

[Cite as *Jones v. Sittineasy, L.L.C.*, 2016-Ohio-712.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103294

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**KAREN JONES**

PLAINTIFF-APPELLEE

vs.

**SITTINEASY L.L.C.**

DEFENDANT-APPELLANT

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**JUDGMENT:  
REVERSED**

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Civil Appeal from the  
Parma Municipal Court  
Case No. 15 CVI 00419

**BEFORE:** Jones, A.J., S. Gallagher, J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** February 25, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} Defendant-appellant Sittineasy, L.L.C., appeals the decision of the Parma Municipal Court granting judgment in favor of plaintiff-appellee, Karen Jones. No appellee brief has been filed in this matter. After a review of the pertinent law and facts, we reverse.

{¶2} In 2014, Sittineasy, a limited liability company owned by John Barker, entered into a contract granting the exclusive right to lease five apartment units it owned. Karen Jones signed the contract individually as the designated licensee on behalf of broker Keller Williams. The contract indicated that Sittineasy would pay a commission equal to the amount of the first month's rent for each unit leased in accordance with the contract terms.

{¶3} Jones leased three units to various renters at a rate of \$750 per month. In February 2015, Jones, in her individual capacity, filed suit against Sittineasy alleging the company failed to pay her commissions for the three leases. Sittineasy filed a motion to dismiss, alleging that Jones lacked the standing to sue because Keller Williams was the proper party. The court held a hearing at which Barker, Jones, and a representative from Keller Williams were present. After hearing testimony from Jones and Barker, the magistrate found in favor of Jones.

{¶4} Sittineasy filed timely objections, raising the issue that Jones was not a proper party plaintiff pursuant to R.C. 4735.21. The trial court overruled the company's objections and entered judgment in favor of Jones for \$2,250 plus 3% interest from December 1, 2014.

{¶5} Sittineasy appealed and raises one assignment of error for our review:

The trial court abused its discretion and erred in denying Appellant's objections and granting judgment in favor of the Appellee, a real estate salesperson, who failed to allege and prove she was a licensed real estate broker as required by O.R.C. §4735.21.

{¶6} Jones filed her action in small claims court; the standard of review for small claims court proceedings is abuse of discretion. *Dinucci v. Lis*, 8th Dist. Cuyahoga No. 86223, 2005-Ohio-6730, ¶ 4. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶7} R.C. 4735.21 provides the following:

No right of action shall accrue to any person, partnership, association, or corporation for the collection of compensation for the performance of the acts mentioned in section 4735.01 of the Revised Code, without alleging and proving that such person, partnership, association, or corporation was licensed as a real estate broker \* \* \*.

No real estate salesperson \* \* \* shall collect any money in connection with any real estate \* \* \*, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker \* \* \* under whom the salesperson is licensed at the time the sales person earned the commission. Nor shall any real estate salesperson \* \* \* commence or maintain any action for a commission or other compensation in connection with a real estate \* \* \* brokerage transaction,

against any person except a person licensed as a real estate broker \* \* \*  
dealer under whom the salesperson is licensed as a salesperson at the time  
the cause of action arose. \* \* \*

{¶8} Thus, R.C. 4735.21 requires a plaintiff to allege and prove as an essential element of a claim for an unpaid commission that he or she was a licensed real estate broker when the cause of action arose. If the person is not a licensed real estate broker, then under R.C. 4735.21, a licensed real estate salesperson may seek relief for an unpaid commission only against a licensed real estate broker under which he or she is licensed as a salesperson at the time the cause of action arose. The real estate salesperson may not recover against the buyer or seller, or as in this case, the owner of the property. *Smith v. Stevens*, 2d Dist. Montgomery No. 15871, 1996 Ohio App. LEXIS 4951, \*13 (Nov. 15, 1996). Ohio courts have strictly interpreted this statute, holding that only a licensed real estate broker can maintain an action for its commissions. *Id.* at \*12-\*13.

{¶9} Jones testified that she was an “agent” for Keller Williams and occasionally performed property management for the company. Although the magistrate found her to be a “proper party,” at no time did Jones allege or prove that she was a licensed real estate broker. Thus, her remedy was to rely on her employer at the time, Keller Williams, to file an action to collect the commission on her behalf.<sup>1</sup> *Ownbey v. Professional Realty Inc.*, 8th Dist. Cuyahoga No. 82468, 2003-Ohio-4949, ¶ 9, citing *Teeple v. Baker, Hostetler &*

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<sup>1</sup> Generally, the statute of limitations for written contracts is eight years after the cause of action has accrued. *See* R.C. 2305.06.

*Patterson*, 8th Dist. Cuyahoga No. 40528, 1980 Ohio App. LEXIS 14359 (Mar. 20, 1980).

Alternatively, Jones could have brought an action against Keller Williams for the commission. *Kapel v. Carnegie Mgt. & Dev. Corp.*, 8th Dist. Cuyahoga No. 67939, 1995 Ohio App. LEXIS 1947, \*8 (May 11, 1995); *see also Hanes v. Davis*, 62 Ohio Misc.2d 468, 471-472, 601 N.E.2d 685 (C.P.1992) (Plaintiff, who was a real estate salesperson working under a real estate company, would have to bring an action against the real estate company for the commission rather than seeking compensation from the defendant seller.)

{¶10} Therefore, in accordance with R.C. 4735.21, Jones lacked standing to commence this action, and the trial court abused its discretion in entering judgment in her favor.

{¶11} The sole assignment of error is sustained.

{¶12} Judgment reversed; case remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Parma Municipal Court to carry this judgment into execution.

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

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LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR