# CAPTION: DAVID RENTALS, LLC V. VIRGINIA WOODS, LLC

**04-17-24**

APPEAL NO.: C-230374

TRIAL NO.: A-1703941

KEY WORDS: CONTRACTS – REAL ESTATE – CIV.R. 15(E) – MATERIAL BREACH – ANTICIPATORY REPUDIATION – BREACH OF FIDUCIARY DUTY –R.C. 4735.21

SUMMARY:

The trial court erred in dismissing the property owner’s supplemental counterclaim for slander of title brought against its property-management company on statute-of-limitations grounds because the supplemental counterclaim filed under Civ.R. 15(E) related back to the date of the property owner’s original counterclaim.

The trial court’s determination after trial that the property owner materially breached the property-management contract by terminating the contract without giving the management company the required 60 days’ notice and that the management company did not anticipatorily repudiate the contract was not against the manifest weight of the evidence: the evidence presented at trial showed that the parties’ relationship began to deteriorate regarding financial issues, that the management company proposed a way to continue the relationship and the owner did not respond, and that the management company notified the owner that it would no longer perform repair work, which would require further extension of financial credit, but that it would continue to provide management duties.

The trial court’s decision dismissing the property owner’s breach-of-fiduciary-duty claims against the property-management company after trial was not against the manifest weight of the evidence: the property owner claimed that the management company’s decision to hire a registered sex offender as a caretaker of the property placed tenants in danger, but the property owner failed to show that the caretaker’s placement caused any injury; the property owner claimed that the management company engaged in self-dealing by charging the property owner a commission for finding the caretaker as a tenant and by charging the owner for the caretaker’s labor, but the owner would have been responsible for both charges under the contract, and it just so happened that the management company found one person to fill both roles; the property owner claimed that the management company mishandled security deposits, but the trial court found in favor of the property owner on its breach-of-contract counterclaim for the mishandled security deposits, and the property owner did not show any damages separate from the breach-of-contract counterclaim.

The trial court erred in failing to apply R.C. 4735.21 to the breach-of-contract claims brought by the property-management company, a limited liability company, against the property owner because a limited liability company qualifies as a “person” for purposes of R.C. 4735.21, and a person cannot seek recovery for real estate broker activities without first proving a valid real estate license under R.C. Chapter 4735. [*But see* DISSENT: The trial court did not err in holding that limited liability companies (“LLCs”) did not need to be licensed as real estate brokers to recover damages under R.C. 4735.21 for claims relating to real estate broker activities because the General Assembly did not include LLCs in the list of entities regulated by that statute and because an LLC does not qualify as a “person” under that statute based on the text and structure of the statute and the usage of those terms throughout the chapter.]

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED

JUDGES: OPINION by WINKLER, J.; BOCK, P.J., CONCURS and BERGERON, J., CONCURS IN PART AND DISSENTS IN PART.