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A. SUZANNE MARTZ, ET AL. VS. EUGENE MONN AND NORMA JEAN MONN, C.P., Franklin County Branch, No. A.D. 1994-178

Civil Action- Action in Ejectment-Demurrer-Mobile Home Park Rights Act

1. A preliminary objection in the nature of a demurrer should not be granted and the complaint dismissed unless the law says with certainty that no recovery is possible.

2. A demurrer should be sustained only where the compliant shows on its face that the claim is devoid of merit.

3. The owner or operator of a mobile park may at any time establish fair and reasonable rules and regulations reasonably related to the health or safety of residents in the park or to the upkeep of the park, provided such rules and regulations are included in any written lease and delivered to existing residents and are posted in a conspicuous and readily accessible place in the mobile home park 68 P.S. Section 398.4

4. Cats must be vaccinated against rabies every three years. 3 P.S. Section 455.8

5. Allegations in the complaint are sufficient if they contain averments of all the facts which the plaintiff will eventually have to prove in order to prevail.

6. To require a party to plead purely evidentiary matters which are the proper subjects of discovery would negate the requirements of rule 1019(a) that averments be in concise and summary form.

7. A trial court has broad discretion in determining the amount of detail that must be averred in a pleading according to the circumstances of the particular case, since the standard of pleading set forth in rule 1019(a) does not lend itself to precise measurement.

Timothy W. Misner, Esquire, Attorney for Plaintiff
Philip Levine, Esquire, Attorney for Defendant

OPINION AND ORDER

HERMAN, J., December 8, 1994

OPINION

Plaintiffs[1] filed an action in ejectment seeking to recover possession of mobile home Lot 11 in Bingaman's Pleasant View Mobile Home

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[1] Pleasant View Rentals is a partnership comprised of A. Suzanne Martz, Larry A. Martz, Perry L. Bingaman, Beverly J. Bingaman, Amy L. Cline, Jerrold B. Bingaman and Tammy L. Bingaman.

Park, which the defendants Eugene and Norma Monn have rented. Following a hearing before the district justice at which the plaintiffs prevailed, the defendants filed a timely appeal pursuant to Pa.R.C.P. 1308(a). The plaintiffs filed a complaint and the defendants filed preliminary objections in the nature of a demurrer and motion for a more specific pleading. The parties submitted briefs and argument was held on September 1, 1994. Our analysis of the issues leads us to conclude that the demurrer should be denied and the plaintiff directed to file a more specific pleading.

A preliminary objection in the nature of a demurrer should not be granted and the complaint dismissed unless the law says with certainty that no recovery is possible. If any theory of law will support a claim raised by the complaint, a dismissal is improper. *Ciafrani v. Commonwealth, State Employees' Retirement Board*, 505 Pa. 294, 479 A.2d 468 (1984). The issue is whether, considering all well-pleaded, material and relevant facts and every inference fairly deducible from those facts, it is clear that no recovery is possible under any theory of law. *Rutherford v. Presbyterian University Hospital*, 417 Pa. Super. 316, 612 A.2d 500 (1992). A demurrer should be sustained only where the complaint shows on its face that the claim is devoid of merit. Any doubt as to whether the demurrer should be sustained should be resolved in favor of refusing to grant it. *Kelly-Springfield Tire Co. v. D'Ambro*, 408 Pa. Super. 301, 596 A.2d 867 (1991).

The complaint alleges several grounds for relief. In paragraphs 7 and 8, the plaintiffs aver that the defendants violated park rules and regulations by failing to provide the plaintiffs with proof that their cat was spayed or neutered and had current rabies shots. The defendants demurrer to these paragraphs on the ground that the park rule governing pets is invalid under the Mobile Home Park Rights Act, 68 P.S. § 398.4[2], which provides as follows:

> The owner or operator of a mobile home park may at any time establish fair and reasonable rules and regulations reasonably related to the health, or safety of residents in the park or to the upkeep of the park, provided such rules and regulations are included in any written lease and delivered to existing residents and are posted in a conspicuous and readily accessible place in the mobile home park. . .

[2] Act of November 24, 1976, P.L. 1176.

Park rule 16 states:

> "Tenants may have a maximum of two housecats . . . They must be kept inside except to be taken out on a leash; never tied to a tree and outside only if owner is outside with cat. All cats must be neutered or spayed and have rabies shots . . . Tenants must provide Park owner/management with proof of this . . ."

The defendants argue that rule 16 is invalid because it regulates private matters within a tenant's home. They contend that their cat poses minimal or no safety or health risks to other park residents and therefore the rule serves merely to unreasonably restrict their personal freedom. We disagree. Residents of mobile home parks live in close proximity to each other. The actions of one resident have an immediate impact on the quality of life of his neighbors and the park as a whole *DePretis v. Robinson,* 140 P.L. J. 124 (1991). Ideally, each pet owner should be able to prevent his pet from escaping their house. In reality, however, pets do sometimes escape and breed, creating offspring which make homes for themselves either under or inside of the homes and sheds of other park residents. These animals may disrupt residents by making noise at all hours of the day and night and pose a health risk if they become aggressive, particularly around children. Spaying and neutering helps control unnecessary breeding and overpopulation. We also note that under 3 P.S. § 455.8, cats must be vaccinated against rabies every three years. This requirement is an acknowledgment of the safety risks which these animals present to human beings. Since the defendants have cited no case law to the contrary, we conclude that park rule 16 is reasonable and valid under the Mobile Home Park Rights Act.

68 P.S. § 398.3(b) provides as follows:

> (b) A mobile home resident shall only be evicted in accordance with the following procedure:
>
> (2) Prior to the commencement of any eviction proceeding, the mobile home park owner shall notify the mobile home park resident in writing of the particular breach or violation of the

lease or park rules by certified or registered mail.

(i) In the case of nonpayment of rent, the notice shall state that an eviction proceeding may be commenced if the mobile home resident does not pay the overdue rent within 20 days from the date of service if the notice is given on or after April 1 and before September 1, and 30 days if given on or after September 1 and before April 1 of an additional nonpayment of rent occurring within six months of the giving of the notice may result in immediate eviction proceedings.

(ii) In the case of a breach of the lease or violation of the park rules, other than nonpayment of rent, the notice shall describe the particular breach or violation. No eviction action shall be commenced unless the mobile home park resident has been notified as required by this section, and upon a second or subsequent violation or breach occurring in within six months, the mobile home park owner may commence eviction proceedings at any time within 60 days of the last violation or breach.

The plaintiffs sent the defendants a notice on December 15, 1993 advising them that they were in violation of park rule 16. The defendants were given 10 days to provide the proper documentation and warned that a second violation of any park rules could result in the initiation of eviction proceedings. (See paragraph 7). Paragraph 8 avers that the defendants failed to cure the pet violation. Paragraphs 9 and 10 state that in addition to not curing this violation, the defendant had failed to pay a certified letter fee and had not paid their full monthly rent for December 1993 and January 1994, and were informed of these violations by a written notice to quit on January 11, 1994. The notice to quit directed the defendants to vacate no later than February 28, 1994.

The defendants argue that they had no opportunity upon receiving the January 11, 1994 notice of their second violation to comply with park rule 16. It has been held that the non-curing of a violation in itself constitutes a second or subsequent violation. *DePretis v. Robinson*, 140 P.L.J. 124 (1991); *Semak v. Fiumara*, 47 D & C 3d 440 (1987). The defendants were given 10 days from the December 15, 1993, notice to provide the pet information, a grace period which the plaintiffs were not obligated to grant under either the park rules or

the Act. Rule 16 indicates that park residents were required to have the pet documentation on hand at all times for the park operator's inspection. The defendants' failure to provide this information upon request constituted a second violation of park rules.

The defendants next demurrer to paragraphs 9 and 10 of the complaint. Paragraph 9 states that "In addition to failing to cure [the pet violation] the Defendants violated rule 10 in that they failed to pay a certified letter fee and failed to pay in full monthly rent for December 1993 and January 1994." Paragraph 10 avers: "As a result of the continued violation of Rule 16 and the subsequent violations of other rules within six months, the plaintiffs served the defendants with a notice to vacate on January 11, 1994 . . ." Park Rule 10 provides:

In the event of a default, tenant shall pay all legal fees spent by Park owner/management for: 1) eviction; 2) enforcement of rules; 3) collection of rents due, late charges, water overages, or 4) any other matter regarding the tenant's lease in the park within 30 days of date billed. Fees spent for any certified letters . . . sent to tenants as required by the Mobile Home Park Rights Act, will also be billed to tenant and paid within 30 days of date billed.

The defendants argue that the complaint does not state that the plaintiffs ever made any demand for unpaid rent and other costs prior to the January 11, 1994 notice to quit and vacate and therefore section 3(b)(2)(i) of the Mobile Home Park Rights Act has not been satisfied. The December 15, 1993 notice warned the defendants that if they violated "this or any other park rules within six months", an eviction could ensue. The plaintiffs state that the reason for the eviction was the two violations of rule 16, and that the unpaid rent from December 1993 and January 1994 and certified letter fees were secondary issues only. They argue that the enumeration of these additional rule violations in the January notice to quit does not nullify the initial December notice regarding the pet violation, since the eviction may be based on that violation alone.

It is unclear from an examination of the complaint whether the plaintiff seeks recovery of unpaid rent from December 1993 and January 1994 and certified letter fees as set forth in the January 11th notice to quit. The notice lists $273.00 in unpaid rent and $25.15 for

letters. On the last page of the complaint, the plaintiff demands $194.71, $1.00 per day late charges for each month the defendants have not paid their monthly rent in full by the 5th day of the month, and costs of the action. If the plaintiff seeks recovery of unpaid rent from December 1993 and January 1994, the defendant should have been given 30 days from the date of billing in which to pay the deficit under park rule 10 and section 3(b)(2)(i) of the Act. The plaintiffs have not stated whether or when this billing notice was given, and the January 11th notice does not give the defendants any opportunity to cure the rent violation. While we agree with the plaintiff that the defendants received more than 30 days notice to cure the pet violation, that fact alone will not make the complaint sufficient regarding the issue of nonpayment of rent. Section (2)(b)(i) specifically provides that tenants with overdue rent shall have 30 days from the service of the written notice of noncompliance to pay those amounts.[3] Rather than sustain the demurrer, however, we will address this issue in conjunction with the defendants' motion for a more specific pleading.

The plaintiff argues that an amendation of the complaint is unnecessary for two reasons, the first being that since the eviction is based on the defendants' second or subsequent violation of pet rules, the plaintiffs are not required to plead that the defendants were ever billed for the certified letters and unpaid rent from December 1993 and January 1994. Alternatively, the plaintiffs argue that the facts as pled give the defendants enough facts to enable them to prepare a defense.

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[3] The defendants cite several cases in support of the general proposition that the purpose of the Mobile Home Park Rights Act is to give special protection to mobile home owners in mobile home parks. We recognize the principles set forth in *Childs Instant Homes, Inc. v. Miller*, 416 Pa. Super. 602, 611 A.2d 1208 (1992), in which the Superior Court held that residents of such parks should be afforded all the protection enjoyed by other types of tenants under the Landlord-Tenant Act of 1951, 68 P.S. § 250.501 regarding service of a notice to quit 30 days before the filing of an ejectment and recovery of possession action, and that the Mobile Home Park Rights Act provides supplemental protection to those basic tenant rights. *Martz v. Yablunosky*, A.D. No. 1992-559, November 24, 1993; *Village Green Manor v. Whitmire*, 11 Franklin County Legal Journal 95 (1991); *Malvern Courts, Inc. v. Stephens*, 275 Pa. Super. 518, 419 A.2d 21 (1980). The defendant have not alleged that the plaintiffs have failed to proceed properly under the Landlord-Tenant Act.

Pa.R.C.P. 1019(a) states: "The material facts on which a cause of action or defense is based shall be stated in concise and summary form." The purpose of the rule is to require the pleader to indicate the material facts sufficient to enable the adverse party to prepare his case. *Landau v. Western Pennsylvania National Bank*, 455 Pa. 217, 288 A.2d 335 (1971). A complaint should frame the issues by summarizing the facts essential to support the claim. Allegations in the complaint are sufficient if they contain averments of all the facts which the plaintiff will eventually have to prove in order to prevail. *Smith v. Wagner*, 403 Pa. Super. 316, 588 A.2d 1308 (1991).

On the other hand, to require a party to plead purely evidentiary matters which are the proper subjects of discovery would negate the requirements of rule 1019(a) that averments be in concise and summary form. *Pike County Hotels Corporation v. Kiefer*, 262 Pa. Super. 126, 396 A.2d 677 (1978). A trial court has broad discretion in determining the amount of detail that must be averred in a pleading according to the circumstances of the particular case, since the standard of pleading set forth in rule 1019(a) does not lend itself to precise measurement. *Id.* at 134.

Bearing these principles in mind, we find that the complaint should be amended to specify whether and when the defendants were notified of their full rent being overdue for December 1993 and January 1994 pursuant to section 3(b)(2)(i) of the Act which gives tenants 30 days to pay the deficit. Regarding the certified letter fee, we note that in exhibit D attached to the complaint, the plaintiff advised the defendants that "you have violated Rule #10 because you have not paid the certified letter fee within 30 days (9/18/93) . . ." It is unclear whether the date referred to was the date when the certified letter was sent to the defendants, or was the date when the defendants were billed for the letter.

As discussed above, the complaint is ambiguous as to whether the plaintiff seeks recovery of these unpaid sums; if they do seek them, they should plead such information to allow the defendants to either admit or deny the allegations accordingly in their answer.

For the reasons stated herein, an appropriate Order will be entered as part of this Opinion.

ORDER OF COURT

NOW this 8th day of December 1994, the defendants' preliminary objection in the nature of a demurrer is DENIED. The defendants' preliminary objection to the plaintiffs' complaint for the reason that the pleadings lack the requisite specificity to allow the defendants to adequately prepare their defense is GRANTED and the plaintiffs are directed to file a more specific pleading.

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