



## Practice Tip (9.17.19)

# Proper Plaintiff in Eviction Actions (Real Party in Interest)

### Summary

Eviction actions must be brought in the name of the proper plaintiff. When defending an eviction action, it is essential to verify that the plaintiff is a person or entity entitled to possession of the premises. An online search of county property records can be done to determine the owner of the property. If a review of online county property records reveals the named plaintiff is not the owner of the property, further investigation is required to determine whether the real party in interest defense should be asserted. When the plaintiff is not a person or entity entitled to possession of the premises, the case should be dismissed and expunged.

Generally, the owner of the property is a proper plaintiff. When an agent is suing on behalf of the owner, a Power of Authority is often required, depending on the specific facts of the case. In more limited circumstances, a management company may be the proper plaintiff.

### Analysis

#### Eviction Statute:

For purposes of the eviction statute (M.S. Chapter 504B), the term, “landlord,” is defined at M.S. § 504B.001, subdivision 7, in pertinent part, to mean “an owner of real property, a . . . lessee, agent or other person directly or indirectly in control of rental property.” The definition is important because there are many obligations placed upon “landlords” in Chapter 504B, and these obligations extend to management agents. The term, “person,” is defined at M.S. § 504B.001, subdivision 10, to mean “a natural person, corporation, limited liability company, partnership, joint enterprise, or unincorporated association.”

It is the term, “person,” and not the term, “landlord,” that is used in the statute to designate the real party in interest in an eviction action. Under M.S. § 504B.285, subdivision 1(a), “[t]he person entitled to the premises may recover possession by eviction” based upon allegations of holding over, breach of the lease, or nonpayment of rent. Likewise, M.S. § 504B.321, subdivision 1(a), provides, in part, that “[t]o bring an eviction action, the person complaining shall file a complaint with the court . . . .”

Accordingly, any “person entitled to the premises” is a proper party plaintiff in an eviction action. Many owners use management companies to manage their residential rental properties. In some cases, eviction actions are brought in the name of the management company and not in the name of the owner. This practice implicates the provisions of Rule 603 of the Rules of General Practice for the District Courts.

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### Rule 603:

Rule 603 states as follows:

An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing.

No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

The first sentence states the general rule, reviewed above, that an eviction action may be “brought in the name of the owner of the property or other person entitled to possession of the premises,” *e.g.*, an authorized management company. The second sentence unambiguously states that “[n]o agent shall sue in the agent’s own name.” These two provisions are not inconsistent or in conflict. A management company that is entitled to possession of the premises in accordance with a specific agreement entered into with the owner can bring an eviction action in its own name. However, a management company that is merely managing the premises on behalf of an owner-principal, *e.g.*, collecting rents and providing building maintenance services, cannot sue in its own name because it is not entitled to possession of the premises.

The third sentence of the first paragraph applies in a case where an eviction action is brought in the name of the owner, as plaintiff, but is commenced by a management agent. In that case, the owner is the principal and a Power of Authority executed by the owner-principal authorizing the agent to commence the action and appear on behalf of the owner-principal must be attached to the eviction action complaint.

This discussion does not address the case where the plaintiff owner or the plaintiff authorized management agent is a corporation and seeks to appear by and through an individual who is not a duly licensed attorney. This discussion also does not address the case where the plaintiff and/or defendant is an individual. Pursuant to the last sentence of Rule 603, individuals can be represented in court by an agent or lay advocate so long as the party is present.

### **Presenting the Real Party in Interest Defense**

The possibility of interposing a real party in interest defense automatically arises when a review of the city and county real property ownership websites reveals that the named plaintiff is not the owner of the property. For Minneapolis properties, check the Minneapolis Property Information Search website ([www.minneapolismn.gov/propertyinfo/index.htm](http://www.minneapolismn.gov/propertyinfo/index.htm)) for the name of the owner, the name and address of the taxpayer, the status of the rental license, and through the “Rental History” link on the left, the name of the person who obtained the rental license. For other Hennepin County properties, check the

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Hennepin County Property Information Search website  
(<http://www16.co.hennepin.mn.us/pins/addrsrch.jsp>).

The appropriate motion at the initial appearance calendar is a motion to strike the Complaint, dismiss the action, and expunge the record because the named plaintiff is not a “person entitled to the premises” under M.S. § 504B.285, subdivision 1(a), and the plaintiff agent may not “sue in the agent’s own name” under Rule 603. A screen shot of the website showing the owner’s name should be sufficient prima facie evidence to support an oral motion at the initial appearance calendar.

If the plaintiff opposes the motion, the burden shifts to the plaintiff to produce some documentary evidence to establish that it has an agreement with the owner that entitles the plaintiff to possession of the premises. The referee may schedule a trial to allow the plaintiff an opportunity to produce evidence of its entitlement to possession. The attorney for the defendant should request discovery of such evidence pursuant to the provisions of Rule 612 of the General Rules of Practice. For trial, proof certain of ownership can be obtained from the Hennepin County Recorder – Register of Titles Office on the Skyway level of the Government Center.

### Ratification of Authority under Rule 17.01:

A management company facing a motion to dismiss may argue that dismissal of the action is inappropriate because it will obtain ratification of its authority to commence the action from the owner pursuant to the procedure set forth in Rule 17.01 of the Rules of Civil Procedure:

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

That argument is unavailing because the provisions of Rule 17 are inconsistent with the provisions of Rule 603 and because the specific real party in interest provisions of Rule 603 take precedence over the more general provisions of Rule 17.

Under Rule 601 of the General Rules of Practice, “[r]ules 601 through 612 and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.” Rule 603 unambiguously states that “[n]o agent shall sue in the agent’s own name.” This provision is more specific than the general real party in interest provisions set forth in Rule 17.01 and does not contain a ratification procedure. Therefore, because the specific governs over the general and because the provisions of Rule 17.01 are inconsistent with the provisions of Rule 603, the provisions of Rule 17.01 do not apply in Hennepin and Ramsey County Housing Courts. *See, e.g., Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).