**[Cite as *Stewart v. Dina's Pizza & Pub, Inc.*, 2018-Ohio-3415.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
**No. 106790**

**LAKESHA STEWART**

PLAINTIFF-APPELLANT

vs.

**DINA'S PIZZA AND PUB, INC.**

DEFENDANT-APPELLEE

**JUDGMENT:**
AFFIRMED

Civil Appeal from the
Cleveland Municipal Court
Case No. 2016 CVE 96434

**BEFORE:** Blackmon, J., E.T. Gallagher, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** August 23, 2018

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PATRICIA ANN BLACKMON, J.:

**{¶1}** Plaintiff-appellant, Lakesha Stewart ("Stewart"), appeals from the judgment of the Cleveland Municipal Court that dismissed her complaint against Dina's Pizza and Pub, Inc. ("Dina's Pizza") due to lack of subject matter jurisdiction. Stewart assigns the following error for our review:

> The trial court committed reversible error by granting [Dina's Pizza's] motion to dismiss for lack of subject matter (monetary) jurisdiction.

**{¶2}** Having reviewed the record and pertinent law, we affirm the decision of the trial court. The apposite facts follow.

**{¶3}** On May 12, 2016, Stewart filed a complaint against Dina's Pizza, alleging that its pizza contained a piece of glass or plastic that became stuck in her throat, causing her to sustain injuries. Stewart's first cause of action alleged that the pizza was defective and unfit for consumption, and proximately caused her to incur $4,900 in medical expenses. The second cause of action alleged negligence, and Stewart's prayer for relief sought $15,000 "as to the first cause of action," "and" $15,000 "as to the second cause of action." On October 4, 2017, Dina's Pizza filed a motion to dismiss for lack of subject matter jurisdiction, claiming that Stewart sought damages in excess of the court's $15,000 monetary jurisdiction limit, in light of the plain language setting forth conjunctive demands, as well as Stewart's reference to $4,900 in medical expenses on the breach of implied warranty claim. In a brief in opposition, Stewart's counsel explained, "both Count One and Count Two ask for the same $15,000, just under different theories of liability." However, on November 18, 2017, Stewart filed a motion for leave to file an amended complaint which set forth a prayer for relief for $14,500 "as to the first cause of action," "and" $14,500 "as to the second cause of action."

**{¶4}** On January 10, 2018, the trial court granted the motion to dismiss, stating, "the Plaintiff is seeking $29,000. That is above the monetary jurisdictional limit. The Court cannot hear cases where it lacks jurisdiction."

**{¶5}** In her sole assigned error, Stewart argues that the trial court erred in dismissing her complaint and/or amended complaint because the two claims for relief were presented as alternative theories of liability within the $15,000 jurisdictional limit.

**{¶6}** An appellate court reviews de novo a trial court's order granting or denying a motion to dismiss for lack of subject matter jurisdiction. *Hull v. Charter One Bank, N.A.*, 8th Dist. Cuyahoga No. 99308, 2013-Ohio-2101, ¶ 7.

**{¶7}** R.C. 1901.18 sets forth the subject matter jurisdiction of municipal courts, subject to the monetary jurisdiction set forth in R.C. 1901.17; *Behrle v. Beam*, 6 Ohio St.3d 41, 43-44, 451 N.E.2d 237 (1983). Under R.C. 1901.17, municipal courts have jurisdiction "only in those cases in which the amount claimed by any party * * * does not exceed fifteen thousand dollars[.]"

**{¶8}** When the monetary amount sought exceeds the municipal court's limit on subject matter jurisdiction, that court is without jurisdiction to decide the matter. *State ex rel. Natl. Emp. Benefit Servs. v. Court of Common Pleas*, 49 Ohio St.3d 49, 50, 550 N.E.2d 941 (1990). A municipal court is required to dismiss an action where the relief sought is beyond the statutory monetary restrictions. *Id*.; *Williams Creek Homeowners Assn. v. Zweifel*, 10th Dist. Franklin No. 07AP-689, 2008-Ohio-2434, ¶ 69.

**{¶9}** In *Turowski v. Apple Vacations, Inc*., 9th Dist. Summit No. 21535, 2004-Ohio-33, the court held that where "there is no indication that * * * claims are pled in the alternative, the demand for relief is in the conjunctive." *Id*. at ¶ 8, citing *Droeder v. Minot*, 11th Dist. Trumbull No. 92-T-4751, 1993 Ohio App. LEXIS 3937 (Aug. 13, 1993) (municipal court lacked jurisdiction where "the demand for relief was in the conjunctive and, thus, the total claim for relief was for $20,000."). *Accord Lance Langan Water Jetting Inc. v. Tiger Gen., Inc*., 9th Dist. Medina No. 05CA0018-M, 2005-Ohio-4541("Because there is no indication that these claims were pled in the alternative, the demand for relief is in the conjunctive.").

**{¶10}** In this matter, the demand of Stewart's complaint sought $15,000 on the first claim for relief "and" $15,000 on the second claim for relief. Stewart's counsel informed the court that "both Count One and Count Two ask for the same $15,000, just under different theories of liability." However, this assertion was inconsistent with the language of the

complaint, and in the amended complaint the demand was again conjunctive as Stewart prayed for $14,500 on the first claim for relief "and" $14,500 on the second claim for relief. From the foregoing, the claims were not pled in the alternative. That is, "the amount claimed" exceeded $15,000 so under R.C. 1901.17, the municipal court lacked jurisdiction, because the prayer in both the complaint and the amended complaint lists conjunctive demands for each cause of action that, when added together, clearly pray for a sum that exceeds the monetary jurisdiction of the municipal court.

**{¶11}** The assigned error is not well-taken.

**{¶12}** The order of the trial court is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

PATRICIA ANN BLACKMON, JUDGE

EILEEN T. GALLAGHER, P.J. and
MARY J. BOYLE, J., CONCUR