

[Cite as *Cleveland Fin. Assoc., L.L.C. v. Cleveland Banquets, L.L.C.*, 2011-Ohio-931.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95009

CLEVELAND FINANCIAL ASSOCIATES, L.L.C.

PLAINTIFF-APPELLEE

vs.

CLEVELAND BANQUETS, L.L.C., ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cleveland Municipal Court
Case No. 08-CVG-24377

BEFORE: Celebrezze, J., Boyle, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: March 3, 2011
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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellee, Cleveland Financial Associates, L.L.C. (“CFA”), has moved this court to dismiss the instant appeal on the grounds that the merits of the trial court’s final judgment have now become moot. In support of its motion, appellee asserts that this matter should not go forward because appellants, Cleveland Banquets, L.L.C., et al. (“CBL”), have vacated the premises that was the subject of the underlying forcible entry and detainer action. The instant appeal was taken from the final judgment rendered by the trial court on April 13, 2010.

Statement of Facts

{¶ 2} In 2002, EOP-BP Tower, L.L.C. (“EOP”), former owner of the 200 Public Square Building located in Cleveland, Ohio, approached Wayne Koury,

the principal of CBL, regarding the provision of food services to employees, visitors, and guests of the building. On or about June 2, 2002, EOP and CBL entered into a management agreement (“the Agreement”) setting forth the rights and obligations of the parties. Pursuant to the terms of the Agreement, EOP gave CBL in excess of 30,000 square feet of space within the building to manage and operate food services for its employees, visitors, and guests. CBL was only required to pay a “Rental Space Fee” of \$500 per month and was not required to pay for utilities for the food service space. During the term of the Agreement, CBL was also required to pay EOP a percentage of the gross sales realized from the operation of the food services after such sales exceeded two million dollars.

{¶ 3} In June 2005, CFA purchased the 200 Public Square Building from EOP and engaged Harbor Group Management Company to operate it. When CFA acquired the property, it did so subject to the Agreement between EOP and CBL.

{¶ 4} On June 19, 2008, CFA notified CBL that it was terminating the Agreement. On that date, CFA also served CBL with a Notice to Leave Premises. CBL refused to leave the property, and the underlying forcible entry and detainer action followed.

Procedural History

{¶ 5} On September 25, 2008, CFA filed a forcible entry and detainer action against CBL in the Housing Division of the Cleveland Municipal Court. A trial was held on July 20, 2009 before a magistrate judge. At the conclusion of the trial, the parties agreed to submit written closing arguments to the magistrate. The magistrate's decision, which included findings of fact and conclusions of law, was released and docketed on November 5, 2009. The magistrate's decision recommended judgment in favor of CFA and further recommended that a Writ of Restitution be issued. On November 5, 2009, the trial court issued and docketed a judgment entry approving and confirming the magistrate's decision.

{¶ 6} On December 21, 2009, CBL filed its objections to the magistrate's decision. On April 13, 2010, the trial court issued an order overruling each of CBL's objections and affirming the magistrate's decision. On April 22, 2010, CBL filed a notice of appeal to this court.

{¶ 7} Thereafter, on April 28, 2010, CFA filed a motion to dismiss with this court pursuant to App.R. 4(A). On May 14, 2010, CBL filed a motion seeking an extension of time to respond to CFA's motion to dismiss. This court granted CBL's motion and set a responsive pleading date for May 25, 2010. On May 24, 2010, this court granted CFA's motion to dismiss for lack of subject jurisdiction. Subsequently, CBL filed a motion for reconsideration, which was granted by this court on July 16, 2010.

{¶ 8} On August 16, 2010, CBL was informed by this court that its appeal had again been dismissed for failure to properly file the record. To rectify this error, CBL filed a second motion for reconsideration on August 24, 2010. On September 23, 2010, while that motion was pending before this court, CBL filed an emergency motion to stay with this court to preclude the bailiff of the Cleveland Municipal Court from enforcing the second Writ of Restitution issued in this matter.¹ The Writ of Restitution was to be enforced by means of the Cleveland Municipal Court bailiff moving CBL from CFA's building on September 24, 2010. The motion to stay was granted on September 24, 2010. Additionally, this court granted CBL's second motion for reconsideration.

{¶ 9} On September 29, 2010, CFA filed a motion to require a supersedeas bond in the amount of \$400,000 to support continued application of the emergency stay. On October 21, 2010, this court granted CFA's motion and ruled that continuation of the stay was contingent upon CBL posting a supersedeas bond in the amount of \$400,000.

{¶ 10} Subsequently, CBL failed to post the required supersedeas bond. On November 8, 2010, the trial court issued a renewed Writ of Restitution, and a move out set by the Housing Court bailiff proceeded. Possession of the premises was restored to CFA on November 8, 2010. On November 18, 2010,

¹The first Writ of Restitution was ordered by the trial court on November 5, 2010.

CFA filed a motion to dismiss with this court, arguing that the underlying forcible entry and detainer action had become moot.

Law and Analysis

{¶ 11} Under Ohio law, a forcible entry and detainer action decides the right to immediate possession of property and “nothing else.” *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.* (1981), 67 Ohio St.2d 19, 25, 423 N.E.2d 1070, fn. 11. Once the landowner has been restored to his property, the forcible entry and detainer action becomes moot because there is no further relief that may be granted to the landowner. *U.S. Secy. of Hous. & Urban Dev. v. Chancellor* (Feb. 25, 1999), 8th Dist. No. 73970. Further, “when a plaintiff is successful and defendant does not obtain a stay preventing its ouster and the return of the premises to the plaintiff * * * the issues are rendered moot.” *Crossings Dev. Ltd. Partnership v. H.O.T., Inc.* (1994), 96 Ohio App.3d 475, 481, 645 N.E.2d 159. A defendant appealing a judgment of forcible entry and detainer may overcome a ruling of mootness by obtaining a stay of execution and/or posting a supersedeas bond. See R.C.1923.14; Civ.R. 62; *Tripp v. French*, 9th Dist. No. 02CA0004-M, 2002-Ohio-6996, at ¶8; *Blosser v. Bowman* (May 1, 2001), 10th Dist. No. 00AP-1140; *Alex-Bell Oxford Ltd. Partnership v. Woods* (June 5, 1998), 2d Dist. No. 16038. However, if a defendant fails to obtain a stay of execution and/or post a supersedeas bond,

all issues relating to forcible entry and detainer are rendered moot. See *Tripp* at ¶8.

{¶ 12} However, this court may address an otherwise moot issue “where the issues raised are ‘capable of repetition, yet evading review.’” *Hocking Metro. Hous. Auth. v. Martin* (Mar. 5, 1998), 4th Dist. No. 97CA9, citing *State ex rel. Beacon Journal Publishing Co. v. Donaldson* (1992), 63 Ohio St.3d 173, 175, 586 N.E.2d 101, quoting *State ex rel. Plain Dealer Publishing Co. v. Barnes* (1988), 38 Ohio St.3d 165, 527 N.E.2d 807, paragraph one of the syllabus. Additionally, this court may consider an appeal where the resolution of the moot issue is of great public importance or will benefit others who are similarly situated. See *Franchise Developers, Inc. v. Cincinnati* (1987), 30 Ohio St.3d 28, 505 N.E.2d 966, paragraph one of the syllabus; *Stacy v. Carr* (Feb. 20, 1992), 4th Dist. No. 519.

{¶ 13} At bar, CBL has appealed from the trial court’s original order granting CFA the right to a Writ of Restitution. That order was the subject of CBL’s emergency motion to stay. The record reveals that CBL did not post the \$400,000 supersedeas bond required by this court for the continuation of the stay. CBL received notice of that order and failed to comply with its requirements. Accordingly, the issues raised by CBL on appeal are now moot. We also find that the issues presented by CBL are not capable of repetition and are not of great public importance.

{¶ 14} Accordingly, the motion to dismiss filed by appellee, Cleveland Financial Associates, L.L.C., is granted since the merits of this appeal have become moot. It is the order of this court that the instant appeal is hereby dismissed. CBL is limited to pursuing other remedies pursuant to R.C.1923.03.

Appeal dismissed.

It is ordered that appellee recover of said appellants costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and
JAMES J. SWEENEY, J., CONCUR