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CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION
JUDGE WILLIAM H. CORRIGAN

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NATIONSBANC MORTGAGE CORP.	CASE NUMBER 93 CVG 14002
PLAINTIFF	
vs.	
WANDA PINKNEY	JUDGMENT ENTRY
DEFENDANT	

Motions for summary judgment were filed by the plaintiff and the defendant.

The court finds that there is no genuine issue as to any material fact: Wanda Pinkney and Clint M. Pinkney, the prior owner of the premises, executed a lease for the term ending March 31, 1994, governing Ms. Pinkney's occupancy of the premises; Ms. Pinkney was not named as a party to the foreclosure action filed by plaintiff against Clint M. Pinkney; and plaintiff initiated this action in forcible entry and detainer against Ms. Pinkney upon service of a three-Day notice to vacate under Revised Code 1923.04.

After a careful review of the case law and public policy considerations, this court concludes that under the above-described circumstances the foreclosure sale did not terminate Ms. Pinkney's lease. The plaintiff, as the purchaser at sheriff's sale, therefore took the property subject to the lease. The plaintiff has not terminated the

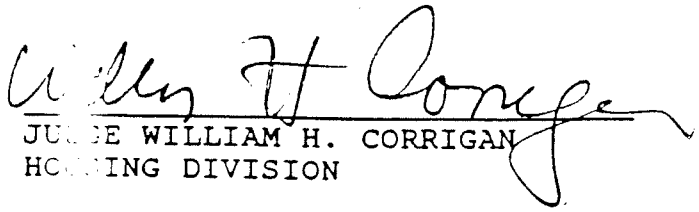
lease in accordance with its terms. The plaintiff is therefore not entitled to a writ of restitution against defendant, and the defendant is entitled to judgment as a matter of law.

This conclusion is consistent with the decisions in Davis v. Boyajian, 11 Ohio Misc. 97 (1989) and First Federal Savings and Loan Association of Zainesville v. Rigg Oil Co., NO. CA83-11 (Ct. App. Muskingum Cty. August 2, 1983), and is mandated by public policy. While the court is mindful of the burden this ruling will impose on purchasers at sheriff's sale, a contrary decision would impose a greater burden on the tenant who occupies the premises under what the tenant believes is a valid lease, is often unaware of the pending foreclosure action, and is usually in a more restrictive financial position than the purchaser.

As indicated by the defendant, the plaintiff may terminate the defendant's tenancy if the defendant is in breach of the terms of her lease, including her obligation to pay rent. Absent a breach of the lease, plaintiff may terminate defendant's tenancy in accordance with the lease, upon its expiration in March 1994.

Judgment is rendered for the defendant, the action is dismissed, and defendant may recover of the plaintiff her costs of action.

IT IS SO ORDERED.



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