

IN THE EUCLID MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

FLIPPING LAKE COUNTY, LTD

Plaintiff(s)

vs.

MONICA K. EGAN

Defendant(s)

CASE NO: 21-CVG-0305

JUDGE PATRICK J. GALLAGHER

MAGISTRATE'S DECISION

CLERK OF COURT
EUCLID MUNICIPAL COURT

MAY 12 2021

FILED

This case is before the Court upon Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed April 13, 2021. The motion has been fully briefed by the parties.

The motion challenges the sufficiency of the three day notice to vacate. The notice attached to the Complaint does not include a signature, *per se*, but instead contains the typed name of Philip Savelli. The notice does not otherwise identify Mr. Savelli or describe what, if any, relationship he has to the named Plaintiff.

Although the Complaint alleges that Plaintiff is the owner of the property, Cuyahoga County Auditor Records indicate the property described in the Complaint is owned by #Flipping Lake County, LTD.¹ Ohio Secretary of State records indicate that Mr. Savelli is the statutory agent for the entity. Although Plaintiff argues that Mr. Savelli is the owner of the property, or perhaps and Plaintiff's *alter ego*, there is nothing in the Complaint or 3 day notice so alleging. (*Page 1 of Plaintiff's response*)

R.C. 1923.04(A) mandates that, as a prerequisite to initiating a forcible entry and detainer action, a tenant must be served with a three-day notice to leave the premises that contains certain mandatory language. One of the requirements is that the **"party desiring to commence the action"** shall notify the adverse party to leave the premises."

Courts have interpreted this language to mean that the party who commences the eviction case must also be the party that serves the three-day notice. See *Gabriel v. Lakeside Tavern of Dayton*, 1980 Ohio App. LEXIS 12894 (May 22, 1980) (if the notice to vacate is signed by a party other than the prospective plaintiff, it is not deemed to be served by the "party desiring to commence an action under this chapter"); *Homeowners Assn. at Arrowhead Bay v. Fidoe*, 7th Dist. Mahoning, 2014-Ohio-1469 (eviction action dismissed because statute requiring action to be brought in the name of the unit owner was violated).

As the Eighth District recently held, compliance with the notice provisions of R.C. 1923.04 is a precondition to invoking a court's jurisdiction in an eviction action and it is a separate jurisdictional step that must be completed before an eviction case action is filed. See *UMH OH Buckeye II, LLC v. Decarlo*, 2019-Ohio-4986, ¶¶ 5-7 (Ct. App.). citing *Ebbing v. Mathis*, 2013-Ohio-2273, ¶ 11.

¹ The records owner of the property, #FlippingLakeCounty, Ltd. is not the same as the named Plaintiff that commenced this action

Here, the action was commenced in the name of Flipping Lake County LTD. This entity is not at all identified on the three day notice. Nor does the notice provide any description of Mr. Savelli's relationship, if any, to the named Plaintiff.

The matter is further complicated by the fact that the record owner of the property is not named in the lawsuit due to the missing hashtag.

Of course, these are all technicalities because Defendant knows that Mr. Savelli is her landlord and further admitted to receiving a three-day notice to vacate. Nonetheless, the holding in *Dicarilo* is clear: Since a valid three day notice is a prerequisite to invoking this Court's jurisdiction, strict technical compliance with R.C. 1924.03(A) is required. And the notice to vacate in this case is deficient because it does not reference the party commencing this action.

Based upon the forgoing, Plaintiff's Complaint is dismissed for lack of subject matter jurisdiction. Because the subject matter jurisdiction of this Court was not properly invoked *ab initio*, Defendant's Counterclaim is stricken from the file. The Case is closed

IT IS SO ORDERED.


Sean P. Allan, Magistrate

Civ. R. 53(D)(3)(b) - OBJECTIONS TO MAGISTRATE'S DECISION

- (i) Time for filing. A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ. R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.
- (ii) Specificity of objection. An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.
- (iii) Objection to magistrate's factual finding; transcript or affidavit. An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ. R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.
- (iv) **WAIVER OF RIGHT TO ASSIGN ADOPTION BY COURT AS ERROR ON APPEAL. EXCEPT FOR A CLAIM OF PLAIN ERROR, A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(A)(II), UNLESS THE PARTY HAS OBJECTED TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(B).**