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IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
ENTER
HON. ALISON HATHEWAY
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.

TINA STEPHENS, : CASE NO. A 2102599

Plaintiff, : JUDGE ALISON HATHEWAY

ENTERED
JUN 24 2022

-vs.-

DOWNTOWN PROPERTY MANAGEMENT,

Defendant.

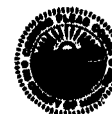
: **ENTRY DECLARING PLAINTIFF TINA STEPHENS A VEXATIOUS LITIGATOR AND GRANTING DEFENDANT DOWNTOWN PROPERTY MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT**

D135307813

This matter is before the Court upon Defendant Downtown Property Management's Motion for Summary Judgment and Motion to Set a Hearing for Sanctions Due to Plaintiff's Frivolous Conduct filed on April 22, 2022. The Court, having considered all the pertinent submitted materials and reviewed the applicable law, finds the Defendant's Motion for Summary Judgment is well-taken. For the reasons explained below, the Court hereby **GRANTS** Defendant's Motion for Summary Judgment and finds the Plaintiff, Tina Stephens, to be a vexatious litigator pursuant to R.C. 2323.52.

STATEMENT OF FACTS

This action arises from a complaint filed by Plaintiff Stephens (hereinafter "Plaintiff") on July 28, 2021 against Defendant Downtown Property Management (hereinafter "Defendant") seeking damages for various claims resulting from her prior tenancy at Airy Trails Apartments. The claims brought in Plaintiff's complaint were compulsory counterclaims that were asserted and/or were required to be asserted in a prior Municipal Court case involving Plaintiff and Defendant pursuant to Civ. R. 13(A). The complaint brought by Plaintiff in the present case is one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CLERK OF THE HAMILTON COUNTY
COURT, HAMILTON COUNTY, OHIO
DEPUTY

of six (6) civil suits brought in the Hamilton County Court of Common Pleas containing the same claims relating to her prior tenancy subsequent to the Municipal Court case, despite judgment being rendered against her in the Municipal Court case on June 8, 2020.

On October 30, 2021, Defendant filed an Answer and Counterclaim setting forth claims that Plaintiff's conduct constitutes both vexatious conduct and frivolous conduct. Defendant now moves for Summary Judgment as to Plaintiff's Complaint based on the doctrine of res judicata and as to Defendant's Counterclaim based upon the vexatious and frivolous conduct of Plaintiff.

LAW AND ANALYSIS

Under Civ. R. 56(C), summary judgment is proper where the moving party establishes that "(1) no genuine issue of any material fact remains, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and construing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 2005-Ohio-2163, 826 N.E.2d 832, ¶ 9, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

The moving party carries the initial burden of informing the court of the basis for the motion and identifying those portions of the record that set forth specific facts that demonstrate its entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the moving party fails to meet this burden, summary judgment is not appropriate. If the moving party meets this burden, summary judgment is appropriate only if the nonmoving party fails to meet its reciprocal burden setting forth specific facts establishing that a genuine issue exists for trial. *Id.* at 293, 662 N.E.2d 264. "[T]he opposing party may not rest upon mere allegation in the pleadings but must respond with affidavits or other appropriate materials to show that there is

a genuine issue of fact for trial." *9900 Timbers Dr. Investment LLC v. Nan Li*, 2020-Ohio-1473, ¶ 8 (1st Dist.).

A. Summary Judgment On Plaintiff Stephens' Complaint

1. *Res Judicata*

The doctrine of res judicata involves both claim preclusion and issue preclusion. *See Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 1995-Ohio-331, 653 N.E.2d 226 (1995). "[A] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Id.* at 382. "It is well established under Ohio law that "an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit." *Grill v. Artistic Renovations*, 2018-Ohio-747, 106 N.E.3d 934, ¶ 19 (8th Dist.), quoting *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69, 25 Ohio B. 89, 494 N.E.2d 1387 (1986).

Under Civ. R. 13(A), "all existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit, regardless of which party initiates the action." *Id.* at ¶ 21 (citation omitted). "A party's failure to assert a compulsory counterclaim constitutes a form of res judicata." *Id.* at ¶ 19.

Here, a final judgment was rendered in Defendant's favor and against Plaintiff on both the complaints and Defendant's counterclaims in the Municipal Court case. Additionally, all of Plaintiff's claims in the present case involve her prior tenancy at Airy Trails Apartments, including alleged issues with conditions at the property, allegations that Defendant violated building codes, and emotional distress. Def.'s Mot. for Summ. J. 5. These claims were compulsory counterclaims that were either asserted and/or were required to have been asserted in the Municipal Court case pursuant to Civ. R. 13(A). *See Grill* at ¶ 21 ("A party who fails to assert a compulsory counterclaim

at the proper time is barred from litigating that claim in a subsequent lawsuit."). Plaintiff's claims asserted in her complaint in the present case arise from the same transaction or occurrence with the same nucleus of facts that was the subject of the Municipal Court case which was heard on the merits.

As such, viewing the facts in a light most favorable to Plaintiff and finding no genuine issue of material fact, the Court finds that Plaintiff's complaint to be barred under the doctrine of res judicata, and therefore **GRANTS** Summary Judgment in favor of Defendant Downtown Property Management on Plaintiff Stephens' complaint.

B. Summary Judgment On Defendant Downtown Property Management's Counterclaims

1. *Vexatious Conduct by Plaintiff Stephens*

"Among the inherent powers possessed by the courts of common pleas in Ohio is the power to secure the orderly administration of justice and safeguard against conduct which would impair the free exercise of judicial functions." *Smith v. Ohio Dept. of Human Servs.*, 115 Ohio App.3d 755, 758, 686 N.E.2d 320 (12th Dist. 1996); *citing Zangerle v. Cuyahoga Cty. Court of Common Pleas*, 141 Ohio St. 70, 46 N.E.2d 865 (1943). The Court has "the ability to curb frivolous litigation practices [as] an essential part of the inherent powers [of the Court] to control and protect the integrity of [the Court's] own processes." *Mayer v. Bristow*, 91 Ohio St.3d 3, 17, 740 N.E.2d 656 (2000), *citing Smith, supra*, at 759.

"Ohio's vexatious litigator statute, R.C. 2323.52, allows a person who has "defended against habitual and persistent vexatious conduct" to ask a trial court to declare the person who engaged in that conduct a vexatious litigator." *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 36. For the court to declare a person a "vexatious

litigator," it must find that the person "has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions." R.C. 2323.52(A)(3). R.C. 2323.52(A)(2) defines "vexatious conduct" as conduct of a party in a civil action that satisfies any of the following:

> (a) The conduct obviously serves to merely harass or maliciously injure another party to the civil action.
> (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
> (c) The conduct is imposed solely for delay.

R.C. 2323.52(A)(2)(a)-(c).

Vexatious litigation conduct includes habitually filing "unnecessary, inappropriate, or supernumerary pleadings and motions" which raise or re-raise arguments that have been repeatedly rejected by the courts. *Howdyshell v. Battle*, 5th Dist. Morgan No. 19AP0001, 2019-Ohio-5232, ¶ 18. In *Mitchell v. Babickas*, the Eighth District has found vexatious conduct in cases where multiple complaints have been filed, as it "clearly demonstrate[s] a pattern of conduct...designed to harass" by "continuing to force [another party] to incur time and expense defending [such] actions, despite [the] court determining that [the] claims...were without merit." 8th Dist. Cuyahoga No. 105294, 2018-Ohio-383, ¶ 21.

However, it is the "nature of the conduct, not the number of actions," that determines whether a person is a "vexatious litigator." *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 40. "Whether undertaken in an array of cases or in a single action, the consistent repetition of arguments and legal theories that have been rejected by

the court numerous times can constitute vexatious litigation." *Prime* at 317. The court may look at the party's "conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought." *Davie* at ¶ 41.

Defendant argues that the six (6) subsequent Common Pleas complaints were filed without reasonable grounds, solely to harass and maliciously injure the named defendants in each case. The Court finds Defendant's argument to be well-taken. Defendant also argues that the claims brought in each of Plaintiff's six (6) subsequent suits were neither warranted under existing law nor supported by a good faith argument for an extension, modification, or reversal of existing law. The Court finds Defendant's argument to be well-taken.

Plaintiff has demonstrated a vexatious, habitual, and persistent pattern of filing unnecessary and supernumerary complaints against various Defendants, all which re-raise the same claims relating to her prior tenancy case in the Municipal Court where judgment was not returned in her favor. *See, e.g.*, *Howdyshell* at ¶¶ 4, 6, 17 (finding that the appellant's numerous and repetitive filings (seven lawsuits) constituted vexatious conduct that was "persistent and habitual...[and] done without reasonable grounds."); *Mitchell* at ¶ 21 (finding that the appellant demonstrated vexatious conduct when she "filed or caused to be filed three separate actions against [appellee] based upon identical facts...despite [the trial] court determining that both her [prior] claims...were without merit.").

As such, viewing the facts in a light most favorable to Plaintiff and finding no genuine issue of material fact, the Court finds that Plaintiff engaged in vexatious conduct per R.C. 2323.52(A)(2), and thus a vexatious litigator designation is appropriate under R.C. 2323.52(A)(3), and therefore **GRANTS** Summary Judgment in favor of Defendant Downtown Property Management on its Counterclaim against Plaintiff Stephens.

It is the order of this Court, pursuant to R.C. 2323.52(D), that Plaintiff Stephens is a vexatious litigator and she shall be prohibited from the following without first obtaining leave of court to proceed: (1) instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; (2) continuing any legal proceedings that the vexatious litigator instituted in any of the courts specified herein prior to this order; and (3) making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified herein. R.C. 2323.52(D)(1)(a)-(c).

2. *Frivolous Conduct by Plaintiff Stephens*

R.C. 2323.51(A)(2)(a) defines "frivolous conduct" as conduct that satisfies any of the following:

> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

R.C. 2323.51(A)(2)(a)(i)-(ii).

"Having found [a party] to be [a] vexatious litigator[], it follows that their conduct would be considered "frivolous" pursuant to R.C. 2323.51." *Brown v. Carlton Harley-Davidson, Inc.*, 8th Dist. Cuyahoga No. 101494, 2014-Ohio-5157, ¶ 11.

For the purposes of determining whether conduct serves to merely harass or maliciously injury another party, R.C. 2323.51(A)(2)(a)(i) "does not require evidence of intent. *Krlich v. Shelton*, 11th Dist. Trumbull No. 2018-T-0104, 2019-Ohio-3441, ¶ 55. Rather, it is an objective standard. *Id.* The Eleventh District has held that filing duplicative motions after the court has already ruled on the same matter and causing a defendant to incur substantial legal costs to defend

could objectively "serve no other purpose than to harass." *Lloyd v. Thornsbery*, 11th Dist. Portage No. 2019-P-0108, 2021-Ohio-240, ¶ 59.

Defendant argues that Plaintiff's filing of these six (6) subsequent lawsuits constitute frivolous conduct under R.C. 2323.51(A)(2)(a)(i) as the filings serve merely to harass or maliciously injure the named Defendants in each case and to cause them to needlessly incur costs to defend the litigation. Def.'s Mot. for Summ. J. 10-11. The Court finds Defendant's argument to be well-taken. The Plaintiff has been granted leave to proceed in forma pauperis, thus she has incurred no cost in filing the multiple complaints. However, the named Defendants in each case have been required to continue to incur time and expenses to defend the multiple and duplicative filings which has resulted in "a needless increase in the cost of litigation". R.C. 2323.51(2)(a)(i); *see also Mitchell* at ¶ 21.

Additionally, the Defendant argues that filing a claim that is barred by the doctrine of res judicata also constitutes frivolous conduct under R.C. 2323.51(A)(2)(a)(ii). Def.'s Mot. for Summ. J. 11. The Court finds Defendant's argument to be well-taken. "Filing a complaint barred by res judicata is frivolous conduct." *Mack v. Asset Acceptance*, 5th Dist. Ashland No. 07-COA-044, 2008-Ohio-5108, ¶ 40. *See also Cincinnati Ins. Co. v. Oancea*, 6th Dist. Lucas No. L-05-1007, 2005-Ohio-4872, ¶ 22 ("[I]t has been held that filing a claim that is clearly barred by res judicata meets the definition of frivolous conduct in R.C. 2323.51(A)(2)(a)(ii)).

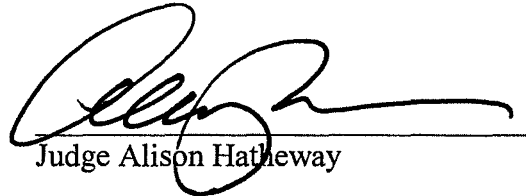
As such, viewing the facts in a light most favorable to Plaintiff and finding no genuine issue of material fact, the Court finds that Plaintiff engaged in frivolous conduct as set forth in R.C. 2323.51(A)(2)(a), and therefore **GRANTS** Summary Judgment in favor of Defendant Downtown Property Management on its Counterclaim against Plaintiff Stephens.

CONCLUSION

Having considered Defendant Downtown Property Management's Motion for Summary Judgment and Motion to Set a Hearing for Sanctions Due to [Plaintiff's] Frivolous Conduct, and being fully appraised of the relevant law, the Court finds the Defendant's Motion for Summary Judgment to be well-taken and **GRANTS** the same. Defendant's Motion to Set a Hearing for Sanctions pursuant to R.C. 2323.51 is hereby **DENIED**. As there are no remaining claims, this is a final appealable judgment and there are no just reasons for delay.

The Clerk of Courts shall send a certified copy of this Order to the Supreme Court of Ohio for publication deemed appropriate for enforcement of this order.

IT IS SO ORDERED.



Judge Alison Hatheway