[Cite as *Park Street Group, L.L.C. v. White*, 2017-Ohio-1188.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
PARK STREET GROUP, LLC Appellee v. REANNA A. WHITE, et al. Appellants	C.A. No. 28254 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2015-08-4212

DECISION AND JOURNAL ENTRY

Dated: March 31, 2017

TEODOSIO, Judge.

{¶1} Appellant, Tony Taylor Jr., appeals from the judgment of the Summit County Court of Common Pleas granting summary judgment in favor of Appellee, Park Street Group, LLC, Successor in Interest to Harbour Portfolio VII, LP ("Park Street Group"), finding Appellant's motion to dismiss and motion for summary judgment without merit, and dismissing Appellant's counterclaim. This Court reverses.

I.

{¶2} In May 2014, Harbour Portfolio VII, LP, entered into a land contract with Tony Taylor Jr. and Reanna A. White, for the property commonly known as 1189 Sherman Street, Akron, Ohio 44301. Payments were to be sent to a management company: National Asset Advisors, LLC. On May 20, 2015, Harbour Portfolio VII, LP, assigned its interest in the land contract to Park Street Group, LLC. Park Street Group sent a 10-day letter of "right to cure" to Mr. Taylor and Ms. White in May 2015, and stated that it served Mr. Taylor and Ms. White with

a 3-day notice to leave the premises in June 2015. On July 14, 2015, Park Street Group filed a complaint in the Akron Municipal Court for the forfeiture of the land contract, money damages, and requesting restitution of the premises, along with an action for forcible entry and detainer. The complaint alleged that Mr. Taylor and Ms. White were in breach of the land contract by failure to make monthly payments and were in arrears in the amount of $3,982.20.

{¶3} In July 2015, Mr. Taylor filed an answer to the complaint, a motion to dismiss, and a counterclaim against Park Street Group, alleging that the land contract was void as the City of Akron had condemned the property prior to his purchase and the condemnation had not been disclosed to him. Park Street Group filed its motion for summary judgment and an answer to the counterclaim in August 2015. Upon the motion of Mr. Taylor, the municipal court ordered the case to be transferred to the Summit County Court of Common Pleas. Mr. Taylor filed a motion to dismiss, a motion "for third party counterclaim," and an "answer" to Park Street Group's motion for summary judgment in December 2015. Mr. Taylor further filed a motion for summary judgment and motion to dismiss in February 2016.

{¶4} On April 29, 2016, the court of common pleas entered an order granting Park Street Group's motion for summary judgment, finding Mr. Taylor's motion for dismissal and summary judgment without merit, dismissing Mr. Taylor's counterclaim for failure to state any claims upon which relief could be granted, and denying all other pending motions as moot. The court further indicated that Park Street Group would forego its right to recover past-due payments and granted restitution of the premises and forfeiture of the land contract. Mr. Taylor now appeals, raising four assignments of error for review.

II.

{¶5} "[A]n appellant's assignment of error provides this Court with a roadmap to guide our review." *Taylor v. Hamlin-Scanlon*, 9th Dist. Summit No. 23873, 2008-Ohio-1912, ¶ 12. We note at the outset that although Mr. Taylor lists four assignments of error at the beginning of his brief, the body of the brief does not separate out the individual assignments of error for analysis as required by Loc.R. 7(B)(7). The majority of the brief consists of large blocks of quoted case law, but does not offer a clear or structured articulation of the arguments as they apply to this case. We will only consider the four assignments of error designated by Mr. Taylor, and will not infer additional assignments from the body of the text. This Court declines to chart its own course when an appellant fails to provide guidance. *Young v. Slusser*, 9th Dist. Wayne No. 08CA0019, 2008-Ohio-4650, ¶ 7.

ASSIGNMENT OF ERROR ONE

> THE TRIAL COURT ERRED BY DISMISSING APPELLANT'S [COUNTERCLAIM].

{¶6} Mr. Taylor argues the circumstances of this case did not justify dismissal of his counterclaim. We agree.

{¶7} In its order entered on April 29, 2016, the trial court dismissed Mr. Taylor's counterclaim "for failure to state any claims upon which relief can be granted." In reviewing the record that is before this Court, it does not appear that a motion to dismiss was filed by Park Street Group. "In general, a court may dismiss a complaint on its own motion pursuant to Civ.R. 12(B)(6), failure to state a claim upon which relief can be granted, only after the parties are given notice of the court's intention to dismiss and an opportunity to respond." *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 161 (1995). "However, *sua sponte* dismissal without notice is appropriate where the complaint is frivolous or the claimant obviously cannot prevail on the facts

alleged in the complaint." *Id*. There is nothing in the record that indicates the trial court found Mr. Taylor's counterclaim to be frivolous. We must therefore review the dismissal using the same standard generally applied to Civ.R. 12(B)(6) dismissals.

{¶8} This Court reviews an order granting a Civ.R. 12(B)(6) motion to dismiss de novo. *Perrysburg Twp. v. City of Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. Given the notice pleading requirements of the Ohio Rules of Civil Procedure, "a plaintiff is not required to prove his or her case at the pleading stage. Very often, the evidence necessary for a plaintiff to prevail is not obtained until [he] is able to discover materials in the defendant's possession." *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144-145 (1991). "Thus, to survive a motion to dismiss for failure to state a claim upon which relief can be granted, a pleader is ordinarily not required to allege in the complaint every fact he or she intends to prove * * *." *State ex rel. Hanson v. Guernsey Cty. Bd. Of Commrs*., 65 Ohio St.3d 545, 549 (1991). "A 'short and plain statement of the claim' will do." *Gall v. Dye*, 9th Dist. Lorain No. 98CA007183, 1999 WL 692440, *4 (Sept. 8, 1999), quoting Civ.R. 8(A).

{¶9} In considering a motion to dismiss under Civ.R. 12(B)(6), a court must consider only the facts alleged in the complaint and any material incorporated into it. *See* Civ.R. 10(C); Civ.R. 12(B); *State ex rel. Crabtree v. Franklin County Bd. of Health*, 77 Ohio St.3d 247, 249, fn. 1 (1997). At this stage, the court "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co*., 40 Ohio St.3d 190, 192 (1988). "Then, before [the trial court] may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery." *Id*. "[A]s long as there is a set of facts, consistent with the plaintiff's complaint,

which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York* at 145.

{¶10} "[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities." *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2004-Ohio-5178, ¶ 3. "However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound." *Id*. "He is not given greater rights than represented parties, and must bear the consequences of his mistakes." *Id*. "It is not this Court's duty to create an appellant's argument for him." *Thomas v. Bauschlinger*, 9th Dist. Summit No. 27240, 2015-Ohio-281, ¶ 8.

{¶11} The caption of Mr. Taylor's counterclaim sets forth sixteen potential causes of action, including "breach of contract" and "failure to disclose." The body of the pleading is not organized into separate counts and does not factually support the vast majority of the listed causes of action.

{¶12} Nonetheless, in his pleading, Mr. Taylor loosely alleges: 1.) there was a failure to provide a Real Estate Transfer Disclosure Statement; 2.) Mr. Taylor and Ms. White were unable to discover the defects in the property; 3.) false statements were made and information was intentionally concealed; 4.) Mr. Taylor and Ms. White have never taken full possession of the property; and 5.) there was a breach of contract. Specifically, the counterclaim states: "Not once did any of the representatives acknowledge that there was an issue concerning the contract for failure to disclose. Representatives intentionally made misleading statements and also intentionally failed to mention any past violations." Mr. Taylor further alleges: "[T]his is a breach of contract as named defendants never disclosed past violations posted by the city in

which property is located nor was property ever obtainable." Presuming all factual allegations of the counterclaim are true, and making all reasonable inferences in favor of Mr. Taylor, it does not appear beyond doubt that he can prove no set of facts to warrant recovery. Given the requirements of notice pleading, the counterclaim states claims for breach of contract and fraudulent misrepresentation/concealment.

{¶13} The trial court erred when it dismissed Mr. Taylor's counterclaim for failure to state any claims upon which relief could be granted. Mr. Taylor's first assignment of error is sustained.

ASSIGNMENT OF ERROR TWO

> THE TRIAL COURT ERRED BY NOT AWARDING APPELLANT APPROPRIATE AMOUNT OF MONETARY RELIEF SOUGHT.

ASSIGNMENT OF ERROR THREE

> THE TRIAL COURT ERRED IN DENYING APPELLANT HIS RIGHT TO A TRIAL BY JURY.

{¶14} The fact that the counterclaim did not proceed to trial and did not result in monetary relief follows from the dismissal of the claim. Based upon our resolution of Mr. Taylor's first assignment of error, these assignments of error are moot. *See* App.R. 12(A)(1)(c).

ASSIGNMENT OF ERROR FOUR

> TRIAL COURT ERRED, THE FACT [sic] AS IS CLAUSE DID NOT APPLY IN THIS CASE.

{¶15} Although the trial court engages in a brief discussion of the "as is" clause, we note that Park Street Group's motion for summary judgment did not address Mr. Taylor's counterclaim. Therefore, the summary judgment granted by the trial court was only in regard to the claims brought by Park Street Group in its complaint.

{¶16} Based upon our resolution of the first assignment of error, Mr. Taylor's fourth assignment of error is moot.

III.

{¶17} The judgment of the Summit County Court of Common Pleas is reversed.

Judgment reversed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

THOMAS A. TEODOSIO
FOR THE COURT

HENSAL, P.J.
CARR, J.
CONCUR.

APPEARANCES:

TONY TAYLOR, pro se, Appellant.

LAURENCE A. LASKY, Attorney at Law, for Appellee.