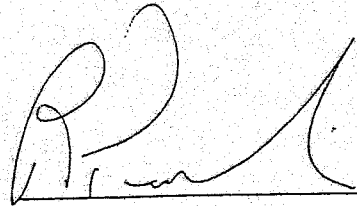


CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
JUDGE RAYMOND L. PIANKA

GF Properties LLC)	Date: July 1, 2005
)	
Plaintiff(s))	
)	Case No. 2005 CVG 12616
vs.)	
)	
Adams)	JUDGMENT ENTRY
)	
Defendant(s))	

Upon review, the magistrate's report and recommendation is approved and confirmed. Plaintiff's Emergency Motion for Entrance is moot. Plaintiff's Motion to Vacate (dismissal dated June 22, 2005) is denied. The claim for money damages is dismissed without prejudice as complaint was filed by a non-attorney on behalf of another entity.

Copies to parties.



Judge Raymond L. Pianka

SERVICE

Copies via regular U.S. mail to:

Plaintiff's counsel

Thomas G. McNally
19800 Center Ridge Road
Rocky River, Ohio 44116

Defendant's counsel

Carol Kile
1223 West 6th Street
Cleveland, Ohio 44113

This 6th day of July 2005

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
JUDGE RAYMOND L. PIANKA

GF Properties LLC)	Date: July 1, 2005
)	
Plaintiff(s))	
)	Case No. 2005 CVG 12616
vs.)	
)	
Adams)	Magistrate's Report and Recommendation
)	
Defendant(s))	

This matter came for hearing July 1, 2005 before Magistrate Sandra R. Lewis, to whom it was assigned by Judge Raymond L. Pianka pursuant to Ohio Rule of Civil Procedure 53, to take evidence on all issues of law and fact regarding plaintiff's Emergency Motion for Entrance and Motion to Vacate Dismissal (dated June 22, 2005). Plaintiff present and represented by Mr. McNally. Defendant failed to appear, but was represented by Ms. Kile.

Prior to hearing, the parties indicated that access to the premises has been granted. The Emergency Motion for Entrance is therefore moot. Defendant has filed his written response to the Motion to Vacate. Hearing had on the Motion to Vacate.

FINDINGS OF FACT

1. Plaintiff GF Properties, LLC is a limited liability company.
2. The complaint is signed by plaintiff's property manager, Mr. Hannan, who is not a licensed attorney.
3. There is no telephone number under Mr. Hannan's signature on the complaint.
4. The case designation sheet in the file includes attorney information indicating a Mr. Myers, his Ohio Bar number, address and telephone number.
5. This phone number was the only one given by plaintiff in the case file.
6. On or about June 9, 2005, the Court set this matter for pretrial and sent regular mail notice of the pretrial date to the parties.
7. On or about June 9, 2005, defendant's counsel received telephone notice of pretrial set for June 22, 2005 from the Court's scheduler. Affidavit of Kile as attached to Defendant's Objections to Plaintiff's Motion to Vacate Dismissal.
8. The scheduler gave defendant's counsel Mr. Myers' name and telephone number from the designation sheet. Affidavit of Kile as attached to Defendant's Objections to Plaintiff's Motion to Vacate Dismissal.
9. Defendant's counsel also spoke, via telephone, with Mr. Myers on or about June 9th regarding the pretrial date. Affidavit of Kile as attached to Defendant's Objections to Plaintiff's Motion to Vacate Dismissal.

10. Myers indicated that he was counsel for plaintiff. Affidavit of Kile as attached to Defendant's Objections to Plaintiff's Motion to Vacate Dismissal.
11. On June 22, 2005, this Court dismissed plaintiff's claim for possession without prejudice for failure to appear for pretrial.
12. Mr. McNally entered this action via the motions filed on behalf of plaintiff on June 24, 2005.

CONCLUSIONS OF LAW

Plaintiff has asked the Court to vacate the dismissal of the claim for possession as entered June 22, 2005 upon plaintiff's failure to appear for pretrial. Defendant has filed in opposition, supported by counsel's affidavit. The motion does not state any basis for vacating the dismissal. The Court therefore will analyze the request first as to lack of notice and second, under Civil Rule 60(B).

Plaintiff's counsel, Mr. McNally, argued that no notice of the pretrial date was received. The Court is unpersuaded. McNally entered the action June 24th, well after the notice would have been sent. At hearing on the motion, plaintiff did not present any testimony or other evidence to show that regular mail was not received.


Even were this not the case, plaintiff's agent, Mr. Myers, whose telephone number was listed on the case designation sheet, had actual notice of the pretrial. Myer's telephone number was the only one given by plaintiff in the case file. On or about June 9, 2005, defendant's counsel, Ms. Kile, spoke with Myers about the pretrial date. At that time, Myers stated that he was counsel for plaintiff. Notably, Myers did not appear for this motion hearing and there was no testimony to clarify his role in this matter.

While listing counsel on a case designation sheet does not constitute an entry of appearance, the listing does suggest that the person identified is at least an agent of plaintiff. Further, plaintiff provided only one contact telephone number in the case file, and that number was Mr. Myers'. At hearing, there was no evidence presented to indicate that Myers was not plaintiff's agent. The Court finds there was actual notice of the pretrial to plaintiff via its chosen agent. Therefore, there is no basis to vacate the June 22nd dismissal.

In order to prevail on a 60(B) motion for relief, the moving party must show (i) a meritorious defense or claim to be presented if the relief is granted, (ii) entitlement to relief under one of the grounds stated in the rule, and (iii) that the motion is made within a reasonable time. Civ.R. 60(B); *GTE Automatic Electric, Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146; *McCann v. Lakewood* (8th Dist. 1994), 95 Ohio App.3d 226. In the present matter, even though plaintiff's claim for possession may have merit, plaintiff will be unable to present the claim. The complaint has been filed by a non-attorney on behalf of a limited liability company. Such a filing is the unauthorized practice of law and the complaint must be dismissed. *DDM LLC v. Fiorentini* (April 15, 1997), Cleveland Muni. No. 97 CVG 06455.

Plaintiff's motion to vacate the dismissal without prejudice on the claim for possession is denied. The remaining claim for money damages is dismissed without prejudice as the complaint was filed by a non-attorney on behalf of a limited liability company. Copies to parties.

Recommended:


Magistrate Sandra R. Lewis

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV.R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S REPORT MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

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Plaintiff's counsel

Thomas G. McNally
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Defendant's counsel

Carol Kile
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this 6th day of July 2005.

