

IN THE SUPREME COURT OF OHIO

PAMELA LEMASTERS	:	CASE NO. 2015-2102
	:	
Relator	:	IN MANDAMUS AND PROHIBITION
	:	
v.	:	
	:	
THE CELINA MUNICIPAL COURT, et al	:	
	:	
Respondents.	:	

RESPONDENTS, THE CELINA MUNICIPAL COURT AND THE HON. JAMES J. SCHEER'S, ANSWER TO RELATOR'S COMPLAINT FOR AN ORIGINAL WRIT OF PROHIBITION & MANDAMUS

Respondents, The Celina Municipal Court and The Hon. James J. Scheer, answer Relator's Complaint as follows:

FIRST DEFENSE

INTRODUCTION

1. Answering Respondents deny the allegations contained in paragraph 1 of the Complaint For An Original Writ of Prohibition & Mandamus ("Relator's Complaint").

JURISDICTION

2. Answering Respondents generally admit the allegations contained in paragraph 2 of Relator's Complaint but specifically deny them as applied to the instant action.
3. Answering Respondents admit Ohio Revised Code §2731.06 states, "When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof." Answering Respondents deny the allegations contained in paragraph 3 of Relator's Complaint because this statute does not afford Relator with the relief sought in the instant action.

4. Answering Respondents admit Ohio Revised Code §2503.40 states, “In addition to the original jurisdiction conferred by Section 2 of Article IV, Ohio Constitution, the supreme court when in session, and on good cause shown, may issue writs of supersedeas in any case, and other writs not specially provided for and not prohibited by law, when necessary to enforce the administration of justice.” Answering Respondents deny the allegations contained in paragraph 4 of Relator’s Complaint because this statute does not afford Relator with the relief sought in the instant action.

PARTIES

5. On this date, Answering Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, and the said allegations are, therefore, denied.
6. Answering Respondents admit Relator named the “Celina Municipal Court” and the “Honorable James J. Scheer” as “parties” to this action, but deny that they are subject to jurisdiction of the Court for the actions plead and relief sought, and further deny that they are sui juris, as stated in the allegations contained in paragraph 6 of Relator’s Complaint.

FACTS

7. Answering Respondents admit the allegations contained in paragraph 7 of Relator’s Complaint.
8. Answering Respondents admit the Trial Court, in its official capacity, held a hearing on October 26, 2015, as stated in the allegations contained in paragraph 8 of Relator’s Complaint, and that both parties appeared. A copy of the Journal Entry is attached hereto as Exhibit A.
9. Answering Respondents admit the allegations contained in Paragraph 9 of Relator’s Complaint.
10. Answering Respondents admit the Trial Court, in its official capacity, scheduled a contempt hearing for November 23, 2015 at 8:00 a.m. Answering Respondents deny the remaining allegations contained in paragraph 10 as that pleading speaks for itself.
11. Answering Respondents admit Ms. LeMasters filed a Notice of Appeal and Motion to Stay on November 17, 2015. Answering Respondents deny the remaining allegations contained in paragraph 11 as that pleading speaks for itself. No allegation stated in the pleading is admitted.
12. Answering Respondents deny the allegations contained in paragraph 12 as Ms. LeMasters Motion to Stay speaks for itself. No allegation stated in the pleading is admitted.
13. Answering Respondents admit the Trial Court, in its official capacity, denied Ms. LeMasters Motion to Stay on November 19, 2015, and the pleading speaks for itself. Answering Respondents deny the remaining allegations contained in paragraph 13 of Relator’s Complaint.

14. Answering Respondents admit the allegations contained in paragraph 14 of Relator's Complaint. No allegation stated in the pleading is admitted.
15. Answering Respondents admit the Trial Court, in its official capacity, issued a Journal Entry on November 20, 2015 and the pleading speaks for itself. Answering Respondents deny the remaining allegations contained in paragraph 15 of Relator's Complaint.
16. Answering Respondents admit the landlord, Gorsuch Homes, Inc. DBA Williamsburg Square Apartments, filed Appellee's Response to Motion for Stay and that pleading speaks for itself. No allegation stated in the pleading is admitted. Answering Respondents deny the remaining allegations contained in paragraph 16 of Relator's Complaint.
17. Answering Respondents admit the Third District Court of Appeals, in its official capacity, issued a Judgment Entry and that pleading speaks for itself, as stated in the allegations contained in paragraph 17 of Relator's Complaint. A certified copy of the Judgment Entry is attached hereto as Exhibit "B".
18. Answering Respondents neither admit nor deny the allegations contained in paragraph 18 of Relator's Complaint. Answering Respondents state the pleading speaks for itself, and therefore, deny the allegations as stated.
19. Answering Respondents neither admit nor deny the allegations contained in paragraph 19 of Relator's Complaint. Answering Respondents state the pleading speaks for itself, and therefore, deny the allegations as stated.
20. Answering Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20, and the said allegations are, therefore, denied. Further, no such action occurred on or before January 4, 2016 before the Trial Court.

COUNT ONE – MANDAMUS

21. Answering Respondents admit and deny the allegations of the incorporated paragraphs contained in paragraph 21 of Relator's Complaint as plead herein.
22. Answering Respondents deny the allegations contained in paragraph 22 of Relator's Complaint.
23. Answering Respondents deny the allegations contained in paragraph 23 of Relator's Complaint.
24. Answering Respondents deny the allegations contained in paragraph 24 of Relator's Complaint.
25. Answering Respondents deny the allegations contained in paragraph 25 of Relator's Complaint.

26. Answering Respondents deny the allegations contained in paragraph 26 of Relator's Complaint.

COUNT TWO – PROHIBITION

27. Answering Respondents admit and deny the allegations of the incorporated paragraphs contained in paragraph 27 of Relator's Complaint as plead herein.
28. Answering Respondents deny the allegations contained in paragraph 28 of Relator's Complaint.
29. Answering Respondents deny the allegations contained in paragraph 29 of Relator's Complaint.
30. Answering Respondents deny the allegations contained in paragraph 30 of Relator's Complaint.
31. Answering Respondents deny the allegations contained in paragraph 31 of Relator's Complaint.
32. Answering Respondents deny the allegations contained in paragraph 32 of Relator's Complaint.
33. Answering Respondents deny the allegations contained in paragraph 33 of Relator's Complaint.

SECOND DEFENSE

34. The Complaint, and each of its causes of action, fails to state facts sufficient to constitute a cause of action.

THIRD DEFENSE

35. This Court lacks subject matter jurisdiction to hear this case.

FOURTH DEFENSE

36. The Respondents do not have a clear legal duty to issue a stay of the eviction judgment or to forbear from acting to execute the eviction judgment.

FIFTH DEFENSE

37. The Relator has an adequate remedy at law barring mandamus and all other equitable relief sought in the Complaint.

SIXTH DEFENSE

38. The Relator's claims are barred because they cannot meet the requirements for mandamus and all other equitable relief sought to issue.

SEVENTH DEFENSE

39. The Respondents have acted in conformity with Ohio law.

EIGHTH DEFENSE

40. The Relator has an adequate remedy at law barring prohibition.

NINETH DEFENSE

41. The Respondent, Judge Scheer, had at all times, proper and adequate legal and factual support to grant the eviction judgment at issue in the underlying suit.

TENTH DEFENSE

42. The Respondents herein did not know, and were not reasonably expected to know, that any actions taken by them with respect to Relator, at all times relevant hereto, were in violation of Relator's constitutional, statutory, or other rights.

ELEVENTH DEFENSE

43. Respondent Judge Scheer is qualifiedly immune from suit because he violated no clearly established rights of which a reasonable person would have known.

TWELFTH DEFENSE

44. Respondent Judge Scheer acted reasonably and in good faith at all times, and is therefore entitled to qualified and absolute immunity.

THIRTEENTH DEFENSE

45. At no time material hereto did Answering Respondent Judge Scheer act with deliberate indifference to the statutorily protected rights of Relator.

FOURTEENTH DEFENSE

46. Relator's Complaint is specifically barred by the doctrine of absolute judicial immunity.

FIFTEENTH DEFENSE

47. The Complaint, and each of its causes of action, is barred by all applicable statutes of limitation.

SIXTEENTH DEFENSE

48. Relator's claims may be barred by the doctrines of *res judicata*, collateral estoppel, issue preclusion and/or claim preclusion.

SEVENTEENTH DEFENSE

49. The Court may not exercise jurisdiction over some or all of the claims of Relator, because Relator has failed to exhaust her administrative remedies or to bring the more specific claim.

EIGHTEENTH DEFENSE

50. Relator's claims may not be justiciable for mootness and/or lack of ripeness.

NINETEENTH DEFENSE

51. Relator's claims are barred by the doctrine of waiver.

TWENTIETH DEFENSE

52. The Complaint, and each of its causes of action and requests for relief, are barred by the doctrine of unclean hands and/or laches.

TWENTY-FIRST DEFENSE

53. Relator has waived the right to pursue the Complaint, and each of its causes of action, by reason of her own actions and courses of conduct.

TWENTY-SECOND DEFENSE

54. Relator has suffered no damages, and any claims of damages by Relator are speculative.

TWENTY-THIRD DEFENSE

55. Respondents acted in good faith, in official capacity only, with lawful privileged, and under color of law at all times material to claims stated in the Complaint.

TWENTY-FOURTH DEFENSE

56. The Eleventh Amendment bars the claims stated in the Complaint.

TWENTY-FIFTH DEFENSE

57. The Celina Municipal Court is not *sui juris*.

TWENTY-SIXTH DEFENSE

58. Respondents allege that they currently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Respondents give notice that they intend to assert and rely upon all affirmative defenses, immunities, avoidances, counter-claims, and third party claims which become available or apparent during the course of discovery or trial, and they hereby reserve the right to amend their Answer to assert such defenses.

WHEREFORE, Respondents pray for judgment as follows:

1. That the Complaint be dismissed in its entirety with prejudice, and that judgment be entered for Respondents;
2. That Respondents be awarded their reasonable costs and attorneys' fees; and
3. That Respondents be awarded such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/Lynnette Dinkler

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*Attorney for Respondents The Celina Municipal
Court and The Honorable Judge James J. Scheer*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2016, I served a copy of the foregoing, via electronic mail, upon the following:

Debra A. Lavey
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Attorneys for Relator

s/Lynnette Dinkler
Lynnette Dinkler (0065455)

CELINA MUNICIPAL COURT
MERCER COUNTY, OHIO

GORSUCH HOMES INC
Plaintiff(s)

vs.

PAMELA LEMASTERS
Defendant(s)

JOURNAL ENTRY
CASE NO. 15CVG00709
FILED
CELINA MUNICIPAL COURT
OCT 26 2015
Barbara A. Painter
Clerk

This matter came on for hearing.

The defendant(s) were not present in Court.

~~The~~ The defendant(s) were present in Court. The Court finds the defendant(s) owe plaintiff the sum of \$ _____ for back rent and a judgment is so awarded and granted.

The defendant(s) along with all their personal property are to be removed from the rental at 1400 W MARKET ST APT 21, CELINA, OH 45822 no later than Sunday, Nov 22, 2015 at 400 P M.

A Show Cause Hearing is set for Monday, Nov 23, 2015 at 800 A M. If defendant(s) along with all their personal property are fully removed by said date & time then they need not appear for Show Cause Hearing. This hearing would be to show cause if not moved why they should not be possibly held in contempt and/or fined and/or jailed for failure to follow the Court's orders.

Fully moved means that all their property is removed, the premises cleaned, the keys returned to the landlord. Anything left might be considered by the Court as abandoned and subject to disposal. Defendant(s) also must supply as per law a copy of their new address upon leaving.

A writ of restitution is given to plaintiff against defendant(s) effective: As soon as moves but no later than Sunday Nov 22, 2015 at 400 P.M
Costs assessed to the plaintiff with right to recover from the defendant(s).

IT IS SO FOUND, ORDERED, ADJUDGED AND DECREED.

a copy given to all parties

Date October 26, 2015

James Selzer
JUDGE

Copies given to:

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MERCER COUNTY

GORSUCH HOMES INC.,

PLAINTIFF-APPELLEE,

v.

PAMELA LEMASTERS,

DEFENDANT-APPELLANT

CASE NO. 10-15-18

FILED

10:33

DEC 03 2015

6/365

JUDGMENT
ENTRY

MERCER CO. COURT OF APPEALS
CLERK

This matter comes before the Court for determination of Appellant's motion to stay execution of the trial court's writ of restitution without bond, and Appellee's response in opposition to the motion to stay.

Upon consideration the Court finds that the trial court's writ of restitution, filed October 26, 2015, required Appellant to vacate the premises no later than Sunday, November 22, 2015. The instant motion was not filed until Thursday, November 19, 2015, and did not reach this Court until Monday, November 23, 2015. Therefore, the instant motion was not promptly filed and, on its' face, has been rendered moot.

The Court further finds that, even if not rendered moot by Appellant's compliance with the writ, there is no good cause shown for staying execution of the trial court's writ of restitution without any bond posted. We disagree with Appellant's assertion that there is "no damage" because her rent is entirely paid by

Case No. 10-15-18

the U.S. Department of Housing and Urban Development. As noted in the response, the eviction was not based on economic reasons, but rather because Appellant continually permitted unauthorized persons to stay at the apartment, contrary to the terms of the lease. Accordingly, for these reasons, the motion should be denied.

It is therefore **ORDERED** that Appellant's motion to stay execution without bond pending appeal be, and hereby is, denied.

CERTIFICATE OF COPY
THE STATE OF OHIO, MERCER, ss
I, Kevin M. McKirnan, Clerk of the Court of Common Pleas and Court of Appeals, within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original Judgment Entry

now on file in said Clerk's Office in the court,
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Celina, Ohio, this 25th day of January, A.D. 20 16
Kevin M. McKirnan, Clerk
Deputy

SEAL

[Signature]
[Signature]
[Signature]

JUDGES

DATED: DECEMBER 2, 2015
/hlo

FILED
DEC 03 2015 ⁶/₃₀₆
MERCER CO. COURT OF APPEALS
[Signature], CLERK

Copies issued to James Tesno and Debra Lavey on 12/4/15.

Darlene Scott
Darlene Scott, Deputy Clerk