

IN THE NEW PHILADELPHIA MUNICIPAL COURT
NEW PHILADELPHIA, OHIO

1989 AUG 31 PM 6 23

ARYEH SPERO,

PLAINTIFF

V.

DONNA KILLEEN,

DEFENDANT

CASE NO. 7-89-CVG-302

JUDGMENT ENTRY

This matter came on for a First Claim Hearing before Acting Judge David Worth on August 25, 1989. The Plaintiff did not appear for the hearing. In his place, there appeared Susan Everetts, who indicated to the Court that she had a signed power of attorney from the Plaintiff to appear on his behalf. She further indicated that she was not an attorney at law. The Defendant was present in Court, represented by Attorney Richard Renner.

The Court

FINDS that the Defendant, by and through her attorney, prior to the commencement of Trial moved for the dismissal of the Complaint because the Court did not have jurisdiction herein. The Defendant pointed out that the Statutory Notice was served upon the Defendant on June 21, 1989; that the Complaint was filed with this Court on June 26, 1989; and that June 24 and 25, 1989 were weekend days. The Defendant contended that the Notice was therefore defective and that the Plaintiff did not comply with the three (3) day notice requirement of Revised Code Section 1923.04.

FINDS that pursuant to Civil Rule 6(A), the day of service is not included in the three (3) day period required by Revised Code Section 1923.04(A).

FINDS that since the time period required by Revised Code Section 1923.04(A) is less than seven (7) days, Saturday, June 24 and Sunday, June 25, 1989 are not to be included in the computation

of the three (3) day period.

FINDS that the Defendant had until the end of the day on June 26, 1989 to comply with the Notice to Vacate. Therefore, June 27, 1989 is the first day that Plaintiff could have properly initiated an eviction action against the Defendant. The Complaint filed on June 26, 1989 was prematurely filed. Inasmuch as the Plaintiff has prematurely initiated the instant action in violation of Revised Code Section 1923.04(A), the Court is without jurisdiction herein to hear the First Claim and the First Claim should be dismissed upon motion of the Defendant.

FINDS that the Defendant, by and through her attorney, further moved to dismiss the First Claim on the basis that the Plaintiff had not appeared, nor was represented by counsel, and therefore there was simply no one there to prosecute the First Claim. The Court agrees with this motion as well. The power of attorney given to Susan Everetts did not transform her into the Plaintiff in person. The Plaintiff did not appear to prosecute the First Claim pro se. Neither did an attorney at law appear to prosecute the claim for the Plaintiff. The power of attorney surely does not imbue the attorney in fact with the ability to engage in the unauthorized practice of law by calling witnesses. The Court cannot become the prosecutor of the Plaintiff's First Claim.

FINDS that the First Claim Hearing should be dismissed, but that the Plaintiff still has a valid Second Claim filed on June 26, 1989.

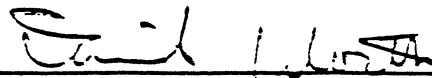
Therefore, it is

ORDERED, ADJUDGED, AND DECREED that the Plaintiff's First Claim for Eviction is hereby dismissed without prejudice.

ORDERED, ADJUDGED, AND DECREED that the Second Claim for unpaid rent of Three Hundred Twenty-Five Dollars (\$325.00) shall come on for hearing on Friday, November 17, 1989 at 10:00 A.M.. The Court notes that the Second Claim of the Complaint seeks as

its only relief damages of Three Hundred Twenty-Five Dollars
(\$325.00).

IT IS SO ORDERED.



David Worth, Acting Judge

cc: Aryeh Spero.
Attorney Richard Renner