

## 2 Fla. L. Weekly Supp. 305a

### **Landlord-tenant -- Eviction -- Complaint for eviction dismissed, and previously entered order ratifying joint stipulation set aside where notice attached to complaint failed to comply with statute, and therefore court had no subject matter jurisdiction**

HOUSING AUTHORITY OF THE CITY OF FORT LAUDERDALE, a Florida non-profit corp., Plaintiff, v. DEBORAH SNELL, Defendant. County Court of the 17th Judicial Circuit in and for Broward County. Case No. 94-01964. May 18, 1994. Peter B. Skolnik, Judge. Janet Eaton Sherr, Legal Aid Service of Broward County, Inc., for Defendant.

### **ORDER GRANTING DEFENDANT'S EMERGENCY MOTION TO SET ASIDE ORDER AND JOINT STIPULATION, AND TO DISMISS THE COMPLAINT FOR LACK OF JURISDICTION**

THIS CAUSE came before the Court on May 9, 1994 upon Defendant, DEBORAH SNELL'S, Emergency Motion To Set Aside the Order and Joint Stipulation and To Dismiss the Complaint. After considering the pleadings and the applicable legal authorities, and hearing argument from Defendant's counsel, the Court makes the following:

#### **FINDINGS OF FACT**

1. Plaintiff is the owner of public housing occupied by the Defendant and her three minor children.
2. Defendant has possession of the unit pursuant to a written yearly lease.
3. A Complaint for Tenant Eviction was filed by Plaintiff and served on the Defendant on February 4, 1994.
4. On February 4, 1994, the day the Defendant was served with the Complaint, she called the Plaintiff's attorney whose name appeared on the face of the Complaint. She was told by the secretary to come to the office that day to sign a paper, and if she signed the paper, her eviction would stop, and the Defendant would not lose her subsidized public housing.
5. The Defendant was not represented at the signing of the Joint Stipulation by counsel. Defendant was not advised of her rights. Defendant was not advised concerning the Stipulation and the fact that she had a choice not to sign the stipulation.
6. The Defendant is a thirty year old, eighth grade educated mother of three minor children who reside with her in the subject matter apartment. Her monthly income is \$364.00.
7. As a result of this meeting, a Joint Stipulation was executed, and this Court entered the Joint Stipulation and an Order ratifying the Stipulation on February 10, 1994.

8. The Plaintiff filed a Notice of Violation of the Stipulation on April 25, 1994, and this Court entered an Order issuing a Writ of Possession on May 3, 1994.
9. The Defendant was served with the Writ of Possession on May 5, 1994.
10. On May 6, 1994 undersigned counsel notified opposing counsel of her intent to file Emergency Motions before the Court.
11. On May 9, 1994 the undersigned counsel filed, and noticed opposing counsel, an Emergency Motion to Set Aside Order and Joint Stipulation and to Dismiss the Complaint.

#### CONCLUSIONS OF LAW

- A. Pursuant to Rule 1.140, Florida Rules of Civil Procedure, any grounds showing that the Court lacks jurisdiction of the subject matter may be made at any time, including after the entry of an Order. *Stel-Den of America, Inc. vs. Roof Structures*, 438 So. 2d 8826 (4 D.C.A. 1983) and *State D.H.R.S. v. Schreiber*, 561 So. 2d 1236 (4 D.D.A. 1990).
- B. The giving and expiration of a proper Notice is a statutory prerequisite to stating a cause of action for tenant eviction, pursuant to Section 83.56(3), Florida Statutes.
- C. Plaintiff's Notice attached to the Complaint for Tenant Eviction, dated December 13, 1993, is defective as it fails to comply with Section 83.56, Florida Statutes. *Housing Authority of the City of Ft. Lauderdale v. Snell*, 2 Fla. L. Weekly Supp. 225.
- D. The Notice dated December 13, 1994 fails to satisfy the statutory prerequisites of Section 83.56, Florida Statutes, and therefore, the Plaintiff's Complaint is fatally and jurisdictionally defective and this Court was without subject matter jurisdiction to issue an Order ratifying the Joint Stipulation.

Based on the foregoing, it is hereby ORDERED AND ADJUDGED that:

1. The Plaintiff's Complaint is Dismissed, with prejudice; and
2. The Order ratifying the Joint Stipulation dated February 10, 1994 is Set Aside; and
3. The Joint Stipulation dated February 4, 1994 is Set Aside; and
4. The Writ of Possession issued on May 5, 1994 is Stayed: and
5. The Court reserves jurisdiction on the issue of awarding attorney's fees and court costs.