

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY

SAINT TORRANCE, :
 :
 Plaintiff-Appellant, : CASE NO. C-081292
 :
 - vs - : JUDGMENT ENTRY
 :
 :
 CINCINNATI METROPOLITAN :
 HOUSING AUTHORITY, :
 :
 Defendant-Appellee. :

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Hamilton County Municipal Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.



Stephen W. Powell, Presiding Judge



Robert P. Ringland, Judge



Robert A. Hendrickson, Judge

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SAINT TORRANCE, :
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 : DECISION
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 CINCINNATI METROPOLITAN HOUSING :
 AUTHORITY, :
 :
 Defendant-Appellee. :

CIVIL APPEAL FROM HAMILTON COUNTY MUNICIPAL COURT
Case No. 08CV14222

Saint Torrance, 3182 Werk Road #2, Cincinnati, Ohio 45211, plaintiff-appellant, pro se
Angela Stearns, 16 West Central Parkway, Cincinnati, Ohio 45202, for defendant-appellee

Per Curiam.

{¶1} Plaintiff-appellant, Saint Torrance, appeals the Hamilton County Municipal Court's order granting summary judgment in favor of defendant-appellee, Cincinnati Metropolitan Housing Authority in an action involving the alleged breach of a Section 8 housing contract. For the reasons that follow, we affirm the trial court's judgment.¹

1. Pursuant to Loc.R. 12, we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

{¶2} Appellant is a local landlord participating in the Housing Choice Voucher Section 8 Program: a statutory program through which local housing authorities subsidize rent payments "[f]or the purpose of aiding low-income families in obtaining a decent place to live." See Section 1437 (f)(a), Title 42, U.S.Code. See, also, *Ocean View Towers Assoc., Ltd. Partnership v. United States* (2009), 88 Fed.Cl. 169, 171. Appellee is a local public housing authority that pays rent subsidies on behalf of low-income families pursuant to Section 8 of the United States Housing Act of 1937. See Section 1437(f), Title 42, U.S. Code.

{¶3} On October 11, 2007, appellant entered a lease agreement with a prospective tenant, Mr. William Aleu, that set the monthly rent at \$668. The next day, appellant submitted his request for tenancy approval ("RTA") application to appellee, which indicated that, among other responsibilities, Aleu would pay electric heating costs. Based on the information provided, appellee sent appellant a Housing Assistance Program Contract ("HAP Contract"), stating that the reasonable rent for Aleu's unit was \$480 per month. Based on appellee's initial rent-allocation calculation, appellee would pay \$25 per month on Aleu's behalf, and Aleu would pay the remaining \$455. However, appellee informed appellant that payments would not begin until appellant submitted additional documentation with his RTA.

{¶4} Between November 2007 and March 2008, appellant contacted appellee's office numerous times, demanding \$668 rent payments for Aleu's apartment. Appellant claimed he had assumed responsibility for Aleu's heating costs and that appellant's other Section 8 tenants received subsidies higher than \$480. On March 31, 2008, appellee sent appellant a HAP Contract cover letter, on which appellee's housing specialist wrote "this is the contract you are signing for" directly beneath the stated contract rent, which remained \$480. On April 4, 2008, appellant finally submitted the documents required to complete his HAP application. On April 15, 2008, appellee issued a direct deposit on behalf of Aleu for

\$154, consisting of six retroactive \$25 payments for the months of November 2007 through April 2008, plus a prorated amount of \$4 for October 2007, when Aleu's lease began. Through a subsequent addendum also dated April 15, 2008, appellee increased its payments toward Aleu's rent from \$25 to \$459, based on Aleu's decreased income and the fact that appellant acknowledged in writing that he, not Aleu, was paying heating costs.

{15} On May 2, 2008, appellant filed suit against appellee for breach of contract, fraud and intentional infliction of emotional distress. Appellant claimed, among other things, that (1) appellee "failed to produce a contract" identical to appellant and Aleu's lease for \$668 per month, (2) appellee failed to properly reimburse appellant based on \$668 dollars-worth of rent, (3) appellee "had their own agenda of blocking a contract between [Aleu] and [appellant]" for \$668, and (4) appellee's failure to properly reimburse appellant caused him to fall behind on his expenses, causing emotional distress.

{16} On September 25, 2008, appellee moved for summary judgment on all claims asserted against it. In a memorandum in support of the motion, appellee argued that summary judgment was appropriate for several reasons. First, appellee argued that as a political subdivision administering housing assistance payments pursuant to the United States Department of Housing and Urban Development (HUD) guidelines, appellee was immune from tort liability pursuant to R.C. Chapter 2744. Second, appellee argued that in the event it was not immune from tort liability, appellant had no evidence to substantiate the claims for fraud and intentional infliction of emotional distress. Third, appellee asserted that appellant lacked any proof supporting the breach-of-contract claim because (1) no contract existed until appellant signed and submitted all required documents in April 2008, (2) appellee performed its obligations pursuant to the terms of the HAP Contract, and (3) that any mistake in the original rent allocation was based on appellant's failure to provide accurate information regarding heating costs in his RTA.

{¶17} In response, appellant moved for partial summary judgment for the breach of contract claim. Appellant argued that appellee was in breach because it failed to give him a HAP Contract for \$668. Appellant argued that partial summary judgment was appropriate because appellee was "sitting on this case and not honoring [appellant's] request for \$668.00 * * * [appellee] did not do there part on this contract being a binding contract with the landlord and the tenant." [Sic.] In an attempt to bolster his argument, appellant included lengthy documentation of his mortgage, loans, taxes, and energy, water, and homeowner's insurance bills as evidence of expenses that were overdue because of appellee's alleged failure to pay the proper rent amount.

{¶18} On December 11, 2008, the trial court issued a decision granting summary judgment in favor of appellee. First, the trial court found that appellant failed to demonstrate sufficient facts to support his claims for fraud and intentional infliction of emotional distress. The trial court further held that it was "indisputable" that appellee was a political subdivision pursuant to R.C. 3735.50, thus appellee successfully demonstrated its immunity to the two tort claims. Regarding the breach of contract claim, the court found several "incontrovertible" facts, including (1) the HAP Contract did not exist prior to April 14, 2008, (2) appellee was not in breach for failing to give appellant a HAP Contract for \$668, and (3) appellant "failed to demonstrate by any material fact that [appellee] violated law, rules, procedures, or policy in its determination of rent allocated for Aleu's apartment."

{¶19} On May 5, 2009, appellant appealed the trial court's decision. Appellant's brief in support of this appeal contains somewhat unclear arguments relating to the game of poker, arch angels and appellee's alleged bias towards disabled veterans. However, appellant appears to assert the following two arguments: first that summary judgment for appellee was improper, and secondly that appellant was entitled to partial summary judgment on the breach of contract claim. Our review of the record indicates that none of the materials

appellant presented to the trial court provide any genuine issues of material fact. Thus, for the reasons outlined below, we hold that summary judgment for appellee was properly granted.

{¶10} We review summary judgment determinations de novo, without deference to the trial court. See, e.g., *Curran v. Vincent*, Hamilton App. No. C-060521, 2007-Ohio-3680, ¶12. The standard governing the parties' cross-motions for summary judgment is set forth in Civ.R. 56. Id. Pursuant thereto, summary judgment should be granted only when (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can only come to a conclusion adverse to the nonmoving party, when viewing the evidence in the light most favorable to the nonmoving party. Id. See also Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. A party moving for summary judgment bears the initial burden of showing that no genuine issue of material fact exists, and if it has satisfied this burden, "the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293; *Curran* at ¶12.

{¶11} Appellee met its initial burden as described in *Dresher*, which states that the moving party must do more than make a "conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some *evidence* of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims." (Emphasis sic.) *Dresher* at 293. Appellant's response, however, did not rise to the level of evidentiary proof required of a party opposing summary judgment.

{¶12} In the case at bar, appellee claims that it is immune from suit under Ohio's

Political Subdivision Tort Liability Act, as codified in R.C. Chapter 2744. Our review of the record indicates that (1) appellee successfully proved immunity from suit under R.C. Chapter 2744, and (2) appellant failed to plead any exception to appellee's immunity.

{¶13} The Ohio Supreme Court has outlined a three-tier analysis for determining whether a political subdivision is entitled to immunity under R.C. Chapter 2744. *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319. See, also, *Diaz v. Cuyahoga Metro. Hous. Auth.*, Cuyahoga App. No. 92907, 2010-Ohio-13, ¶6; *Williams v. Cuyahoga Metro. Hous. Auth.*, Cuyahoga App. No. 92964, 2009-Ohio-6644. "Under R.C. 2744.02(A)(1), the first tier requires that [appellee] be a political subdivision. The second tier focuses on exceptions to immunity under R.C. 2744.02(B). Finally, under the third tier, if an exception was found to exist, immunity may be restored if the political subdivision asserts a defense under R.C. 2744.03." *Diaz* at ¶6 (citations omitted).

{¶14} Under R.C. 2744.01(A)(1), "a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." Under the first tier, a public housing authority ("PHA"), such as appellee, fits neatly within the definition of "political subdivision." R.C. 3735.50.² See, also, R.C. 2744.01(F).³ Further, the Ohio Supreme Court has held that the operation of a PHA is a governmental (as opposed to proprietary) function because it accomplishes "urban renewal projects and the elimination of slum conditions." *Diaz*, 2010-Ohio-13 at ¶7, quoting *Moore v. Lorain Metro. Hous. Auth.*, 121 Ohio St.3d 455, 2009-Ohio-

2. R.C. 3735.50 states: "A metropolitan housing authority, created under section 3735.27 of the Revised Code, constitutes a political subdivision of the state within the meaning of section 5739.02 of the Revised Code."

3. R.C. 2744.01(F) states that "political subdivision" means "a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state."

1250, ¶13. See, also, R.C. 2744.01(C)(2)(q); *Charles Gruenspan Co., LPA v. Thompson*, Cuyahoga App. No. 80748, 2003-Ohio-3641, ¶48 ("As a general principle, political subdivisions are not liable in damages unless a specific exception to that immunity exists. This applies particularly to intentional tort claims of fraud and intentional infliction of emotional distress"). Thus, appellee qualifies as a political subdivision performing a "governmental function" by providing housing assistance payments in accordance with HUD guidelines.

{¶15} Under the second tier, we next must consider whether appellant set forth sufficient allegations to establish that a statutory exception to immunity may apply. See, e.g., *Williams*, 2009-Ohio-6644 at ¶8. In this case, appellant completely failed to address appellee's immunity claim. Further, it does not appear that any of the five exceptions to a political subdivision's immunity would apply in this case.⁴ Without an established exception to appellee's immunity, it is unnecessary to address the third tier of the analysis. Therefore, we hold that the trial court properly entered summary judgment for appellee on the claims for fraud and intentional infliction of emotional distress.

{¶16} In his brief, appellant also appears to argue that the trial court erred in granting summary judgment to appellee on the breach of contract claim. Specifically, appellant seems to argue that the trial court erred in concluding that appellee was not in breach for its failure to give appellant a HAP Contract for \$668.

{¶17} Accordingly, appellant had the burden of production in the trial court on each

4. R.C. 2744.02(B) lists the five exceptions that would make a political subdivision, otherwise immune, liable for damages: "(1) negligent operation of a motor vehicle by the political subdivision's employee; (2) negligent performance of acts by an employee of a political subdivision with respect to the political subdivision's 'proprietary functions,' (3) the political subdivision's negligent failure to keep public roads in repair; (4) negligent creation or failure to remove physical defects in buildings and grounds; (5) and where another section of the Ohio Revised Code expressly imposes civil liability on a political subdivision." *Diaz*, 2010-Ohio-13 at ¶8. In the case at bar, appellee's alleged actions do not relate to motor vehicles, proprietary functions, roads, physical defects, nor does appellant assert that any other section of the Revised Code applies.

element of the claim, including the existence of a valid contract, performance by appellant, breach by appellee, and damage or loss to appellant. See, e.g., *Brunsmann v. W. Hills Country Club*, Hamilton App. No. C-020323, 2003-Ohio-891, ¶111; *Doner v. Snapp* (1994), 98 Ohio App.3d 597. As previously stated, under Civ.R. 56(C), summary judgment is proper if the "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 322-23, 106 S.Ct. 2548, the United States Supreme Court held that the plain language of Civ.R. 56(C) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* See, also, *Kool, Mann, Coffey & Co. v. Castellini Co.* (Aug. 2, 1995), Hamilton App. No. C-930951, 1995 WL 453049, at *5.

{¶18} Thus, in the case at bar, Civ.R. 56(C) mandates the entry of summary judgment for appellee because, after an adequate time for discovery, appellant failed to make a showing sufficient to establish the existence of at least one element essential to his claim: breach by appellee. To prove a breach by appellee, appellant had to show that appellee "did not perform one or more of the terms of the contract." *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶18 (citation omitted). In the case at bar, the trial court found that the HAP Contract created a contractual relationship between appellee and appellant that was separate and distinct from the contractual relationship formed by the lease agreement between appellant and Aleu. Appellant's lease agreement with Aleu did not control

appellee's actions, nor did it have any effect on how the rent was determined in the HAP Contract. In fact, the HAP Contract that appellant signed clearly states that "the rent to owner [i.e., appellant] may at no time exceed the reasonable rent for the contract unit as *most recently determined or redetermined by the PHA* in accordance with HUD requirements"⁵ and that the "HAP contract contains the *entire agreement* between owner and the PHA." (Emphasis added.) In other words, as a PHA, appellee had the authority to determine "reasonable rent" for appellant's Section 8 housing in accordance with HUD guidelines, and that rent controlled the parties' agreement.

{¶19} The record lacks any evidence that appellee failed to act in accordance with the HAP Contract terms or HUD regulations. Rather, the record reflects that appellee began processing payments on Aleu's behalf in accordance with the HAP Contract on April 15, 2008 – soon after appellant submitted all necessary documentation. The facts appellant *does* contribute to the record are related to the HAP Contract rent for appellant's *other* Section 8 units, which are completely irrelevant to the HAP Contract rent in this case. In determining reasonable rent for Section 8 housing under Section 982.507(b), Title 24, C.F.R., appellee must review the rent for comparable "*unassisted*" units. Here, appellant fosters the unsupported notion that appellee was required to consider the rent for his other Section 8 "*assisted*" units. In sum, appellant's conclusory and entirely unsupported argument that he

5. {¶a} Section 982.507(b)(1)-(2), Title 24, C.F.R. states:

{¶b} "The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

{¶c} "(1) The location, quality, size, unit type, and age of the contract unit; and

{¶d} "(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease."

was entitled to \$668 in rent does not demonstrate that appellee breached its contract.⁶ Appellee's mere dissatisfaction in the rent he received for Aleu's unit does not support a claim for breach of contract

{¶20} Because appellant failed to make a showing sufficient to establish that appellee breached its contract – an essential element of his claim – summary judgment for appellee was proper. In holding that summary judgment for appellee was proper, we necessarily dispose of appellant's argument regarding the propriety of partial summary judgment in his favor.

{¶21} Thus, appellant's assignments of error are overruled.

{¶22} Judgment affirmed.

POWELL, P.J., RINGLAND and HENDRICKSON, JJ., concur.

6. Although his brief is quite lengthy, appellant's remaining arguments are unsupported, and difficult to comprehend including "[d]uring this requested Oral hearing [appellee] demonstrate a lack of communication and also a some kind of [bullying], reputation kind of thing I seen always in business which I call legal business tactics which in front of my fathers they call it lying with a consequences with a original game of why I through everybody out of heaven, now we will see who will return to heaven, please don't miss this game there is 5,556,000,000.00 that will not make it pass my gates." [sic] Unfortunately, we did not have the opportunity to ask questions to clarify appellant's arguments because he failed to appear for oral arguments, despite his request to argue this case.