IN THE SUPREME COURT OF OHIO

PAMELA LEMASTERS	:	CASE NO. 2015-2102
	:	
Relator	:	IN MANDAMUS AND PROHIBITION
	:	
v.	:	
	:	
THE CELINA MUNICIPAL COURT, et al	:	
	:	
Respondents.	:	

RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Respondents, the Celina Municipal Court and the Honorable Judge James J. Scheer, move the Court, pursuant to Ohio Civil Rule 12(C), for judgment on the pleadings. The grounds for this motion are set forth in the attached memorandum.

Respectfully submitted,

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MEMORANDUM

I. INTRODUCTION

The instant action arises from an eviction proceeding brought against tenant and Relator, Pamela LeMasters, by her landlord in the Celina Municipal Court. On October 26, 2015, after a trial on the merits, Respondent, the Honorable Judge James J. Scheer, granted an eviction judgment against Ms. LeMasters and ordered that she be removed from the rental premises no later than November 22, 2015. The basis for the eviction was specifically "allowing a non-trespassed individual on the premises continually." Testimony was presented at trial that Ms. LeMasters had permitted unauthorized persons to stay at her apartment, contrary to the terms of the lease.

Ms. LeMasters filed a Motion to Stay Execution of Journal Entry Pending Appeal Without Bond with Supporting Memorandum and Affidavit on November 17, 2015. Judge Scheer declined the stay request via Journal Entry of November 19, 2015. That same day, Ms. LeMasters filed a Motion to Stay Execution of Journal Entry Pending Appeal Without Bond with Supporting Memorandum and Affidavit with the Third District Court of Appeals in *Gorsuch Homes, Inc. v. Pamela LeMasters,* Third Appellate District Case No. 10-15-18.

On December 3, 2015, the Third District Court of Appeals entered judgment against Ms. LeMasters. The Appellate Court ruled on the merits of Ms. LeMasters' motion, finding there was no good cause shown for staying execution of the trial court's writ of restitution without any bond posted. The Court stated, "[w]e disagree with Appellant's assertion that there is 'no damage' because her rent is entirely paid by the U.S. Department of Housing and Urban Development… [a]s noted in the response, the eviction was not based on economic reasons, but

rather because Appellant continually permitted unauthorized persons to stay at the apartment, contrary to the terms of the lease." (Exhibit G to Relator's Compl., Ct. of Appeals Entry p. 1-2)

Relator, Ms. LeMasters, filed a Complaint for an Original Writ of Prohibition & Mandamus on December 30, 2015. Ms. LeMasters seeks an Order from this Court mandating and directing Respondents, Judge Scheer and the Celina Municipal Court, to stay the writ of restitution granted on October 26, 2015, without bond immediately. (Compl. at ¶26). Ms. LeMasters further seeks an Order from this Court prohibiting Judge Scheer and the Celina Municipal Court from enforcing the eviction judgment. (Comp. at ¶33).

The respondents are entitled to judgment on the pleadings pursuant to Ohio Civil Rule 12(C) and dismissal of this Complaint. As an initial matter, the Celina Municipal Court is not an entity capable of being sued, or *sui juris*. In addition, this action is essentially a duplicate filing of the appeal already litigated in the trial and appellate courts. Both courts denied on the merits Ms. LeMasters' motions for a stay of execution on the writ of restitution. In this original action, Ms. LeMasters seeks the same relief she sought in the lower courts, and, thus it should be dismissed as improper.

II. LAW AND ARGUMENT

A. Standards for Deciding Rule 12(C) Motions

"In applying the Civ.R. 12(C) standard, judgment on the pleadings may be granted where no material factual issue exists and the moving party is entitled to judgment as a matter of law. The determination is restricted solely to the allegations of the pleadings and the nonmoving party is entitled to have all material allegations in the complaint, with all reasonable inferences to be drawn therefrom, construed in her favor as true." (Internal citation omitted.) *State ex rel. Pirman v. Money* (1994), 69 Ohio St.3d 591, 592-93.

The Third District recently recited Ohio law on Rule 12(C) motions as follows:

> "[T]he standards for Civ.R. 12(B)(6) and (C) motions are similar, but Civ.R. 12(C) motions are specifically for resolving questions of law[.]" *State ex rel. Midwest Pride IV, Inc. v. Pontious* (1996), 75 Ohio St.3d 565, 570, 664 N.E.2d 931, citing *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 166, 297 N.E.2d 113. Dismissal is appropriate under Civ.R. 12(C) only when a court: (1) construes the material allegations in the complaint, along with all reasonable inferences therefrom, in favor of the nonmoving party as true; and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Pontious*, 75 Ohio St.3d at 570, 664 N.E.2d 931, citing *Lin v. Gatehouse Constr. Co*. (1992), 84 Ohio App.3d 96, 99, 616 N.E.2d 519. On the other hand, a court need not assume the truth of conclusions, which are not supported by factual allegations. *Garofalo v. Chicago Title Ins. Co*. (1995), 104 Ohio App.3d 95, 104, 661 N.E.2d 218, citing *Mitchell v. Lawson Milk Co*. (1998), 40 Ohio St.3d 190, 192–93, 532 N.E.2d 753 (noting that the complaint's facts, not its conclusions, determine a Civ.R. 12(B)(6) motion).

Spears v. Bush, Marion App. No. 9-10-05, 2010-Ohio-3547 (3rd Dist. 2010).

A Court's determination on a Rule 12(C) motion is restricted to the allegations in the pleadings and any writings attached to the pleadings. See, e.g., *Schmitt v. Educational Serv. Ctr. Of Cuyahoga Cty.*, 970 N.E.2d 1187, 2012-Ohio-2208 (8th Dist. 2012); *McGlothin v. Schad*, 194 Ohio App.3d 669, 2011-Ohio-3011 (12th Dist. 2011).

Respondents further submit that this Court should consider adopting the pleading standards set forth by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007),[1] which directs that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions [or] a formulaic recitation of the elements of a cause of action." Some appellate districts in Ohio have adopted this pleading

[1] While *Twombly* involved a Rule 12(B)(6) motion to dismiss, Ohio courts have reasoned that the same standard applied to Rule 12(B)(6) motions applies to Rule 12(C) motions, as Rule 12(C) motions are typically characterized as "a belated Rule 12(B)(6) motion." See, e.g., *Gawloski v. Miller Brewing Co.*, 96 Ohio App.3d 160, 163 (9th Dist. 1994). The Third District has reasoned that "the standards for Civ.R. 12(B)(6) and (C) motions are similar, but Civ.R. 12(C) motions are specifically for resolving questions of law[.]" *Spears v. Bush*, Marion App. No. 9-10-05, 2010-Ohio-3547, 2010 WL 2990896 (3rd Dist. 2010). Federal courts apply the *Twombly* standard to Rule 12(C) motions. *Tucker v. Middleburg-Legacy Place*, 539 F.3d 545 (6th Cir. 2008).

standard,[2] reasoning that the pleading requirements under Fed.R.Civ .P. 8(a) and Civ.R. 8(A) are virtually identical, and that Ohio's rule is modeled after the Federal rule. *Vagas v. City of Hudson*, Summit App. No. 24713, 2009-Ohio-6794, 2009 WL 4981219 (9th Dist. 2009); *Fink v. Twentieth Century Homes, Inc.*, Cuyahoga App. No. 94519, 2010-Ohio-5486, 2010 WL 4520482 (8th Dist. 2010). This has been described as the "plausibility test" by Ohio courts, and the two-step approach has been explained as follows:

> First, the trial court should separate the allegations based upon legal conclusions and those based upon factual allegations. Only factual allegations are presumed to be true and only claims supported by factual allegations can avoid dismissal. Second, the trial court must determine whether the claims supported by factual allegations plausibly suggest that the plaintiff is entitled to relief.

Haas v. Stryker, Williams App. No. WM–12–004, 2013-Ohio-2476, 2013 WL 3055763 (6th Dist. 2013).

At a bare minimum, *Twombly* instructs and reaffirms that complaints must contain more than mere "labels and conclusions," and the Eighth District recently noted that Ohio courts have been applying such reasoning as follows:

> Since *Gallo*, other Ohio appellate courts have also cited *Twombly* or *Iqbal*. The Fifth District cited *Iqbal* for the proposition that "[a] legal conclusion cannot be accepted as true for purposes of ruling on a motion to dismiss." *Cirotto v. Heartbeats of Licking Cty.*, 5th Dist. Licking No. 10–CA–21, 2010-Ohio-4238, 2010 WL 3495623, ¶ 18. In *Vagas v. Hudson*, 9th Dist. Summit No. 24713, 2009-Ohio-6794, 2009 WL 4981219, the Ninth District cited *Twombly* for the proposition that complaints must contain more than mere "labels and conclusions." *Id*. at ¶ 13. Similarly, the Eleventh District cited *Twombly* for the idea that mere recitation of the elements of a cause of action is insufficient without some factual allegations. See *Hoffman v. Fraser*, 11th Dist. Geauga No. 2010–G–2975, 2011-Ohio-2200, 2011 WL 1782099, ¶ 21.

[2] Respondents acknowledge that some appellate courts in Ohio have expressly rejected this proposition. See, e.g., *Bahen v. Diocese of Steubenville*, Jefferson App. No. 11JE34, 2013-Ohio-2168, 2013 WL 2316640; *Sacksteder v. Senney*, Montgomery App. No. 24993, 2012-Ohio-4452, 2012 WL 4480695 (2nd Dist. 2012); *Tuleta v. Medical Mutual of Ohio*, 6 N.E.3d 106, 2014-Ohio-396 (8th Dist. 2014). The Ohio Supreme Court recently did not take the opportunity to address this conflict when it declined to take jurisdiction over the *Senney* case. *Sacksteder v.* Senney, 134 Ohio St.3d 1484 (2013).

Tuleta v. Medical Mutual of Ohio, 6 N.E. 106, 2014-Ohio-396 (8th Dist. 2014).

In this case, it does not matter whether the Court applies the "plausibility test" of *Twombly*, or whether the Court analyzes the case under Ohio's pre-*Twombly* law, as recounted by the Third District in *Spears v. Bush* above. The Relator's Complaint fails to state any viable claims against both Respondents, and should be dismissed as a matter of law.

B. The Celina Municipal Court is not *sui juris*.

Relator names the Celina Municipal Court as a party. No express statutory authority exists to provide Relator with legal grounds to sue the Municipal Court. The Court cannot sue or be sued, as it is not *sui juris*. *Malone v. Court of Common Pleas of Cuyahoga County*, 45 Ohio St.2d 245, 248 (1976) (quoting *State ex rel. Cleveland Municipal Court v. Cleveland City Council*, 34 Ohio St.2d 120, 121 (1973); *Harsh v. City of Franklin, Ohio*, No. 1:07-cv-874, 2009 U.S. Dist. LEXIS 25209 (holding the Warren County, Ohio Court of Common Pleas and City of Franklin Municipal Court not *sui juris*). Therefore, all claims plead against the Municipal Court must be dismissed with prejudice for a failure to state an action claim.

C. This Original Action Should Be Dismissed as Relator Cannot Meet the Elements of the Writ of Mandamus or the Writ of Prohibition as a Matter of Law.

As stated above, this original action began as a simple eviction case in the Celina Municipal Court. Judge Scheer of that Court ruled against the Relator, Ms. LeMasters, and granted a writ of restitution to the landlord. Ms. LeMasters sought stays of execution of the writ of restitution from the Celina Municipal Court and the Third District Court of Appeals. Both courts declined to issue a stay without bond, which was the request of Ms. LeMasters, on the merits. Ms. LeMasters' recourse following the denial of her motion to stay would have been to ask for bond to be set, carrying on with her appeal in the Third District, or seek discretionary review by this Court upon issuance of final judgment entry by the Third District Court of

Appeals. Ms. LeMasters did not pursue the appropriate recourse. Rather, she instead filed this original action seeking writs of restitution and prohibition against the Celina Municipal Court and Judge Scheer.

What this really is, though, is duplicative litigation seeking yet a third bite at the same apple on her motion to stay execution of the writ of restitution. As a preliminary matter, this Court has upheld sanctions for repetitive litigation tactics, such as filing a writ that is duplicative to lower court proceedings. *State ex rel. Bell v. Madison County Bd. of Comm'rs*, 139 Ohio St. 3d 106, 2014-Ohio-1564 (2014). This original action appears to be the same type of repetitive litigation that was sanctioned in the *Bell* case.

Aside from the "overly persistent" litigation tactics occurring here, this original action should be dismissed due to Ms. LeMasters' inability to satisfy the necessary elements establishing writs of mandamus or prohibition. For a court to grant a writ of mandamus, the relator must establish: (1) a clear legal right to the requested relief; (2) a clear legal duty to perform these acts on the part of the respondent; and (3) the lack of a plain and adequate remedy in the ordinary course of law. *State ex rel. Neff v. Corrigan*, 75 Ohio St. 3d 12, 1996-Ohio-231 (1996).

Mandamus is not a substitute for appeal. *State ex rel. Foster v. Buchanan*, 2006-Ohio-2061, ¶2 (8th Dist. Ct. Appeals, Cuyahoga). Moreover,

> [M]andamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *** Indeed, the "facts submitted and the proof produced must be plain, clear, and convincing before a court is justified in using the strong arm of the law by way of granting the writ."

Id. (citing, *inter alia*, *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus). (some internal citations omitted).

Clearly, relief in mandamus is not appropriate in the instant original action because, like the Relator in *Foster* supra, Ms. LeMasters is merely attempting to use this action as a substitute for an appeal. Ms. LeMasters already attempted to pursue the same relief she is seeking in this Court with the Third District, and the Third District found that Ms. LeMasters had no clear legal right to the relief requested. *Gorsuch Homes, Inc. v. Pamela LeMasters*, Third Appellate District Case No. 10-15-18 (Dec. 3, 2015). The Relator may not simply try again with this "original action" in a higher court because she did not like the decision she got from the Third District. For this reason alone, the writ of mandamus should be denied and this Complaint dismissed as improper.

Where both the trial court and court of appeals deny a motion to stay execution of a writ of restitution, further appeals are moot and must be dismissed. *Gara v. Gara*, 2015-Ohio-4401 (2nd Dist. Ct. Appeals, Montgomery). See also *Millennia Hous. Mgt., Ltd. v. Withrow*, 4th Dist. No. 12CA2, 2013-Ohio-278, ¶ 5 ("the Supreme Court of Ohio has advised us that it is reversible error for an appellate court to consider the merits of an appeal that has become moot."). Thus, Ms. LeMasters cannot satisfy the first element necessary for mandamus to be granted.

Nor can Ms. LeMasters satisfy the necessary elements establishing the right to a writ of prohibition. In order for a writ of prohibition to issue, petitioner must prove that: (1) the lower court is about to exercise judicial authority; (2) the exercise of authority is not authorized by law; and, (3) the petitioner has no other adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Pullins v. Eyster*, 2009-Ohio-2846, ¶10 (5th App. Dist.) (citing *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St. 3d 176. While no current action pends before the Celina Municipal Court and Judge Scheer on this matter, should the landlord seek enforcement, Relator has failed to plead any fact that would substantiate that the Court and Judge

Scheer would be exercising any authority that is not authorized by law. While Relator is not personally obligated to pay rent given the government subsidy she receives, she is obligated to follow the rules and her rental agreement, which do not allow her to have unauthorized people living with her and her son. She admitted to breaking that rule, and Judge Scheer lawfully enforced the agreement between the parties. She has filed an appeal to the Third District through counsel. She can file a discretionary appeal to this Court if the Third District affirms the Municipal Court's judgment.

Neither mandamus nor prohibition will issue where there is an adequate remedy at law. *Id*. at ¶11.

There is no question that the Relator, Ms. LeMasters, has or had an adequate remedy at law to challenge the Respondents' (and the Third District Appeals Court's) denial of the stay of execution of the writ of restitution, such that she cannot satisfy the third element of either the writ of mandamus or the writ of prohibition. Following her appeal to the Third District Court of Appeals and its judgment rendered against her, Ms. LeMasters could have sought discretionary review from this Court. See *1994-N1 Ohio Assocs. L.P. v. Planet Earth Entm't,* 108 Ohio App.3d 383 (2nd Dist. App. 1995). She chose not to do so and, instead, sought the extraordinary and inappropriate relief of mandamus and prohibition writs in this original action.

And, Ohio Civil Procedure Rule 62 does not, contrary to Relator's Complaint allegation at paragraph 22, provide Relator with a stay of the judgment "as a matter of right." The Rule itself states an appellant "may obtain a stay" . . . "by giving adequate supersedeas bond." Just because the rent is subsidized does not mean that the landord's interests in the property will be preserved, as Ms. LeMasters admitted to violating the lease agreement rules by allowing an unauthorized person to stay in the apartment. She further only requested a stay of the Court of

Appeals with no bond. *State ex. Rel State Fire Marshal v. Curl* (2000), 87 Ohio St.3d 568, 2000-Ohio-248 is a case involving governmental officials who are entitled to a stay with under Civil Rule 62 (C), which grants a stay with no bond. Ms. LeMasters is not a government official and, therefore, her claim for relief is fatally flawed, and, therefore, her request for stay was properly denied by the Court of Appeals, a court with unlimited power to preserve justice and the status quo pending appeal under Ohio Civil Procedure Rule 62(D).

Judge Scheer is not an appellate court judge. He has taken no unlawful action in adjudicating this eviction matter. And, he is not divested of jurisdiction to hear further proceedings pending the appeal, as the *Curl* case is not applicable to the parties and factual allegations at issue here. Furthermore, a reading of the *Curl* opinion illustrates why this action fails to state a claim. Only where the government or one of its officials are seeking a stay is a stay automatically issued as a matter of right. Id. at 571-572. Stays are as a matter of right in those specific instances because no bond is required as a matter of Civil Rule. Such is not the case for Ms. LeMasters, a private tenant who was found by Judge Scheer to have violated the terms and conditions of the lease agreement for the apartment she rented. Whether the rent is subsidized by a government program is not relevant – what is relevant is that Judge Scheer properly maintained the status quo by denying the stay to justly protect the landlord's interest in its real property as Ms. LeMasters' admitted that she allowed an unauthorized person to reside in the apartment she leased from the landlord.

Ms. LeMasters did not ask for bond to be set, and as such, she comes to this Court with unclean hands seeking extraordinary relief. Separately, because the appropriate channel of appeal was available to her but not pursued, Ms. LeMasters cannot meet the third element of

satisfying the right to a writ of mandamus or writ of prohibition, and the instant Complaint must be dismissed.

III. CONCLUSION

The Celina Municipal Court is not sui juris and must be dismissed for it is not capable of being sued. The Relator cannot disguise the instant appeal as an original action and cannot satisfy the elements necessary to establish a right to the extraordinary relief of writs of mandamus and prohibition as a matter of law.

FOR THE FOREGOING REASONS, the Respondents respectfully request that the Court SUSTAIN this motion for judgment on the pleadings, and ORDER that all of the claims made in the Complaint be dismissed with prejudice, with costs taxed to Relator.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2016, I served a copy of the foregoing, via electronic mail, upon the following:

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