BEREA MUNICIPAL COURT FILED 2011 NOV -4 A 9:14

> RAYMOND J. WORL CLERK OF COURT

IN THE BEREA MUNICIPAL COURT CUYAHOGA COUNTY, OHIO

GMS MANAGEMENT CO., INC.)	CASE NO.: 11 CVG 02425
Plaintiff)	
v.)	MAGISTRATE'S REPORT AND RECOMMENDATION
MAZEN ALNAZER, et al.)	
Defendants)	

This matter came before the Court on a First Cause of Action involving an eviction of a residential unit.

Plaintiff presented its case which included the following facts:

- (1) Plaintiff served a three (3) day notice to leave premises upon the defendants on Wednesday, October 5, 2011.
- (2) Plaintiff filed its Complaint on Tuesday, October 11, 2011. Defendants moved to dismiss the First Cause of Action due to the failure of proper service of the three (3) day notice, to-wit: the Complaint was filed one (1) day too soon.

The parties were granted leave to file a brief regarding this matter.

After review of the briefs, the facts and the law, the Court finds that O.R.C. § 1923.04 and O. Civ. R. 6 are relevant to this matter in that service of a three (3) day notice is required before an eviction complaint can be filed and that the service day as well as intermediate Saturdays,

Sundays and legal holidays shall be excluded in the computation of days. See, Midtown Apts. v. Davis, 20 Ohio B. 128, 1985 WL 6044 (Ct. App. Franklin Cty. 1985); McCallister v. Pickrel, No. 02-CVG-00268 (Mun. Ct. Licking Cty. Mar. 12, 2002); Labaki v. Carter, No. 96-CVG-00558 (Mun. Ct. Zanesville, July 1, 1996); Will v. Stiller, No. 90-CVG-1248 (Mun. Ct. Painesville, Sept. 19, 1990); Bezon v. James, No. 89-CV-G&F-1957 (Mun. Ct. Alliance, Feb. 5, 1990); Spero v. Killeen, No. 7-89-CVG-302 (Mun. Ct. New Philadelphia, Aug. 31, 1989); Winthrow v. Smith, 32 Ohio Misc. 2d 12, 513 N.E. 2d 363 (Mun. Ct. Akron 1987); Bowers v. Starcher, No. 87-CL-254686 (Mun. Ct. Springfield, July 11, 1987); Shakaran v. Smith, No. 86-CVG-1159 (Mun. Ct. Elyria, May 21, 1986); Northpointe Apts. v. Dooley, No. M85-CVG-3909 (Mun. Ct. Franklin Cty. Apr. 8, 1985). See also, Barnebey v. Oliver, No. 99-CVG-00026 (Mun. Ct. Lancaster, Jan. 27, 1999) (follows Winthrow).

Such being the case, this Court holds that the Complaint was filed one (1) day too soon (Columbus Day, a legal holiday, was October 10, 2011. The defendants' motion to dismiss is granted and the First Cause of Action is dismissed, without prejudice at the plaintiff's costs.

The Second Cause of action remains pending.

November 4, 2011

Magistrate S. Robert E. Lazzaro

Mark A. Comstock Judge

Deputy Clerk

BEREA MUNICIPAL COURT

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MARK A. COMSTOCK

BEREA MUNICIPAL COURT GMS MANAGEMENT CO., INC. Plaintiff(s) -vs-MAZEN ALNAZER, et al. RAYHOUR JUDGMENT ENTRY and ORDER CLERK OF COUR FIRST CAUSE OF ACTION) Defendant(s) This Court, having reviewed independently the Report and Recommendation of the magistrate, hereby adopts the Magistrate's decision and enters the following judgment: Defendant in Court
Defendant rep'd by counsel Plaintiff in Court Neither Party in Court Plaintiff rep'd by counsel _ Defendant Continued At Request of Plaintiff The Magistrate's Report and Recommendation is approved and adopted, and judgment is entered as follow: __ Judgment For Defendant. __ Judgment For Plaintiff. Writ of Restitution To Issue. _ Forthwith Move Out Ordered ___ Move Out To Take Place On Or After _____ __ 1st Cause __ 2nd Cause __ Both Causes ___ By Order Of Court, Dismissed w/ Prej. By Order Of Court, Dismissed w/o Prej. ___ 1st Cause ___ 2nd Cause Both Causes __ For Want Of Prosecution, Dismissed w/o Prej. 1st Cause (Def. __ in __ not in Court.) The Magistrate's Report and Recommendation is ___ modified __ rejected, and judgment is rendered as follows: This matter is remanded to the magistrate for additional finding hearing regarding Magistrate shall issue a supplemental Report and Recommendation to the Court. Additional Finding(s) Order(s) Upon Objection of plaintiff, objection is overruled.

Case dismissed due to improper Notice. X