

MUNICIPAL COURT OF

2001 JUN 19 P 1:32

IN THE CUYAHOGA FALLS MUNICIPAL COURT CUYAHOGA FALLS, OHIO

SUMMIT COUNTY, OHIO

OWNERS MANAGEMENT CO.)	CASE NO. 01 CVG 1136
)	
PLAINTIFF)	
)	
vs)	JUDGE KIM R. HOOVER
)	
KEVIN ESLINGER)	
)	
DEFENDANT)	<u>MAGISTRATE'S DECISION</u>

This matter came before the Magistrate on Defendant's motion to vacate. Defendant moves the Court to vacate the judgment based upon insufficiency of service and on the basis that there was not a non-payment of rent.

Plaintiff filed the action at bar on April 23, 2001. The Complaint was served by regular mail and by posting by the bailiff. Defendant testified that he did not receive any regular mail or certified mail, and that the materials left on the door contained the summons, but not the Complaint. Civ. R. 4(B) requires a copy of a Complaint to be served with a summons. Defendant's testimony that he only received the summons is uncontroverted. Ohio law provides that a judgment rendered without personal jurisdiction over a Defendant is void ab initio. Patton v. Diemer (1988), 35 Ohio St. 3d 68. A judgment rendered without proper service is a nullity and is void. Lincoln Tavern, Inc. V. Snader (1956), 165 Ohio St. 61, 64.

The probative evidence indicating that Defendant was not properly served, it is the recommendation of the Magistrate that the judgment be vacated.



JOHN W. CLARK, Magistrate

This decision will be adopted and approved by the Judge unless any party files a written Objection within 14 days. If Objections are filed the Judge will review the case file before a final decision is rendered.

cc: Ted Friedman, Attorney for Plaintiff
Darlene Bonta & Joann Sahl, Attorneys for Defendant
File