[Cite as *Tillimon v. Eby*, 2013-Ohio-2025.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Duane J. Tillimon	Court of Appeals No. L-12-1190
Appellant	Trial Court No. CVG-05-18026
v.	
Jeremy Eby and Kendra Simms-Eby	**DECISION AND JUDGMENT**
Appellee	Decided: May 17, 2013

* * * * *

Duane J. Tillimon, pro se.

Erik G. Chappell and Peter A. Dewhirst for appellees.

* * * * *

SINGER, P.J.

{¶ 1} Appellant landlord appeals a judgment of the Toledo Municipal Court vacating a prior judgment, denying sanctions and awarding a reduced amount. Because

we conclude that the trial court properly found the lease extension upon which appellant based his claim had been discharged in bankruptcy, we affirm.

{¶ 2} On May 1, 2003, appellant, Duane J. Tillimon, entered into a two year residential lease with appellees, Jeremy Eby and Kendra Simms-Eby, nka Salley, for property appellant owned on Hurd Street in Toledo. The lease provided for monthly rent of $750 and was automatically renewable for one year, absent 30 days written notice of termination.

{¶ 3} On June 10, 2005, appellees filed Chapter 7 bankruptcy. Appellees remained in the Hurd Street home and continued to pay rent during June, July and August. On August 25, 2005, appellees gave notice that they would be vacating the house by September 30, 2005.

{¶ 4} On September 25, 2005, appellant sued appellees on the lease and obtained a default judgment. Appellees' bankruptcy was discharged on October 24, 2005. In 2007, following an uncontested damages hearing, the court awarded damages in the amount of $3,524.70 plus interest and costs. When appellant sought execution of the judgment, there was a temporary bankruptcy stay which was later dissolved on appellant's presentment that the debt was not discharged in bankruptcy as it had been incurred after the bankruptcy was filed.

{¶ 5} In 2012, appellant moved for a debtor's examination. Appellees responded, filing a suggestion of bankruptcy. Appellant moved to strike the suggestion. The trial court set the matter for a hearing.

{¶ 6} At the hearing, appellees, now represented by counsel, argued that the one-year automatic lease extension that began on May 1, 2005, was extant at the time they filed bankruptcy. Thus the lease extension was discharged in that proceeding, irrespective of the fact that it was not listed as an executory contract or unexpired lease in the bankruptcy filing. In support, appellees relied on *In re: Madaj*, 149 F.3d 467 (6th Cir.1998).

{¶ 7} On consideration, the trial court found that the lease extension had been discharged in bankruptcy and that appellees were only liable for the rental value of the home during the carry-over period. The court vacated the original judgment and found for appellant in the amount of $750 for the month of September. The court denied appellant's motion for sanctions against appellees' counsel for purported Civ.R. 11 infractions.

{¶ 8} From this judgment, appellant now brings this appeal. Appellant sets forth the following two assignments of error:

> Assignment of Error #1: The Trial court committed reversible error by reducing the amount of the previously awarded judgment in favor of plaintiff, and against defendants from $3,724.70 to $750.00
>
> Assignment of Error #2: The trial court committed reversible error, and abused its discretion, by not awarding the plaintiff sanctions against the defendant, her attorneys, and her witness for their conduct in the case by bringing forth a caim [sic] that was neither supported by the facts or law or

a good faith argument for modification or extension of the law and by intentionally interposing delay.

I. Bankruptcy

{¶ 9} Appellant insists that the trial court erred in concluding that the damages he is due were discharged in bankruptcy. Appellant maintains that the rents and fees he sued for could not possibly be discharged because the debt was not incurred until after the bankruptcy was filed and appellants did not list the home lease in the bankruptcy.

{¶ 10} At issue is the automatic lease extension triggered at the May 1, 2005 expiration of the original lease. Appellant's claims derive from the original lease agreement which automatically renewed and was in effect when appellees filed bankruptcy.

{¶ 11} As the *Madaj* court explained, 149 F.3d at 469, a Chapter 7 bankruptcy discharges every pre-petition debt, regardless of whether a claim has been filed, unless the debt is specifically excepted from discharge under 11 U.S.C. 523. The list of exception is lengthy, including items in which the state has an interest and fraudulently obtained loans.

{¶ 12} 11 U.S.C. 523(a)(3)(A) excepts from discharge debts unlisted by the debtor in his or her petition or schedules in time for a creditor to file a timely proof of claim. The exception for discharge is ineffective if the creditor had notice or actual knowledge of the bankruptcy in time to file a proof of claim. *Id.*

{¶ 13} In a Chapter 7 no-asset case, such as appellants', the court sets no deadline for filing proofs. Instead, creditors are merely notified that there are no assets and that filing a claim is unnecessary. As a result, whenever a creditor learns of the bankruptcy, the creditor may file a proof of claim. Since it is never too late for a creditor to file a proof of claim in a no-asset case, the 11 U.S.C. 523(a)(3)(A) exception is inapplicable. *Id.* at 470. Debts, scheduled or unscheduled, are discharged. Logically, the same is true for unscheduled executory agreements. *See* 11 U.S.C. 524(c)(4).

{¶ 14} Since the bankruptcy discharged appellant's lease agreement, his claimed damages are unsupported, except for unpaid rent for September, 2005, which he was awarded. Accordingly, appellant's first assignment of error is not well-taken.

II. Sanctions

{¶ 15} In his second assignment of error, appellant asserts that the trial court erred when it refused to grant him sanctions against appellants and their lawyers.

{¶ 16} In material part, Civ.R. 11 provides that when a party or an attorney signs a pleading, that signature constitutes a certificate that he or she has read the document and,

> that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. * * * For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses

and reasonable attorney fees incurred in bringing any motion under this rule.

{¶ 17} We have carefully examined the record and the transcript of the hearing on this matter and find nothing to suggest that either appellees or their attorneys engaged in any acts which would subject them to sanctions. Accordingly, appellant's remaining assignment of error is not well-taken.

{¶ 18} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE