[Cite as *Knights Ctr. Corp. v. Burton Lawrence Sports Restaurant, L.L.C.*, 2024-Ohio-4675.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

KNIGHTS CENTER CORPORATION HTTA KNIGHTS CENTER CORP.,	:	
Plaintiff-Appellee,	:	No. 113331
v.	:	
BURTON LAWRENCE SPORTS RESTAURANT LLC, ET AL.,	:	
Defendants-Appellants.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 26, 2024

Civil Appeal from the Cleveland Municipal Court
Housing Division
Case No. 2023-CVG-008254

Appearances:

Streeter & Petropouleas LLC and Jim Petropouleas, *for appellee*.

Roetzel & Andress, LPA, E. Mark Young and Demari W. Muff, *for appellants*.[1]

[1] After appearing by the filing of a brief on behalf of the appellants, counsel filed a notice of withdrawal of counsel on June 17, 2024. This court granted counsel leave to withdraw on September 19, 2024. No substitute counsel has entered an appearance.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Defendants-appellants, Burton Lawrence Sports Restaurant, LLC, DBA Burton Lawrence Sports Restaurant Enterprises; Burton Lawrence Restaurant Enterprises Inc.; Donald Burton and Lawrence Lemons (the "tenants"), appeal an order of the Cleveland Municipal Court, Housing Division, that granted a commercial eviction to the plaintiff-appellee, Knights Center Corporation HTTA Knights Center Corp (the "landlord").

{¶ 2} For the reasons that follow, we affirm.

I. Factual Background and Procedural History

{¶ 3} The tenants were commercial tenants in a building owned by the landlord and located at 840 Huron Road in Cleveland, Ohio.

{¶ 4} The landlord filed a forcible entry and detainer action based on the tenants' alleged failure to pay rent and other financial obligations required under the terms of their lease. The parties negotiated and prepared an agreed judgment entry to resolve the dispute. The trial court accepted, and adopted, the agreed entry.

{¶ 5} In the agreed judgment entry, the tenants agreed, among other things to (1) make a $50,000 payment to the landlord on or before August 25, 2023; (2) make a $61,955.27 payment to the landlord on or before September 21, 2023; and (3) open an escrow account with PNC Bank and deposit $18,204.78 in that account on or before September 21, 2023.

{¶ 6} The tenants further agreed that if they failed to make the required payments or comply with the other obligations to which they agreed, "judgment

shall be rendered in favor of the Plaintiff on the first cause of action [forcible entry and detainer] and a move-out shall be ordered forthwith." (Emphasis deleted.)

{¶ 7} The tenants made the first payment in accordance with the agreement. The tenants made a partial payment toward the second payment but failed to pay it in its entirety (they paid $2,091 of the $61,000 obligation). The tenants averred that they had obtained cashier's checks for the remaining amount but apparently those checks were never delivered to the landlord's property manager as required by the agreed judgment entry.

{¶ 8} The tenants averred that Burton Lawrence Sports Restaurant, LLC opened an escrow account with PNC Bank a few days before the September 21, 2023 deadline. However, the tenant did not deposit the $18,204.78 third payment into the account as required by the agreed judgment entry. The tenants explained that they did not make the deposit because PNC Bank informed them on September 20, 2023, that it would be closing the account on September 26, 2023, choosing not to do business with them.

{¶ 9} A magistrate at the housing court held a status hearing and thereafter issued a magistrate's decision finding that the tenants had not met the obligations of the agreed judgment entry and recommending that the trial court issue judgment for eviction for the landlord. The tenants filed no objections to the magistrate's decision, although we note that the trial court adopted the decision and entered judgment on the same day that the magistrate's decision was issued.

{¶ 10} The tenants thereafter filed (1) a motion to vacate the judgment pursuant to Civ.R. 60(B) and (2) a motion to stay the judgment pending a ruling on the motion to vacate. The housing court has held the two motions in abeyance pending this appeal.

{¶ 11} The tenants raise the following assignment of error for review in this appeal:

> The trial court erred by granting the judgment entry authorizing the commercial eviction of appellants in the absence of appellee's compliance with the contractual preconditions under a certain commercial lease and in the absence of compliance with R.C. Ch. 1923.

II. Law and Analysis

{¶ 12} Civ.R. 53(D)(3)(b) imposes an affirmative duty on parties to submit timely, specific, written objections to the trial court, identifying any error of fact or law in a magistrate's decision. *See, e.g.*, *Wells Fargo Bank, N.A. v. Lundeen*, 2020-Ohio-28, ¶ 11 (8th Dist.). Civ.R. 53(D)(3)(b)(iv) provides that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion . . . unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Thus, when a party fails to object to a magistrate's decision in accordance with Civ.R. 53(D)(3)(b), it generally forfeits the right to assign those issues as errors on appeal. *U.S. Bank, N.A. v. Matthews*, 2017-Ohio-4075, ¶ 14 (8th Dist.); *see also Lundeen* at ¶ 11 ("Simply put, 'one cannot object to an error on appeal that was not raised to the trial court who adopted a magistrate's decision.'"), quoting *Naple v. Bednarik*, 2012-Ohio-5881, ¶ 34 (7th Dist.). This rule is "'based on the principle that a trial court should have a chance to

correct or avoid a mistake before its decision is subject to scrutiny by a reviewing court.'" *Barnett v. Barnett*, 2008-Ohio-3415, ¶ 16 (4th Dist.), quoting *Cunningham v. Cunningham*, 2002-Ohio-4094, ¶ 8 (4th Dist.). A notice to this effect, as required by Civ.R. 53(D)(3)(a)(iii), was included in uppercase, boldface type on the magistrate's decision sent to the tenants. The notice specifically stated that "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."

{¶ 13} Here, the tenants never filed objections to the magistrate's decision. Therefore, they have forfeited appellate review of all but plain error as to the challenges raised in this appeal. Civ.R. 53(D)(3)(b)(iv).

{¶ 14} "'Plain errors are errors in the judicial process that are clearly apparent on the face of the record and are prejudicial to the appellant.'" *Lundeen* at ¶ 12, quoting *Macintosh Farms Community Assn., Inc. v. Baker*, 2015-Ohio-5263, ¶ 8 (8th Dist.). When applying the plain-error doctrine in the civil context, reviewing courts "must proceed with the utmost caution." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997). The doctrine is limited to those "extremely rare cases" in which "exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a materially adverse effect on the character of, and public confidence in, judicial proceedings." *Id.* Plain error exists only where the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Id.* at 122–123.

{¶ 15} The crux of the tenants' argument is that the housing court could not have authorized their eviction — despite their breach of the settlement agreement journalized in the agreed judgment entry — because the landlord failed initially to comply with certain provisions in the original lease applicable to the tenants' default. The landlord responds that the eviction was authorized under the terms of the settlement agreement. We agree with the landlord. We find no error, let alone plain error, in the order.

{¶ 16} A trial court has the authority to enforce a settlement agreement voluntarily entered into by the parties to a lawsuit because such an agreement constitutes a binding contract. *E.g.*, *Metron Nutraceuticals, L.L.C. v. Thomas*, 2022-Ohio-79, ¶ 15 (8th Dist.); *see also Wallick Properties Midwest, LLC v. Jama*, 2021-Ohio-2830, ¶ 10–11 (10th Dist.) (an agreed judgment entry in an eviction action is treated like a settlement agreement).

{¶ 17} The party alleging the breach of a settlement agreement must establish by a preponderance of the evidence the following: (1) the existence of the agreement; (2) performance by the nonbreaching party; (3) breach by the other party and (4) resulting damages or loss to the nonbreaching party. *E.g.*, *Metron Nutraceuticals* at ¶ 16.

{¶ 18} Here, the parties do not dispute that they entered into a valid settlement agreement. There is no claim that the agreement was tainted by fraud, duress or undue influence. *See Bryan v. Johnston*, 2012-Ohio-2703, ¶ 13 (7th Dist.). There also seems to be no contention that the landlord breached the settlement

agreement. And finally, there is no dispute that the tenants breached the settlement agreement by failing to make required payments and leaving the landlord without rent owed under the terms of the lease. Therefore, the record overwhelmingly demonstrates that the tenants did not comply with the agreed judgment entry.

{¶ 19} The arguments that the tenants set forth on appeal are defenses to the original eviction action but the tenants agreed to forego litigation over the merits of those defenses by entering into the settlement agreement in housing court. The settlement agreement specifically acknowledged that the agreement was entered into for the purpose of resolving disputed claims.

{¶ 20} There is no dispute that the parties entered into a settlement agreement or that the tenants breached that agreement. The negotiated agreement provided for the remedy for such a breach: eviction. The trial court was authorized to enforce the agreement and committed no error in doing so upon sufficient evidence of a material breach.

{¶ 21} We, therefore, overrule the tenants' assignment of error.

III. Conclusion

{¶ 22} Having overruled the appellants' sole assignment of error for the reasons stated above, we affirm.

It is ordered that the appellee recover from the appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court, Housing Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MICHAEL JOHN RYAN, J., CONCUR