



ORIGINAL

IN THE CIRCUIT COURT OF COOK COUNTY,
MUNICIPAL DEPARTMENT FOURTH DISTRICT

WESLEY TERRACE CONDO ASSN,)

Plaintiff,)

v.)

Case No: 2016-M4-000881

CHRISTOPHER STOLLER and)

MICHAEL STOLLER,)

Defendants.)

ORDER FOR SANCTIONS

The Defendants have moved to sanction Plaintiff for filing this forcible entry and detainer action arguing that it was an abuse of process and harassing. Sanctions are appropriate if there is a violation of Rule 137, which states that the signer of a pleading certifies that he or she has performed a reasonable inquiry and has concluded, to the best of his or her knowledge, information and belief, that the pleading, motion or other paper is well grounded in fact and warranted by existing law or good faith argument for suspension, modification or reversal.

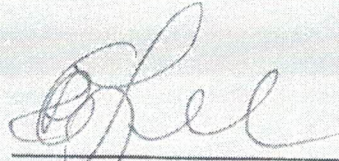
Sanctions are warranted if the pleader knew or should have known that the material allegations of fact the signer pled, were false. In this case, Wesley Terrace Condominium Association alleges in the Complaint that, "Plaintiff and Defendant Christopher Stoller entered into a condominium lease agreement for the aforementioned premises commencing on November 1, 2015 through October 31, 2016." This is not true. Wesley Court Condominium Association and the Defendant entered into a lease agreement.

A reasonable investigation of the modified lease agreement attached to the Complaint with the handwritten assertions or insertions would have put Plaintiff's counsel on notice as to this fact.

Consequently, Defendants' Motion for Sanctions will be **GRANTED**. The Court will hear arguments and/or entertain written submissions as to an appropriate sanction. The Court does not make that ruling at this juncture.

SO ORDERED THIS _____ **day of** _____, **2016.**

ENTERED:



JUDGE

ENTERED
JUDGE KEVIN T. LEE - 2112
OCT 13 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK



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ORDER

This is a case where the Plaintiff and the Defendant Christopher Stoller entered into a lease for the property designated at 415 Wesley, Unit 1, Oak Park, Illinois, on October 30th of 2015. Plaintiff's Complaint alleges that Defendant failed to pay \$2,252.00 in rent in violation of the lease attached to the Complaint, executed by both the Plaintiff and Defendant.

Plaintiff served a five-day notice on the Defendant and brought this forcible entry and detainer action for both possession and judgment.

At issue in the case is, Plaintiff's Complaint which alleges that Wesley Terrace Condominium Association is the owner of the property at 415 Wesley, Unit 1. However, the lease entered into between the parties contains the name of Wesley Court Condominium Association. The word "Court" is lined out, and the word "Terrace" is written in.

In the first and second paragraphs of the lease agreement, additionally, the signature block for the landlord at the conclusion of the lease contains the name "Wesley Terrace" is handwritten in before the words Condominium Association. Defendant asserts that the version of the lease that he signed does not contain these modifications.

As the Court sees it, the following facts are not in dispute. Plaintiff alleges that Wesley Terrace Condominium Association is the owner of the property in the Complaint. Wesley Terrace

Condominium Association and Wesley Court Condominium Association are separate corporations. At the time the contract was signed, the lessor was listed as Wesley Court Condominium Association in the lease. It was modified to reflect that the lease was between Wesley Terrace Condominium Association and Defendant.

The lease itself at Paragraph 26 states, any provision of this lease may be modified, waived, discharged only by an instrument in writing, signed by the party against whom that enforcement of such modification, waiver or discharge is sought.

So with regard to Defendants' Motion to Dismiss, Defendant also argues that the alteration of the lease was both material and fraudulent. Defendant argues that Wesley Terrace Condominium Association has no standing to bring this forcible entry and detainer action.

Plaintiffs have argued vigorously that the issues raised by the Defendant are absurd and should be addressed at trial in response to the Defendants' Motion to Dismiss, at Section 4. Plaintiff suggests in the Motion for Use and Occupancy, that the modification of the lease is merely a typographical error which the Plaintiff characterized as a misnomer.

This argument wasn't specifically in the reply brief to the Motion to Dismiss, however, the Court will address it. Misnomer is defined as a situation where the correct parties are in the case. However, one of the parties is referenced by an incorrect name. Typically, misnomer is not a basis for dismissal because misnomer can be corrected by amending the pleading, which is an argument that has been raised by the Plaintiff in this case.

The instant case, however, does not meet the definition of misnomer. The incorrect name is in the lease, the contract upon which the Complaint is based.

If the problem was simply a case of misnomer, the Plaintiffs could have sought to amend the Complaint to correct the misnomer. However, no Motion to Amend has been brought in the

eight months that this case has been pending, as it is, the contract itself that is incorrect or at least inconsistent, not the pleading.

It is clear to the Court that the lease was modified because it contains handwritten information which is not in the version of the lease attached to Defendants' Motion to Dismiss at "Exhibit 4". Moreover, there's nothing in the record to suggest that a modification was completed in accordance with Paragraph 26 of the lease, and signed by Mr. Stoller, the party against whom the Plaintiffs seek to enforce it.

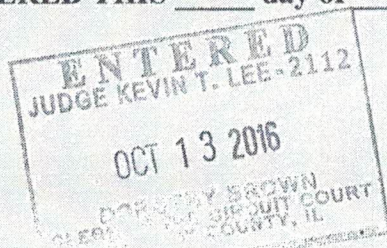
Consequently, Defendants' 2-619 Motion to Dismiss the forcible entry and detainer action brought by the Plaintiffs, Wesley Terrace Condominium Association, is granted and the case is dismissed as it is predicated on a contract that was executed with a different corporate entity, Wesley Court Condominium Association. The instant Complaint is defective for the reasons stated and will be dismissed.

Defendant Stoller's Motion for Judicial Notice is moot. Defendant Stoller's Motion to Produce is also moot in light of the Court's ruling on the Motion to Dismiss. Plaintiff's Motion for Use and Occupancy is now moot in light of the Court's ruling on the Motion to Dismiss. Defendant Michael Stoller's Motion to Intervene also is moot.

The Complaint that I have and the lease upon which it was predicated do not line up, and under the law, the appropriate action to take was to dismiss based upon the Defendants' 2-619 Motion. Plaintiff is granted leave to amend their Complaint as reflected in the Order of October 13, 2016, in this matter.

SO ORDERED THIS _____ day of _____, 2016.

ENTERED:



A handwritten signature in cursive script, appearing to read "K. Lee", written over a horizontal line.

JUDGE