

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALISSA SCHWAB, Individually and as Next Friend  
of TATE SCHWAB, TELISSA SCHWAB, and  
TAFT SCHWAB, minors,

Plaintiffs,

v

CHARLES REINHART COMPANY, MARY  
BETH KANTZLER, BILL MARTIN, and NANCY  
DRUSKIN,

Defendants,

and

PATTENGILL CONDOMINIUM ASSOCIATION,

Defendant/Cross-Plaintiff/Appellant,

and

JIM HARPER

Defendant/Cross-Defendant/Appellee.

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Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant/cross-plaintiff, Pattengill Condominium Association, appeals as of right from an order dismissing its cross claim against defendant/cross-defendant, Jim Harper, in this eviction and housing discrimination case that was consolidated below. We affirm.

UNPUBLISHED  
April 30, 1999

No. 206564  
Washtenaw Circuit Court  
LC No. 96-007794 CZ

Pattengill brought an eviction suit against Alissa Schwab in the 15<sup>th</sup> District Court alleging that Schwab and her minor children had been unreasonably disruptive and noisy in the condominium complex. Schwab filed a counterclaim alleging that Pattengill and others violated the Fair Housing Act, 42 USC 3601 *et seq.*, and the Civil Rights Act, MCL 37.2505; MSA 3.548(502), by discriminating against her and her minor children because of their familial status. Schwab was not the owner of the condominium unit, but rented it from Harper. As such, Harper was named as a defendant in Schwab's suit because of the necessary joinder provision of MCR 2.205. The district court allowed Schwab's discrimination claim to proceed in the circuit court, while retaining jurisdiction in the eviction proceeding.

Pattengill then filed a cross claim against Harper alleging that Harper, as the owner of the condominium unit, was subject to the by-laws of the condominium association and that, by leasing his unit to Schwab, Schwab's behavior was imputed to Harper. Pattengill asserted that the action for eviction entitled Pattengill to attorney fees from Harper pursuant to Article XI, § 1(b) of the by-laws, which provides:

In any proceeding arising because of an alleged default by any Co-owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (not limited to statutory fees) as may be determined by the Court, but in no event shall any Co-owner be entitled to recover such attorneys' fees.

Mediation was held involving all parties. Schwab and Harper accepted the panel's evaluation. Pattengill accepted the evaluation as to Schwab's claim, but rejected the evaluation as to its claim against Harper. Pattengill subsequently filed a motion to sever the case so that the eviction proceeding could be returned to the district court and litigated promptly. At the motion hearing, the circuit court decided that it was going to dismiss *sua sponte* Pattengill's cross claim, finding that Pattengill's claim for attorney fees was moot. Because Schwab had voluntarily agreed to move out of the condominium, the parties stipulated to the dismissal of the eviction proceeding.

Pattengill first argues that it was denied due process at the hearing because it did not receive any notice that the circuit court was considering a dismissal of its claim, and, therefore, it was not adequately prepared to argue against the dismissal. The circuit court did not violate Pattengill's procedural due process rights where Pattengill had notice, an opportunity to be heard at the hearing, and an opportunity to file a motion for reconsideration. *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998). Here, Pattengill had notice of the possibility that its claim could be dismissed because Harper had requested such relief in the answer to the cross claim. Further, Pattengill had an opportunity to be heard because the circuit court asked counsel to justify a request of attorney fees where the case had been mediated and dismissed since Schwab had voluntarily left the premises. There is no procedural due process violation under these circumstances. *Vicencio v Ramirez*, 211 Mich App 501, 504; 536 NW2d 280 (1995); *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

Pattengill next argues that the circuit court erred in dismissing its cross claim because Pattengill had clearly rejected the mediation evaluation regarding Harper. Pattengill maintains that it was entitled to further proceedings because the matter of attorney fees had not been resolved.

Pattengill was not entitled to attorney fees in the housing discrimination proceeding because that suit involved a defense of its own conduct and had nothing to do with the eviction proceeding. Pattengill would have been entitled to attorney fees only in the eviction proceeding, but that case was ultimately dismissed because Schwab voluntarily left the premises. Because Schwab had voluntarily left the premises and no proceeding actually took place in the lower courts, Pattengill was “successful” in the proceeding against Schwab. In fact, there is no indication that anything other than the filing of the eviction papers took place in the district court. Moreover, Pattengill was not successful in defending the housing discrimination claim against it where Pattengill paid Schwab \$5,000 pursuant to the mediation award.

Accordingly, the circuit court did not err in dismissing Pattengill’s cross claim against Harper.

Affirmed.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Stephen J. Markman