An additional distinction exists between Chapman and the case at bar. Chapman involved a lease which specifically permitted subletting without the consent of the lessor. Thus it was within the contemplation of the lessor that other entities may occupy the property in the future. Subleases in the instant case were clearly prohibited without the plaintiff's consent. Therefore, Ms. Runyon's occupancy was beyond the expectations of the plaintiff.

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied. . . .

But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected Id. at 314 - 315. (Emphasis added.)

Thus, the test is one of "reasonableness" within the context of the "practicalities and peculiarities" of the situation. The plaintiff herein had no actual knowledge of an unauthorized occupant and no basis for having constructive knowledge of the same. The plaintiff took all reasonable steps available to it to prevent unauthorized occupancy by prohibiting it in the lease, both generally and by means of subletting. In the event such lease terms might have been breached, the plaintiff took the reasonable step of expanding the scope of its three day notice, complaint and summons by including the unknown occupants, if not by name, then by the apt description "and all other occupants". Such language is "reasonably certain to inform" such occupants, as Ms. Runyon herein, of the pending court action. Of the three major means of service of process commonly employed, residential service as utilized herein is probably the most likely means available for delivering process into the hands of unknown occupants of the premises itself. No challenge was made to the adequacy of time between service of process and the hearing date. Based on the foregoing the Referee therefore concludes that the residential service of process, containing the above noted language describing Ms. Runyon, was "notice reasonably calculated, under all the circumstances, to apprise [Ms. Runyon] of the pendency of the action and afford [her] an opportunity to present [her] objections", Id. at 314, and thus sufficient in itself to pass constitutional muster.

D. Counsel for Ms. Runyon cites §1923.06(A) of the Revised Code which requires the summons in this case to be "issued and directed . . . and be served and returned as in other cases". Cases cited by Ms. Runyon, Burton v. Murry (1973), 8 Ohio Ops. 3d 197 (Ct. Apps. Cuyahoga Cty.) and Cotterman v. Fahrig (1972), 55 Ohio App. 2d 15 (Ct. Apps. Montgomery Cty.), correctly construe such language as requiring compliance with Ohio Civil Procedure Rule 4.1(3), pertaining only to the means employed for service of process -- residential service -- and not the content of the process served, which is at issue in this case. For the reasons outlined in the preceding paragraphs, the Referee concludes that the residential service of process employed herein complies with Ohio Civil Procedure Rule 4.1(3).

E. In summary, the Referee concludes that service of process by means of residential service in a forcible entry and detainer action seeking the recovery of residential property is sufficient as against unknown and unnamed occupants of the property in question if said process contains the Complaint and summons, both of which must include within the designated defendants the language "and all other occupants", and only if the plaintiff in such an action had no actual knowledge of such occupancy and took all reasonable steps available to prohibit and prevent such an occupancy. Once plaintiff amends its Complaint to name Ms. Runyon as defendant, the Court will have jurisdiction over her. Any requirement to re-serve her personally would substantially delay this summary proceeding while only marginally improving the quality of notice conveyed to her.

INTERIM REFEREE'S RECOMMENDATION

In light of the limited appearance entered by counsel for Ms. Runyon, in the interest of justice the Referee recommends that Ms. Runyon be afforded an opportunity to present any defenses to the merits of the First Cause of Action herein at a hearing to be held on May 9, 1985. The Referee further recommends that the rights of any party to file objections to this Interim Recommendation be preserved until the rendering of the Final Recommendation to be made after the May 9th hearing.

May 1, 1985

Copies to: *DM*

David B. Pariser
35 East Livingston Avenue
Columbus, Ohio 43215

ATTORNEY FOR PLAINTIFF

Randy Rattliff
4595-3D Refugee Road
Columbus, Ohio 43232

DEFENDANT

Michael Kirkman
40 West Gay Street
Columbus, Ohio 43215

ATTORNEY FOR DEFENDANT PENNY RUNYON



REFEREE DENNIS R. KIMBALL