

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL ACTION**

*Filed and Attested by the
Office of Judicial Records
06 SEP 2016 11:23 pm
E. MASCUILLI*

YASMIN VASQUEZ

No.: 160800537

Plaintiff

v.

OBARA INVESTMENT REALTY
ADVISERS, LLC &

MARC A. GILBERT

Defendants

ORDER

AND NOW, this _____ day _____, 2016 up on consideration of Defendants' Preliminary Objectinos to Amended Complaint, and any response, thereto, it is hereby ORDERED and DECREED that said Preliminary Objections are SUSTAINED and the Plaintiff's COMPLAINT is therefore DISMISSED _____ WITHOUT PREJUDICE, _____ WITH PREJUDICE; Plaintiff to have _____ days to re-file.

BY THE COURT:

J. _____

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL ACTION**

YASMIN VASQUEZ	::	No.: 160800537
	::	
Plaintiff	::	
	::	
v.	::	
	::	
OBARA INVESTMENT REALTY	::	
ADVISERS, LLC &	::	
	::	
MARC A. GILBERT	::	
	::	
Defendants	::	

RULE

AND NOW, this day _____ of _____, 2016 upon consideration of Defendant(s), Preliminary Objections, and any response thereto, a Rule is hereby issued upon the Respondent/Plaintiff to show why the relief requested therein should not be granted.

RULE RETURNABLE, on the _____ day of _____, 2016 at _____ a.m./p.m. in Courtroom _____ City Hall Philadelphia, PA 19107.

BY THE COURT:

J. _____

Edward Smith, Esquire
Law Office of Ed Smith, Esq.
910 Arch St., Suite 2M
Philadelphia, PA 19107
Attorney ID# 310179
(215) 801-3469

Attorney for the Defendants

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL ACTION**

YASMIN VASQUEZ	::	No.: 160800537
	::	
Plaintiff	::	
	::	
v.	::	
	::	
OBARA INVESTMENT REALTY	::	
ADVISERS, LLC &	::	
	::	
MARC A. GILBERT	::	
	::	
Defendants	::	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Defendants, Obara Investment realty Advisers, LLC & Marc Gilbert, by and through counsel, hereby submit these preliminary objections pursuant to Pennsylvania Rule of Civil Procedure 1028 and pray that they be sustained by the Honorable Court for the following reasons [Hereinafter all references to the Pennsylvania Rules of Civil Procedure will refer to those Rules as Pa.R.C.P.]:

I. INTRODUCTON

1. On August 4 2016 Plaintiff, Yasmin Vasquez, flied a civil action complaint against the Defendants, Obara Investment realty Advisers, LLC & Marc Gilbert.
2. Plaintiff and Defendant(s) previously had a landlord/tenant relationship with Plaintiff as the tenant.
3. Plaintiff moved out in March 2016.

4. Plaintiff's suit is based on alleged breaches of the Philadelphia Property Maintenance Code.
5. The Philadelphia Property Maintenance Code sets standards for the practice of offering property for rent in the City of Philadelphia and the condition of said property.
6. Defendants hereby submit the following preliminary objections:

II. FIRST PRELIMINARY OBJECTION, UNDER Pa.R.C.P. 1028(4) – OBJECTION TO COUNT 1, LEGAL INSUFFICIENCY, A.K.A. DEMURRER

7. Paragraphs 1-6, above, are hereby incorporated as though fully stated herein.
8. In paragraph 90 of Plaintiff's Complaint, Plaintiff states that Section 3901(4)(-f) of the Philadelphia Property Maintenance Code [Hereinafter referred to as the "PMC"] "provides a private right of action to enforce the law."
9. In paragraph 94 of Plaintiff's Complaint, Plaintiff demands recovery of money damages, including all rent paid.
10. Philadelphia Property Maintenance Code § 9-3901(4)(-f) does not provide for a private right of action as Plaintiff states. EXHIBIT B.
11. A private right of action is provided in PMC § 9-3904(4) "Penalties and Enforcement: Private Right of Action" which states in relevant part: "Any tenant of any property subject to the provisions of this Chapter shall have the right to bring an action against the owner of such property to compel compliance with this Chapter, and with Title 4, Subcode PM (Property Maintenance Code)."
12. PMC § 9-3904(4) "Penalties and Enforcement: Private Right of Action" does not provide for money damages; it only allows the tenant to bring an action to compel enforcement. *See* Second Preliminary Objection. EXHIBIT B.
13. Plaintiff has already brought an action to compel enforcement, in front of the Fair Housing Commission. EXHIBIT A.
14. WHEREFORE, because the PMC does not allow for recovery of money damages, or a rent

rebate, and for the reasons stated below, i.e. Plaintiff has already pursued her full and adequate remedy at law, Defendants ask this Honorable Court to Dismiss Count 1 of Plaintiff's Complaint.

III. SECOND PRELIMINARY OBJECTION, UNDER Pa.R.C.P. 1028(1) – OBJECTION TO ALL COUNTS, LACK OF SUBJECT MATTER JURISDICTION

15. Paragraphs 1-14, above, are hereby incorporated as though fully stated herein.

16. On March 22, 2016 the Plaintiff filed an action in front of the Fair Housing Commission of

17. Philadelphia to enforce compliance with the PMC.

18. On May 11, 2016 the Fair Housing Commission of Philadelphia issued its Final Order.

EXHIBIT A.

19. The Fair Housing Commission of Philadelphia has the power to enforce the PMC, including the power to issue penalties which can include monetary damages.

20. As a result of the Final Order issued by the Fair Housing Commission of Philadelphia the case against Plaintiff was withdrawn.

21. The Final Order attached as Exhibit A was not appealed by the Plaintiff.

22. In the Final Order the issue of Defendant(s) non-compliance with the PMC Section regarding the Certificate of Rental Suitability was addressed. *See* EXHIBIT A ¶ 25.

23. The issue complained of were addressed by the Fair Housing Commission of Philadelphia already, and their Final Order, which was appeal-able to the Court of Common Pleas, was not appealed.

24. The Municipal Court of Philadelphia case against the Plaintiff was withdrawn as a result of the Final Order.

25. Plaintiff has received her full and adequate remedy at law for the alleged violations of the PMC, it is the Final Order attached as Exhibit A. *See* Plaintiff's Complaint, Count 1.

26. Contracts between landlords and tenants in Philadelphia are governed by the PMC; therefore no

separate right of action in contract exists. *See* Plaintiff's Complaint, Count 2.

26. The doctrine of *res judicata* bars the litigation of claims more than once; The Commonwealth follows this doctrine.

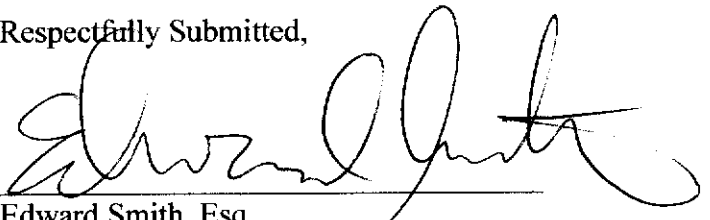
27. This Court is barred from jurisdiction due to the resolution of the claims in front of the Fair Housing Commission.

28. Plaintiff's claims in Counts 1 & 2 are barred from the doctrine of *res judicata*, because the Final Order of the Fair Housing Commission, which was not appealed, necessarily disposed of those claims.

29. The remaining Counts of the Plaintiff's Complaint have no merit, because they are based on claims that were already fully and finally disposed by participation in the Fair Housing Commission hearings.

30. WHEREFORE, COUNTS 1 & 2 must be dismissed as a matter of law due to *res judicata*, and the remaining counts which necessarily rely on counts 1 & 2 must be DISMISSED as well.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Edward Smith', written over a horizontal line.

Edward Smith, Esq.
Attorney for the Defendants

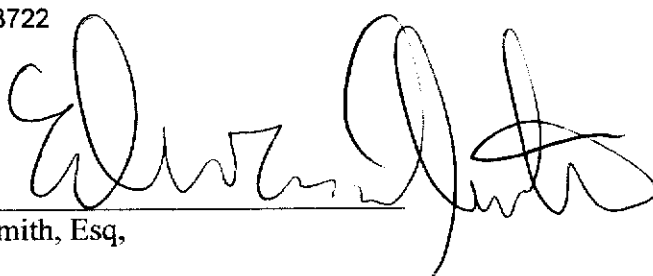
CERTIFICATION OF SERVICE

I, Edward Smith, Esquire, attorney for the Defendants, hereby certify, pursuant to the penalties of Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities, that a true and correct copy of the attached Entry of Appearance was served upon the Plaintiff via first class mail, postage-prepaid, at the following address and/or by email if agreed upon by the parties, on the date indicated below:

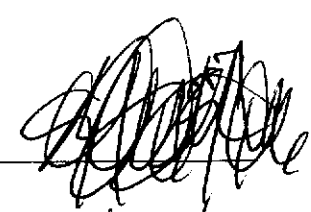
DANIEL UREVICK-ACKELSBERG, ESQ. &
JENNIFER CLARKE, ESQ.
PUBLIC INTEREST LAW CENTER
1709 BEN FRANKLIN PARKWAY
2nd Fl.
PHILADELPHIA PA 19103
(267)546-1316

MIKE CARROLL, ESQ.
COMMUNITY LEGAL SERVICE
1424 CHESTNUT ST
5th Fl.
PHILADELPHIA PA 19102
(215) 981-3722

/s: _____
Edward Smith, Esq,

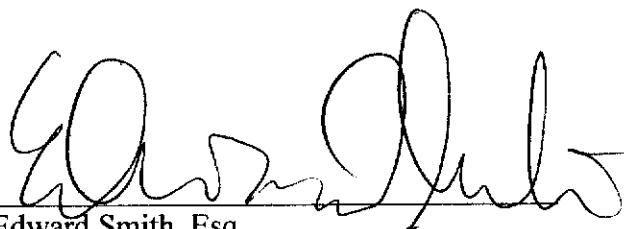


Dated: _____


9/7/14

STATEMENT IN LIEU OF VERIFICATION

I Edward Smith, Esq., Attorney for the Defendants hereby state, certify and swear pursuant to the penalties contained in Pa.C.S.A. § 4904, relating to unworn falsifications to authorities, that no verification is required for this filing because this filing contains no new averments of fact not already of record. This statement is made pursuant and in compliance with Pa.R.C.P. 1024(a) "Verification".

/s/ 
Edward Smith, Esq.
Attorney for Defendants

Edward Smith, Esquire
Law Office of Ed Smith, Esq.
910 Arch St., Suite 2M
Philadelphia, PA 19107
Attorney ID# 310179
(215) 801-3469

Attorney for the Defendants

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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YASMIN VASQUEZ

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No.: 160800537

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Plaintiff

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OBARA INVESTMENT REALTY
ADVISERS, LLC &

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MARC A. GILBERT

::

::

Defendants

::

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS
PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

Defendants, Obara Investment realty Advisers, LLC & Marc Gilbert, by and through counsel, hereby submit this memorandum of law in support of their preliminary objections pursuant to Pennsylvania Rule of Civil Procedure 1028 and pray that they be sustained by the Honorable Court for the reasons stated herein and in the attached Preliminary Objections:

I. APPLICABLE LAW

Pennsylvania Rule of Civil Procedure [Pa.R.C.P.] Rule 1028. "Preliminary Objections," states in relevant part:

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint:

Official Note

Of the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by Rule 1006(e). Forum non conveniens and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2).

See Rule of Appellate Procedure 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.

...

(4) legal insufficiency of a pleading (demurrer);

Relevant sections from the Philadelphia Property Maintenance Code are attached as Exhibit B. These include § 9-3901 “General Provisions,” and § 9-3904. “Penalties and Enforcement.”

II. FACTS

For Brevity, Plaintiff hereby incorporates by reference the facts of the attached Preliminary Objections, as though fully states herein.

III. ARGUMENT

For Brevity, Plaintiff hereby incorporates by reference the facts of the attached Preliminary Objections, as though fully states herein. Defendants, by and through counsel, will submit case law in a supplemental memorandum of law if the Court so allows. Case law was not available at the time of filing because the attorney was not hired until near the deadline for this filing.

Attorney for Defendants respectfully submits that oral argument on these issues is appropriate because, after a reasonable amount of research, these issues may be a matter of first impression.

THE CITY OF PHILADELPHIA

FAIR HOUSING COMMISSION
 Curtis Center Building
 601 Walnut St, 3rd Floor, Suite 300
 South
 Philadelphia, PA 19106
 Telephone (215) 686-4670
 Fax # (215) 686-4684



Rev Ralph E. Blanks
 Chairperson
 Rue Landau, Esquire
 Executive Director

Yazmin Vazquez
 1122 W. Loudon St., 2nd Floor
 Philadelphia, PA 19141
 Tenant

vs.

Docket #: F16-03-2592

Marc Gilbert
 510 W. 110 St. Apt. 1A
 New York, NY 10025
 Landlord

Obara Investment Realty Advisors
 P.O. Box 43189
 Philadelphia, PA 19129
 Agent

5/20/16
 8:45
 3

FINAL ORDER

On May 3, 2016, the Fair Housing Commission heard the above cited matter; and, the following ORDER was issued, in accordance with the Philadelphia Fair Housing Ordinance, and §§ 9-801, 9-804, 9-805, and/or 9-806 of The Philadelphia Code:

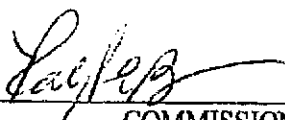
1. On December 29, 2013, the Tenant moved into the property located at 1122 W. Loudon St., 2nd Floor, Philadelphia, PA 19141.
2. Since December 2013, the Tenant complained verbally to the Landlord about repairs needed in the rental property.
3. On July 27, 2015, the Landlord obtained a rental license for the property.
4. On August 4, 2015, the Department of Licenses and Inspections issued a written report #495995 indicating open code violations such as: lack of a valid rental license for the property; lack of use registration permit for the property; a change in occupancy of the property; and lack of an annual fire alarm certification.
5. Since November 2015, the Tenant complained verbally and through email to the Agent about repairs needed in the rental property.

EXHIBIT A

6. On February 4, 2016, the Department of Licenses and Inspections issued another written report #518965 indicating open code violations such as: lack of smoke detectors and a carbon monoxide detector in the property; lack of a use registration permit for the property; rodent burrows; repair rear basement window; inadequate heat; rear exterior light fixture dangling from the wall; and lack of an annual fire alarm certification.
7. On February 25, 2016, the Department of Licenses and Inspections issued a third written report #521698 indicating open code violations such as: the unit being designated an unfit for human occupancy and an inoperable gas heater causing an inadequate room temperature.
8. On February 25, 2016, the Department of Licenses and Inspections issued a fourth written report #521699 indicating open code violations such as: unfit structure due to raw sewage in the basement; lack of a smoke detector in the unit; cracked glass in the kitchen windows; raw sewage creating an unsafe condition in the basement which must be cleaned; broken light fixtures in the basement; stove with inoperable burners; and broken light fixtures in the basement.
9. On March 22, 2016, the Landlord gave the Tenant a 3-day written notice to vacate the property.
10. On March 22, 2016, the Tenant filed a complaint with the Commission alleging an unfair rental practice and retaliation by the Landlord.
11. On April 22, 2016, all of the code violations were marked as complied by the Department of Licenses and Inspections.
12. On May 3, 2016, the Commission heard this case for the 1st time and, with only the Tenant present, issued a Final Order.
13. The Landlord and Agent failed to appear today and without prior notice.
14. As of today, there are still open code violations on the property.
15. The Tenant testified that she moved out of the property on March 28, 2016 because the Landlord asked her to leave.
16. The Tenant testified that no repairs were made while she was living in the property.
17. The Tenant testified that the Landlord asked her to leave because she called the Department of Licenses and Inspections.
18. The Tenant testified that she last paid rent to the Landlord in January 2016 at \$650 per month.
19. The Tenant testified that she did not pay rent for February 2016 and March 2016.

20. The Tenant testified that the Landlord was stealing gas which caused Philadelphia Gas Works (PGW) to shut the service off.
21. The Tenant testified that she contacted PECO about her electric bill, and PECO found unauthorized usage.
22. The Tenant testified that the Landlord asked her to leave the property because she contacted PGW and PECO.
23. The Tenant testified that she did not receive a Certificate of Rental Suitability for the property.
24. Pursuant to § 9-3903 of The Philadelphia Property Maintenance Code, the owner of any property for which a rental license is required shall, at the inception of each tenancy, provide to the tenant a Certificate of Rental Suitability and a copy of the "City of Philadelphia Partners for Good Housing Handbook."
25. Pursuant to § 9-3901 of The Philadelphia Property Maintenance Code, any owner who fails to obtain a rental license as required by § 9-3902, or to comply with § 9-3903 regarding a Certificate of Rental Suitability, or whose rental license has been suspended, shall be denied the right to recover possession of the premises or to collect rent during or for the period of noncompliance or during or for the period of license suspension.
26. Due to the outstanding code violations on the property and lack of a Certificate of Rental Suitability, no rent is owed to the Landlord.
27. Based on the testimony presented, the Commission finds retaliation and constructive eviction by the Landlord.
28. After review of the Landlord's letter to the Tenant dated March 22, 2016, the Commission finds that the Tenant is not responsible for the eviction filing fee of \$150 nor the court appearance fee of \$250.
29. The Tenant's testimony in regard to a theft of utility services could constitute a counterclaim by the Tenant which the Commission asks the Court to take into consideration.
30. The Tenant shall be allowed to retrieve any belongings from the property.
31. The Tenant shall return any keys to the Landlord.
32. The Landlord shall complete the repairs before renting the property again.
33. The Landlord shall provide the Commission with a copy of the compliance notice from the Department of Licenses and Inspections; a valid rental license for the property; and a Certificate of Rental Suitability.

34. The Tenant testified that she paid \$1350 to move into the property, which includes \$50 for keys, 1st month's rent, and a security deposit.
35. The security deposit shall be returned to the Tenant according to PA Law.
36. There shall be no harassment or retaliation by either party.
37. Failure to abide by this Order may result in additional legal action.
38. Both parties shall attend the Landlord Tenant hearing on May 20, 2016 at 8:45 AM.



COMMISSIONER
FAIR HOUSING COMMISSION
Docket #: F16-03-2592

5/11/16

If you wish to appeal the Final Order of the Philadelphia Fair Housing Commission you must do so in the Court of Common Pleas. You do this by filing a Notice of Appeal with the Prothonotary of the Court of Common Pleas, Room 280 City Hall. You have thirty (30) days in which to file an Appeal of the Commission's Order. If you are the Tenant you will be required to put any Escrow monies into an account with the Prothonotary. The amount must be enough to bring you current and up to date with what you would have normally paid in rent.

If you wish to appeal this order or are named as a party in an appeal, it is strongly recommended that you get a lawyer. All appeals are governed by the Rules of Civil Procedure of the Court of Common Pleas and strict compliance is required. **IF YOU FAIL TO COMPLY WITH THESE RULES, YOU CAN LOSE YOUR CASE.** If you do not have a lawyer or cannot afford one, you may call the Philadelphia Bar Association, Lawyer Referral & Information Service, at (215) 238-6333, Monday to Friday, 9A.M. to 5 P.M.

EXHIBIT B

§ 9-3901. General Provisions. (1) Administration. Subcode A (The Philadelphia Administrative Code) of Title 4 shall apply with respect to the provisions of this Chapter, and govern their administration. 23 Chapter 9-100 shall not apply to this Chapter. Terms shall be defined as set forth in Section PM-202, unless otherwise defined herein. (2) General Requirements of Applications: Every application for a registration or license under this Chapter shall include all information required by the Department, including, but not limited to: (a) An identification of the owner by name, residence and business address. If the owner is a corporation, the identification shall include the name and address of such corporation, together with the name, residence and business address of at least one principal. If the owner is under the age of eighteen years or has been judicially declared incompetent, a legal representative shall file the license application. (b) The name, address, and 24-hour contact information of an emergency contact where one is required pursuant to § 9-3902(5)(a). (c) The signature of the owner, or if the owner is a corporation, of any officer. (3) General Conditions of Registrations and Licenses: All registrations and licenses issued under this Chapter shall be subject to the following conditions: (a) Registrations and licenses shall be valid for a period of one year and shall be renewed annually, as long as required. The Department shall fix the registration or license year on a basis it deems desirable for efficient administration. If a registration or license year is changed, any person holding a registration or license shall receive credit for the unexpired term. (b) No registration or license required by this Chapter shall be transferable. The new owner shall obtain a new registration or license from the Department within ten days after the transfer in any manner of ownership or control of the interest in such property. (c) An owner, who is required to be registered or licensed under this Chapter, shall inform the Department in writing by first-class mail and shall amend the application within five days if there is a change of address of the owner, a change in the list of officers of the owner corporation, a change of address of any of such listed officers, or vacating of an excepted unit by an owner.

§ 9-3904. Penalties and Enforcement. (1) Suspension and Revocation (a) Any license issued pursuant to the provisions of this Chapter shall be subject to suspension by the Department for failure to comply with the requirements of any of the following: (i) this Chapter; (ii) Title 4, Subcode PM (the Property Maintenance Code), after reinspection pursuant to Section A-503.1 of the Administrative Code of Title 4; (iii) failure to pay any fine or cost imposed under this Chapter, Title 4, Subcode PM (Property Maintenance Code), or Title 4, Subcode A (Administrative Code). (b) Any suspension imposed pursuant to subsection (1)(a) shall continue until there has been compliance and until any unpaid fines and costs have been paid. The Department shall provide written notice and an opportunity for a hearing prior to any suspension or revocation of a license under this Chapter. (2) Violations of this Chapter shall be punishable by a fine of \$300, except as otherwise expressly provided. Each day that a violation exists or a person refuses to submit such information as required shall constitute a separate offense. 27 (a) Failure to obtain a rental registration when required by § 9-3902(1) shall be a Class II offense. (b) Failure to comply with § 9-3902(5)(a)(ii) shall be a Class III offense where no person designated as an emergency contact pursuant to that provision is available to the department in an emergency. (3) Private Enforcement. (a) No owner shall have the right to recover possession of the premises or collect rent during or for any period of non-compliance with respect to any of the following: (i) Failure to obtain or maintain a registration or license under this Chapter whenever one is required. (ii) Renting out any premises with respect to which a rental registration has been suspended or revoked under § 9-3904(2). (iii) Violation of any rental registration condition imposed pursuant to § 9-3904(2). (b) In any action to recover possession of real property or to make any claim against a tenant, the owner shall attach a copy of the rental registration together with any amendments thereto. (4) Private right of action. Any tenant of any property subject to the provisions of this Chapter shall have the right to bring an action against the owner of such property to compel compliance with this Chapter, and with Title 4, Subcode PM (Property Maintenance Code).