

Atty
Mollica

IN THE COURT OF COMMON PLEAS OF BEDFORD COUNTY, PENNSYLVANIA

CHARLES K. DAVIS and
SHIRLEY DAVIS, his wife,
Plaintiffs

vs.

BRIAN ELLIS,
Defendant

: No. 1121 for the year 2007
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: Civil Action - Law
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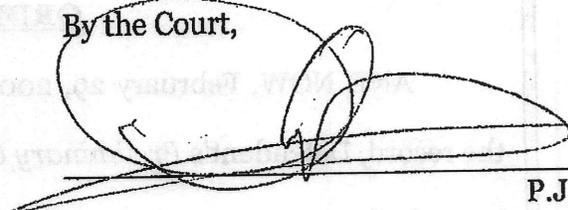
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ORDER OF COURT

AND NOW, February 29, 2008, after hearing and upon due consideration of the record, Defendant's *Preliminary Objection to Plaintiff's Complaint* on the basis of lack of subject matter jurisdiction by reason that the suit filed with MDJ Osman was commenced more than sixty (60) days from notice of the second violation is hereby sustained. 68 P.S. § 398.3(b)(2)(ii) states in pertinent part that "...the mobile home park owner **may** commence eviction proceedings at any time within 60 days of the last violation or breach" (emphasis added). We agree with Plaintiffs' counsel that "may" is permissive, however, we disagree with counsel as to the effect of the use of this permissive word. We find that the owner is permitted but not required to commence eviction proceedings upon a second or subsequent violation, but, if the owner chooses to proceed, the eviction action is to be initiated within sixty (60) days of the last violation or breach. In the present matter, the second notice sent to the Defendant was dated April 13, 2007. Plaintiffs did not commence eviction

proceedings until September 5, 2007. Clearly, more than sixty (60) days had passed between the last notice and the commencement of the action, and, therefore, the provision of 68 P.S. § 398.3(b)(2)(ii) was not met. As such, the magisterial district court did not have proper subject matter jurisdiction to hear the Plaintiffs' claim, and, therefore, neither does this Court in the requested de novo review of the matter. Plaintiffs' *Complaint* is hereby dismissed, and, therefore, we shall make no comment on Defendant's remaining preliminary objections.

By the Court,



P.J.

Counsel:

For the Plaintiff:

Bradley D. Allison, Esquire

For the Defendants:

Carl Mollica, Esquire

J. Michael Mondok, Esquire

IN THE COURT OF COMMON PLEAS IN AND FOR
BEDFORD COUNTY – (Civil Action)

CHARLES K. DAVIS and)	
SHIRLEY DAVIS, his wife,)	
Plaintiffs)	No. 1121-2007
V.)	
BRIAN ELLIS,)	
Defendant)	

BRIEF IN SUPPORT OF DEFENDANT'S
PRELIMINARY OBJECTIONS

Respectfully submitted:

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By Carl Mollica, #41277
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I. Facts

The Plaintiffs bring this action in the Court of Common Pleas following the Defendant's appeal from an adverse decision before a Magisterial District Judge. The case before this Court is one to recover possession of real property in Plaintiffs' mobile home park for breach of conditions of the lease.

The lease between the parties specifies that is for a term of twelve months commencing on March 16, 2007, and ending on March 17 of 2008.

By letter dated April 3, 2007, the Plaintiffs, by their attorney, notified the Defendant that they had determined him to have violated a provision in the lease forbidding additional occupants at Defendant's home for "more than (7) days per month and not more than twice that many days in any one year period." He was also accused of using paintballs in the mobile home park and thereby violating Rule 1 of the park's rules and regulations.

Subsequently, averring a second violation by the Defendant, the Plaintiffs mailed him a "Second Notice" dated April 13, 2007.

By a paper dated July 19, 2007, and denominated "Eviction Notice" the Plaintiffs gave the Defendant thirty (30) days to leave the park for violating the lease "and/or" park rules and regulations. A copy of this notice is found at Plaintiffs' Complaint, Exhibit D.

On September 5, 2007, the Plaintiffs filed a Landlord and Tenant Complaint against the Defendant averring the lease to have been forfeited due to breach of conditions thereof and requesting possession of the

leased space.

More than 60 days had elapsed from the date of the second notice until the issuance of a notice to quit and until the time of filing suit.

II. Statement of the Questions Presented

A. Have the Plaintiffs provided the proper notice to quit in this case?

The Defendant answers in the negative and because of that the case has not been brought within the subject matter jurisdiction of the Court.

B. Has Plaintiffs' failure to commence or file suit within sixty (60) days of Defendant's alleged second rule violation deprived this Court of subject matter jurisdiction?

The Defendant answers in the affirmative.

III. Arguments

A) THE LANDLORD AND TENANT ACT REQUIRES A MOBILE HOME PARK LANDLORD TO PROVIDE A TENANT WITH A 90 DAY NOTICE TO QUIT WHEN THE LEASE IS FOR A TERM OF ONE YEAR OR MORE.

THE COURT OBTAINS SUBJECT MATTER JURISDICTION IN A LANDLORD AND TENANT MATTER ONLY WHEN THE LANDLORD HAS PROVIDED A NOTICE TO QUIT OF THE PROPER DURATION AND SUIT IS FILED AFTER THE EXPIRATION OF THE NOTICE PERIOD.

Section 250.501 (c) of the Landlord and Tenant Act of 1951, Notice to Quit, provides, in relevant part, as follows:

In case of the expiration of a term or of a forfeiture for breach of the conditions of the lease involving a tenant of a mobile home park as defined in the "Mobile Home Park Rights Act," where the lease is for any term of less than one year or for an indeterminate time, the notice shall specify that the tenant shall remove within

thirty days from the date of service thereof, and when the lease is for one year or more, then within three months from the date of service thereof.

68 P.S. 250.501 (c)

Well established decisional law holds that service on a tenant of a properly composed notice to quit is a jurisdictional condition precedent to the filing of a landlord/tenant eviction action. Patrycia Brothers, Inc. v. McKeefrey, 38Pa. D&C 2d 149 (Del.Cty. 1966); Galizia v. Tardino, 87 Pa.D&C 191(Bucks Cty. 1954); Jankoskie v. Orloske, 84 Pa. D&C 522 (Lackawanna 1952); Fulton Terrace Ltd. V. Riley, 4 Pa.D&C 4th 149 (Fulton Cty. 1989).

Although appeals from magistrate district judges' judgments to the Court of Common Pleas are defined as being de novo, a Common Pleas Court nonetheless lacks subject matter jurisdiction to entertain a matter over which a magistrate judge himself had no subject matter jurisdiction. Where the magistrate district judge was without authority to rule his or her judgment is void ab initio. Stated differently, the appeal is from a nullity, and this fact is not changed by the change in forum. This issue was considered in the seminal case of Fuller Terrace Limited Partnership v.

Reily, 10 Franklin L. J. 12 (Fulton CCP, 1989), and resolved as urged by this Defendant. See also, Dwyer v. Dwyer, 43 Cumb. 206 (1994).

The lease between the Davises and Brian Ellis is for the term of one year and the reason for eviction is breach of the conditions of the lease. The notice to quit, therefore, must have been one of ninety (90) days duration. That notice period must have expired before any court could have subject matter jurisdiction of suit to regain possession of the rented mobile home space.

The thirty day eviction notice served upon the Defendant was dated July 19, 2007; the suit against him was filed on September 5, 2007. Suit was therefore filed less than 60 days after service of the notice to quit.

Without having provided a proper notice to quit the Plaintiffs can't state a legally sufficient claim. Further, for the same reason, there is no subject matter jurisdiction and the suit must, it is respectfully submitted, be dismissed.

Waiver

The Plaintiffs may argue that the Defendant has waived the right to a notice to quit of 90 days owing to the paragraph preceding the Defendant's signature on the Rules and Regulations which are made a part of the lease.

This would represent the waiver of a significant right and the Plaintiff's lease does not comply with Pennsylvania Plain Language

Consumer Contract Act regarding such a waiver. 73 P.S. 2201, et. seq., hereinafter PPLCCA. The Court should not find the Defendant to have waived the right to the 90 days notice.

This act, passed in 1993, applies to consumer contracts including leases. 73 P.S. 2203. The protections provided can't be waived and any waiver is "void not just voidable." 73 P.S. 2210. The PPLCCA is to be construed liberally to protect consumers. 73 P.S. 2204 (c).

Although the Act does state, at 73 P.S. 2208 (c), that violations do not void a contract or otherwise affect its validity, an expansive reading of this provision could result in consumers being held to contractual provisions that violate the Act and which they did not understand; this would be inconsistent with the purposes of this Act. The Defendant is not arguing that the lease is void or invalid but that the portions violative of the PPLCCA not be enforced.

Pennsylvania Landlord Tenant Law and Practice, Ronald M.

Friedman, 3rd Edition (Bisel, 2001), though of course not binding, is an often used treatise on the subject of landlord and tenant law. It discusses the Plain Language Consumer Contract Act at Section 2.2 and provides an example of language constituting an effective waiver of a notice to quit.

The author states that..."the landlord may find that lease provisions involving undisclosed waivers are not enforceable." Friedman, at p. 36.

B) THE MOBILE HOME PARK RIGHTS ACT REQUIRES THAT SUIT BE COMMENCED WITHIN SIXTY (60) DAYS OF A SECOND OR SUBSEQUENT VIOLATION OR BREACH OF THE LEASE. THE SUIT AGAINST THE DEFENDANT WAS COMMENCED MORE THAN ONE HUNDRED AND FORTY (140) DAYS AFTER THE SECOND ALLEGED LEASE VIOLATION.

THERE IS NO SUBJECT MATTER JURISDICTION TO ENTERTAIN THIS SUIT AND THE PLAINTIFFS DO NOT STATE A LEGALLY SUFFICIENT CLAIM.

A mobile home park landlord is required to send the tenant a written notice of an initial lease violation. 68 P.S. 398.3 (b)(2). No eviction action may be commenced, however, unless there is a second or subsequent lease violation within six months of the first violation. 68 P.S. 398.3 (b)(2)(ii). The suit must be commenced within sixty (60) days of the second or subsequent violation. 68 P.S. 398.3(b)(2)(ii).

This is a notice requirement which is separate from the requirement of giving the notice to quit imposed by 68 P.S. 250.501(c).

The requirements of the Mobile Home Parks Rights Act may not be waived. 68 P.S. 398.12.

The notice of the second alleged lease violation was dated April 13, 2007. The suit to evict the Defendant was not filed until September 5, 2007, more than one hundred and forty (140) days after the second alleged violation. The suit was, therefore, filed too late.

The language of the Act is clear:”....No eviction action shall be commenced unless the mobile home park resident has been notified as required by this section, and upon a second or subsequent violation or breach occurring within six months, the mobile home park owner may commence eviction proceedings at any time within 60 days of the last violation or breach.”
.....Hence, absent literal compliance with the mandatory provisions of this act, no eviction proceedings may be commenced.

Malvern Courts, Inc. v. Stevens, 419 A.2d 21, 24, (Pa.Super. 1980).

Note that the violation notices sent by the Plaintiffs are both conditional notices. A conditional notice can't serve to terminate a leasehold. Brown v. Brown, 64 A.2d 506 (Pa. 1949). In any event, the violation notices can't operate as notices to quit; 68 P.S. 250.501(c) specifically provides for the notice to quit for mobile home park residents. Both types of notices must be provided.

It is respectfully submitted, then, that this Court is without jurisdiction to entertain Plaintiffs' suit. Further, not having filed their suit within the time period provided by statute, the Plaintiffs can't state a legally sufficient claim.

C. THE RECONCILIATION OF THE APPARENT CONFLICT
BETWEEN 68 P.S. 250.501(C) AND 68 P.S. 398.3(B)(20(II)).

When statutory provisions are in pari materia they must be construed, if possible, as one statute. 1 Pa.C.S. 1932. See also, Industrial Valley Bank v. Nash, 502 A.2d 1254, 1263 (Pa.Super. 1985) (statutes are in pari materia when they relate to the same persons or things ...and shall be construed together, if possible, as one statute.)

If the phrase “commence [ment] [[of] eviction proceedings” (68 P.S. 398.3(b)(2)(ii)) is construed to mean the giving of a notice to quit pursuant to the specific mandate of 68 P.S. 250.501(c) rather than the filing of suit, then the requirement of 1 Pa.C.S.1932 is met. If the landlord gives the tenant the 90 day notice to quit at anytime within the sixty days after the tenant’s second or subsequent lease violation he or she will have met the time limit prescribed.

In the case at bar, the landlords did not give the notice to quit within 60 days of the second alleged violation. The notice to quit was given on July 19; more than 90 days after the April 13 notice of rule violation.

Actual suit was filed more than 140 days after the second notice of rule violation. Either way, the landlords’ suit was commenced after the time period provided for such had lapsed.

IV. Conclusion

Even should the 30 day notice to quit be ruled to be effective, the Plaintiffs’ have not brought the case within the jurisdiction of the court because of the issues raised in Argument B.

The relief requested by Defendant in his preliminary objections is meritorious and the objections should be sustained by this Honorable Court

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