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U. S. DISTRICT COURT E.D. N.Y.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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MRM MANAGEMENT COMPANY,

Plaintiff,

- against -

DAWUD AND REGINA ALI,

Defendants.

-----X
A P P E A R A N C E S:

PEARLMAN, APAT & FUTTERMAN
80-02 Kew Gardens Road, Suite 5001
Kew Gardens, New York 11415
By: Sharon E. Cook, Esq.
Counsel for Plaintiff

DAWUD AND REGINA ALI
c/o Judy Dupree
161-38 119th Road
Jamaica, New York 11434
Defendants Pro Se

JOHNSON, District Judge:

MRM Management Company ("MRM" or "plaintiff") moves to remand this action to New York City Civil Court, Housing Part, and requests attorney's fees and costs. For the reasons stated below, the action is remanded, but attorney's fees and costs are not awarded to plaintiff.

BACKGROUND

This action originated in New York City Civil Court, Housing Part ("Housing Court"), as a summary holdover action in which MRM sought possession of Dawud and Regina Ali's (the "Alis" or "defendants") apartment. Because the

Alis failed to appear in Housing Court, MRM was initially awarded a decision and judgment of possession of the apartment, and subsequently a warrant of eviction was issued. The Alis challenged the judgment, however, alleging that they had not been properly served with notice of the Housing Court action, and a traverse hearing was begun on February 26, 1997 to determine whether process had properly been served. At the hearing, the process server testified on direct examination regarding the details of service. Prior to cross-examination of this witness, the Alis successfully requested an adjournment of the hearing. After an additional adjournment, the hearing was scheduled to continue on March 4, 1997. On that date, however, the Alis filed removal papers with this Court.

The Alis have twice requested this Court to issue an "Order to Show Cause" why plaintiff is not violating a variety of their constitutional rights. This Court has declined to issue those orders, because of lack of subject matter jurisdiction. MRM now moves to remand this action to Housing Court.

DISCUSSION

I. Subject Matter Jurisdiction.

As an initial matter, the Court notes that defendants' allegations that their constitutional rights

have been violated by MRM are largely conclusory. Even when the Court accords their pro se papers the close and sympathetic reading to which they are entitled, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), however, dismissal of the instant case for lack of subject matter jurisdiction is required based on principles of comity and federalism. As one court has stated: "If we accept the removal of [summary possession proceedings] to federal court, we will not only overburden the federal system but will also completely emasculate the state structure for dealing with such disputes." Glen 6 Associates, Inc. v. Dedaj, 770 F. Supp. 225, 229 (S.D.N.Y. 1991). In accordance with the reasoning set forth in Glen 6 Associates, the Court abstains from this matter and remands the case to the state system.

II. Attorney's Fees and Costs.

Plaintiff also requests that the Court award it attorney's fees and costs. MRM alleges, in part, that defendants removed this case solely to frustrate and delay the Housing Court proceeding. The Court notes, however, that the Alis have appeared in this action pro se and, although misinformed, clearly genuinely believe that removing the action to federal court was proper, as evidenced in part by their two requests for an order to show cause. The Court also notes that although MRM asserts

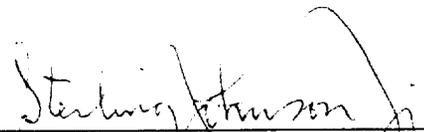
that the removal to federal court has caused them lengthy delay in this matter, MRM itself waited almost two months before requesting a remand of the action to Housing Court. Accordingly, the Court does not find an award of attorney's fees and costs appropriate.

CONCLUSION

For the reasons stated above, the action is remanded to New York City Civil Court, Housing Part. Plaintiff's request for an award of attorney's fees and costs is denied.

SO ORDERED.

Dated: Brooklyn, New York
May 27, 1997



U.S.D.J.