

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Estate of Sharon Lee Morrow by, :
Bruce Morrow, Personal Representative, : C.A. No: K13C-12-019 RBY
Bruce Morrow individually, Alice Riley, :
Wayne Morrow and Herbert Morrow, :

_____ Plaintiffs, :
v. :
Anton Bohn and Mary Hanna, :
Defendants. :

Submitted: April 10, 2014

Decided: June 2, 2014

***Upon Consideration of Plaintiffs’
Motion for Summary Judgment
GRANTED***

ORDER

David J. Bever, Esquire of Barros, McNamara, Malkiewicz & Taylor, P.A., Dover,
Delaware for Plaintiffs.

Anton Bohn, *Pro se*.

Mary Hanna, *Pro se*.

Young, J.

SUMMARY

The Estate of Sharon Lee Morrow, Personal Representative Bruce Morrow, Alice Riley, Wayne Morrow and Herbert Morrow (“Plaintiffs”) move for summary judgment pursuant to Superior Court Rule 56. Plaintiffs have filed a Petition for Ejectment, seeking an order removing Anton Bohn and Mary Hanna (“Defendants”) from the subject property, and requiring them to pay for damages related to their illegal occupation of the property. A previous hearing before the Justice of the Peace Court previously determined that Defendants’ occupation of the property is, in fact, illegal.

Defendants do not deny any of the relevant factual claims made by Plaintiffs in their Complaint as required by 10 *Del. Code* § 6701 (b) for a valid defense to the action. Defendants simply request that Plaintiffs grant prior occupant Sharon Lee Morrow’s alleged “last wishes” that Defendants be allowed to reside on the property. Even if true, that basis does not provide Defendants with a legal justification to continue residing on the property. Defendants present no other genuine issue of material fact. Accordingly, Plaintiffs’ Motion for Summary Judgment is **GRANTED**.

FACTS AND PROCEDURAL POSTURE

The property at issue (“the Property”) is located at 2190 South DuPont Blvd., Smyrna, Delaware, 19977. The Property is owned jointly by Plaintiffs pursuant to the last will and testament of Sherman Morrow, who died on May 14, 1998. Plaintiffs permitted Sharon Lee Morrow to live on the Property until her

Morrow v. Bohn, et. al.
C.A. No.: K13C-12-019 RBY
June 2, 2014

death on April 21, 2013. According to a letter¹ written by Sharon Lee Morrow, she permitted Mary Hanna to reside with her on the Property. Sharon Lee Morrow did not request or require any rent from Defendant, Hanna.

_____After Sharon Lee Morrow died, Plaintiffs attempted to take possession of the Property, but found Defendants residing in the home. According to Plaintiffs' Affidavit filed on March 19, 2014, Plaintiffs have requested Defendants to leave the Property on many occasions. Plaintiffs did not enter into any agreement or contract with Defendants permitting them or either of them to continue to reside on the Property.

On December 4, 2013, Plaintiffs attempted to remove Defendants from the Property with assistance from the Delaware State Police. However, the Delaware State Police refused to take action without a specific order authorizing them to remove Defendants from the Property. Plaintiffs' Affidavit further states that Defendants have never paid rent and have never provided any other financial remuneration to Plaintiffs for their continued occupation of Plaintiffs' property. Defendants are not entitled by will or deed or otherwise to any use of the Property.

_____On October 22, 2013, an action for summary possession was heard before Judge Dillard at the Justice of the Peace Court, where the Court found that Defendants had no standing under the landlord-tenant code. The Court determined that Defendants were not legally tenants, and dismissed the case. On December 19, 2013, Plaintiffs filed a Complaint for Ejectment against Defendants pursuant to 10

¹ Exhibit B.

Morrow v. Bohn, et. al.
C.A. No.: K13C-12-019 RBY
June 2, 2014

Del. Code § 6701, seeking to remove Defendants from the Property. On March 7, 2014, Defendants jointly filed an Answer to the Complaint. In the Answer, Defendants admitted *inter alia*, that Sherman Morrow left his estate to his living children, the Plaintiffs.

STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 56, summary judgment is appropriate when there is no genuine issue of material fact so that the moving party is entitled to judgment as a matter of law. In ruling on a motion for summary judgment, the Court must consider the facts in the light most favorable to the non-moving party.² The moving party bears the burden of showing that no genuine material of fact exists.³ If, in a properly supported motion for summary judgment, the moving party shows that there is no genuine issue of material fact, then the burden shifts to the non-moving party to prove that there is a material issue of fact in dispute.⁴

In order to carry its burden, the non-movant must produce specific facts, which would sustain a verdict in its favor.⁵ The non-movant cannot create a genuine issue for trial through bare assertions or conclusory allegations.⁶ In weighing a motion for summary judgment under this rule, the Court must examine

² *Schagrín v. Wilmington Medical Center, Del. Super.*, 304 A.2d 61 (1973).

³ *Moore v. Sizemore, Del. Super.*, 405 A.2d 679 (1979).

⁴ *Id.* at 681.

⁵ *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242 (1986).

⁶ *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Morrow v. Bohn, et. al.
C.A. No.: K13C-12-019 RBY
June 2, 2014

the record, including pleadings, depositions, admissions, affidavits, answers to interrogatories, and any other product of discovery.⁷

DISCUSSION

In the instant Motion for Summary Judgment, Plaintiffs note that, as indicated in the prior action of the Justice of the Peace Court, there is no landlord-tenant relationship between Plaintiffs and Defendants. Plaintiffs accurately assert further that no legal basis exists for Defendants' remaining on the Property. According to 10 *Del. Code* § 6701 (b), Defendants are required to set forth all defenses in law or fact in their answer for a valid defense to Plaintiffs' Petition for Ejectment.

In Defendants' Answer, Defendants do not deny any of the relevant factual claims made by Plaintiffs in their Complaint. Instead, Defendants actually acknowledge that they do not have rights to stay on the Property, and simply request that Plaintiffs grant Sharon Lee Morrow's alleged "last wishes" that the Defendants be allowed to reside on the Property. Even if Sharon Lee Morrow's "last wishes" are accurately stated, that does not give Defendants any legal right to continue residing on the Property. Hence, Defendants do not satisfy the requirements for a valid defense to Plaintiffs' Petition for Ejectment, and Defendants present no genuine issue of material fact. Therefore, Plaintiffs' Motion is **GRANTED**. Defendants are **ORDERED** to be removed from the Property.

⁷ *G.R. Sponaugle & Sons v. Mcknight Construction Co.*, Del. Super. Ct., 304 A.2d 339 (1973); *Oliver B. Cannon & Sons v. Door Oliver, Inc.*, Del. Super. Ct., 312 A.2d 322 (1973).

Morrow v. Bohn, et. al.
C.A. No.: K13C-12-019 RBY
June 2, 2014

Finally, Defendants are **ORDERED** to pay for damages related to their illegal occupation of the property, in an amount to be determined at an inquisition at the request of Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBV/lmc
Via File & ServeXpress & U.S. Mail
oc: Prothonotary
cc: Mr. Bever, Esq.
Mr. Bohn, *Pro se*
Ms. Hanna, *Pro se*
Opinion Distribution
File