

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

FILED
OCT 23 2025

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

KIMBERLY SEXTON,
Individually and as trustee
and Owner/Manager of Equity
Trust Company FBO Kimberly
Sexton #20257668 and DUSTIN
BRAY,

Plaintiffs,

vs.

TONY Y. LEE, JAMIE S.
FUHRMAN, and CHRISTOPHER A.
GOHLKE,

Defendants.

ENTERED

OCT 23 2025

MAG

No. 2222-CC10119

Division No. 22

JUDGMENT AND ORDER

The Court has before it two separate motions: Defendant Jamie S. Fuhrman's (Fuhrman's) Motion to Dismiss Plaintiffs' Third Amended Petition with Prejudice and Defendant Christopher A. Gohlke's (Gohlke's) Motion to Dismiss Plaintiffs' Third Amended Petition. Defendants Tony Lee (Lee) and Gohlke join in Defendant Fuhrman's Motion to Dismiss the Third Amended Petition. These motions were argued before the Court on October 10, 2025. All parties appeared as represented by counsel and were given the full and fair opportunity to argue in favor of

and in opposition to the motions. The Court now rules as follows.

On December 21, 2022, Plaintiffs filed their Petition seeking damages arising from the flooding of residential property known and numbered as 6169 Westminster Place, St. Louis, Missouri (the Premises). On December 27, 2022, Plaintiffs filed an Amended Petition alleging Defendants occupied the Premises pursuant to a written contract when the flooding occurred. Plaintiffs allege Defendants caused the flooding by failing to provide heat to the Premises during cold weather while they were out of town on or about January 6, 2018, causing the water pipes to burst. On July 9, 2025, Plaintiffs were granted leave to file a Second Amended Petition solely to assert claims for wanton waste.

On July 29, 2025, this Court entered its Order granting Defendant Jamie Fuhrman's Motion to Dismiss Plaintiffs' Second Amended Petition and granting Christopher A. Gohlke's Motion to Dismiss Plaintiffs' Second Amended Petition in part and dismissing Plaintiffs' Second Amended Petition in its entirety. The Court found that Plaintiffs' Second Amended Petition failed to state a claim as to each of its four Counts. On sustaining the motion to dismiss, the Court granted Plaintiffs leave to

amend to properly state a claim as provided by Rule 67.06.

Plaintiffs were provided seven days to file their amended petition. The Court later extended the time to file Plaintiffs' amended petition to August 11, 2025.

Plaintiffs filed their Third Amended Petition (the Petition) on August 11, 2025. The Petition brings claims against Defendants in four counts. These claims are nearly identical to the claims alleged in Plaintiffs' Second Amended Petition. In Count I of the Petition, Plaintiff Dustin Bray seeks damages for flooding to the Premises in breach of Defendants' duty to exercise ordinary care in the use of the Premises to avoid causing damage over and above ordinary wear and tear. In Count II of the Petition, Plaintiff Kimberly Sexton seeks damages for flooding to the Premises in breach of Defendants' duty to exercise ordinary care in the use of the Premises to avoid causing damage over and above ordinary wear and tear. In Count III of the Petition, Plaintiff Dustin Bray seeks damages for breach of contract for Defendants' failure to keep and maintain the Premises in good repair and for Defendants' failure to pay for damages as agreed to in the underlying residential lease agreement. In Count IV of the Petition, Plaintiff Kimberly Sexton seeks damages for breach of contract for Defendants'

failure to keep and maintain the Premises in good repair and for Defendants' failure to pay for damages as agreed to in the underlying residential lease agreement.

Defendant Fuhrman moves to dismiss the Petition with prejudice. Defendant argues that the Petition does not remedy any of the issues identified in the Court's July 29, 2025 Order dismissing the case and accordingly does not comply with the Courts Rule 67.06 Order and should be dismissed with prejudice.

Rule 67.06 provides:

On sustaining a motion to dismiss a claim, counterclaim or cross-claim the court shall freely grant leave to amend and shall specify the time within which the amendment shall be made or amended pleading filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect; in which cases amendment shall be made promptly by the party in default.

In this Court's July 29, 2025 Order the Court found that Plaintiffs' Second Amended Petition should be dismissed for failure to state a claim and identified numerous deficiencies in Plaintiffs' claims. First, the Court found that Counts I and II failed to adequately allege duty and injury, which are necessary elements of a negligence cause of action. See Wieland v. Owner-Operator Servs., 540 S.W.3d 845, 848 (Mo. banc 2018). Second,

the Court found that Count III failed to adequately allege damages, a necessary element in a breach of contract action. See CIBC Bank USA v. Williams, 669 S.W.3d 298, 305 (Mo. App. E.D. 2023). Finally, the Court found that Count IV of the Petition failed to state a claim because it did not adequately allege that Sexton was a party to the underlying contract, a necessary element in a breach of contract action. Id.

The Court has reviewed the Petition and finds that it does not correct the deficiencies identified in the Court's July 29, 2025 Order. The Court finds that the Petition continues to fail to state a claim. "Parties to litigation do not have absolute rights to file an amended petition." TWA, Inc. v. Associated Aviation Underwriters, 58 S.W.3d 609, 624 (Mo. App. E.D. 2001). "[W]here an amendment would be futile, the trial court does not abuse its discretion in denying leave to amend." Suppes v. Curators of the Univ. of Mo., 613 S.W.3d 836, 857 (Mo. App. W.D. 2020). The Court finds that it should not grant leave to amend here where the amendment sought would be futile because the Petition fails to state a claim.

In addition, the Court finds that leave to amend need not be granted where, as here, it appears from the record that Plaintiffs had the factual information that purportedly gave

rise to their new claims for a considerable period of time before filing their amended pleading. See Boling v. State Farm Auto Ins. Co., 466 S.W.2d 696, 699 (Mo. banc 1971); Kanefield v. SP Distributing Co., 25 S.W.3d 492, 498 (Mo. App. E.D. 2000).

Accordingly, the Court finds that Plaintiffs have failed to comply with the Court's Rule 67.06 Order by failing to amend the Petition to properly state a claim and that Plaintiffs' claims should be dismissed with prejudice.

In Defendant Gohlke's Motion to Dismiss Plaintiffs' Third Amended Petition, Defendant Gohlke joins in Fuhrman's Motion to Dismiss. Accordingly, the Court finds that Gohlke's motion to dismiss should be granted for the reasons stated above. Defendant Gohlke also re-raises his arguments previously stated in his Third Motion to Quash, or in the Alternative, Dismiss Plaintiffs' Petition for Lack of Personal Jurisdiction, Insufficiency of Process, and Insufficiency of Service of Process.

Regarding these additional arguments, the Court has reviewed the Honorable Joseph Whyte's February 10, 2025 Order denying Defendant's Third Motion to Quash, or in the Alternative, Dismiss Plaintiffs' Petition for Lack of Personal Jurisdiction, Insufficiency of Process, and Insufficiency of

Service of Process and finds it to be well reasoned. The Court finds that these arguments lack merit.

Plaintiffs oppose Defendants' motions to dismiss arguing that the Honorable Joseph Whyte's prior orders denying summary judgment and denying prior motions to dismiss preclude the dismissal of this case, and that the Petition does state a claim relying on Turner v. Shaw, 36 Mo. 22, 8 S.W. 897 (Mo. 1888), and Ethridge v. TierOne Bank, 226 S.W.3d 127 (Mo. banc 2007).¹

First, the Court notes that the findings and holdings made by the Honorable Joseph Whyte in his rulings on the subject motions are merely interlocutory and are not controlling. See Stagner v. Wells Fargo Bank, N.A., 632 S.W.3d 443, 450 (Mo. App. W.D. 2021).

In addition, the Court has reviewed the record in this case and finds that the Court's rulings herein are not inconsistent with prior rulings of the Court, including Judge Whyte's orders.

As previously stated, the Court agrees with the Honorable Joseph Whyte's February 10, 2025 Order denying Defendant's Third Motion to Quash, or in the Alternative, Dismiss Plaintiffs' Petition for Lack of Personal Jurisdiction, Insufficiency of

¹ The other cases cited in Plaintiffs' opposition involve general propositions of law or, as discussed below, legal questions that the Court believes should be resolved in Plaintiffs' favor.

Process, and Insufficiency of Service of Process. The other rulings referenced in Plaintiffs' opposition do not deal with the same issues as those before the Court.

Regarding the summary judgment ruling, Judge Whyte's Order deemed certain facts admitted only for purposes of summary judgment under Rule 74.04(c)(2) and not for purposes of trial under Rule 74.04(d). See Hendrix v. City of St. Louis, 636 S.W.3d 889, 894 n.2 (Mo. App. E.D. 2021). In addition, the Court notes that an opposing party's admissions do not obviate the need to properly state a claim in a party's pleadings.

As to the case law referenced by Plaintiffs, the Court finds the cases to be inapposite. Turner v. Shaw was an action involving the reformation of a deed and involved the disposal of certain real property in a will. 8 S.W. 897, 898 (Mo. 1888). The case has no application herein. Ethridge v. TierOne Bank, was an action for reformation of a deed of trust to create a valid lien on a home, held by a husband and wife as tenants in common, that was refinanced only in the husband's name. 226 S.W.3d 127, 129 (Mo. banc 2007). Following the husband's death, the wife stopped paying on the loan. Id. The Missouri Supreme Court found that the necessary requirements for reformation were not met and that other equitable theories did not apply in order to assert a lien

against the wife's real property. Id. at 134. The case has no application herein.

The Court finds that Plaintiffs' arguments in opposition to the main arguments in Defendants' motions to dismiss lack merit. The Petition does not correct the deficiencies identified in the Court's July 29, 2025 Order and should be dismissed.

Plaintiffs' counsel stated at oral argument on these motions that Sexton put up the money to purchase the title to the Premises, but was scammed out of the title due to fraud. This set of facts does not convey an ownership interest.

The Court agrees with Plaintiffs' arguments on the issues of the sufficiency of Plaintiffs' claims for waste, that Plaintiffs need not attach the alleged warranty deed referenced in the Petition, that Plaintiffs may plead mental anguish, that Plaintiffs do not need to plead around affirmative defenses, and that damages from burst pipes need not be pled as special damages here. This agreement with Plaintiffs does not alter this Court's determination that the Petition fails to state a claim and must be dismissed.

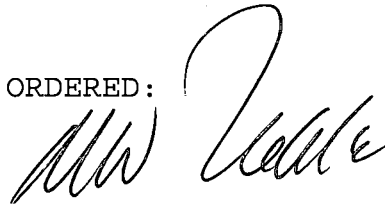
JUDGMENT

THEREFORE, it is Ordered and Decreed that Defendant Jamie S. Fuhrman's Motion to Dismiss Plaintiffs' Third Amended Petition with Prejudice and Defendant Christopher A. Gohlke's Motion to Dismiss Plaintiffs' Third Amended Petition are hereby GRANTED.

Plaintiffs' Third Amended Petition is hereby dismissed with prejudice.

Costs taxed against Plaintiffs.

SO ORDERED:

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

Michael Noble, Judge

Dated: 10/23, 2025