



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

JERRY M. STERN VICTIM OF NAZI PERSECUTION,	)	CASE NO. CV-19-917105
	)	
Plaintiff,	)	JUDGE CASSANDRA COLLIER-WILLIAMS
	)	
v.	)	<b><u>OPINION AND ORDER</u></b>
	)	
ROB OLDHAM PROPERTIES LLC, ET AL.,	)	
	)	
Defendants.	)	

**JUDGE C. COLLIER-WILLIAMS:**

On February 1, 2021, this cause was called for a bench trial on the remaining issues in this case, Counts 1, 4, and 7 of Defendants' Counterclaim. Additionally, the court held hearings for a number of outstanding motions.

On the morning of trial but prior to its commencement, the Court addressed the issue of Defendants' failure to adhere to this Court's trial orders entered on December 21, 2020 (the "Trial Order").

Among other things, the Trial Order required all parties to file a trial brief. Per this order, a trial brief must contain the following: the estimated length of trial; statement of the facts; a discussion of the controlling law; a list of proposed witnesses along with a brief description of the subject matter of the testimony of each witness; an index of all proposed exhibits containing a brief description of each exhibit; and a discussion of any evidentiary issues likely to arise at trial. Although the Plaintiff filed his trial brief, Defendants failed to file a trial brief.

The Trial Order further provided that any witnesses and exhibits not listed in the trial brief shall not testify or be introduced at trial absent a showing of good cause. Defendants filed a separate witness list and exhibit list on January 18, 2021. The Court finds that Defendants failed to show good cause as to why they did not file their trial brief.

After due consideration of the above, Plaintiff's Motion to Preclude Defendants from Further Defending at Trial, Proceeding on Counterclaim or Calling Witnesses, filed 01/29/2021, is GRANTED. The Court hereby enters judgment in favor of Plaintiff against Defendants on Counts 1, 4, and 7 of Defendants' Counterclaim.

Defendant Theresa Oldham's Motion to Dismiss under Ohio Civ R. 12(b)(6) and Motion for Sanctions and Attorney Fees Pursuant to ORC Ann. 2323.51 and Ohio Civ.R. 11, filed 10/12/2020, was called for hearing. The portion of said motion that seeks dismissal was rendered moot on October 13, 2021, when Plaintiff dismissed Ms. Oldham from this litigation. Regarding the Motion for Sanctions and Attorney Fees, Ms. Oldham argued that Plaintiff should have never sued Theresa Oldham as a Trustee of RO Properties Family Trust because the trust documents clearly indicate that she is not a trustee of said trust. Plaintiff put forth evidence that he added Theresa Oldham to this action as a Trustee of the RO Properties Family Trust based upon Defendant Robinson Oldham's sworn testimony during his deposition that both he and his wife, Theresa Oldham, were trustees of said trust. After due consideration, and reviewing all evidence and arguments presented, Theresa Oldham's Motion for Sanctions and Attorney Fees is DENIED.

Defendant Robinson Oldham's Motion for Plaintiff to Show Cause Why This Case Should Not Be Dismissed with Prejudice and Sanctions Ordered Based on Plaintiff's Fraud Upon the Court and Fraudulent Misrepresentation Against Defendant Causing Diminished Property Values and Damages, filed 11/12/2020, was called for hearing. In support of his motion, Defendant Robinson Oldham called witnesses and submitted exhibits. After due consideration of all testimony and exhibits, said Motion to Show Cause is DENIED.

A hearing was called on Defendant Robinson Oldham's Motion for Plaintiff to Show Cause Why This Case Should Not Be Dismissed with Prejudice and Sanctions Ordered Based on Plaintiff's Gross Negligence and Fraud Upon Defendant and Defendant's Tenants Causing Damages to Defendant, filed 11/12/2020. In support of his motion, Defendant Robinson Oldham called witnesses and submitted exhibits. After due consideration of all testimony and exhibits, said Motion to Show Cause is DENIED.

A hearing on damages was held. Plaintiff called his expert witness regarding attorney fees and other witnesses in support of its damages.

This is a breach of contract case. The facts are simple: On or about March 9, 2018, Defendant Rob Oldham Properties, LLC entered into a Mortgage Note agreement and Mortgage with Plaintiff in the principal amount of \$750,000.00. Defendant Robinson Oldham became personally liable pursuant to the terms of the Mortgage Note. The loan was structured as a one-year loan with monthly interest-

only payments in the amount of \$7,500.00. The principal amount of \$750,000.00 was initially due in full on March 9, 2019.

On April 9, 2019, Defendants defaulted on the loan when it failed to tender the principal balance due and owing to Plaintiff. The Court finds that the Plaintiff is entitled to judgment against Defendants Robinson Oldham and Rob Oldham Properties, LLC, jointly and severally, in the principal amount of \$750,000.00.

The Court further finds that pursuant to the Mortgage Note, Defendants accrued a \$37,500.00 late fee due to their default on repayment of the loan. On or about May 14, 2019, Defendants paid \$7,500.00 to the Plaintiff. This payment will be credited to the late fees. Consequently, the Court finds that Plaintiff is entitled to judgment against Defendants Robinson Oldham and Rob Oldham Properties, LLC, jointly and severally, for late fees in the amount of \$30,000.00.

The Court further finds that pursuant to Section 6(D) of the Mortgage Note, the Plaintiffs are entitled to an award of reasonable attorney fees incurred in the enforcement of said Note. The Complaint in this matter was filed on June 21, 2019. The matter was concluded on February 1, 2021. The record indicates that a total of approximately 65 motions were filed by the parties in this matter. Plaintiff called its expert witness who testified that he reviewed the documents involved in this case, the docket, and the attorney fee invoices. Through January 12, 2021, Plaintiff had accrued \$112,209.52 in attorney fees. Plaintiff's representative testified that the Plaintiff had paid its attorneys \$55,000.00 out of its own funds for this matter. Plaintiff's expert witness testified to a reasonable degree of certainty that the

attorney fees incurred were fair, reasonable, and not excessive. On February 2, 2021, Plaintiff filed his Notice of Filing of Final Invoice for Legal Fees and Expenses. The total amount of attorney fees allegedly incurred by the Plaintiff in prosecuting this case is \$139,417.74. This filing by the Plaintiff was not contested by the Defendants. Based upon the testimony of Plaintiff's expert witness and the Plaintiff, the Court finds Plaintiff's request for attorney fees, in the amount of \$139,417.74, is reasonable. Consequently, the Court finds that Plaintiff is entitled to judgment against Defendants Robinson Oldham and Rob Oldham Properties, LLC, jointly and severally, for attorney fees, in the amount of \$139,417.74.

Plaintiff has been collecting the rents from Defendants' properties that are listed in the mortgage note pursuant to the assignment of rents clause located in Clause 13 of the Mortgage. A representative of the Gentile Property Management LTD ("GPM") testified that it is the management company that was hired by the Plaintiff to collect the rents from Defendant's properties. As of January 14, 2021, GPM has collected a total of \$216,634.20 of rental income from said properties. Of this amount, GPM testified that \$215,945.24 was cashed out for various reasons including, but not limited to, attorney fees, insurance bills, winterization of the vacant properties, management fees, water bills, maintenance, and property reserves. GPM testified that no monies had been paid to the Defendants. GPM further testified that as January 14, 2021, there exists a net amount of \$688.96 remaining in its possession of owner funds.

GPM testified that it was directed by Plaintiff to pay to Plaintiff's attorneys the amount of \$48,039.27, as and for legal fees accrued in connection with the instant litigation.

The Court finds that Defendants are entitled to a total credit of \$48,728.23, to be applied to the judgement rendered against them in this case. The Court orders that this credit is to be applied first to the judgment interest due and then to the unpaid principal balance. *See Augustine v. North Coast Limosine*, 8th Dist. Cuyahoga Nos. 76742 & 76993, 2000 Ohio App. LEXIS 3640, \*7.

The Court further finds that Plaintiff's contractual right to collect the rents from Defendant's properties named in the Mortgage Note, shall continue until such time that the loan is paid in full, or that there is an Order of Court that directs otherwise. *See generally Bank v. Heritage Prop. Grp. LLC*, 12th Dist. Clermont No. CA2013-10-078, 2014-Ohio-991 (12th Dist.).

Plaintiff seeks to enforce the contract interest rate of 18% per annum to be applied as the default interest rate on the Mortgage Note. Pursuant to Section 1343.01(B)(1) of the Ohio Revised Code, the Court finds that Plaintiff is entitled to receive the contract interest rate of 18% per annum from the date of default.

Plaintiff's Motion to Tax Deposition Expenses as Costs, filed 01/26/2021, is DENIED. *See Vossman v. Airnet Sys., 159 Ohio St. 3d 529, Inc., 2020-Ohio-872, 152 N.E.3d 232.*

Plaintiff's Motion for Reconsideration, filed 01/31/2021, is DENIED.

Defendants' Motion to Exclude the Expert Report and Testimony on the Issue of Attorney's Fees for Failure to Submit and Itemized and Detailed Legal Bill and Other Evidentiary Basis and Defendants' Motion to Deny Excessive Fees Should a Fee Award be Granted to Plaintiff, filed 02/01/2021, is DENIED.

Therefore, it is ORDERED, ADJUDGED, AND DECREED, that judgment be rendered in Plaintiff's favor against Defendants Robinson Oldham and Rob Oldham Properties, LLC, jointly and severally, in the principal amount of \$750,000.00, plus \$30,000.00 in late fees, plus interest at the contract rate of 18% per annum from the date of default, plus attorney fees in the amount of \$139,417.74. It is further ORDERED, ADJUDGED AND DECREED that Defendants are entitled to a credit of \$48,728.23.

Final.

IT IS SO ORDERED.

  
JUDGE CASSANDRA COLLIER-WILLIAMS

2/22/2021  
DATE