

IN THE SUPREME COURT OF OHIO

BIO ENERGY (OHIO), LLC,

Plaintiff-Appellee,

-v-

PHOENIX GOLF LINKS, LTD.,

Defendant-Appellants.

: Case No. 12-1919
:
:
:
: ON APPEAL from the
: Franklin County Court of Appeals,
: Tenth Appellate District
:
: Ct. of App. No. 12AP-171
:
:
:
:

MEMORANDUM IN SUPPORT OF JURISDICTION

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I. EXPLANATION OF WHY THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

In a short, six-page decision, the Tenth Appellate District has turned the last century of landlord-tenant law on its head, holding that forcible entry and detainer claims under R.C. § 1923.01 *et seq.* may be brought by tenants against landlords. *Bio Energy (Ohio), LLC v. Phoenix Gold Links, Ltd.*, 10th Dist. No. 12AP-171, 2012-Ohio-4421.

Section 1923 of the Ohio Revised Code governs forcible entry and detainer and provides that “any judge of a county or municipal court or a court of common pleas, within the judge’s proper area of jurisdiction, may inquire about persons who make unlawful and forcible entry into lands or tenements and detain them, and about persons who make a lawful and peaceable entry into lands or tenements and hold them unlawfully and by force. If, upon the inquiry, it is found that an unlawful and forcible entry has been made and the lands or tenements are detained, or that, after a lawful entry, lands or tenements are held unlawfully and by force, a judge shall cause the plaintiff in an action under this chapter to have restitution of the lands or tenements.” R.C. § 1923.01.

Since the nineteenth century, forcible entry and detainer statutes in Ohio have been used by landlords and property owners as a method to remove unlawful possession of their property. It has not been used by tenants against landlords when tenants have been disposed from the lease property. Even simple Google searches of “forcible entry and detainer” returns definitions that make clear that this is a claim that landlords bring against tenants. By way of example, U.S. Legal.com states that “Forcible Entry and Detainer is an action that a **landlord, or new property owner** can take if the existing occupant refuses to leave after appropriate notice.” U.S. Legal, Forcible Entry and Detainer Definition, <http://definitions.uslegal.com/f/forcible-entry-and-detainer> (accessed November 8, 2012) (emphasis added).

In spite of more than a Ohio century of case law in which only landlords and property owners bring forcible entry and detainer claims against tenants, the Tenth Appellate District has decided that the Ohio Legislature was not specific enough in R.C. § 1923.01 *et seq.* to preclude a tenant from bringing a forcible entry and detainer claim against a landlord.

The public and great general interest in this case are clearly palpable. The public and great general interest is substantial because landlord-tenant relationships permeate society throughout the state, whether it be residential apartment renters or large commercial businesses that are leasing space in a shopping center. For tenants to be able to assert new claims of relief that have not otherwise been afforded to them for the past century creates concern for all landlords throughout the state.

Accordingly, Defendant-Appellant Phoenix Golf Links, Ltd. requests this Court exercise jurisdiction over this matter.

II. STATEMENT OF THE CASE AND FACTS

A. SWACO and Phoenix Agree to Build a Golf Course on Model Landfill

On January 14, 1999, the Solid Waste Authority of Central Ohio (“SWACO”) executed a Ground Lease for Golf Course (“Golf Lease”) with Model LF Golf, Ltd. (“Model Golf”), a predecessor in interest to Defendant-Appellant Phoenix Golf Links, Ltd. (“Phoenix”). (A true and accurate copy of the Golf Lease was attached as Exhibit C to Phoenix’s Memorandum in Opposition to BioEnergy’s Motion for Preliminary Injunction). Model Golf developed and operates a golf course built on the ground above the Model Landfill.

On the same day, SWACO executed a Gas Lease and Easement Agreement (“Gas Lease”) with Model Gas Development, Ltd. (“Model Gas”), another affiliate of Phoenix. (A true and accurate copy of the Golf Lease was attached as Exhibit B to Phoenix’s Memorandum in

Opposition to BioEnergy's Motion for Preliminary Injunction). The Gas Lease grants Model Gas the right to extract and utilize any and all landfill gas ("LFG"). The Gas Lease (Section 3.2(b)) requires Model Gas to maintain – itself or through agreement – the landfill gas management system ("LFGMS").

B. Phoenix Subleases Property to BioEnergy to Construct and Maintain the LFGMS

On March 10, 1999, Model Gas entered into certain agreements with Plaintiff-Appellee Bio Energy (Ohio), LLC's ("Bio Energy") with respect to the landfill including: a gas sublease pursuant to which Model Gas subgranted to BioEnergy those rights held by Model Gas through the Gas Lease; an Operation and Maintenance Agreement ("O&M Agreement") pursuant to which BioEnergy agreed to operate and maintain the LFGMS; and a sublease for about two tenths of an acre of the golf course property. (A true and accurate copy of the Gas Sublease was attached as Exhibit D, O&M Agreement as Exhibit E, and Sublease as Exhibit F to Phoenix's Memorandum in Opposition to BioEnergy's Motion for Preliminary Injunction). It is this last agreement that BioEnergy contends was breached.

In or about 2000-2001, Model Gas contracted with Bio Energy to design and construct substantial improvements to the LFGMS. (A true and accurate copy of the System Repair Agreement was attached as Exhibit G to Phoenix's Memorandum in Opposition to BioEnergy's Motion for Preliminary Injunction). Specifically, the design added approximately 55 LFG extraction wells, extensive piping reconfiguration, relocation of the original flare, and the installation of three generator sets. The new LFGMS went into operation in February 2001.

For years the LFGMS has underperformed. Phoenix has often communicated this to BioEnergy who has failed to take appropriate action. In the past year, SWACO has exerted

significant pressure on Phoenix and its affiliates to remedy ongoing operational deficiencies with the LFGMS. Phoenix took control of the LFGMS on August 7, 2011 to comply with the requirements put in place by SWACO. Since taking operational control of the LFGMS, Phoenix has been working to repair the system pursuant to the specific directions of SWACO.

C. Procedural Background

Phoenix sued BioEnergy in the Franklin County Court of Common Pleas on August 10, 2011, seeking compensation for the substantial maintenance obligations it has been forced to undertake, obligations BioEnergy contractually accepted, as well as for damages to the golf course resulting from the failure to maintain the LFGMS. (*See Phoenix Golf Links, Ltd., et al., v. Bio Energy, Ohio, LLC*, Case Number 11 CV 10009 in the Franklin County Court of Common Pleas). Two weeks later, BioEnergy instituted the case below, new litigation under a separate case number, alleging that the steps Phoenix took to comply with SWACO's directives resulted in the breach by Phoenix of a sublease concerning about two tenths of an acre that Phoenix leased to BioEnergy. BioEnergy also moved for a temporary restraining order and a preliminary injunction seeking control of the subleased premises. The Court denied BioEnergy's Motion for a TRO. On August 25, 2011 - the day after the Court denied the TRO request and refused to grant BioEnergy access to the premises - BioEnergy served a three-day notice as a predicate for a FED claim which it asserted in an Amended Complaint filed on August 30. The Amended Complaint also alleges breach of contract, trespass, and other claims.

On Friday, September 9, 2011, BioEnergy withdrew its motion for a preliminary injunction and instead opted to move forward at the September 12, 2011 hearing only on its request for a writ of restitution pursuant to the FED statute. Phoenix moved to dismiss the FED claim, arguing that BioEnergy had no right to bring a FED claim because that cause of action is

reserved for landlords, not tenants. The trial court held that BioEnergy failed to state a claim upon which relief might be granted.

The Tenth Appellate District reversed and remanded the trial court's decision, holding that there "an FED action may lie when brought by a tenant against a landlord who is otherwise one of the permissible defendants defined in R.C. § 1923.02." *Bio Energy (Ohio), LLC v. Phoenix Golf Links, Ltd.*, 10th Dist. No. 12AP-171, 2012-Ohio-4421, at ¶13. The Tenth Appellate District applied a overly narrow statutory interpretation, finding that "[w]hile the legislature elsewhere saw fit to use the words 'landlord' or 'tenant' under various detail provisions of the FED statute, it did not include such restrictive labels under the general description of who may bring an action, and against whom it may be brought." *Id.*, at ¶15. Essential to the Tenth Appellate District's analysis was its position against a "general holding that flatly excludes tenants from the class of plaintiffs under R.C. § 1923.01 [that] would leave tenants without recourse to gain expedited restitution from all classes of persons, not just landlords, that infringe upon a right of occupancy...." *Id.*

As set forth below, Phoenix maintains that the Tenth Appellate District erred by finding that tenants may bring FED claims against landlords. The Tenth Appellate District's decision belies the history of Ohio common law, as neither BioEnergy nor the Tenth Appellate District can cite even one case in the last 100 years (and certainly not since the current FED statute was passed) that remotely suggests that FED relief is available to a tenant against a landlord. Furthermore, this Court has unambiguously stated that R.C. § 1923.01 *et seq.* permits courts to adjudicate "disputes between landlords and tenants, and, where appropriate, **order restitution of the premises to the landlord.**" *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St. 2d 129, 130, 423 N.E.2d 177 (1981) (emphasis added). For these reasons, and those listed below,

Phoenix requests that this Court exercise jurisdiction in this matter to resolve that FED claims may not be brought by tenants against landlords.

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

A. Proposition of Law No. I:

UNDER OHIO'S FORCIBLE ENTRY AND DETAINER STATUTES, ONLY LANDLORDS—AND NOT TENANTS—CAN SEEK IMMEDIATE POSSESSION OF REAL PROPERTY.

1. *BioEnergy Cannot Maintain a Claim under R.C. § 1923.01 et seq. Against Phoenix*

BioEnergy's FED claim should fail as a matter of law because there is no support in the statute or caselaw for a tenant to utilize R.C. § 1923.01 *et seq.* against a landlord. This Court has specifically stated that “forcible entry and detainer, as authorized in R.C. Chapter 1923, is a summary proceeding in which ‘any judge of a county court’ may make inquiry into disputes between landlords and tenants, and, where appropriate, order restitution of the premises to the **landlord.**” *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St.2d 129, 130, 423 N.E.2d 177 (1981). A forcible entry and detainer action is intended to serve as an expedited mechanism by which an **aggrieved landlord may recover possession of real property.** *Id.* at 131, 423 N.E.2d at 179; *see, also, Haas v. Gerski*, 175 Ohio St. 327, 330, 194 N.E.2d 765 (1963). This Court did not state that this was a mechanism for tenants to recover property against landlords.

The Tenth Appellate District noted “two venerable cases from the courts of this state” that BioEnergy cited as examples why tenants should be permitted to pursue claims under R.C. § 1923.01 *et seq.* – *Yager v. Wilber*, 8 Ohio 398 (1838) and *Smith v. Whitbeck*, 13 Ohio St. 471 (1862). But these two cases are from the nineteenth century that provide no analysis on the current forcible entry and detainer statute. In fact, in *Whitbeck*, the tenant pursued a FED claim against the landowner and the landowner's agent. 13 Ohio St. 471. The landowner was never

actually served with the complaint, and the case proceeded against the landowner's agent. *Id.* The *Whitbeck* decision thus allowed a tenant to bring a FED claim against a landowner's agent. This type of case would be permissible under R.C. 1923.02(A)(5), as a landowner's agent would be an occupier without color of title. However, this decision does not stand for the proposition that a tenant can bring a FED claim against a landlord. Accordingly, neither the Tenth Appellate District nor BioEnergy have actually found a case interpreting R.C. § 1923.01 *et seq.* to allow a tenant to bring a forcible entry and detainer claim against a landlord from the past 174 years.

In the framework of the FED statute, R.C. § 1923.01 *et seq.*, the Ohio State Legislature first laid out the definitions for FED claims under R.C. § 1923.01. The Legislature then, in R.C. § 1923.02, provided a list of fifteen proceedings where a FED claim is appropriate. At no point in R.C. § 1923.02 does the Legislature include a proceeding in which a tenant may bring a FED claim against a landlord. *See* R.C. § 1923.02. If the Ohio State Legislature had intended FED claims to be able to be brought by tenants against landlords, then it could have provided such a proceeding in its list in R.C. § 1923.02. Surely it would have been very easy to write that subsection and it would have been quite clear if tenant relief was available. But the statute is silent on the issue and no case holds that tenant relief is available against landlords, so the conclusion naturally follows that FED relief is not proper for tenants to bring against landlords.

But the Tenth Appellate District adopted BioEnergy's arguments that R.C. § 1923.02(A)(5) and (6) permit tenants to bring a FED claim against landlords. What the Tenth Appellate District failed to note in its analysis is that neither section provides cause to ignore the Ohio Supreme Court's plain statements regarding R.C. § 1923.01 *et seq.* or the statutory language and application throughout Ohio common law.

R.C. § 1923.02 governs “Persons subject to forcible entry and detainer action.” The statute specifically states that:

(A) Proceedings under this chapter may be had as follows:

* * *

(5) When the defendant is an *occupier of lands or tenements, without color of title*, and the complainant has the right of possession to them;

(6) In any other case of the unlawful and forcible detention of lands or tenements. For purposes of this division, in addition to any other type of unlawful and forcible detention of lands or tenements, such a detention may be determined to exist when both of the following apply: [subdivisions related to drug offenses and controlled substances].

R.C. § 1923.02(A)(5)-(6). First, with respect to subsection (A)(5), the Tenth Appellate District erred by finding that Phoenix does not hold the property under color of title. *Bio Energy (Ohio), LLC v. Phoenix Golf Links, Ltd.*, 2012-Ohio-4421, at ¶14. In fact the opposite is true – Phoenix plainly operates under the color of title as it is without dispute that Phoenix holds a valid lease interest from the record owner of the land – SWACO. Without any doubt, Phoenix is BioEnergy’s landlord, and R.C. § 1923.02(A)(5) is not applicable in this matter. For the Tenth District to state otherwise without any citation or explanation as to why it believes Phoenix does not have color of title is befuddling.

The key for the Tenth Appellate District’s holding that a tenant could also bring a FED claim falls under the catchall provision of R.C. § 1923.02(A)(6) – “any other case of unlawful and forcible detention.” But the Court fails to examine the Ohio common law history on the application of R.C. § 1923.02(A)(6). Ohio courts that have analyzed R.C. § 1923.02(A)(6) have either addressed the need of the landlord to evict a tenant because the tenant is engaging in criminal activity, or had to address a real estate relationship that was not a leasehold interest, such as land installment contract or life estate. See *Shaw v. Kadey*, Case No. CA 7045, 1981

Ohio App. LEXIS 13148 (2nd App. Dist., 1981) (The “broad authority warranted under R.C. § 1923.02(A)(6) provides a sufficient basis on which land installment contracts not covered by R.C. Chapter 5313 may be subjected to actions in forcible entry and detainer.”); *Dudrow v. Traver*, Case No. OT-85-23, 1986 Ohio App. LEXIS 6541 (6th App. Dist., 1986) (Ohio Sixth Appellate District affirming the trial court’s ruling that R.C. § 1923.02(A)(6) permitted a person who held a life estate in the property to remove subsequent purchasers). The Ohio Seventh Appellate District has also held that “[t]he phrase ‘in addition to’ connotes that section (A)(6) provides an additional ground for eviction beyond the terms of a lease.” *Buckeye Mgmt. Co. v. Mason*, 2003 Ohio 4886; 2003 Ohio App. LEXIS 4410 (7th App. Dist., 2003). The court further reasoned that “section (A)(6) provides for a ‘fail safe’ in the event that a drug violation occurs and is not covered under the standards set forth in any other applicable section of the statute.”

At no point has any Ohio court interpreted R.C. § 1923.02(A)(6) to allow tenants to bring FED claims against landlords. For the Tenth Appellate District to now do so completely reverses more than a century of Ohio case law, and is obviously of great general interest for this Court to grant jurisdiction.

2. *Tenants May Still Bring a Claim for Breach of the Covenant of Quiet Enjoyment.*

What further makes the Tenth Appellate District’s decision regarding FED claims of great public and general interest is that although BioEnergy does not have the option of bringing a FED claim, this does not foreclose BioEnergy from bringing suit against Phoenix for the conduct about which it complains. Ohio has long recognized that “a covenant of quiet enjoyment is implied into every lease contract for realty and protects the tenant’s right to a peaceful and undisturbed enjoyment of its leasehold.” *Dworkin v. Paley* (1994), 93 Ohio

App.3d 383, 386. “The covenant is breached when a landlord obstructs, interferes with, or takes away from the tenant in a substantial degree the beneficial use of the leasehold.” *Howard v. Simon*, (1984), 18 Ohio App.3d 14, 16. This is exactly the factual scenario that BioEnergy has alleged in this matter, and BioEnergy has specifically claimed a such breach of this covenant. (See BioEnergy’s Amended Complaint, ¶54.)

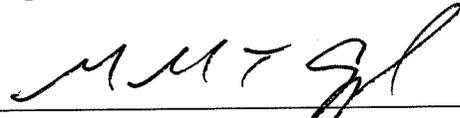
BioEnergy persists that a claim for breach of the covenant of quiet enjoyment is not adequate and only FED relief would be. But this is not true. Had BioEnergy been able to carry its burden with respect to its TRO motion, it would have achieved the same result that it seeks with its FED claim. That BioEnergy was not able to carry its burden does not change the fact that, relevant to the issue before the Court, aggrieved tenants have a non-FED remedy.

BioEnergy wonders why landlords can utilize FED relief but tenants may not use the same relief against landlords. There is substantial difference between an aggrieved landlord and an aggrieved tenant, a difference that fully explains the difference in remedies available to each. A tenant, like BioEnergy, that feels that it has been wrongfully dispossessed of property, now has the flexibility to seek out whatever property it wants on whatever terms it wants; after all, its interest in the subject property has been terminated. On the other hand, when a tenant occupies property despite having breached the agreement that gave rise to possession in the first instance, the landlord has no flexibility; it cannot, for example, rent the premises to another tenant that would pay. The need for a landlord to have a “summary, extraordinary, and speedy method for the recovery of possession of real estate,” *Cuyahoga Metropolitan Housing Auth. v. Jackson*, (1981) 67 Ohio St. 2d 129, 130, is thus substantially greater than that of a tenant. Again, the tenant is not without a remedy and if the dispossession would cause irreparable harm, for example, the tenant also has access to speedy relief through the Court’s equitable powers.

IV. CONCLUSION

This case presents novel and important questions of law regarding whether tenants may be permitted to pursue a claim for forcible entry and detainer under R.C. § 1923.01 *et seq.* against landlords. As such, Phoenix respectfully requests that the Court exercise jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was served via electronic and regular mail on this 13th day of November 2012 upon:

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Bio Energy (Ohio), LLC, :
Plaintiff-Appellant, :
v. : No. 12AP-171
Phoenix Golf Links, Ltd., : (C.P.C. No. 11CVH-08-10569)
Defendant-Appellee. : (ACCELERATED CALENDAR)

D E C I S I O N

Rendered on September 27, 2012

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APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiff-appellant, Bio Energy (Ohio), LLC, appeals from a judgment of the Franklin County Court of Common Pleas dismissing its forcible entry and detainer ("FED") claim against defendant-appellee, Phoenix Golf Links, Ltd.

{¶ 2} The details of the underlying facts in this matter are neither fully established at the trial court level nor immediately relevant to the present appeal. They will be summarized only briefly. Phoenix describes itself as the successor in interest to Model LF Golf, Ltd., which leased a reclaimed landfill from its owner, the Solid Waste Authority of Central Ohio ("SWACO") for purposes of developing and operating a golf course. Another affiliate of Phoenix, Model Gas Development, Ltd., also entered into a lease with SWACO for purposes of exploiting commercially utilizable gas generated by the former landfill site.

Model Gas then sublet to Bio Energy the rights under the gas lease. These include the surface use of a small amount of the golf course property and the obligation to operate and maintain an underground gas collection system over the whole of the landfill.

{¶ 3} Dissatisfied with Bio Energy's performance under the terms of the gas lease, Phoenix took control of the gas collection system from Bio Energy and assumed operational control of the gas collection system.

{¶ 4} Phoenix then sued Bio Energy in the Franklin County Court of Common Pleas seeking compensation for alleged damages arising out of Bio Energy's faulty maintenance of the gas collection system and resulting damage to the golf course. Bio Energy then filed its own complaint in a new case in the same forum, also asserting a breach of the sublease. That is the case from which this appeal arises. Bio Energy in this action sought a temporary restraining order and preliminary injunction to regain control of the sublet premises. The trial court denied the temporary restraining order, and Bio Energy then filed an amended complaint asserting an FED claim, as well as further claims for breach, replevin, trespass, and tortious interference with contracts.

{¶ 5} Phoenix moved to dismiss the FED claim, asserting that such claim was inapposite to the relative position of the parties, being reserved as an action by landlords against tenants wrongfully in possession. The trial court granted Phoenix's motion to dismiss the FED claim, and included in its judgment the appropriate Civ.R. 54(B) language to allow the present appeal to go forward while all other claims and matters between the parties remain pending in the trial court.

{¶ 6} Bio Energy brings the following sole assignment of error:

The trial court committed reversible error by deciding as a matter of law that under Ohio's forcible entry and detainer ("FED") statutes, only landlords- -and not tenants- -can seek immediate possession of real property, dismissing the tenant's/appellant's FED claim for failing to state a claim upon which relief can be granted.

{¶ 7} Initially we note that the trial court dismissed the present case for failure to state a claim. When reviewing a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, an appellate court's standard of review is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be

granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). A trial court must presume all factual allegations contained in the complaint to be true and must make all reasonable inferences in favor of the nonmoving party. *Garofalo v. Chicago Title Ins. Co.*, 104 Ohio App.3d 95, 104 (8th Dist.1995), citing *Perez v. Cleveland*, 66 Ohio St.3d 397 (1993), *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190 (1988), and *Phung v. Waste Mgt., Inc.*, 23 Ohio St.3d 100 (1986). "[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145 (1991).

{¶ 8} The sole issue in the present appeal is whether Ohio's FED statute, R.C. 1923.01 et seq, provides a remedy by which a sublessor can recover possession of the leased premises from the lessor, which itself holds rights to the property under a lease from the title owner.

{¶ 9} Bio Energy argues that, on its face, the FED statute provides a remedy not only to landlords seeking to recover possession from tenants, but to any person seeking to recover possession of property unlawfully held by another. The foundational statutory language is as follows:

As provided in this chapter, any judge of a county or municipal court or a court of common pleas, within the judge's proper area of jurisdiction, may inquire about persons who make unlawful and forcible entry into lands or tenements and detain them, and about persons who make a lawful and peaceable entry into lands or tenements and hold them unlawfully and by force. If, upon the inquiry, it is found that an unlawful and forcible entry has been made and the lands or tenements are detained, or that, after a lawful entry, lands or tenements are held unlawfully and by force, a judge shall cause the plaintiff in an action under this chapter to have restitution of the lands or tenements.

R.C. 1923.01(A). R.C. 1923.01(C) goes on to define various terms used in the chapter, including the terms "tenant" and "landlord," which are given their commonly accepted meanings. R.C. 1923.01(C)(1) and (2).

{¶ 10} R.C. 1923.02 delineates those defendants who are subject to an FED action. This section describes many of the typical FED claims brought by landlords, judgment

creditors, and executors in probate proceedings, as well as incorporating more modern aspects allowing landlords expedited relief in the case of tenants violating various drug laws or sex offender restrictions. The section, however, retains two enumerated instances that reflect the broader language of R.C. 1923.01(A):

Proceedings under this chapter may be had as follows:

* * * *

(5) When the defendant is an occupier of lands or tenements, without color of title, and the complainant has the right of possession to them;

(6) In any other case of the unlawful and forcible detention of lands or tenements. For purposes of this division, in addition to any other type of unlawful and forcible detention of lands or tenements, such a detention may be determined to exist when both of the following apply: [specified drug-related criminal activity by tenants]

R.C. 1923.02(A)(5) and (6)

{¶ 11} Bio Energy points out that R.C. 1923.01(A) generically refers to "plaintiffs" as parties that may seek restitution of premises through an FED action, and defendants as "persons" unlawfully occupying the premises. Bio Energy correctly asserts that the statute thus does not on its face limit the class of defendants to "tenants" and the class of plaintiffs to "landlords," although concededly this is the posture of the parties in the vast majority of FED actions initiated in the state. Bio Energy asserts that the definitions of landlord and tenant provided elsewhere in the statute are not used in the operative part of the statute generally governing actions, but only invoked in certain detail provisions. Bio Energy points to two venerable cases from the courts of this state that applied older versions of the FED statute to apparently allow such an action by a tenant against a landlord. *Smith v. Whitbeck*, 13 Ohio St. 471 (1862), and *Yager v. Wilber*, 8 Ohio St. 398, 401 (1838).

{¶ 12} Phoenix asserts to the contrary that relief through an FED action is available only to "landlords" as defined in the statute. Phoenix cites innumerable cases in which the parties are so postured. None of these specifically remarks that the statute is limited to such circumstances.

{¶ 13} Applying basic principles of statutory construction, there is no restriction in R.C. 1923.01(A) upon who may bring an FED action, while under R.C. 1923.02 there is a defined class of defendants against whom it may be brought. Under R.C. 1923.02(A)(5), the action requires only that the defendant be an "occupier of lands or tenements, without color of title," and that the "complainant" have "the right of possession to them." Even more broadly, R.C. 1923.02(A)(6) provides that the action may be brought "[i]n any other case of the unlawful and forcible detention of lands or tenements."

{¶ 14} Under common rules of statutory interpretation, we will not furnish restrictive detail where the legislature has omitted it: "'[W]here the language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom.'" *Terry v. Sperry*, 130 Ohio St.3d 125, 2011-Ohio-3364, ¶ 25, quoting *Sherwin-Williams Co. v. Dayton Freight Lines, Inc.*, 112 Ohio St.3d 52, 2006-Ohio-6498, ¶ 14. Phoenix here does not hold the property under color of title, and is therefore subject to R.C. 1923.02(A)(5). Phoenix, on the face of the FED complaint, is alleged to unlawfully and forcibly detain the subject property, and therefore meets the criteria for a defendant under R.C. 1923.02(A)(6).

{¶ 15} While the legislature elsewhere saw fit to use the words "landlord" or "tenant" under various detail provisions of the FED statute, it did not include such restrictive labels under the general description of who may bring an action, and against whom it may be brought. The vast majority of cases, as alluded to above, inevitably will involve landlords seeking prompt restitution from tenants who are in breach of lease or otherwise unlawfully in possession. The more common application of the statute, however, does not define its limits, and we conclude that an FED action may lie when brought by a tenant against a landlord who is otherwise one of the permissible defendants defined in R.C. 1923.02(A). Looking beyond the facts of this case, a general holding that flatly excludes tenants from the class of plaintiffs under R.C. 1923.01 would leave tenants without recourse to gain expedited restitution from all classes of persons, not just landlords, that infringe upon a right of occupancy; one can easily conceive of such situations involving competing co-tenants, squatters, or others.

{¶ 16} We accordingly find that the court of common pleas erred when it dismissed this action for failure to state a claim pursuant to Civ.R. 12(B)(6). We sustain Bio Energy's

sole assignment of error, reverse the trial court's judgment, and remand the matter to the Franklin County Court of Common Pleas for further proceedings. The present decision addresses only the procedural availability of the remedy and not the merits of the claim, and the court of common pleas of course remains free to apply the appropriate standard to determine whether relief is warranted under R.C. 1923.01, in conjunction with the other claims now pending between the parties.

*Judgment reversed;
cause remanded.*

BRYANT and TYACK, JJ., concur.
