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IN THE DELAWARE MUNICIPAL COURT OF DELAWARE COUNTY, OHIO

Justice Center, 70 North Union Street, Delaware, Ohio 43015 • Voice: 740.203.1500 • Facsimile: 740.203.1599 • www.municipalcourt.org

Jeffrey Loethen  
Plaintiff

Case No. 11 CVG 909  
Judge Gormley  
Magistrate Pelanda  
Judgment Entry / Magistrate's Decision  
Findings of Fact and Conclusions of Law

Michael Boehm, et al.  
Defendants

FILED  
DELAWARE  
MUNICIPAL COURT  
DELAWARE, OHIO  
2011 SEP 19 AM 8:06  
CINDY BRAYVO  
CLERK

This is before the court on Defendants' motion for sanctions against Plaintiff and Plaintiff's response. For the reasons shown, the motion is denied.

Plaintiff, without counsel, filed this statutory eviction action against Defendants. The evidence showed that Defendants paid their full year's rent in full, in advance of the lease term, but that they failed to pay a \$1,000 pet deposit and declined to consent to Plaintiff showing the premises to prospective tenants within the final weeks of the lease term.

By the time of the final hearing, the lease term had expired and Defendants had vacated the premises. Plaintiff's newly retained counsel mistakenly recounts that the court "ordered" Defendants to accede to Plaintiff's requests to show the home to prospective tenants. In fact, the court merely observed (at a hearing prior to the final hearing) that Plaintiff did not require Defendants' consent to show the home.

Defendants were distressed to discover after they leased the home that Plaintiff had neglected to advise them that the home was in foreclosure. Inasmuch as Defendants had paid the full year's rent in advance, this put them at considerable risk should Plaintiff's lender have succeeded in dispossessing Plaintiff of the property prior to expiration of the lease term. Plaintiff who had, ironically, re-located to Las Vegas, was nonplused by the risk of gambling Defendants' \$35,000 rental advance against his lender's efforts to foreclose the mortgage. Indeed, Plaintiff not only succeeded in forestalling his lender's foreclosure efforts, he did so without paying any of the \$35,000 that Defendants advanced on the rent to the mortgage. In fact, when Defendants declined to re-let the premises, Plaintiff promptly set about attempting to locate new tenants, much to Defendants' consternation.

Defendants failed to tender the \$1,000 pet deposit required by the lease and declined to cooperate with Plaintiff's requests to enter and show the premises. Prior to serving the 3-day notice to leave premises, Plaintiff failed to serve a 30-day notice terminating the lease as required by the lease agreement. The court found that issuance of the 30-day notice was a precondition to eviction under the lease and dismissed the complaint. The dismissal was of little consequence to Plaintiff, who already had possession of the premises by the time of the hearing.

1 Historically, perhaps, "to the victor belong the spoils."<sup>1</sup> In other words, 'the winner gets the booty.'  
2 Defendants prevailed at trial and now seek sanctions (i.e., "the booty") under R.C. § 2323.51 against Plaintiff  
3 for pursuing the matter. Defendants claim that Plaintiff's pursuit of the matter was "frivolous" as defined  
4 by R.C. § 2323.51(A)(2)(a) in that

5 (i) It obviously serves merely to harass or maliciously injure another party to the civil action  
6 or appeal or is for another improper purpose, including, but not limited to, causing  
7 unnecessary delay or a needless increase in the cost of litigation.

8 (ii) It is not warranted under existing law, cannot be supported by a good faith argument for  
9 an extension, modification, or reversal of existing law, or cannot be supported by a good  
10 faith argument for the establishment of new law.

11 Mere victory at trial is not sufficient to reap spoils under the frivolous conduct statute. Plaintiff's conduct  
12 failed to rise to the standard cited by Defendants.

13 Certainly, by accepting a full year's rent in advance while the home was already in foreclosure,  
14 Plaintiff placed Defendants at considerable risk. However, at issue is whether Plaintiff sought to  
15 "maliciously injure" Defendants by prosecuting the eviction action. While not a bar to showing the home,  
16 Defendants' lack of cooperation was an appreciable impediment to Plaintiff as he sought new, unsuspecting  
17 tenants. While Defendants' lack of cooperation was understandable, Plaintiff was entitled, nevertheless, to  
18 reasonable access to the home upon proper notice to Defendants. Further, Defendants failed to tender the  
19 \$1,000 deposit required by the lease for the pets that they acknowledged harboring in the home.

20 Under such circumstances, one cannot say that Plaintiff's complaint 'serve[d] merely to harass or  
21 maliciously injure' Defendants. However undeserving of relief Plaintiff may have appeared, he had a  
22 justiciable grievance against Defendants even if the court ultimately determined that a procedural omission  
23 kept him from obtaining judgment on his complaint.

24 Defendants debate whether the lease required issuance of a 30-day notice prior to an eviction action.  
25 The debate was largely academic at the time of trial inasmuch as Plaintiff already had possession of the  
26 premises. Plaintiff had a good faith argument that Defendants' noncompliance with the lease warranted  
27 forfeiture without prior issuance of a 30-day notice. The mere fact that Defendants prevailed on the legal  
argument does not render Plaintiff's position "unwarranted under existing law" so as to characterize it as  
"frivolous" under the code.

Prosecution of the complaint was not "frivolous conduct" even though Plaintiff did not prevail at  
trial. Defendants' motion for sanctions is denied.

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<sup>1</sup>The modern American proverb is attributed to Senator William Learned Marcy (1786-1857) of  
New York during congressional debate in 1832 regarding partisan patronage employment appointments  
following a recent election. *Random House Dictionary of Popular Proverbs and Sayings* (1996),  
Gregory Y. Titelman.


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The clerk shall, within three days of filing, serve the parties, or counsel, a copy hereof by regular mail per Civil Rule(s) 53 / 58 and indicate below and in the journal said service by initial or signature. No party shall assign as error on appeal adoption of any finding of fact or legal conclusion unless the party timely and specifically objects to that finding or conclusion as required by Civil Rule 53(D)(3)(b). Civil Rule 53(D)(3)(a).

  
September 15, 2011  
Magistrate Kevin Pelanda

This is adopted as the final order of the court subject to Civil Rule 53.

  
Judge David M. Gornley

copy served:   Plaintiff Attorney  Defendants' Attorney 9-20-11

Andrew J. Ruzicho II, Esq. for Plaintiff  
Timothy S. Rankin, Esq., M. Breck Roesch for Defendant

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