

[Cite as *State ex rel. Tri Eagle Fuels, L.L.C. v. Dawson*, 2019-Ohio-109.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107699

STATE OF OHIO, EX REL.
TRI EAGLE FUELS, L.L.C.

RELATOR

vs.

WILLIAM DAWSON, JUDGE

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 522842
Order No. 523628

RELEASE DATE: January 8, 2019

ATTORNEYS FOR RELATORS

For Tri Eagle Fuels, L.L.C.

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FOR INTERVENOR

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SEAN C. GALLAGHER, J.:

{¶1} Relator, Tri Eagle Fuels, Inc. (“Tri Eagle”), seeks a writ of mandamus directing respondent judge, William Dawson, to transfer a pending case in the East Cleveland Municipal Court to the Cuyahoga Court of Common Pleas. Intervenor, Giant Petroleum, Inc. (“Giant”) and Euclid Lake Properties, L.L.C. (“Euclid”), have filed a motion for summary judgment, which we grant. We also deny relator’s motion for summary judgment and deny the request for a writ of mandamus.

{¶2} The dispute between relator and intervenors has spawned three contemporaneous cases in various trial courts, and now two original actions in this court. The saga began when

Tri Eagle purchased the business assets of Giant for roughly \$275,000 in 2015. Giant operated a gas station on Euclid Avenue in East Cleveland, Ohio. At the time of purchase of Giant's business assets, Tri Eagle also entered into a 15-year lease for the gas station premises with Euclid and Giant. Tri Eagle alleges that all lease payments were timely made, but a dispute arose between these parties over the condition of the premises. Giant asserted that Tri Eagle was not maintaining the property as required by the lease. After an opportunity to remedy the alleged defects had ended, on October 4, 2017, intervenors affixed a notice to the premises that Tri Eagle was in default of the lease and had three days to vacate the premises.

{¶3} Two days later, Tri Eagle filed an action in the Cuyahoga County Common Pleas court, *Tri Eagle Fuels, L.L.C. v. Euclid Lake Properties L.L.C. & Giant Petroleum, Inc.*, Cuyahoga C.P. No. CV-17-887038. There, it asserted claims for breach of the leasing contract, breach of the asset purchase agreement, promissory estoppel, and tortious interference with business relations. A few days later, intervenors commenced the underlying forcible entry and detainer action in the East Cleveland Municipal Court. *Euclid Lake Properties, L.L.C. v. Tri Eagle Fuels, L.L.C.*, East Cleveland M.C. No. 17CVG01000. Tri Eagle then filed its first original action in this case, seeking a writ of prohibition to prevent respondent judge from hearing the municipal court case. *State ex rel. Tri Eagle Fuels, L.L.C. v. Dawson*, 8th Dist. Cuyahoga No. 106459, 2018-Ohio-3054. This court issued an alternative writ staying the municipal court proceedings, which prompted a party related to intervenors to file a second forcible entry and detainer action, *Najjar v. Tri Eagle Fuels, Inc.*, East Cleveland M.C. No. 18CVG00151. This court granted an alternative writ staying those proceedings as well.

{¶4} Ultimately, this court denied Tri Eagle's request for a writ, finding that Tri Eagle had an adequate remedy at law for its jurisdictional priority argument. *Dawson* at _ 18.

{¶5} After this court's decision was issued, respondent judge set a hearing date for the underlying forcible entry and detainer action for September 26, 2018. On September 12, 2018, Tri Eagle filed counterclaims in the first forcible entry and detainer action that mirror the claims it filed in the common pleas court case. The same day, Tri Eagle filed a motion to transfer the case to the common pleas court because the counterclaims exceeded the monetary jurisdictional limit of the municipal court. A review of the docket supplied by Tri Eagle indicates the motion has yet to be decided. On September 19, 2018, Tri Eagle filed the instant complaint for a writ of mandamus, seeking to have this court order respondent judge to transfer the case to the common pleas court based on a lack of jurisdiction where the counterclaims exceed the monetary jurisdiction of the court.

{¶6} We granted an alternative writ, instructing respondent judge to show cause why the case should not be transferred, but respondent judge failed to answer at all in the present action. We granted leave for Giant and Euclid to intervene in the case, and the parties have filed cross motions for summary judgment and briefs in opposition to summary judgment.

{¶7} In order for a writ of mandamus to issue, (1) Tri Eagle must have a clear legal right to the requested relief, (2) respondent judge must have a clear legal duty to perform the requested relief, and (3) Tri Eagle must have no other adequate remedy at law. *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 95777, 2011-Ohio-1966, ¶ 6, citing *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). These three elements must be shown by clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of the syllabus. Further, a court should exercise the utmost caution when issuing a writ of mandamus and it is within the court's discretion to deny the writ when any element is lacking. *Davis* at _ 6, citing *State ex rel.*

Pressley v. Indus. Comm. of Ohio, 11 Ohio St. 2d 141, 228 N.E.2d 631 (1967), paragraph seven of the syllabus.

{¶8} This matter is decided on summary judgment, where pursuant to Civ.R. 56, this court must determine that there is no genuine issue as to any material fact, and after construing all evidence in favor of the nonmoving party, the moving party is entitled to judgment as a matter of law. Civ.R. 56(C); *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

{¶9} Tri Eagle argues that because its counterclaims exceed the monetary jurisdiction of the East Cleveland Municipal Court, respondent judge must certify the case to the Cuyahoga County Common Pleas Court.

{¶10} R.C. 1901.17 provides the monetary jurisdictional limit of a municipal court. It states,

[a] municipal court shall have original jurisdiction only in those cases in which the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed fifteen thousand dollars, except that this limit does not apply to the housing division or environmental division of a municipal court.

East Cleveland does not have a separate housing division. Therefore, the monetary jurisdictional limited set forth in the statute applies to the case. Where that jurisdictional limit is exceeded by a counterclaim, Civ.R. 13(J) provides the mechanism for transfer of the case to the common pleas court. Civ.R. 13(J) provides, “[i]n the event that a counterclaim, cross-claim, or third-party claim exceeds the jurisdiction of the court, the court shall certify the proceedings in the case to the court of common pleas.” *See also* R.C. 1901.22(E).

{¶11} Tri Eagle claims it is entitled to a writ of mandamus because its counterclaims exceed the monetary jurisdiction. Intervenor argues that the jurisdiction priority rule prohibits Tri Eagle’s counterclaims. They further argue Tri Eagle is not entitled to a writ of mandamus

because the counterclaims are a sham. As further explained below, this court will not address intervenors' argument at this time. Whether claims exceed the jurisdictional limitation of a municipal court or are sham claims should not be decided in the first instance on an abbreviated record in this mandamus action. That decision should be decided, in the first instance, by a trial court pursuant to Civ.R. 13(J). *Lewallen v. Mentor Lagoons, Inc.*, 85 Ohio App.3d 91, 95-96, 619 N.E.2d 98 (8th Dist.1993). As the trial court has yet to make that determination, it would be inappropriate for this court to weigh in on the validity or monetary value of those claims at this juncture.

{¶12} Tri Eagle's reliance on, among others, *State ex rel. El Turk v. Comstock*, 8th Dist. Cuyahoga Nos. 106444 and 106446, 2018-Ohio-2125, is misplaced. There, this court addressed a municipal court's jurisdiction in a forcible entry and detainer action that involved counterclaims that exceed the jurisdictional limit of the court. This court granted a writ of mandamus because we found that when a municipal court determined that counterclaims exceeded the monetary jurisdictional limit, the proper action was to certify the entire matter to the common pleas court. *Id.* at _ 12. In that case, a municipal court judge determined that counterclaims filed in response to a forcible entry and detainer action exceeded the monetary jurisdictional limit of the court. *Id.* at

_ 4. The judge certified only the counterclaims to the common pleas court, and retained the forcible entry and detainer portion. *Id.* This court found that the trial court's decision to retain a portion of the case was improper, and certification of the entire matter to the common pleas court was required under R.C. 1901.22(E) and Civ.R. 13(J). *Id.* at _ 7-8, citing *State ex rel. Penn v. Swain*, 21 Ohio App.3d 119, 486 N.E.2d 1187 (11th Dist.1984); *Pete's Grill, Inc. v. EnterCorp*, 8th Dist. Cuyahoga No. 61547, 1992 Ohio App. LEXIS 6268 (Dec. 10, 1992);

Bohinc v. Stafford, 8th Dist. Cuyahoga No. 52335, 1987 Ohio App. LEXIS 6928 (Mar. 19, 1987); *Widder & Widder v. Kutnick*, 113 Ohio App.3d 616, 626, 681 N.E.2d 977 (8th Dist.1996); *Richwood Homes, Inc. v. Brown*, 3 Ohio App.3d 204, 444 N.E.2d 463 (10th Dist.1981); and *Wells v. Cunningham*, 56 Ohio Misc.2d 9, 564 N.E.2d 758 (M.C.1990).

{¶13} *El Turk* is distinguishable from the present matter. In *El Turk*, the trial court, in fact, made a determination that the counterclaim exceeded the jurisdiction of the municipal court.

Here, no decision on the matter has been reached. The judge in *El Turk* clearly lacked jurisdiction to retain a portion of a case after deciding that a claim exceeded the jurisdictional monetary limit. Respondent judge has not made a similar determination or any determination on the motion to certify at all.

{¶14} The present case is more similar to *State ex rel. Garling v. Nicaastro*, 8th Dist. Cuyahoga No. 98644, 2012-Ohio-3161. There, this court addressed requests for writs of prohibition and mandamus that sought to prevent a forcible entry and detainer action from going forward where the defendant in the underlying action filed a counterclaim that purported to exceed the monetary limit of the municipal court. This court denied the writ, noting that the record, as supplied by the parties, did not contain any decision on the motion to certify, and a municipal court judge has discretion to decide whether a counterclaim actually exceeds the jurisdictional limit. *Id.* at _ 2, 5. Further, this court determined that an appeal constitutes an adequate remedy at law.¹ *Id.* at ¶ 5.

{¶15} In the present case, respondent judge has not made a determination about the validity of the counterclaims or whether the claims truly exceed the monetary jurisdictional

¹ Tri Eagle further argues that an appeal is not an adequate remedy because it would be dispossessed of the property, but nothing stops them from seeking a stay pending appeal pursuant to App.R. 7.

limitation of the municipal court. “Although a writ of mandamus may require an inferior tribunal to exercise its judgment or to proceed to the discharge of its function, R.C. 2731.03, it may not control judicial discretion, even if such discretion is grossly abused.” *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 119, 515 N.E.2d 914 (1987), citing R.C. 2731.03; *State ex rel. Sawyer v. O’Connor*, 54 Ohio St.2d 380, 377 N.E. 2d 494 (1978).

{¶16} The motion to certify is still pending. This action was filed only five business days after the motion to transfer was filed, and this court’s order granting an alternative writ has prohibited respondent judge from determining the issue. This action for writ of mandamus is premature. Even if it were not, a court has discretion to determine whether a claim exceeds the jurisdictional limit, and mandamus generally cannot be employed to control judicial discretion even where that discretion is grossly abused. *Id.*

{¶17} For these reasons, we grant intervenors’ motion for summary judgment, deny Tri Eagle’s motion for summary judgment, and deny the writ. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶18} Writ denied.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR