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COMMON PLEAS COURT
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**THIS IS A FINAL
APPEALABLE ORDER**

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SUPREME COURT OF OHIO

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Charter One Bank, F.S.B.,

Plaintiff,

vs.

Duane J. Tillimon, et al.,

Defendants.

*

* Case No. CI0200503931

* OPINION AND JUDGMENT ENTRY

* Hon. Charles J. Doneghy

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This foreclosure action is before the Court on the motion for summary judgment filed defendant Preferred Properties, Inc. ("Preferred") against co-defendant Duane Tillimon. Upon review of the pleadings, memoranda of the parties, evidence, and applicable law, the Court finds that it should sustain the motion in part and overrule the motion in part.

I. BACKGROUND

On June 30, 2005, the plaintiff filed this foreclosure action ("Charter2") against Preferred, Mr. Tillimon, and other co-defendants. On August 16, 2005, Mr. Tillimon filed a

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crossclaim against Preferred and others alleging tortious interference with contracts, abuse of process, and entitlement to punitive damages. On October 31, 2005, Preferred filed a crossclaim against Mr. Tillimon seeking an order by the Court declaring Mr. Tillimon a vexatious litigator pursuant to R.C. 2323.52. On April 11, 2006, Preferred filed its motion for summary judgment seeking dismissal of Mr. Tillimon's crossclaims and seeking judgment on its vexatious-litigator claim. In the interim, Mr. Tillimon dismissed his crossclaim without prejudice. Preferred continues to seek judgment on its vexatious-litigator claim.

On May 31, 2005, the plaintiff filed an earlier foreclosure case ("Charter1") in this Court, captioned Charter One Bank, F.S.B. v. Tillimon, Lucas C.P. No. CI0200503345, also against Preferred, Mr. Tillimon, and other co-defendants. Also, on August 16, 2005, Mr. Tillimon filed a crossclaim against Preferred and others identical to the one he filed in Charter2. In Charter1, also on October 31, 2005, Preferred filed an identical crossclaim against Mr. Tillimon seeking an order by the Court declaring Mr. Tillimon a vexatious litigator. As in Charter2, on April 11, 2006, Preferred filed the identical motion for summary judgment in Charter1 seeking dismissal of Mr. Tillimon's crossclaims and seeking judgment on its vexatious-litigator claim. In Charter1, Mr. Tillimon also dismissed his crossclaim without prejudice. Preferred continued to seek judgment on its vexatious-litigator claim.

Subsequently, on September 16, 2005, Naqid Hasan filed a separate foreclosure case ("Hasan") in this Court, captioned Hasan v. Tillimon, Lucas C.P. No. CI0200505303, also against Preferred, Mr. Tillimon, and other co-defendants. Like in Charter1 and Charter2, Mr. Tillimon filed an identical crossclaim against Preferred and others, Preferred filed an identical vexatious-litigator crossclaim against Mr. Tillimon, Preferred filed a motion for summary judgment in Hasan seeking

dismissal of Mr. Tillimon's crossclaims and seeking judgment on its vexatious-litigator claim, Mr. Tillimon dismissed his crossclaim, and Preferred continued to seek judgment on its vexatious-litigator claim. The Hon. Linda Jennings overruled Preferred's motion in Hasan.

Before the filing of Charter1, Preferred brought a fair-housing action in the United States District Court for the Northern District of Ohio against Mr. Tillimon and his corporate-business entity, Indian River Estates ("Estates"), regarding the sale of residential lots. The caption of that case was Preferred Properties, Inc. v. Indian River Estates, Inc., N.D. Oh. No.3:99CV7342 ("fair-housing case"). On September 7, 2004, the Hon. David Katz issued an order in favor of Preferred and against Mr. Tillimon and Estates. On January 22, 2007, the United States Sixth Circuit Court of Appeals affirmed Judge Katz' decisions.

II. SUMMARY JUDGMENT STANDARD

To succeed on a Civ.R. 56(C) motion for summary judgment, the movant must demonstrate:

"(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." Harless v. Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46.

See, also, Zivich v. Mentor Soccer Club, Inc., 82 Ohio St.3d 367, 369-370, 1998-Ohio-389, 696 N.E.2d 201. "The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Id.* at 370, citing Dresher v. Burt, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264. Accord Vahila v.

Hall, 77 Ohio St.3d 421, 429-430, 1997-Ohio-259, 674 N.E.2d 1164; Mitseff v. Wheeler (1988), 38 Ohio St.3d 112, 114-115, 526 N.E.2d 798. In response, the nonmoving party may not rest on the allegations of her pleading, instead she must establish a genuine issue of material fact by affidavit or in some other manner provided in Civ.R. 56. State ex rel. Burnes v. Athens Cty. Clerk of Courts, 83 Ohio St.3d 523, 524, 1998-Ohio-3, 700 N.E.2d 1260.

III. DISCUSSION

Preferred asks the Court to determine whether Mr. Tillimon is a vexatious litigator pursuant to R.C. 2323.52. For the reasons that follow, the Court finds that Mr. Tillimon is a vexatious litigator.

A party seeking to have an opponent-litigant designated a vexatious litigator must file a claim for relief to do so. Gevedon v. Gevedon, 167 Ohio App.3d 450, 2006-Ohio-3195, 855 N.E.2d 548, at ¶31. The party may trigger vexatious-litigator proceedings by filing a counterclaim. Castrataro v. Urban, 155 Ohio App.3d 597, 2003-Ohio-6953, 802 N.E.2d 689, at ¶51. R.C. 2323.52 reads in relevant part as follows:

"R.C. 2323.52 - Civil action to have person declared vexatious litigator * * *.

"(A) As used in this section:

** * *

"(2) 'Vexatious conduct' means conduct of a party in a civil action that satisfies any of the following:

"(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

"(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

"(c) The conduct is imposed solely for delay.

"(3) 'Vexatious litigator' means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas,

municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. 'Vexatious litigator' does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

"* * *

"©) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

"(D) (1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator * * * the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

"(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

"(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

"©) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

"* * *

"(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

"* * *." (Emphasis added.)

"[T]he objective of the [vexatious-litigator] statute is to prevent the abuse of the system by vexatious litigators who deplete judicial resources, 'unnecessarily [encroach] upon the judicial machinery needed by others for the vindication of legitimate rights,' and attempt 'to intimidate public officials and employees or cause the emotional and financial decimation of their targets.' Mayer v. Bristow (2000), 91 Ohio St.3d 3, 13, 740 N.E.2d 656." Farley v. Farley, 10th Dist. No. 02AP-1046, 2003-Ohio-3185, at ¶49.

A party may satisfy the "vexatious-conduct" element by establishing: 1) that the opponent-litigant filed the matter "merely to harass"; 2) the filing was "not warranted under existing

law" or "by a good faith argument for an extension, modification, or reversal of existing law"; or 3) the filing was "imposed solely for delay." Hull v. Sawchyn (2001), 145 Ohio App.3d 193, 196, 762 N.E.2d 416. To establish the "harass" prong, the party need only establish that the opponent-litigant's actions have "the effect of harassing" by causing the party to respond to groundless claims; the party need not prove the opponent-litigant's intent to harass. Farley v. Farley, supra, 2003-Ohio-3185, at ¶51. Where the opponent-litigant has provided no authority to support a legal basis for his/her claims, the opponent-litigant is deemed to be harassing the party. See Castrataro v. Urban, 155 Ohio App.3d 597, 2003-Ohio-6953, 802 N.E.2d 689, at ¶58. To satisfy the "habitually and persistently" element, the party may show that the opponent-litigant has filed the same claim in several different cases; this is especially true when the initial filing remains pending. *Id.*

An opponent-litigant may not institute, continue, or make "any" application in any case after being declared a vexatious litigator without first obtaining leave of court. State v. Baumgartner, 6th Dist. No. E-06-045, 2006-Ohio-3792, at ¶10. Thus, the only filing a vexatious litigator may make without court approval is an application for leave to proceed. *Id.* at ¶11.

In its motion, Preferred asserts that Mr. Tillimon's crossclaim is without merit because Mr. Tillimon cannot controvert Preferred's evidence which clearly refutes the claims. Thus, Preferred contends the crossclaims constitute "vexatious conduct" as they 1) were brought to harass, 2) were not warranted under existing law, and 3) were imposed for delay. Additionally, Preferred argues that Mr. Tillimon's crossclaims here, in Charter1, and in Hasan constitute "habitual" and "persistent" unreasonable conduct. In opposition, Mr. Tillimon asserts that he brought the crossclaims in these three cases in an "attempt[]" to protect his property from a judgment that was obtained against him" in the fair-housing case pending the Sixth Circuit's decision. Mr. Tillimon

has offered no legal authority supporting the propriety of filing the multiple crossclaims to "protect property" from legal process already progressing in another court. Additionally, the Court notes that Mr. Tillimon has offered no evidence refuting Preferred's uncontroverted evidence against his crossclaims.

Based on the foregoing, the Court finds reasonable minds could only conclude that Mr. Tillimon has habitually and/or persistently engaged in vexatious conduct without reasonable grounds. Accordingly, the Court finds that it should declare Mr. Tillimon to be a vexatious litigator.

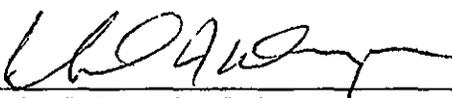
JUDGMENT ENTRY

The Court hereby ORDERS that the motion for summary judgment filed by defendant Preferred Properties, Inc. against defendant Duane Tillimon is overruled in part and sustained in part. The Court further ORDERS and DECLARES that defendant Tillimon is a vexatious litigator. Pursuant to R.C. 2323.52 (D) (1), the Court further ORDERS that, unless he first seeks leave of court, defendant Tillimon may not: 1) institute legal proceedings in Ohio state trial courts; 2) continue any legal proceedings that defendant Tillimon has instituted in any of the state courts; or 3) making any application, other than an application for leave to proceed, in any legal proceedings instituted by him in state courts. The Court further ORDERS that this order shall stay in effect for a period of three years.

The Court hereby ORDERS and NOTIFIES the Clerk of Courts of this matter.

The Court finds no just reason for delay.

June 5, 2007


Charles J. Doneghy, Judge

- pc: Johna M. Bella
Michael D. Portney
Brad F. Hubbell
Melanie Cornelius
Lee Fisher
Kerry D. Bruce
Robert B. Williams
Steven C. Hales
Mike Madden
Duane Tillimon

THE STATE OF OHIO, LUCAS COUNTY, ss:
I, BERNIS QUILTER, Clerk of Common Pleas Court
and Court of Appeals, hereby certify this document to be a true
and accurate copy of entry from the Journal of the proceedings
of said Court filed 6-13-2007 on case number
CF 2005-3931.

IN TESTIMONY WHEREOF, I have hereunto
set my name officially and affixed the seal of the Court
at the Courthouse in Toledo, Ohio, in said County, this 13th
Day of June, A.D., 2007

BERNIS QUILTER, Clerk


P. Dillworth
Deputy