

IN THE MAGISTRATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CONYA DILLON WEEMS

Plaintiff,

vs.

KENYA MOORE

Defendant.

DISPOSSESSORY ACTION
FILE NO. 13-ED-020276

FILED IN OFFICE
2013 JUN 21 PM 4:34
CLERK OF
FULTON COUNTY, GEORGIA

MOTION FOR EXPEDITED HEARING ON SHORTENED NOTICE

COMES NOW, Plaintiff, **Conya Dillon Weems** (the "Plaintiff") hereby files this Motion for Expedited Hearing on Shortened Notice (the "Motion for Expedited Hearing") with regard to Defendant's Motion To Set Aside Default Judgment And Stay Of Execution Of The Writ Of Possession and Brief In Support Thereof (the "Motion to Set Aside") based on the following grounds:

1. Plaintiff has unjustly suffered severe financial distress as result of Defendant's numerous delinquencies and defaults on the terms and conditions of the Lease.
2. Plaintiff has been forced to reside in temporary housing while renting out storage space for her personal items. A delay of the dispossessionary action further adds to the financial burdens already incurred by Plaintiff as a result of Defendant's numerous delinquencies and defaults on the terms and conditions of the Lease.

3. Plaintiff has suffered extreme emotional distress as a result of the delay of this dispossessory action and Defendant's malicious and intentional attacks on Plaintiff's character in various national media outlets.

4. As a reality TV personality, Defendant has utilized this Court and the media to intentionally and knowingly delay execution of a Writ of Possession in an attempt to avoid public humiliation for her irresponsible financial behavior.

Because of the nature of this matter and because of the unreasonable delay that has occurred to date, immediate action is essential in order to avoid further financial and emotional harm to Plaintiff. According to O.C.G.A §44-7-53(b) "Every effort should be made by the trial court to expedite a trial of the issues." In support of this Motion for Expedited Hearing, the Plaintiff respectfully shows the Court as follows:

A. FACTS SUPPORTING THIS MOTION

1. Defendant Sought Out Plaintiff to Lease Property for

Employment as Reality TV Personality

In April 2012, Defendant emailed Plaintiff's real estate agent, Ginny Nevins of Windsor Realty, and subsequently left a handwritten letter inside the mailbox of Plaintiff's residential property located at 13330 Bishops Court, Roswell, Georgia 30075 (the "Property"), desperately seeking to lease said Property for the purposes of her employment as a reality TV personality with True Entertainment, LLC.

2. Defendant Entered into Lease Agreement with Plaintiff

On or about May 8, 2012, Defendant entered into a Lease For Residential Property (the "Lease"), which is attached hereto as Exhibit A and incorporated herein by reference, with Plaintiff for the purposes of leasing said Property for US\$3,999.00 ("Monthly Rent Fee"). Upon entering into

the Lease, Defendant completed a rental application to show her ability to pay the Monthly Rent Fee in which she reported an annual income of US\$400,000. The term of the Lease was from June 1, 2012 until May 30, 2013.

3. Defendant Agreed to Abide by Terms of Lease Including Utilities and Maintenance

Defendant agreed to abide by all the terms and conditions set forth in the Lease, including payment of all utilities and maintenance services for the Property. During the term of the Lease, Plaintiff agreed to allow Defendant to maintain all utilities and maintenance services in Plaintiff's name. After execution of the Lease, Plaintiff has defaulted on the terms and conditions of this Lease a minimum of fifteen (15) times since October 2012.

4. Defendant Defaults on Lease October 2012

In October 2012, Defendant defaulted on **Section 5. Rent** and **Section 6. Late Payments** of the Lease when she was delinquent on her Monthly Rent Fee which was received by Plaintiff on October 11, 2012 without including the required late payment service charge of US\$400.00 as required under the Lease.

5. Defendant Defaults on Lease November 2012

In November 2012, Defendant again defaulted on **Section 5. Rent** and **Section 6. Late Payments** of the Lease when she was delinquent on her Monthly Rent Fee without including the required late payment service charge of US\$400.00 as required under the Lease.

6. Plaintiff Notifies Defendant of Prior Defaults on Lease November 2012

On November 9, 2012, Plaintiff notified Defendant that she was in default of **Section 10. Utilities** and **Special Stipulations #3** which states "Tenant agrees to use Neptune Pools for pool maintenance and Carlos Santana for lawn care...", for non-payment of pool maintenance (US\$1,100.00) and lawn care services (US\$492.00) from June 2012 through November 2012.

As a result of Defendant's excessive delinquencies, Plaintiff requested immediate remittance of all payments and informed Defendant that Plaintiff was at risk of receiving a fine from the Home Owners Association (the "HOA") for not properly maintaining the lawn.

7. Defendant Remains Delinquent on Lease December 2012

On or about December 1, 2012, Defendant remained delinquent on pool maintenance and lawn care services in addition to utility and service payments for the City of Roswell Utilities, GasSouth and Andrews Security.

8. Defendant Defaults on Lease December 2012

In December 2012, Defendant again defaulted on **Section 5. Rent** and **Section 6. Late Payments** of the Lease when she was delinquent on her Monthly Rent Fee without including the required late payment service charge of US\$400.00 as required under the Lease.

9. Defendant Defaults on Lease January 2013

In January 2013, Defendant again defaulted on **Section 5. Rent**, **Section 6. Late Payments**, **Section 10. Utilities** and **Special Stipulations #3** of the Lease when she was delinquent on her Monthly Rent Fee (US\$3,999.00), late fee (US\$400.00), pool service (US\$592.00), lawn care (US\$1,100.00), and utilities (US\$431.48) as of January 11, 2013.

10. Plaintiff Filed First Dispossession Action Against Defendant January 11, 2013

On January 11, 2013, Plaintiff properly filed a Proceeding Against Tenant Holding Over (the "First Eviction Notice") against Defendant before the Magistrate Court of Fulton County due to Defendant's default on the Lease as permitted under **Section 7. Dispossession Fee** which states, "if Tenant owes any outstanding, additional rent and other fees and charges as of the 10th day of the month, Landlord may file a dispossession action in the county in which the Property is

located.” Service was properly served on Defendant on February 7, 2013. The First Eviction Notice and Entry of Service is attached hereto and referenced herein as Exhibit B.

11. Defendant Requests Settlement To Avoid Public Humiliation

Upon receipt of the First Eviction Notice, Defendant desperately requested settlement of the past due rent and utilities payments in order to avoid public humiliation for her repeated delinquencies. Defendant did not want the public to know that she was unable and unwilling to pay her Monthly Rent Fee and utilities on time. As a result, Plaintiff settled the Dispossessory Action with Defendant by accepting payment of the past due rent after the filing of the First Eviction Notice. A Letter of Request to Dismiss Case is attached hereto and referenced herein as Exhibit C. Plaintiff accepted payment under O.C.G.A §44-7-52(a) which states, “Except as provided in subsection (c) of this Code section, in an action for nonpayment of rent, the tenant shall be allowed to tender to the landlord, within seven days of the day the tenant was served with the summons pursuant to Code Section 44-7-51, all rents allegedly owed plus the cost of the dispossessory warrant.”

12. Defendant Defaults on Lease February 2013 Immediately

Following First Dispossessory Action

Immediately following the settlement of the January 11, 2013 Eviction Notice, Defendant again defaulted on **Section 5. Rent**, **Section 6. Late Payments**, **Section 10. Utilities** and **Special Stipulations #3** of the Lease when she was delinquent on her Monthly Rent Fee, late fee, pool service, lawn care, and utilities.

13. Defendant Defaults on Lease Section 21.N Rules and Regulations

Section 21.N. Rules and Regulations states: “Tenant shall be prohibited from improving, altering or modifying the Property (including painting) during the term of this Agreement

without the prior written approval of the Landlord...Any improvements, alterations or modification of the Property made by Tenant without the approval of Landlord shall be deemed to be damage done to the Property by Tenant.” Defendant painted the Dining Room walls, Master Bedroom walls, Bonus Room walls and a bathroom, without approval from the Plaintiff. Additionally, Defendant installed wall paper and painted the Office Room, without approval from the Plaintiff. The estimated damage incurred from Defendant’s default of Section 21.N. is US\$1,950.00.

14. Defendant Defaults on Lease March 2013

In March 2013, Defendant again defaulted on **Section 10. Utilities** of the Lease when she was delinquent on the sanitation bill (US\$333.96), DirectTV/Phone bundle (US\$226.55), and GasSouth bill (US\$341.07) as of March 11, 2013.

15. Defendant Defaults on Lease April 2013

On or about April 11, 2013, Defendant again defaulted on **Section 10. Utilities** of the Lease when she was delinquent on the AT&T bill (US\$256.81). Plaintiff notified Defendant that she had received phone calls from a bill collector as a result of the delinquency and requested immediate payment. Defendant did not respond to this notification.

16. Defendant Fails to Respond to Second Notification for Default of Lease April 2013

On or about April 29, 2013, Plaintiff again notified Defendant that she was delinquent on the AT&T bill (US\$256.81). Defendant did not respond to this notification.

17. Defendant Defaults on Lease May 2013

On or about May 16, 2013, Plaintiff notified Defendant of her failure to pay GasSouth (US\$519.71), Cobb EMC (US\$71.48), and AT&T (US\$256.81) and her resulting late fee (US\$400.00) for non-payment of additional rent.

18. Plaintiff Files Second Dispossession Action Against Defendant in Six (6) Months

On or about May 24, 2013, Plaintiff properly filed a Proceeding Against Tenant Holding Over (the "Second Eviction Notice") against Defendant before the Magistrate Court of Fulton County due to Defendant's default on the Lease as permitted under Section 7. Dispossession Fee which states, "if Tenant owes any outstanding, additional rent and other fees and charges as of the 10th day of the month, Landlord may file a dispossession action in the county in which the Property is located."

19. Defendant Filed Answer to May 24, 2013 Dispossession Action

On June 7, 2013, Defendant filed an Answer, Defense and Counterclaim with this Court.

20. Notice Provided for Dispossession Hearing

On June 10, 2013, proper notice was provided by the Deputy Clerk, State Court Civil to both Plaintiff's and Defendant's attorneys of a dispossession hearing scheduled for June 18, 2013 at 2:00pm in courtroom 1A.

21. Court Entered Order and Judgment for Writ of Possession Against Defendant

On June 18, 2013, Defendant failed to appear for the scheduled hearing at 2:00p in courtroom 1A. As a result of Defendant's failure to appear, this Court entered an Order and Judgment for Writ of Possession on behalf of Plaintiff.

22. Defendant Delays Court Process and Writ of Possession

On June 19, 2013, Defendant filed the Motion to Set Aside, for the purpose of intentionally delaying the process of the Court and the Writ of Possession.

23. Defendant Knowingly and Maliciously Made False Statements

About Plaintiff in Public

On or about June 7, 2013 and June 20, 2013, Defendant knowingly and maliciously made false statements about Plaintiff on the daytime TV talk show, Wendy Williams, in an effort to defame, intimidate and embarrass Plaintiff in the public. Defendant has utilized this dispossessionary process as an attempt to maintain relevancy as a reality TV personality during the downturn of her career. Additionally, Defendant has attempted to prolong the eviction process in order to avoid public humiliation as an irresponsible tenant.

24. Plaintiff has paid over \$4,000.00 for delinquent utilities, pool and lawn maintenance services for May and June to avoid a negative credit rating as a result of Defendant's delinquencies and defaults on the Lease.

To avoid a negative credit rating, Plaintiff has paid approximately US\$4,387.00 in delinquent utilities, pool and lawn maintenance services for May and June for the Property because Defendant has defaulted on the Lease and refuses to pay the utilities and maintenance services on time. Plaintiff has received numerous calls from bill collectors throughout the term of the Lease as a result of Defendant's delinquencies and defaults.

25. Plaintiff has suffered financial distress due to the delay of this dispossessionary action

Plaintiff is currently residing in temporary housing and renting out storage space for her personal items due to the delay of this dispossessionary action. Plaintiff currently pays approximately \$2,000.00 per month for temporary housing and storage space in addition to the fees she has occurred as a result of Defendant's delinquencies and defaults. In order to effectively pursue this dispossessionary action against Defendant, Plaintiff has also had to pay attorneys' fees which continue to accumulate as a result of the delay. Plaintiff has given Defendant every opportunity to resolve her financial delinquencies since October 2012 and should not be delayed in her right

to pursue and complete dispossessory action against Defendant. To continue to unjustifiably delay this process for the purpose of a hearing would cause further financial distress to Plaintiff.

26. Plaintiff has suffered emotional distress due to the delay of this dispossessory action and

Defendant's malicious attacks on Plaintiff's character in the media

Plaintiff is a private person and a professional who has worked hard to earn a respectable living for herself and her family. Due to the delay of this dispossessory action and Defendant's malicious attacks on Plaintiff's character in the media, Plaintiff has suffered emotional distress and has been unable to maintain normal sleeping habits. Plaintiff has also been forced to shut down all social media accounts in order to avoid overwhelming contacts and requests from the public.

B. SUMMARY OF THE NECESSITY FOR EXPEDITED HEARING

Defendant has grossly defaulted on the terms and conditions of the Lease a minimum of fifteen (15) times since October 2012. Additionally, Defendant has received two (2) notices for Dispossessory Actions within six (6) months (1) January 11, 2013 for failure to pay past due rent and (2) May 24, 2013 for failure to pay past due rent and default of lease. Plaintiff accepted past due rent payments as a settlement once in a twelve (12) month period for the first Dispossessory Action filed on January 11, 2013 and is not required to do so more than once according to O.C.G.A §44-7-52(a) which states, "Such a tender shall be a complete defense to the action; provided, however, that a landlord is required to accept such a tender from any individual tenant after the issuance of a dispossessory summons only once in any 12 month period." Plaintiff has been forced to pay over US\$4,000.00 for delinquent utilities and maintenance services because of Defendant's numerous delinquencies and defaults on the terms and conditions of the Lease in order to avoid a negative credit rating. Plaintiff has suffered severe financial distress as a result

of the delay in this dispossessory action. During this dispossessory process, Defendant has created a media circus in a desperate attempt to maintain relevancy as a reality TV personality while maliciously attacking Plaintiff's character. As a result, Plaintiff has suffered extreme emotional distress. Based on the record in this matter and the facts presented, this matter should be resolved as soon as possible to avoid any further injury to Plaintiff. An expedited hearing on the Motion for Expedited Hearing is simply a way to assure that both parties are given an opportunity to present their case at the earliest possible date as time is of the essence in this dispossessory action.

C. WHEN AND HOW COUNSEL NOTIFIED OF MOTION TO EXPEDITE

I, Linecia L. Gilmore, electronically served a copy of this Motion to Expedite upon counsel for the Defendant. The Certificate of Service is attached to this Motion to Expedite.

(Continued on next page)

Based on the foregoing, the Plaintiff respectfully submits that the Court has cause to schedule a hearing on an expedited basis and upon shortened notice to consider and resolve expeditiously the Motion to Set Aside.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an Order, substantially in the form as Exhibit D attached hereto and incorporated herein by reference, that

1. Grants this Motion for Expedited Hearing;
2. Sets an expedited hearing on the Motion to Set Aside at the earliest possible day and date;
3. Reduces the notice period for the hearing on the Motion to Set Aside
4. Allows notice of this Motion for Expedited Hearing to be served electronically; and
5. Grants such other and further relief as the Court deems just and proper.

Respectfully submitted this 21st day of June, 2013.


Linécia L. Gilmore

Georgia Bar No. 870164
The Gilmore Law Firm, LLC
191 Peachtree Street
Suite 3300, PMB#146
Atlanta, Georgia 30303
Telephone: (404)829-2740
Facsimile: (404)829-2743
E-mail: lgilmore@gilmorelegal.com

Counsel for Plaintiff Conya Dillon Weems

Counsel for Plaintiff Conya Dillon Weems