

[Cite as *Bay West Elec. Co., Inc. v. GMS Constr., Ltd.*, 2003-Ohio-6927.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 83016

BAY WEST ELECTRIC CO., INC., :
Plaintiff-Appellant : JOURNAL ENTRY
vs. : AND
GMS CONSTRUCTION LTD., et : OPINION
al., :
Defendants-Appellees :

DATE OF ANNOUNCEMENT : DECEMBER 18, 2003
OF DECISION :

CHARACTER OF PROCEEDING : Civil appeal from
Berea Municipal Court
Case No. 02CV102519

JUDGMENT : AFFIRMED

DATE OF JOURNALIZATION :

APPEARANCES:

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ANNE L. KILBANE, P.J.

{¶1} This is an appeal by Bay West Electric Co. Inc. ("Bay West") from a order of Berea Municipal Judge Mark Comstock¹ awarding it \$443 plus interest against GMS on a contract claim. It claims it was error to overrule its objections to the magistrates report and affirm his decision. Its central contention is that, on remand, the judge failed to follow the mandate of this court that he rule on its objections. We affirm.

{¶2} From the record we glean the following: Bay West brought an action against GMS Construction claiming it was owed \$2,081 for unpaid electrical subcontracting work. A magistrate from the Rocky River Municipal Court, Small Claims Division, issued a decision that awarded Bay West \$443 plus interest at 10% from the date of judgment. It filed objections to the magistrate's decision, but Judge Donna Congeni Fitzsimmons affirmed the decision without ruling on the objections. On appeal, we remanded the case with a mandate that the judge rule on these objections.²

{¶3} Upon remand, the judge recused herself, and the matter

¹Sitting by assignment.

²*Bay West Elec. Co., Inc. v. GMS Constr., Ltd.*, Cuyahoga App. No. 80360, [2002-Ohio-2964](#). ("Bay West I")

was assigned to the Berea Municipal Court by the Chief Justice of the Supreme Court of Ohio. The judge entered an order overruling Bay West's objections and affirming the magistrate's decision.

{¶4} Bay West asserts two assignments of error set forth in Appendix A.

{¶5} Bay West suggests that the judge neither read nor ruled on its objections to the Rocky River magistrate's decision and urges us to apply the requirements set forth for objections in Civ.R. 53(E)(5). A diligent search of Civ.R. 53 failed to reveal this subsection but, a review of *Bay West I* suggests that, in fact, we are urged to follow Civ.R. 53(E)(4)(b), which states:

"The court shall rule on any objections. The court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter. The court may refuse to consider additional evidence proffered upon objections unless the objecting party demonstrates that with reasonable diligence the party could not have produced that evidence for the magistrate's consideration."

{¶6} The instant journal entry states in full:

"Upn obj of appl and after revw of case file and mags notes, objctn is overruled and Mags Dec is affirmed."

{¶7} Upon review, we presume the regularity of the proceedings below.³ The judge, therefore, complied with this court's mandate and Civ.R. 53(E)(4)(b), although the entry is mostly composed of abbreviated forms of what can be translated into English words.

³*Hartt v. Munobe*, 67 Ohio St.3d 3, [1993-Ohio-177](#), 615 N.E.2d 617.

Assignments of error one and two are overruled.

{¶8} The judgment is affirmed.

Judgment affirmed.

ANN DYKE and JAMES J. SWEENEY, JJ., concur.

APPENDIX A- ASSIGNMENTS OF ERROR

"I. THE TRIAL JUDGE IN BEREA MUNICIPAL COURT ERRED AND COMMITTED PREJUDICIAL ERROR BY FAILING TO OBEY THE MANDATE OF THE COURT OF APPEALS 8TH APPELLATE DISTRICT, TO REVIEW AND RULE ON APPELLANT'S OBJECTIONS IN THE COURT OF APPEALS CASE NO. 80360."

"II. THE BEREA MUNICIPAL COURT ABUSED ITS DISCRETION AND COMMITTED PREJUDICIAL ERROR BY FAILING TO COMPLY WITH THE MANDATE FROM THE EIGHTH DISTRICT COURT OF APPEALS, AND ALSO THE REQUIREMENTS OF RULE 53, OHIO RULES OF CIVIL PROCEDURE."

It is ordered that appellee shall recover of appellant costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Berea Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANNE L. KILBANE
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R.22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with

supporting brief, per App.R. 26(A) is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).