

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
THIRD DIVISION
CASE NO: 13-C-1073

ENTERED
ATTEST. VINCENT RIGGS, CLERK
JAN 15 2016
FAYETTE CIRCUIT CLERK
BY _____ DEPUTY

LEXINGTON RENTAL HOMES, LLC

PLAINTIFF

V.

AMENDED FINAL OPINION AND JUDGMENT

CHARLES AARON ADAMS,
JENNIFER C. FRALEY-ADAMS; AND
JUDY H. ADAMS

DEFENDANTS

This court has previously entered an Opinion and Order awarding the Plaintiff, Lexington Rental Homes, LLC, damages in the amount of \$4,643.25 [\$3,500.45 in undisputed damages; \$761.44 in disputed damages; and costs in amount of \$381.36]. Additionally, the court awarded a claim for attorney's fees to the plaintiff but reserved ruling on the amount of attorney's fees to be awarded. This court's previously filed Opinion and Order further advised that the damage award was to be "jointly and severally" against all three named defendants. The court's previously entered Opinion and Order is restated, reiterated, and incorporated by reference herein subject to the following:

ATTORNEY'S FEES

The plaintiff, Lexington Rental, has filed a claim for attorney's fees in the amount of \$7,160.75. (See Affidavit of Counsel in Support of Attorneys' fees and Cost Recovery, pg. 1).

The Defendant, Judy Adams, has filed an Objection to Award of Attorney Fees, arguing that "[T]he court appears to have improperly applied the concept of joint and several liability in a contract action with the willful state of mind contemplated by KRS 383.660, in order to support an award of attorney's fees in this landlord-tenant action." [Defendant's, Judy Adams, Objection to Award of Attorney Fees, pg. 1].

Lexington Rental, in its Response to Objection to Attorney's Fees, argues that the defendant, Adams, "...relies upon tort law whereas this is a simple breach of contract matter", and that as a guarantor under the applicable lease agreement Judy Adams as a "...guarantor is bound upon the principal's default **without further steps being taken.**" [Plaintiff's Response to Objection to Attorneys' Fees, pg. 1].

CLAIM FOR ATTORNEY'S FEES PURSUANT TO KRS 383.660

The Plaintiff cites **KRS 383.660** in reliance on its claim for attorney's fees. That statute reads, in part, as follows:

- (3) Except as provided in KRS 383.505 to 383.715, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or KRS 383.605 or 383.610. If the tenant's noncompliance is willful the landlord may recover actual damages and reasonable attorney's fees.

TORT OR CONTRACT?

The Defendant, Judy Adams, in support of her argument "[T]hat the court appears to have improperly applied the concept of joint and several liability in a contract action with the willful state of mind contemplated by KRS 383.660, in order to an award of attorney fees in this landlord-tenant action", has cited *Deneger v. Hall Contracting*, 27 S.W. 3d 775 (Ky. 2000); *Dix & Associates Pipeline Contractors v. Key*, 799 S.W. 507 (Ky. 1940); *Ford Motor Company v. Smith*, 143 S.W. 507 [sic] (Ky. 1940); and *United States v. Hoffman*, 918 F.2d [sic] 44, 46 (6th Cir. Ky. 1990). (See Defendant, Judy Adams' Objection to Award of Attorney Fees, pg. 2).

However, both *Deneger v. Hall* and *Dix & Associates v. Key* are cases based on *negligence* actions involving joint *tortfeasors*. The case at bar, however, is based on a *breach of contract* claim and, therefore, neither *Deneger* or *Dix* are applicable.

Based on the facts of this case, the court is of the opinion that the issue of attorney fees should be based on contract and statutory law.

APPLICABLE LAW

In *O'Rourke v. Lexington Real Estate Company L.L.C.*, *supra*, the Kentucky Court of Appeals said that:

Generally, with respect to attorney's fees, Kentucky follows the American Rule of individual party responsibility rather than the fee shifting practice of some states and some other nations. [citations omitted]. However, the Kentucky General Assembly has created a limited statutory exception to the general rule. That exception provides that "if noncompliance is willful the landlord may recover actual damages and reasonable attorney's fees." KRS 383.660(3). 'Willful' means with deliberate intention, not accidentally or inadvertently, and done according to a purpose." KRS 383.545(17). *O'Rourke*, *ibid* at 586.

Additionally, the *O'Rourke* court further held that:

We have not overlooked *Batson v. Clark*, 980 S.W.2d 566 (Ky.App.1998), in which this Court correctly noted that attorney's fees are not ordinarily allowable as costs in the absence of a statute or an express contract provision. However, the *Batson Court* went on to recognize an indistinct trial court discretion based on equity and particular circumstance. In this case, however, we need not explore the contours of whatever discretion there may be, for the general assembly has spoken clearly to the issue in KRS 383.570 and KRS 383.660(3). With respect to rental agreements, there can be no attorney's fees contract provision, for it is forbidden in KRS 383.570. *O'Rourke, supra* at 586-587. *O'Rourke, supra* at 586-587.

WILLFUL CONDUCT AND ATTORNEY'S FEES

This court in its prior Opinion and Order dated June 12, 2015 has found that "...the actions of the Defendant, or Defendants, were 'willful' as they relate to their 'noncompliance' with the terms and conditions of the Lease Agreement, and this Court is of the opinion that Plaintiff is entitled to attorney's fees pursuant to KRS 383.600." The Opinion and Order further stated that "...the Plaintiff shall recover from the Defendants, both jointly and severally...". (See Opinion and Order, pg. 6.)

The Defendant, Judy Adams, filed an Objection to Award of Attorney Fees on August 13, 2015, arguing that "...there is no evidence whatsoever that the defendant, Judy Adams, did anything more with respect to the leasehold other than to sign as a guarantor. Any determination that her conduct, either with respect to violation of the lease terms or damage to the property, was 'willfull' solely because she signed the lease is clear error." (See Objection to Award of Attorney Fees, pg. 2).

This court has never made a determination that any conduct by the defendant, Judy Adams, was "willful" or "willful solely because she signed the lease". The rationale for holding all defendants, including the defendant, Judy Adams, "jointly and severally" liable is based on the following:

1. KRS 383.660 allows the landlord to recover attorney's fees "[I]f the tenant's noncompliance is willful."
2. This court has previously determined that "...the actions of the Defendant, or Defendants, were 'willful' as they relate to their 'noncompliance' with the terms and conditions of the lease agreement".
3. The Defendant, Judy Adams, is a named "tenant" on the applicable Lease Agreement which she executed, along with the Defendants, Jennifer Fraley-Adams and Charles Aaron Adams, on March 12, 2012.

4. That the applicable Lease Agreement executed by all three Defendants herein, including the Defendant, Judy Adams, contains the following language:

The term "tenant" refers collectively to each of the tenant's of the property who have signed this lease, and each of them is authorized to give notice and receive notice, and to do any act contemplated hereunder, and in so doing, they shall be deemed to have acted on behalf of all the tenants. All individuals signing as tenant are jointly severally responsible for all obligations of tenant hereunder.

In determining whether attorney's fees should be assessed against the Defendant, Judy Adams, the court, in its discretion, has considered the following:

1. That the applicable Lease Agreement was executed by all three Defendants, including the Defendant, Judy Adams.
2. The Plaintiff, in executing the applicable Lease Agreement, relied on Judy Adams' signed agreement that she would be "...jointly and severally responsible for all obligations hereunder."
3. That Judy Adams is the mother of the Defendant, Charles Aaron Adams, the tenant who was ostensibly responsible for the majority, if not all, of the property damage, as well as the contractual damages, sustained by the Plaintiff, Lexington Rental Homes.
4. That Judy Adams is the mother-in-law of the defendant, Jennifer Fraley-Adams, the tenant responsible for, at least, the contractual damages sustained by the Lexington Home Rentals.
5. That Judy Adams is a "tenant" responsible for , at least , the contractual damages sustained by Lexington Rental Homes.
6. That the Plaintiff, Lexington Rental Homes, LLC, contracted with all three defendants, including the defendant, Judy Adams, and relied upon each of their representations and legal obligations when entering into the contractual Lease Agreement with them.
7. The record reflects that the amount of "disputed" property damage in this case amounted to only \$806.44, and of that amount the court found in favor of the Plaintiff in the amount of \$761.44. The remaining damages, which were "undisputed" by the Defendant, Judy Adams, amounted to \$3,500.45.

8. That despite the relatively small amount of “disputed” property damage [\$806.44] alleged by the Plaintiff, the actions and inactions of the various defendants herein compelled the Plaintiff to file suit and incur some rather extensive legal fees.

MATTER OF EQUITY

In an endeavor to determine which defendant, or defendants, should be liable for attorney fees pursuant to KRS 383.660, this court has considered various options, in its discretion, based on “equity” and the particular circumstances of this case. See *O’Rourke, supra*. These options are as follows:

1. The court, in its discretion, could assess attorney fees solely against the defendant, Charles Aaron Adams;
2. The court, in its discretion, could assess attorney fees, jointly and severally, against the defendants, Charles Aaron and Jennifer Fraley-Adams; or
3. The court, in its discretion, could assess attorney fees, jointly and severally, against all three defendants, Charles Aaron Adams, Jennifer Fraley-Adams, and Judy H. Adams.

If the court assessed attorney fees solely against the defendant, Charles Aaron Adams, the Plaintiff would be unable to collect its attorney fees in the event the defendant, Charles Aaron Adams, was found to be judgment proof.

If the court assessed attorney fees only against the defendants, Charles Aaron Adams and Jennifer Fraley-Adams, the Plaintiff would be unable to collect its attorney fees if both these defendants were found to be judgment proof.

If the court assessed attorney fees against all three defendants, the Plaintiff would be able to attempt to recoup its attorney fees from all three defendants, including the defendant, Judy H. Adams, jointly and severally. This resolution would by no means prevent the defendant, Judy H. Adams, from attempting to convince or persuade her co-defendants, Charles Aaron Adams (her son) and/or Jennifer Fraley-Adams, (her daughter-in law), to satisfy the award of attorney’s fees, in addition to the property damage and contractual claims.

In reliance on the contract language set forth in the applicable Lease Agreement as well as KRS 383.660, this court, in its “discretion”, and “based on equity and particular circumstance” of this case, is of the opinion that all three defendants, including the defendant, Judy H. Adams, should be responsible for the attorney fees that the innocent Plaintiff, Lexington Rental Homes LLC, was forced to incur due to the actions and/or inactions of the defendant, or defendants, herein. See *O’Rourke, supra*, citing *Batson, supra*.

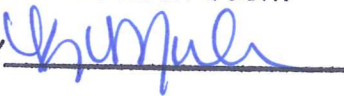
AMOUNT OF ATTORNEY FEES

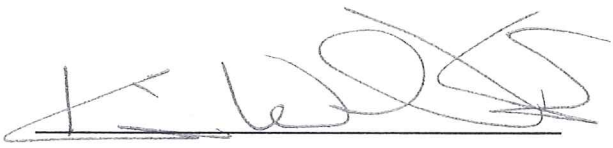
The Plaintiff has submitted proof of attorney fees in the amount of \$7,160.75. The Defendant, Judy Adams, has not disputed the reasonableness of this amount and, therefore, the court awards the Plaintiff, Lexington Home Rental, attorney's fees in the amount of \$7,160.75.

WHEREFORE IT IS THE OPINION AND ORDER of the Court that the Plaintiff, Lexington Rental Homes, LLC, shall recover from the Defendants, Charles Aaron Adams, Jennifer Fraley- Adams, and Judy H. Adams, jointly and severally, JUDGMENT in the amount of three thousand five hundred dollars and forty five cents (\$3,500.45) [undisputed damages]; seven hundred sixty one dollars and forty four cents (\$761.44) [disputed property damages]; attorneys fees in the amount of seven thousand one hundred sixty dollars and seventy five cents (\$7, 160.75); and three hundred eighty one dollars and thirty six cents (\$381.36) in taxable court costs, for a total amount of eleven thousand eight hundred and four dollars (\$11,804.00).

DATED this the 14th day of January, 2016.

A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT

BY  DEPUTY



Hon. Kim Wilkie
Judge, Fayette District Court
Third Division

Clerk's Certificate of Service

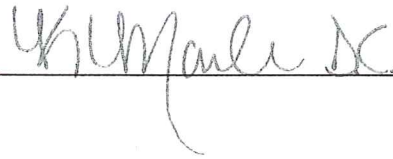
This is to certify that a true and correct copy of the foregoing was mailed on this the 15 day of January, 2016 to:

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By:  D.C