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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

G. LASSON, d/b/a Windstar III,	:	Case No. 05-CV-3436
Plaintiff,	:	(Judge Dennis J. Langer)
v.	:	**FINAL AND APPEALABLE DECISION, ORDER AND ENTRY**
STACEY COLEMAN, et al.,	:	**SUSTAINING THE MOTION FOR PARTIAL SUMMARY JUDGMENT**
Defendants.	:	**REGARDING THE VEXATIOUS LITIGATOR CLAIM**
	:	**ORDER REFERRING MATTER TO**
	:	**MAGISTRATE FOR HEARING AND DETERMINATION OF**
	:	**APPROPRIATE SANCTIONS**
	:	**NON-FINAL DECISION, ORDER AND ENTRY**
	:	**SUSTAINING THE MOTION FOR PARTIAL SUMMARY JUDGMENT**
	:	**REGARDING THE CONSUMER SALES PRACTICES ACT CLAIM**

This matter is before the Court on the *Motion for Partial Summary Judgment on Liability* [hereinafter the "*MPSJ*"] filed on August 11, 2006 by Defendant/Counterclaimant Stacey Coleman [hereinafter "Coleman"]. Plaintiff G. Lasson [hereinafter "Lasson"] filed a *Motion to Strike and Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment* [hereinafter the "*Mot. Strike/Memo. Opp.*"] and a *Motion Contra on GAL Vexatious Litigator (with a hearing before an elected Judge) and to Reconsider the Over Ruling of GAL's 1st Request for CR C(8)* [hereinafter the "*Mot. Contra*"] on September 7. Coleman filed a *Reply*

Memorandum in Support of Her Motion for Partial Summary Judgment and Response in Opposition to Plaintiff's Motions to Strike and for Default Judgment [hereinafter the "*Reply*"] on September 20. These matters are properly before the Court.[1]

I. PROCEDURAL HISTORY

This Court has reviewed the entire docket[2] for the case at bar. For the purpose of providing context for the analysis and disposition of the instant motions, this Court has reviewed the pleadings, motions, and memoranda filed by the parties and the various decisions docketed in the case at bar. This Court also expressly acknowledges and adheres to all prior decisions. See generally *Barlowe v. AAAA Int'l Driving*, 2d Dist. Case No 19794, 2003-Ohio-5748, ¶ 12.

This Court finds that certain matters addressed in some of the prior decisions directly bear upon the jurisdictional and procedural context for the instant motions. Particularly, this Court highlights some of the six decisions concurrently filed on February 15, 2006:

- the *Decision, Order and Entry Sustaining Defendant's Motion for Summary Judgment on Plaintiff's Claims, Overruling the Motion of Plaintiffs, Affordable Best Homes for Summary Judgment, Overruling as Moot All Pending Motions Pertaining to Amending Pleadings or Default Judgment on Plaintiff's Claims, and Vacating as Moot the January 12, 2006 Decision, Order and Entry Requiring Joinder* [hereinafter the

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[1] Lasson's *Mot. Strike/Memo. Opp.* contests whether this Court retains subject-matter jurisdiction to consider and decide Coleman's *MPSJ* due to pending statutory and Civ. R. 54(B) certified interlocutory appeals. This jurisdictional issue is addressed in Section II, infra.

[2] References to documents preceding April 20, 2005 are located within the *Summary of Docket and Journal Entries* [hereinafter the "*Area 1 Docket*"], which is the certified docket of Case 2005CVG00374. The *Area 1 Docket* was formally filed in the instant case's docket on April 20, 2005. For purposes of clarity, individually identifiable documents contained within the *Area 1 Docket*, such as Lasson's March 22, 2005 *Complaint*, will be specifically referenced without noting that the documents are docketed in the *Area 1 Docket*.

"*Summary Judgment Dec.*"];

- the *Decision, Order and Entry Sustaining Defendant's Motion to Strike and Sustaining the Defendant's Request for Sanctions* and *Order Referring Matter to Magistrate for Hearing and Determination of Appropriate Sanctions* [hereinafter the "*Strike and Sanctions Dec.*"];
- the *Final and Appealable Decision, Order and Entry Overruling Defendant's Motion for Class Certification* [hereinafter the "*Class Cert. Dec.*"]; and
- the *Final and Appealable Decision, Order and Entry Sua Sponte Addressing Issues of Subject Matter Jurisdiction in Light of the Multiple Decisions Concurrently Filed in This Case* [hereinafter the "*Jurisdiction Decision*"].

In the *Summary Judgment Dec.*, this Court sustained full summary judgment in favor of Coleman against Lasson's claims. In the *Class Cert. Dec.*, this Court overruled Coleman's class certification motion, which impacts the class action claims presented in her June 6, 2005 *First Amended Counterclaim*. See id. at ¶ 16-20.

In the *Jurisdiction Decision*, this Court found that the *Summary Judgment Dec.* and the *Class Cert. Dec.* were proper for immediate appellate review, and therefore this Court certified those two decisions as final and appealable orders. The docket reflects that on March 16, 2006, in appellate case number CA21523, Lasson appealed, and on the same day, in appellate case number CA21524, Coleman appealed. The appeals are ongoing.[3]

In the *Strike and Sanctions Dec.*, this Court expressly found "that Lasson willfully violated the applicable provisions of Civ. R. 11 * * * [and] that the willful violation warrants sanctions." *Strike and Sanctions Dec.* at 6. This Court also filed a general order referring the

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[3] As noted in footnote 1, supra, this Court addresses the subject-matter jurisdiction issue in Section II, infra.

matter to the magistrate for a hearing. Id. at 7. On June 28, after conducting the scheduled hearing, the magistrate filed the *Magistrate's Decision Denying Plaintiff's Motion to Recuse Magistrate, and Granting Sanctions for Plaintiff's Conduct in Violation of Rule 11* [hereinafter the "*Mag. Dec.*"] On July 12, Lasson filed *Objections to Magistrates* [sic] *Decision Dated 6-28-06*. This Court has addressed the objections and the attendant sanctions issue in a separate decision. See the concurrently filed *Decision, Order and Entry Overruling Lasson's Objections to Magistrates Decision*.

Therefore, for purposes of identifying the currently pending claims, this Court notes that Lasson has no affirmative claims pending. Except for the aforementioned class claims, Coleman's causes of action as set forth in her *First Amended Counterclaim* remain pending. However, this Court finds that Coleman has expressly moved for partial summary judgment pertaining to only two of her claims:

- Count IV, which alleges violations of R.C. Chapter 1345, the Ohio Consumer Sales Practices Act [hereinafter the "CSPA"], see *First Amended Counterclaim* at ¶ 41-44; and,
- Count VI,[4] which seeks a designation pursuant to R.C. § 2323.52 that Lasson is a vexatious litigator, see *First Amended Counterclaim* at ¶ 61-68.

Implicitly, all other claims and causes of action pled by Coleman in her *First Amended Counterclaim* are not presented for consideration in the instant *MPSJ* and remain pending.

II. JURISDICTIONAL ANALYSIS

Well-established Ohio law provides that "in the absence of a patent and unambiguous

[4] Technically the vexatious litigator claim is Count VII in the *First Amended Counterclaim*. The pleading has harmlessly erred in identifying the intentional infliction of emotional distress claim and the vexatious litigator claim as Count VI.

lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction and a party challenging that jurisdiction has an adequate remedy by appeal." *State v. Lewis*, 99 Ohio St. 3d 97, 2003-Ohio-2476, ¶ 19 (quoting *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, ¶ 18). However, "'[i]n the absence of subject-matter jurisdiction, a court lacks the authority to do anything but announce its lack of jurisdiction and dismiss.'" *Kelley v. Wilson*, 103 Ohio St. 3d 201, 2004-Ohio-4883, ¶ 6 (quoting *Pratts v. Hurley*, 102 Ohio St. 3d 81, 2004-Ohio-1980, ¶ 21); see also Civ. R. 12(H)(3); *Forest Hills Local Sch. Dist. Bd. of Educ. v. Huegel*, 12th Dist. Case No. CA2002-07-050, 2003-Ohio-3444, ¶ 8 (stating that a court of common pleas, as a court of general jurisdiction, has the authority to determine upon motion or sua sponte the extent of its subject matter jurisdiction for purposes of cases presented).

Lasson argues that in light of his appeal regarding the *Summary Judgment Dec.*, which was Rule 54(B) certified for immediate appeal in the *Jurisdiction Decision* at page 6, this Court has "lost jurisdiction over that portion of this suit dealing with Defendant's [Coleman's] summary judgment, thus the Court lacks jurisdiction to rule on Defendant's motion for partial summary jurisdiction [sic]." *Mot. Strike/Memo. Opp.* at [1]. He moves to strike the *MPSJ* for lack of subject-matter jurisdiction. *Mot. Strike/Memo. Opp.* at [1]-[2].

In the *Reply*, Coleman argues that the jurisdictional argument misunderstands Ohio law and this Court's prior rulings. She argues that Lasson's pending appeal has divested this Court of subject-matter jurisdiction regarding Lasson's claims against her, but has no impact on her counterclaims, including the two claims addressed in the *MPSJ*. See *Reply* at 2-3, 6-7. She argues that the *MPSJ* may be properly considered and that striking it would be inappropriate. *Reply* at 6-7.

This Court finds that multiple prior decisions in the case at bar clearly demonstrate that only two narrow issues are subject to immediate appeal and are accordingly divested from this Court's subject-matter jurisdiction. The *Summary Judgment Dec.* and the certification in the *Jurisdiction Decision* clearly address only Lasson's claims against Coleman. The *Class Cert. Dec.* and the *Jurisdiction Decision* clearly address only Coleman's class claims and her attendant motion to certify.

However, this Court has repeatedly indicated in prior decisions that Coleman's individual counterclaims against Lasson remain pending. As an example, in the *Decision, Order and Entry Overruling Defendant's Application for Default Judgment and Motion for Oral or Non-Oral Hearing on Application* [hereinafter the "*Default Dec.*"], also filed on February 15, 2006, this Court overruled Coleman's motion for a default judgment in favor of her claims against Lasson. Analyzing the jurisdictional posture of the case at bar in light of the various concurrently filed decisions, in pertinent parts this Court expressly stated:

> The *Summary Judgment Dec.* resolved **only** the claims by Lasson against Coleman. **Coleman's counterclaims against Lasson were unaddressed in that decision**. Furthermore, the *Default Dec.* addressed Coleman's counterclaims against Lasson, but did not enter an otherwise final order. The *Default Dec.* overruled the application for default judgment, **resulting in the claims remaining pending**. Furthermore, **this Court has implicitly retained some of the claims pending in the case at bar** by striking the purported notice of bankruptcy and referring the sanctions matter to the magistrate. See the *Strike and Sanctions Dec.*

Jurisdiction Decision at 4-5 (emphases added).

> Regarding the *Default Dec.*, this Court finds that it does not satisfy the initial statutory definition for finality. **It has not prevented Coleman from obtaining judgment on her claims against Lasson. The merits of her claims remain pending.** Without the statutory component being satisfied, an analysis of whether to provide a Civ. R. 54(B) certification would be inappropriate.

Jurisdiction Decision at 7 (emphasis added).

This Court notes that the parties recognize the well-settled maxim in Ohio caselaw that "[w]hen a case has been appealed, the trial court retains all jurisdiction not inconsistent with the reviewing court's jurisdiction to reverse, modify or affirm the judgment." *Garcia v. Wayne Homes, LLC*, 2002-Ohio-1884, *10 (quoting *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St. 3d 141, 146); *State ex rel. Neff v. Corrigan* (1996), 75 Ohio St. 3d 12, 15. However, the Second District has expressly recognized that even though an appeal from some portion of the case is pending, the trial court retains jurisdiction "to proceed in any way it [sees] fit regarding the remaining issues in the case. **This would be particularly true for Civ. R. 54(B) appeals, which contemplate ongoing proceedings during the appeal.**" *NBD Mtge. Co. v. Marzocco*, 2d Dist. Case No. 188824, 2001-Ohio-1705, *44-*45 (citing *Howard*, 70 Ohio St. 3d at 146) (emphasis added).

Based on the foregoing analysis, this Court finds that Lasson's arguments regarding subject-matter jurisdiction are not well-met. Specifically, for purposes of Coleman's counterclaims against Lasson, except for her class certification allegations, this Court finds that the subject-matter jurisdiction clearly and unambiguously remained with this Court. In other words, Lasson's interlocutory appeal did not divest this Court of any subject-matter jurisdiction other than the narrow claims and issues specifically involved in the two pending appeals. Therefore, Lasson's motion to strike for lack of subject-matter jurisdiction is overruled.

III. FACTS

For purposes of deciding the instant *MPSJ* only, this Court has reviewed the parties' memoranda and the evidentiary materials submitted.

Lasson operates a self-titled "RTO Homes Program" under various names, including "Windstar III," "Affordable Best Homes," and "Action Homes." In November 2004, Windstar

III–"represented" physically by Lasson–and Coleman purportedly contracted in a "lease" and "purchase agreement" for Coleman to occupy and potentially acquire residential real property located at 305 Huntsford Place in Trotwood, Ohio [hereinafter "the property"]. The property is owned and titled to putative parties Donald and Annetta Williams [hereinafter the "Williams"]. Lasson purportedly has been authorized by the Williams to act on their behalf in matters pertaining to the property. See the document facially titled "Authority" and dated "12/8/04" attached as Exhibit B [hereinafter the "Authority"] to the *Motion of Plaintiffs, Affordable Best Homes for Summary Judgment Against Defendant, Stacey Coleman, et al.* [sic] *And Motion Contra to Defendants* [sic] *Motion for Summary Judgment* [hereinafter the "*Lasson MSJ/Mot. Contra*"] filed June 6, 2005.

The fees and purchase price was $107,432.00. Coleman was required to provide $4,900.00 up front. The remainder was to be paid in variable amounts as noted on the first page of the "purchase agreement." Bi-monthly payments were also structured in the "purchase agreement," along with express provisions for an additional $45 for any payment not postmarked by the due date. After five days from any due date that was unpaid, the contract purports to be in default. See generally the "purchase agreement." Similar terms are included in the "lease."

Additionally, Lasson personally represented to Coleman that he would provide credit counseling services and assistance acquiring financing to purchase the property. Id. Additionally, Lasson represented that he would use a purportedly granted limited power of attorney to negotiate to improve Coleman's credit.

On March 15, 2005, Coleman mailed to Lasson two checks made payable to "Action Homes." The first check, in the amount of $374.00, was purportedly for the rent payment due

on that date. The second check, in the amount of $130.00, was purportedly for payment on a credit card. See Coleman Aff. On March 16, 2005, Coleman received a notice to vacate for failure to pay rent. Id. The initial eviction (forcible entry and detainer) suit filed by Lasson and the subsequent countersuit filed by Coleman resulted.

IV. LAW AND ANALYSIS

A. Summary Judgment Standard

"Trial courts should award summary judgement with caution." *Leibreich v. A.J. Refrigeration, Inc.* (1993), 67 Ohio St.3d 266, 269. In *Harless v. Willis Day Warehousing Inc.* (1978), the Ohio Supreme Court stated in order for summary judgment to be appropriate, it must appear that:

> (1) There is no genuine issue as to any material fact;
> (2) The moving party is entitled to judgment as a matter of law; and
> (3) Reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

54 Ohio St.2d 64, 66.

The moving party bears the initial burden of informing the court of the basis of the motion and identifying those portions of the pleadings, depositions and other such material which it believes demonstrates the absence of a genuine issue of material fact. *Misteff v. Wheeler* (1988), 38 Ohio St.3d 112, 114; *Harless,* 54 Ohio St.2d at 66. The burden on the moving party may be satisfied by "showing" that there is an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 323-325. Furthermore, any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Leibreich,* 67 Ohio St.3d 266, 269; *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150, 152.

Thereafter, the non-moving party bears the burden of coming forward with specific facts and evidence showing that there is a genuine issue of material fact for trial. *VanFossen v. Babcock & Wilson Co.* (1988), 36 Ohio St.3d 100, 117. The non-moving party has the burden "to produce evidence on any issue for which that party bears the burden of production at trial." *Leibreich,* 67 Ohio St.3d at 269; *Wing v. Anchor Media, Ltd.* (1991) 59 Ohio St.3d 108, 111 (citing *Celotex Corp.*, 477 U.S. 317, 322-323). Therefore, the non-moving party may not rest upon unsworn or unsupported allegations in the pleadings. *Benjamin v. Deffet Rentals* (1981), 66 Ohio St.2d 86; *Harless,* 54 Ohio St.2d at 66. The non-moving party must respond with affidavits or other appropriate evidence to controvert the facts established by the moving party. *Id.* Further, the non-moving party must do more than show there is some metaphysical doubt as to the material facts of the case. *Matsushita Electric Ind. Co. v. Zenith Radio* (1980), 475 U.S. 574.

Notably, the non-movant's reciprocal burden is only applicable when the movant has satisfied the initial burden. Ohio courts have cautioned that when the movant fails to meet the initial burden, summary judgment is not proper, regardless of whether an opposing memorandum is filed by the non-movant. *Brandimarte v. Packard* (May 18, 1995), 8th Dist. Case No. 67872, 1995 Ohio App. LEXIS 2095, *4 (citing *Glick v. Dolin* (1992), 80 App. 3d 592, 595) ("[W]hen the movant's evidentiary materials do not establish the absence of a genuine issue of material fact, summary judgment must be denied even if no opposing evidentiary matter is presented."); *Sohio Oil, Div. of BP Oil v. Neff* (June 29, 1993), 10th Dist. Case No. 93AP-48, 1993 Ohio App. LEXIS 3416, *4-*5 (citing *Morris v. Ohio Cas. Ins. Co.* (1988), 35 Ohio St. 3d 45, 47; *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St. 3d 157, 161) ("[T]he nonmoving party's failure to

respond, by itself, does not mandate granting summary judgment because the moving party bears the burden of showing that all of the requirements of Civ. R. 56(C) are satisfied.)

B. Standards for Partial Summary Judgments

In addition to the general standards pertaining to summary judgment motions, the provisions of Civ. R. 56(D) specifically provides for partial summary judgment decisions. In pertinent part, Civ. R. 56(D) provides:

> If on motion under this rule summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court in deciding the motion, shall examine the evidence or stipulation properly before it, and shall *if practicable, ascertain what material facts exist without controversy and what material facts are actually and in good faith controverted.* The court shall thereupon make an order on its journal specifying the facts that are without controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just.

Id. (emphasis added). Furthermore, "[a] trial court *may* * * * narrow the issues for trial by determining that certain issues are not controverted." *Thrash v. Motorists Mut. Ins. Co.*, 2d Dist. Case No. 19504, 2003-Ohio-1765, ¶ 24 (citing Civ. R. 56(D); emphasis added). Notably, Civ. R. 56(D) qualifies as "if practicable" the requirement that the trial court ascertain and journalize an entry distinguishing the contested and uncontested material facts. An Ohio appellate court has recognized that the practicability determination is a discretionary conclusion based on a review of the specific facts and issues presented in the case. *Funk v. Hancock* (1985), 26 Ohio App. 3d 107, 108-109 (disapproved on other grounds in *Albain v. Flower Hosp.* (1990), 50 Ohio St. 3d 251); but see *Brannon, Gianuglou & Caras v. Buchanan* (Jan. 15, 1993), 2d Dist. Case No. 13210, 1993 Ohio App. LEXIS 112, *7-*8; *Couto v. Gibson, Inc.* (1990), 67 Ohio App. 3d 407, 414-416 (Fourth District recognizing the purposes for requiring a trial court to distinguish in a pretrial partial summary judgment order the contested and

uncontested matters). Matters that may be properly subject to partial summary judgment included, inter alia, questions of law. See e.g. *Fireman's Fund Ins. Co. v. Mitchell-Peterson, Inc.* (1989), 63 Ohio App. 3d 319, 327 (holding that determining the meaning of contractual language may be properly resolved in Civ. R. 56(D) partial summary judgment because that issue is expressly a matter of law).

C. Preliminary Evidentiary Determinations

In light of an examination of the memoranda submitted, this Court notes that in part the propriety of the evidentiary materials submitted has been raised. Ohio law provides that a preliminary resolution of any evidentiary issues is prudent to comply with the "mandatory duty on a trial court to thoroughly examine all *appropriate materials* filed by the parties before ruling on a motion for summary judgment." *Murphy v. Reynoldsburg* (1992), 65 Ohio St. 3d 356, syllabus (analyzing Civ. R. 56(C)) (emphasis added). Binding precedent additionally provides that, absent an articulated objection, the trial court has the discretion to consider or reject inappropriate materials. See e.g. *Walther-Coyner v. Walther* (June 2, 2000), 2d Dist. Case No. 18131, 2000 Ohio App. LEXIS 2319, *11; *Reeser v. Weaver Brothers, Inc.* (June 28, 1995), 2d Dist. Case No. 1359, 1995 Ohio App. LEXIS 2746, *14; see also *Worthington v. Speedway SuperAmerica LLC*, 4th Dist. Case No. 04CA2938, 2004-Ohio-5077, ¶ 3 n.1; but see contra e.g. *Bevier v. Pfefferle* (Oct. 22, 1999), 6th Dist. Case No. E-99-020, 1999 Ohio App. LEXIS 4920, *10 (minority view holding that summary judgment evidence must be restricted to only appropriate materials regardless of whether parties raise objection).

The pertinent provision of the Civil Rules of Procedure provides the categorical list of proper evidentiary materials: "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely

filed in the action * * *." Civ. R. 56(C). Additionally, caselaw has stated that materials that do not fall within the express categories may be introduced when those materials are incorporated by reference in an affidavit properly framed pursuant to Civ. R. 56(E). See *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App. 3d 220. A properly framed Civ. R. 56(E) affidavit must be based on the personal knowledge of an affiant who is competent to testify at trial setting forth facts that would be admissible in evidence. The personal knowledge requirement has been identified as "knowledge of the truth in regard to a particular fact or allegation, which is *original*, and *does not depend on information or hearsay*." *Brannon v. Rinzler* (1991), 77 Ohio App. 3d 749, 756 (emphasis added); see also *Doudican v. Dieckman*, 2005-Ohio-6393, ¶ 16-17; *Rozzi ex rel. Tomski v. Cafaro Co.*, 2002-Ohio-4817; *Black v. McLaughlin* (Dec. 19, 1985), 5th Dist. Case No. CA-2338, 1985 Ohio App. LEXIS 10008, *10-*15 (stating that facts that the affiant "learned" through hearsay are inappropriate for purposes of summary judgment evidentiary determinations).

1. The parties' pleadings and attachments to pleadings

Regarding the evidentiary materials submitted by the parties, this Court first addresses the express category of "pleadings." For purposes of the instant *MPSJ*, this Court has arguendo analyzed all documents purporting to constitute a "pleading" as defined in Civ. R. 7(A), including any purported "pleading" filed by Lasson and the *First Amended Counterclaim* filed by Coleman. Additionally, certain documents purporting to be contractual documents or other legally operative documents–e.g. the "purchase agreement," the "lease," and the "Homes' (RTO*) Standard DISCLOSURE FORM & CHECKLIST"–have notably been attached to certain "pleadings" filed by both parties and have been incorporated by reference in the affidavit of Coleman [hereinafter "Coleman Aff."] attached to the various motions. Based on

the arguments presented and Civ. R. 56(C), this Court finds that the pleadings and the attachments to the pleadings may be properly considered in deciding the instant *MPSJ*.

2. Coleman's additional evidence

Lasson did not present any specific evidentiary objections regarding the additional evidence presented by Coleman, although he represented that he would do so when the Second District "releases that matter to this court * * *." *Mot. Contra* at [4]. His argument is clearly based on his argument that this Court lacks subject-matter jurisdiction to decide Coleman's *MPSJ*. His jurisdictional argument has been addressed above and is not persuasive. Furthermore, Coleman has presented arguments specifically addressing the propriety of the evidentiary materials submitted for consideration. See e.g. *MPSJ* at 13 n.3 (citing Evid. R. 803(10)), 14 n. 4 (citing Evid. R. 803(8) and 902), and 19 n.6 (citing *Brown v. Ohio Casualty Ins. Co.* (1978), 63 Ohio App. 2d. 87, 90).

This Court has reviewed Coleman's evidentiary arguments. For purposes of deciding the instant *MPSJ* only, her uncontested arguments based on the various Rules of Evidence are persuasive. Regarding her reliance on the Eighth District's decision in *Brown* for the proposition that this Court has discretion to consider evidentiary materials not contested by an objection, this Court's research has identified the more recent Second District decisions that express the same proposition of law. See e.g. *Walther-Coyner*, 2000 Ohio App. LEXIS 2319 at *11; *Reeser*, 1995 Ohio App. LEXIS 2746 at *14. Specifically, the evidentiary materials that Coleman argues this Court should exercise its discretion to consider are Exhibits 12-18 attached to the *MPSJ*, which are certified copies of pleadings and other written materials from multiple Montgomery County Common Pleas cases involving Lasson. Based on the arguments presented, this Court is persuaded that discretionary consideration is appropriate regarding the

certified copies of materials docketed in other Montgomery County Common Pleas cases. See generally Evid. R. 902(4); *Matthews v. D'Amore*, 10th Dist. Case No. 05AP-1318, 2006-Ohio-5745, ¶ 67 (in dicta, appellate court found no error in trial court granting summary judgment based in part on certified copies of documents from case dockets in unrelated litigation); but see *Buoscio v. Macejko*, 7th Dist. Case No. 00-CA-00138, 2003-Ohio-689, *18-*19 (found that a party moving for summary judgment on a vexatious litigator claim premised on the existence of vexatious conduct in prior civil actions is required to submit proper documentary proof of the prior civil actions); *Catalano v. Pisani* (1999), 134 Ohio App. 3d 549, 555 (Eleventh District found trial court erred in granting summary judgment regarding claims about opposing party's conduct in prior proceedings, when the claims were only supported by docket sheets lacking any evidentiary substantiation or specific references by the party to particular portions of the docket sheets). Therefore, the additional evidentiary materials submitted by Coleman may be properly considered in deciding the instant *MPSJ*.

3. Lasson's additional evidence

Coleman has argued that "Plaintiff [Lasson] does not provide any evidence of the types listed in Civ. R. 56(C) to rebut the evidence offered by Defendant [Coleman]." *Reply* at 6 (emphasis omitted). Coleman does not present any additional argument. Although the conclusory argument pertains to the form of Lasson's evidentiary materials, this Court finds that the argument also pertains to whether the evidence, assuming the evidentiary materials are consider, would satisfy Ohio's shifted-burden requirement on a summary judgment non-movant. See supra Section III.A. (setting forth Ohio's shifting-burden framework for summary judgment motions).

Notably, the evidentiary materials submitted by Lasson are not consistent with the

express categories in Civ. R. 56(C) and no appropriate incorporating affidavit has been presented. Accordingly, the evidentiary materials attached to Lasson's *Mot. Contra* are not properly presented.[5]

However, for purposes of completeness, this Court is mindful of the well-settled principle of law in Ohio that when appropriate, the preference is to decide cases on the merits not on technicalities. See generally *State ex rel. Sudlow v. Handcock Cty. Bd. of Commrs.* (2001), 93 Ohio St. 3d 1224, 1226. Because the conclusory evidentiary objection may also be construed to address a merits-related argument, this Court exercises its discretion to consider arguendo whether Lasson's evidentiary materials rebut Coleman's arguments supporting her *MPSJ.*

4. Judicial Notice of other Ohio decisions, including prior decisions by this Court

For purposes of completeness, this Court notes that Coleman has presented evidentiary materials, discussed above, the involve multiple cases from the Second District and the Montgomery County Court of Common Pleas in which Lasson has been a litigant. Some of the evidentiary materials are non-decisional filings such as pleadings from the various cases. However, some of the materials are judicial opinions. Insofar as the various cases have proceeded to some form of official judicial decision, opinion, order or entry, this Court finds that pursuant to Civ. R. 44.1(A)(1), this Court is required to take judicial notice of "the *decisional*, constitutional, and public statutory law of this state." Id. (emphasis added); but see

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[5] This Court has previously stricken from consideration non-compliant evidentiary materials submitted by Lasson. See the *Summary Judgment Dec.* at 4-5. Although Lasson has appealed the *Summary Judgment Dec.*, this Court notes the prior evidentiary determination to highlight that Lasson knew or should have known of the evidentiary standards for summary judgment motions and the potential consequence for non-compliance. See generally *State v. Goldwire*, 2d Dist. Case No. 20838, 2005-Ohio-5784, ¶ 7 (quoting *Yocum v. Means*, 2d Dist. Case No. 1576, 2002-Ohio-3803) ("'Litigants who choose to proceed pro se are presumed to know the law and correct procedure, and are held to the same standards as other litigants.'")

Buoscio, 2003-Ohio-689 at *19 (providing that trial court could not take judicial notice of existence of prior proceedings without submission by the movant of some evidence that prior proceedings exist). Pursuant to the mandate in Civ. R. 44.1(A), this Court has taken judicial notice of the decisional law presented by the various cases referenced by Coleman. For purposes of completeness in the record, copies of unpublished decisional law are attached as an Appendix to this *Decision*.

D. Because the evidence clearly demonstrates that Lasson engaged in conduct as an improper credit services organization, which constitutes a *per se* CSPA violation, partial summary judgment in favor of Coleman and against Lasson is proper.

Regarding the CSPA violation claim, Coleman argues that Lasson's dealings with her constituted improper conduct of a "credit services organization" [hereinafter a "CSO"] as that term is defined in R.C. Chapter 4712, the Ohio Credit Services Organization Act [hereinafter the "CSOA"]. See *MPSJ* at 1, 4. She argues that Lasson's own pleadings and the purported contractual and legally operative documents he has submitted in the evidentiary record clearly establish that his conduct satisfies the CSO statutory definition found in R.C. § 4712.01(C). See *MPSJ* at 11. Coleman argues that she clearly satisfies the related statutory definition of a "buyer" found in R.C. § 4712.01(A). See *MPSJ* at 11-12.

Premised on her definitional arguments, Coleman further argues that Lasson, acting as a CSO, was governed by the registration requirements and the attendant administrative regulations provided by the pertinent portions of the CSOA. See *MPSJ* at 4-14. Particularly, she argues that he did not comply with the registration requirement mandated by R.C. § 4712.02. See *MPSJ* at 12-13. She argues that the evidentiary record clearly demonstrates that Lasson has also violated the CSOA prohibition on a CSO from using more than one fictional

name. See *MPSJ* at 13-14 (citing R.C. § 4712.02(G)). Furthermore, Coleman identifies additional CSOA regulations that the evidence demonstrates Lasson has violated. See *MPSJ* at 4-15. She highlights that R.C. § 4712.02(J) expressly prohibits a CSO from complying with the regulatory mandates established in R.C. § 4712.02(A), (B), (D), (E), (F), or (G), and that Lasson clearly violated them. See *MPSJ* at 14.

To correlate her arguments that Lasson's CSOA violations constitute a CSPA violation, Coleman argues that the clear and unambiguous statutory language provides that "[a] violation of **division (J) of section 4712.02**, division (E) of section 4712.04, division (D) or (E) of section 4712.05, division (A) of section 4712.06, section 4712.07 or 4712.08, or division (A) of section 4712.09 of the Revised Code is deemed to be an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code." *MPSJ* at 14 (quoting R.C. § 4712.11) (emphasis added). Pertinent portions of R.C. § 1345.02(A) prohibits the commission of "an unfair or deceptive act or practice in connection with a consumer transaction." Id. Coleman argues that pursuant to pertinent portions of R.C. § 1345.09, she may pursue in her individual civil action[6] her claim for actual damages and, additionally, statutorily trebled damages. See *MPSJ* at 15.

For purposes of demonstrating her actual damages attributable to the CSOA and CSPA

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[6] Notably, portions of R.C. § 1345.09 also address the possibility to pursue a class action, which is governed by the statutorily cross-referenced Civ. R. 23. As discussed in the procedural history and jurisdictional analysis, supra, Lasson's class claims were denied in the *Class Cert. Dec.* and that denial has been appealed. Although the appeal divests this Court of subject-matter jurisdiction regarding the class claims, this Court notes that the explicit statutory provision for an individual cause of action demonstrates the General Assembly's intention to provide alternative methods to pursue an application CSPA claim. Therefore, because Coleman has focused only on the propriety of partial summary judgment in favor of her individual claims against Lasson, this Court has clearly retained subject-matter jurisdiction over those issues raised in the *MPSJ*.

violations,[7] Coleman cites portions of her affidavit–and by extension the attachments to the Coleman Aff.–to demonstrate that Lasson demanded and she paid to him a purportedly non-refundable deposit and fee totaling $4,900.00. See *MPSJ* at 15 (citing Coleman Aff. at ¶ 3-5). She has also argued that an applicable portion of the CSPA allows recovery of a reasonable attorney's fee if a knowing violation has occurred. She argues that Ohio caselaw does not require a showing that Lasson specifically knew he was violating the CSPA; the caselaw only requires a showing that Lasson conduct was an intentional act. She argues that Lasson's repeated use of improper documents clearly demonstrates the intentional acts necessary to satisfy the statutory requirements for an attorney fee award. See *MPSJ* at 16. In sum, Coleman argues that she has demonstrated that partial summary judgment is appropriate for her actual damages in the amount of $4,900.00, plus the statutory treble damages in the amount of $14,700.00, plus reasonable attorney fees in an amount to be determined in a separate hearing.[8]

Lasson's apparent rebuttal argument regarding the use of numerous fictitious names is that "each property is assigned a separate name for proper record keeping purposes * * *." *Mot. Contra* at [2]. He provides no other rebuttal arguments addressing Coleman's CSOA and CSPA claims.

This Court has reviewed the evidentiary materials submitted by the parties as identified above. This Court has reviewed the parties' arguments in the pertinent memoranda. Coleman's arguments are persuasive and Lasson's counter-arguments are unresponsive and

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[7] This Court notes that pursuant to the pertinent portion of Civ. R. 8(A), Coleman did not specify the amount of damages attributable to the CSOA/CSPA claim the allegations and demand for relief in the *First Amended Counterclaim*. However, for purposes of summary judgment, including a determination of the specific amount of awardable damages, Coleman must present evidence to satisfy that burden of proof.

[8] Coleman has indicated that she understands the determination of the amount of reasonable attorney fees would require a separate evidentiary hearing. See *MPSJ* at 16-17.

unpersuasive. Specifically, this Court finds that the various documents in evidence clearly used by Lasson in his transactions with Coleman satisfy the definition of a CSO in R.C. § 4712.01(C)(1). Furthermore, this Court finds that the various documents in evidence demonstrate that Coleman was a "buyer" as that term is defined in R.C. § 4712.01(A). Therefore, this Court finds that the provisions of the CSOA govern Lasson's conduct with Coleman.

This Court finds that Lasson has violated various provisions of the CSOA. Coleman presented evidence that Lasson has not complied with the CSOA registration requirement set forth in R.C. § 4712.02(A). Coleman presented evidence demonstrating that Lasson has used multiple fictitious names in violation of R.C. § 4712.02(G). Pursuant to R.C. § 4712.02(J)(1), a CSO such as Lasson is prohibited from violating R.C. § 4712.02(A), and pursuant to R.C. § 4712.02(J)(2), a CSO such as Lasson is prohibited from violating R.C. § 4712.02(G). As discussed above, Coleman has also presented evidence demonstrating the other CSOA violations.

Applying the burden-shifting framework for summary judgment motions, this Court finds that Lasson has not present any rebuttal evidence to create a genuine issue of material fact regarding purported compliance with any of the CSOA requirements raised by Lasson. When viewing Lasson's assertions that he used different names for record keeping purposes in the light most favorable to him, this Court finds that Lasson's explanation does not negate the fact that such conduct is a clear CSOA violation.

This Court has reviewed Coleman's statutory arguments correlating the CSOA violations as CSPA violations. Lasson has not rebutted the statutory arguments. Specifically, this Court finds that R.C. § 4712.11 clearly indicates that a violation of R.C. § 4712.02(J)

constitutes "an unfair or deceptive act or practice," which is a violation of R.C. § 1345.02. This Court similarly finds that the statutory arguments and the evidentiary materials clearly demonstrate that Coleman may pursue individual claims for the CSPA violations, and therefore she may pursue recovery for her actual damages and the statutory trebled damages. Coleman's arguments are persuasive for purposes of summary judgment regarding her actual damages of $4,900.00 and the trebled-damages amount of $14,700.00 (Total damage award is $19,600.00).

Furthermore, summary judgment is proper regarding a statutory award of reasonable attorney fees to be determined in an evidentiary hearing. Accordingly, pursuant to Civ. R. 53(D)(1)(b), this Court hereby refers this matter to the magistrate to conduct a hearing, after proper notice to the parties, for the limited purpose of determining the appropriate amount of sanctions to be awarded.

Therefore, this Court hereby sustains the portion of Coleman's *MPSJ* pertaining to Count IV in the *First Amended Counterclaim*.

E. Because the evidence clearly demonstrates that Lasson has engaged in vexatious conduct in the case at bar and in other cases, partial summary judgment in favor of Coleman and against Lasson is proper. This Court hereby finds Lasson to be a vexatious litigator as defined in R.C. § 2323.52(A)(3) and subject to the restrictions enumerated in division (D).

Coleman also argues that Lasson's conduct as documented in the docket of the instant case and other cases clearly demonstrates that he is a vexatious litigator as defined in R.C. § 2323.52(A)(3). She highlights portions of various filings in the case at bar where Lasson has made harassing and threatening statements against her and her counsel. Coleman also highlights instances in which Lasson has made harassing statements against opposing counsel.

She highlights that Lasson has already been sanctioned by this Court for his frivolous conduct regarding the bankruptcy stay. See *MPSJ* at 17-19 and the referenced exhibits.

Lasson has asserted that "[c]oncerning the request to declare [him] a vexatious litigator, [he] would like a hearing before an elected judge, if a hearing is necessary." *Mot. Contra* at [2]. He asserts that he believes "he has reasonable grounds to bring or defend every action he has been involved with." Id. at [4]. He also presents arguments apparently intended to explain his conduct and distinguish what he believes is improper conduct by Coleman and her counsel. See generally *Mot. Contra*.

Lasson also argues that finding him to be a vexatious litigator would result in an impermissible restriction on his ability to exercise pursue the legal rights and remedies under his business' agreements. He also asserts it would be a violation of his due process and equal protection rights. See id. at [4].

In the *Reply*, Coleman argues that Lasson's response regarding the vexatious litigator claim is not directed at rebutting the evidence of his vexatious conduct, but is another example of Lasson making undefined and unsubstantiated accusations against her and her counsel. See *Reply* at 6. She argues that the evidence is clear and no genuine issues of material fact remain regarding Lasson's vexatious conduct. Id. She also argues that the vexatious litigator statute is appropriately applied in the case at bar.

1. Ohio Standards for a Vexatious Litigator Claim

In Ohio, a vexatious litigator claim is a statutory cause of action provided by R.C. § 2323.52. For purposes of such a claim, "vexatious conduct" is statutorily defined as:

> conduct of a party in a civil action that satisfies any of the following:
> (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
> (b) The conduct is not warranted under existing law and cannot be supported

> by a good faith argument for an extension, modification, or reversal of existing law.
>
> (c) The conduct is imposed solely for delay.

R.C. § 2323.52(A)(2). Additionally, the statute defines a "vexatious litigator" as:

> any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

R.C. § 2323.52(A)(3). Notably, both definitions in division (A) are not limited to when the person is acting as a plaintiff in a civil action; the terms used are "party" and "person" and therefore broadly encompass a person acting as a party-plaintiff or a party-defendant.

The statute expressly provides that "[a] civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action." R.C. § 2323.52(C). Implicitly, a vexatious litigator claim may be brought in a "standard" civil action, or when applicable, in a counterclaim. See *Palmer v. Hobbs*, 2d Dist. Case No. 21392, 2006-Ohio-5981 (Second District reviewed trial court's grant of summary judgment on vexatious litigator counterclaim); *Castrataro v. Urban*, 155 Ohio App. 3d 597, 2003-Ohio-6953 (Fifth District affirmed trial court's disposition of a vexatious litigator counterclaim). Furthermore, because summary judgment procedure is provided by Civ. R. 56, the statute implicitly provides that a vexatious litigator claim may, when otherwise appropriate under the standards for deciding any summary judgment motion, be resolved in a summary judgment decision. See *Palmer*, supra; *Castrataro*, supra. Because summary judgment procedure applies, well-settled Ohio law provides that the "hearing" may be in open

court or a "non-oral hearing" involving the trial court's consideration of written briefs with submitted evidentiary materials. See generally *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St. 3d 8, 2003-Ohio-4829, ¶ 9-14 (in the trial court's discretion, the "hearing" provided by Civ. R. 56 may involve an in-court oral argument or as little as the submission of written memoranda with evidentiary materials).

Notably, the Supreme Court of Ohio has reviewed and approved the constitutionality of most of the vexatious litigator statute, including the provisions that would prohibit a declared vexatious litigator from pursuing civil actions without prior judicial leave. In *Mayer v. Bristow* (2000), 91 Ohio St. 3d 3, the Supreme Court of Ohio "consider[ed] the constitutionality of the [vexatious litigator" statute * * *." Id. at 12. The court recognized:

> The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources -- resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.
> * * * the untoward effects of vexatious litigation in depleting judicial resources and unnecessarily encroaching upon the judicial machinery needed by others for the vindication of legitimate rights. In addition, vexatious litigators oftentimes use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets. Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system, threatens the integrity of the judiciary, and casts a shadow upon the administration of justice. Thus, the people, through their representatives, have a legitimate, indeed compelling, interest in curbing the illegitimate activities of vexatious litigators.

Id. at 13 (citations and quotation marks omitted). The Supreme Court further stated:

> At its core, the statute establishes a screening mechanism that serves to protect the courts and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings. It provides authority to the court of common pleas to require, as a condition precedent to taking further legal action in certain

> enumerated Ohio trial courts, that the vexatious litigator make a satisfactory demonstration that the proposed legal action is neither groundless nor abusive.

Id.

> However, the statute is not designed, nor does it operate, to preclude vexatious litigators from proceeding forward on their legitimate claims. Instead, it establishes a screening mechanism under which the vexatious litigator can petition the declaring court, on a case-by-case basis, for a determination of whether any proposed action is abusive or groundless.

Id. at 14.

2. Analysis of Vexatious Litigator Claim

Based on the foregoing, this Court initially notes that Lasson's request for a hearing on the vexatious litigator claim has been satisfied by consideration of the written memoranda and the submitted evidentiary materials. An in-court oral hearing is unnecessary, and insofar as Lasson was moving for such, that request is overruled.

Regarding the vexatious litigator claim, this Court has reviewed the parties' arguments presented in the pertinent memoranda and the submitted evidentiary materials. This Court has found the following cases pertinent to the vexatious litigator analysis.

a. The "Sutherland" case

For purposes of reference, Exhibits 9 and 10 attached to the *MPSJ* address a civil action and civil appeal captioned *Sutherland v. Lasson*. The Montgomery County Common Pleas trial court case number is 1999 CV 0776 [hereinafter the "*Appendix Case 1*"], which was assigned to Judge Mary Donovan, who referred portions to Magistrate Timothy O'Connell. On appeal to the Second District, the appellate case number is CA20217. For purposes of completeness only, the Supreme Court of Ohio did not allow a discretionary appeal by Lasson. See *Sutherland v. Lasson*, 105 Ohio St. 3d 1470, 2005-Ohio-1186.

This Court has reviewed Coleman's arguments pertaining to Exhibits 9-10.

Furthermore, pursuant to Civ. R. 44.1(A)(1), discussed above, this Court has reviewed the decisional law from *Appendix Case 1* and the appeal to the Second District.

In a *Decision and Entry Granting Plaintiffs' Motion for Sanctions* [hereinafter "*Decision 1-A*"] filed September 25, 2000, Magistrate O'Connell decided a motion filed by the Plaintiffs for sanctions against Lasson relating to discovery defaults. See id. at 1. A hearing was set, but Lasson failed to appear. See id. Magistrate O'Connell noted that many of Lasson's discovery responses were illegible or stated "'see following' but did not attach the documents or any other responses." Id. at 2. Magistrate O'Connell noted that Lasson made promises to provide the discovery during the extrajudicial informal discussions regarding the discovery, but Lasson failed to perform those promises. See id.

In subsequent proceedings in *Appendix Case 1*, Judge Donovan filed on July 25, 2001, a *Decision, Entry and Order Overruling Defendants' Objections to Magistrate's Decision* [hereinafter "*Decision 1-B*"]. Regarding Lasson's objection asserting that Magistrate O'Connell was biased in favor of the Plaintiffs because "virtually all of the Magistrate's discovery-related decisions favored the Plaintiffs[,]" Judge Donovan noted that his "contentions are extremely broad and fail to set forth any rationale for believing any particular decision was biased or unfair." *Decision 1-B* at 1-2. Regarding another objection, Judge Donovan found that "Lasson intentionally disguised the documents relating to the transaction at issue to create the illusion that Defendants had entered into a Land Installment Contract. Now he must face the consequences for having succeeded in doing so." Id. at 2. The purported land installment contract was determined to be non-compliant with certain statutory requirements and was therefore deemed unenforceable. See id. at 3.

Addressing another objection, Lasson sought to bring in the mothers of the Plaintiffs as

third parties, which was denied: "The mothers of the Plaintiffs were not legally interested parties pursuant to applicable rules of civil procedure. Therefore, they were properly excluded as parties to the suit." Id. at 5. Another objection was rejected as "totally without merit based upon the record before the Court." Id.

In proceedings nearly two years later in *Appendix Case 1*, Magistrate O'Connell filed a *Magistrate's Decision Granting Plaintiff's Motion for Attorney Fees* [hereinafter "*Decision 1-C*"]. He addressed a motion by Plaintiff Sutherland for an award of attorney fees based on her assertion that Lasson had engaged in frivolous conduct in violation of R.C. § 2323.51. See *Decision 1-C* at 1. Magistrate O'Connell conducted a four-day hearing on the motion. Plaintiff Sutherland was represented by counsel and Lasson appeared pro se. Id.

From the prior proceedings in *Appendix Case 1*, Plaintiff Sutherland had obtained a judgment against Lasson. She had sought a non-wage garnishment to satisfy the judgment. Lasson contested the non-wage garnishment and requested a R.C. § 2716.13 hearing. See *Decision 1-C* at 3.

Plaintiff Sutherland argued that Lasson's request for the R.C. § 2716.13 hearing constituted "frivolous conduct" as that term is defined in R.C. § 2323.51(A)(2)(a). See *Decision 1-C* at 3-4. In his analysis, Magistrate O'Connell noted that the name on the bank account subject to the garnishment order had a similar name, but not an identical match, to the name of a corporation. Magistrate O'Connell found this "illustrative of [Lasson's] pattern of use of many names that are just slightly different to do business. This can mislead and deceive parties who are dealing with [Lasson]." Id. at 5. Magistrate O'Connell concluded, "[a]ccording to the record, [that] there is no evidence that [Lasson] could have had a good faith belief that the subject [bank] account was not under his proprietorship. There being no factual

basis in which to request a hearing to dispute the garnishment[,] his action amounts to frivolous conduct, thus wasting the Court's time and resources." Id. at 6.

Lasson objected to the attorneys fee award in *Decision 1-C*. In a *Decision, Order and Entry Overruling Defendant's Objections to the Magistrate's Decision* [hereinafter "*Decision 1-D*"], Judge Donovan noted that Lasson failed to properly provide a transcript of the hearings, as required by the Civil Rules of Procedure. She highlighted that he had the hearing CD for months but had failed to obtain a transcript or submit a copy of the CD. *Decision 1-D* at 1-2. She overruled his objections and adopted Magistrate O'Connell's decision in its entirety. See id. at 2.

In *Sutherland v. Lasson*, 2d Dist. Case No. 20217, 2004-Ohio-5834, which is Lasson's appeal from *Decision 1-D*, the Second District affirmed the judgment. See *Sutherland*, 2004-Ohio-5834 at ¶ 59. The appellate court expressly found that "[t]he place to begin to understand this case and the [Lasson's] conduct is with the magistrate's decision," id. at ¶ 1, which involved a nearly word-for-word quotation of both the magistrate decision, *Decision 1-C*, and Judge Donovan's decision, *Decision 1-D*. See *Sutherland*, 2004-Ohio-5834 at ¶ 2-37.

The appellate court expressly noted Lasson's failure to timely file a transcript of the magistrate's hearing for consideration by the trial court. The court also highlighted that Lasson had attempted to file the hearing transcripts "two months *after* the trial court's decision and *after* the notice of appeal had been filed." Id. at ¶ 39 (emphases added). Applying binding precedent, the Second District concluded it would not review the untimely, improper transcripts, even though the transcripts were in the file. Id.

In reviewing his brief, the Second District "note[d] that [Lasson] filed his brief in violation of App.R. 19, which requires double spacing, but we will consider it anyway since it

is extremely short." *Sutherland*, 2004-Ohio-5834 at ¶ 52. Particularly, the Second District recognized that in one of his assignment of errors, Lasson attempted "to justify his failure to timely prepare a transcript of the hearing, but in view of the rules of court, *he cannot justify his failure.*" Id. at 54 (emphasis added). The appellate court recognized that Lasson requested a hearing, "but he simply failed to attend." Id. at ¶ 56. Some of Lasson's assignments of error were also rejected as irrelevant to the appeal. Id. at ¶ 58. The Second District's analysis concluded:

> The defendant, although disclaiming any interest in the garnished bank account, has vigorously fought this matter. We count at least eight filings in the trial court alone by the defendant, including both motions and memoranda. It seems to us, as it must have seemed to the trial court, that the defendant, in so vigorously fighting this matter, seems to have a substantial interest in the bank account in question, contrary to his protestations otherwise. All of the assignments of error are overruled and the judgment is affirmed.

Id. at ¶ 59.

b. The "Martz" case

Coleman has also cited, as Exhibit 13 attached to the *MPSJ*, the *Complaint* filed by Lasson, pro se, commencing on July 1, 2002, a case captioned *Best Homes v. Martz*, Montgomery Cty. C.P. Case No. 02CV4216 [hereinafter "*Appendix Case 2*"]. Coleman argues that the *Complaint* in *Appendix Case 2* provides additional evidence that Lasson has repeatedly filed frivolous litigation using unregistered fictitious names as a "dba." See *MPSJ* at 19.

Notably, this Court was assigned *Appendix Case 2* and is mindful of its procedural history. Specifically, this Court notes that proceedings were stayed for six months, see generally *Order staying Proceedings and Setting Telephone Status Conference* [hereinafter "*Decision 2-A*"] filed September 26, 2002, and when the stay expired, in a *Decision and Order* filed March 27, 2003 [hereinafter "*Decision 2-B*"], this Court dismissed the case for two

reasons:

> First, the Plaintiff, G.A. Lasson, *failed to comply with the court's order* to call the court and participate in a telephonic conference on March 20, 2003 at 8:30 a.m. Second, it has been reported to the court at the time Mr. Lasson filed this suit he was in bankruptcy and may still be in bankruptcy court.

Decision 2-B (emphasis added).

c. The "Miller" case

In Exhibits 6 attached to the *MPSJ*, Coleman has provided affidavit testimony regarding matters addressed in a case assigned to Judge Michael Hall captioned *Lasson v. Miller*, Montgomery Cty. C.P. Case No. 04CV4447 [hereinafter "*Appendix Case 3*"] and the corresponding appellate case under the same caption. See *MPSJ* Exhibit 8 (a copy of an unpublished Second District opinion in *Lasson v. Miller*, 2d Dist. Case No. 21199) [hereinafter "*Appendix Case 4*"].

In *Appendix Case 3*, three decisions filed by Judge Hall are informative. On December 20, 2004, Judge Hall filed a *Decision, Order, and Entry Overruling Defendants', Melissa Miller, Alan A. Biegel and Alan A. Biegel Co., LPA, Motion to Dismiss and/or Motion for Summary Judgment* [hereinafter "*Decision 3-A*"]. The underlying issue was Lasson's conduct in filing the case in his own name when all of the claims involved contracts made in the name of a fictitious name, "The Southwest Ohio RTO Homes Co." See generally *Decision 3-A* at 5. The argument for dismissal was that the claims were improper because the fictitious name had not been properly registered as required by Ohio statute. See id. (citing R.C. § 1329.10). Lasson attempted to avoid dismissal by demonstrating that he had subsequently satisfied the registration requirement. See id. Notably, Judge Hall highlighted that Lasson's submission of evidence purportedly demonstrating the registration was not certified or stipulated as evidence. Id. However, the submission was construed to allow its consideration and the dismissal and

summary judgment motions were overruled. Id.

Also on December 20, 2004, Judge Hall filed a second decision, a *Decision, Order, and Entry Sustaining Defendants Carol and Joe Wyatt's Motion to Dismiss* [hereinafter "*Decision 3-B*"]. Judge Hall determined that "Plaintiff [Lasson] fails to state a claim upon which relief can be granted." *Decision 3-B* at 3. Although Defendants Carol and Joe Wyatt are identified in the complaint as "tenant/buyers who 'desire to perform per the contracts with [Plaintiff,]'" id. (bracketed modification sic), Judge Hall notes that "[o]ther references to Defendants [Carol and Joe Wyatt] in the complaint concern claims against the other named defendants, but fail to allege any wrong doing on behalf of the Defendants." Id. The motion is sustained. Id.

In a *Decision, Order, and Entry Sustaining Defendants Miller and Biegel's Motion for Summary Judgment; Overruling Plaintiff's Motion for Summary Judgment* [hereinafter "*Decision 3-C*"] filed on July 8, 2005, Judge Hall addressed cross-summary judgment motions filed by Lasson and Defendants Miller and Biegel. Regarding Lasson's motion, Judge Hall found that Lasson has not presented any appropriate evidence in support, resulting in a failure to meet the initial Civ. R. 56 burden. Lasson's motion was overruled. See *Decision 3-C* at 4.

Citing a Kettering Municipal Court forcible entry and detainer determination that Lasson had breached his "lease purchase agreement" with Defendant Miller for non-payment of rent, Judge Hall found that Lasson could not bring claims against Defendant Miller for alleged breaches of the agreement by her. See id. at 4. Lasson attempted to utilize unsupported allegations in pleadings to oppose the adverse summary judgment motion. See id. at 4-5. The court found that Lasson had failed to meet his reciprocal burden to oppose summary judgment. Therefore, summary judgment was sustained in full for Defendants Carol and Joe Wyatt. See id. at 5.

In *Appendix Case 4*, which is Lasson's appeal from Judge Hall's decisions in *Appendix Case 3*, Lasson filed on November 28, 2005, an *Announcement of Filing Ch 11 Bankruptcy, Staying Action; With Request for Extended Time by PLAINTIFF-APPELLANT; and Request for Oral Argument.*[9] In an unpublished *Decision and Entry* [hereinafter "*Decision 4-A*"] filed on January 19, 2006, the Second District considered Lasson's *Announcement* and a motion to dismiss the appeal filed by the appellees. See *Decision 4-A* at 1. Specifically, the appellees' "assert[ed] that 'Appellants are misrepresenting to the Court that this action is stayed by the filing of a Bankruptcy Petition.'" Id. The Second District reviewed the Bankruptcy Court's docket, found that a bankruptcy petition had been filed, but found:

> [T]he docket also indicates that the case was closed and the matter dismissed on November 14, 2005. The dismissal of the case by the Bankruptcy Court terminates the automatic stay. *See* Section 362(c)(2)(B), Title 11, U.S. Code.

Decision 4-A at 2. The Second District overruled the motion to stay, but allowed Lasson thirty days to file his appellate brief. See id. The court expressly indicated that "[t]his is the final extension for Appellants in this matter." Id.

On May 18, 2006, the Second District filed another unpublished *Decision and Entry* [hereinafter "*Decision 4-B*"] in which Lasson, among other matters, raised the status of his purported bankruptcy filing. The Second District stated:

> [T]his Court will not change its position stated in the January 19, 2006 entry that the bankruptcy stay is overruled due to the dismissal of the bankruptcy action. Appellant [Lasson] has not provided this Court with any information to indicate that any bankruptcy case is currently pending.

Decision 4-B at 1. The Second District also allowed Lasson another extension to file his appellate brief. See id. at 1-2.

On September 20, 2006, the Second District filed an unpublished *Decision and Final*

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[9] A copy of this filing is attached as Exhibit 8 to Coleman's *MPSJ*.

Judgment Entry [hereinafter "*Decision 4-C*"]. The court recounted the prior determinations in *Decision 4-A* and *Decision 4-B* regarding Lasson's request to stay the appeal due to a bankruptcy. *Decision 4-C* at 1. The Court stated that "once again, Appellants' request to stay the above-captioned appeal is OVERRULED." Id (formatting sic). The Court also found that twice Lasson had been warned that no further extensions for filing his appellate brief would be permitted, and [a]ccordingly, Appellants' request to enlarge the briefing time is OVERRULED and the above-captioned appeal is DISMISSED for failure to file a brief." Id. (formatting sic).

d. The case sub judice

In support of the *MPSJ*, Coleman also references Lasson's conduct in the case at bar, of which this Court is clearly aware.[10] This Court finds certain matters notable for purposes of the instant *MPSJ*.

In a *Decision, Order and Entry Overruling Plaintiff Lasson's Motion to Transfer Count 1 to Area 1 County Court* [hereinafter the "*Remand Dec.*"] filed on August 1, 2005, this Court noted that Lasson argued, among other issues, that his forcible entry and detainer claim should be remanded to the Area 1 Court. Id. at 2 (citing *Motion to Transfer to Area One* at 1). This Court found that the amount of damages sought in her *Counterclaim* did exceed the county court jurisdictional limit and that the appropriate action by the county court was to transfer the entire civil action to this Court's jurisdiction. *Remand Dec.* at 2-3. Furthermore, this Court highlighted its concurrent jurisdiction regarding forcible entry and detainer actions and noted that Lasson presented no support for his argument to remand only the forcible entry and detainer claim. Id.

Without repeating the entirety of the decision, this Court also notes its familiarity with

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[10] For clarity, because the docket for the case at bar is the record, copies of prior decisions in this case are not included in the Appendix.

the issues addressed in the *Strike and Sanctions Dec.*, specifically "[t]he clear implication * * * to delay or cancel the telephonic conference[,]" and "that Lasson willfully violated the applicable provisions of Civ. R. 11." *Strike and Sanctions Dec.* at 6.

Without repeating the entirety of the decision, this Court also notes its familiarity with the issues addressed in the concurrently filed *Decision, Order and Entry Overruling Lasson's Objections to Magistrates Decision* regarding Lasson's *Objections to Magistrates* [sic] *Decision Dated 6-28-06.* Specifically, this Court notes that Lasson failed to attend the scheduled hearing, he attempted to delay the hearing with unfounded arguments in a late-hour motion, and he failed to attend the hearing. He also failed to file a transcript of the hearing.

3. Lasson's conduct in the instant case, as well as the aggregate of his conduct in all of the cases reviewed, demonstrates that Lasson has engaged in vexatious conduct. There are no genuine issues of material fact and a vexatious litigator designation is appropriate as a matter of law.

Based on a review of all of the cases discussed above, this Court finds that Lasson has engaged in conduct that obviously serves to harass another party to the lawsuit. Based on a review of all of the cases discussed above, this Court finds that Lasson has engaged in conduct that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Based on a review of all of the cases discussed above, this Court finds that Lasson has engaged in conduct that is imposed solely for delay.

Lasson has previously been sanctioned for frivolous conduct in violation of R.C. § 2323.51. Lasson has also been sanctioned for his intentional misconduct in violation of Civ. R. 11. Although the remedies attendant to proceedings under the R.C. § 2323.51 "frivolous

conduct in a civil action" section are distinct from the remedies provided in the R.C. § 2323.52 "vexatious litigator" section, this Court finds that the sections are *in pari materia*. Both statutes address substantially identical forms of misconduct.

Notably, in *Appendix Case 1*, Lasson was sanctioned specifically for engaging in conduct not warranted by existing law or a good faith argument. In the case at bar, Lasson was sanctioned for engaging in conduct obviously imposed solely for delay.

However, in light of this Court's analysis above regarding *Appendix Case 4*, the appeal in *Lasson v. Miller*, this Court has recognized additional information that was not apparent in the docket when the *Strike and Sanctions Dec.* was filed. This additional information presents another critical inference that Lasson has intentionally acted in a manner intended solely to delay. In the *Strike and Sanctions Dec.*, this Court identified certain procedural history:

> On November 17, 2005, this Court filed an *Entry Setting Telephone Status Conference on December 13, 2005 at 8:30 A.M.*, which addressed a *Motion for Pre-Trial Conference to Set Trial Date* filed by Coleman on November 8, 2005. On the day prior to the scheduled telephonic conference, Lasson filed an *Announcement of Filing Ch. 11 Bankruptcy, staying further action* [hereinafter the "*Bankruptcy Announcement*"] in which he alleges that "they"[11] had commenced a Chapter 11 Bankruptcy petition [hereinafter "the bankruptcy case"] in the Bankruptcy Court of the District Court of the Southern District of Ohio [hereinafter the "Bankruptcy Court"]. The *Bankruptcy Announcement* attempted to invoke a stay in light of the bankruptcy case. In light of the *Bankruptcy Announcement*, this Court vacated the telephonic conference.

Strike and Sanctions Dec. at 1-2.

Similar to the analysis in the *Strike and Sanctions Dec.*; the timing of Lasson's filings is critical. This Court's *Entry* setting the December 13, 2005 telephone status was docketed on November 17, 2005. The bankruptcy stay was clearly dissolved by virtue of the dismissal of the Bankruptcy Case prior to this Court's November 17 *Entry*. In *Appendix Case 4*, Lasson

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[11] The *Bankruptcy Announcement* is captioned "G. Lasson, dba Windstar III, Affordable Best Homes Company."

filed his *Announcement* trying to stay the appeal on November 28, 2005. However, as this Court previously found in the *Strike and Sanctions Dec.*, Lasson intentionally waited until the day before this Court's scheduled telephonic conference to file the *Bankruptcy Announcement* in the case at bar.

Lasson's improper attempt to delay the briefing deadlines in *Appendix Case 3* demonstrates one level of improper delay tactics. He repeatedly tried to re-argue the matter to the Second District. This is another level of improper delay tactics. Ultimately, he failed to timely pursue his appeal and the appellate court rendered the ultimate sanction for such misconduct, the appeal was dismissed.

However, comparing the *Announcement* in the appeal and the *Bankruptcy Announcement* in the case at bar, this Court notes that Lasson filed substantially identical documents in both cases. However, comparing the filing dates, this Court notes that Lasson filed the *Announcement* in the appeal weeks before he filed the *Bankruptcy Announcement* in the case at bar. The timing of the filing in the instant case, however, was obviously intended result in an immediate cancellation of the telephonic conference set for the next day. Arguendo, Lasson could have filed his *Bankruptcy Announcement* in the case at bar on the same date as he filed the *Announcement* in *Appendix Case 3*; the reasonable inference is Lasson intentionally delayed to intentionally create confusion and delay. This is an additional level of misconduct by Lasson, demonstrating persistent misconduct as well as an intent to delay.

The evidence presented demonstrates that Lasson habitually attempts with no reasonable basis to join persons in his lawsuits that he cannot present a claim against under existing law. He has threatened in numerous filings to bring claims against Coleman's attorneys. He has brought claims against other attorneys, such as Mr. Biegel, who were

representing clients who were also defending against Lasson's claims. This demonstrates conduct obviously intended to harass other parties and their counsel.

Furthermore, this Court has issued multiple decisions addressing the jurisdictional posture of the case at bar. Many of Lasson's filings, including his instant *Mot. Strike/Memo. Opp.* to his multiple attempts to seek default judgment on claims subject to final and appealable adverse summary judgment, constitute conduct unwarranted under existing law and conduct imposed solely to delay.

Based on all of the foregoing, this Court hereby finds that Lasson has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in civil actions, including the case at bar, before multiple judges of this Court and in the Second District Court of Appeals, in violation of R.C. § 2323.52(A)(3). Therefore, the portion of the *MPSJ* regarding the vexatious litigator claim is sustained. The statutory prohibitions attendant to this finding are set forth below.

V. CONCLUSION

Based on the foregoing, this Court hereby sustains Coleman's *MPSJ*. Accordingly, pursuant to Civ. R. 56(D), this Court hereby finds that no genuine issues of material fact exist and Coleman is entitled to judgment as a matter of law. Subject to the provisions of Civ. R. 54(B), this Court hereby enters partial summary judgment as follows:

The CSPA claim, Count IV:

Based on the above disposition of partial summary judgment on the CSPA claims, this Court hereby enters judgment as follows:

- Pursuant to R.C. § 1345.09(A), Coleman is awarded against Lasson her actual damages of $4,900.00;

- Pursuant to R.C. § 1345.09(B), Coleman is awarded against Lasson treble-damages in the amount of $14,700.00;
- Pursuant to R.C. § 1345.09(F)(2), Coleman is awarded against Lasson a reasonable attorney's fee limited to the work reasonably performed. The matter is referred to the magistrate to conduct an the evidentiary hearing and determine the appropriate amount to be awarded.

The vexatious litigator claim, Count VI:

Regarding Ohio trial courts:

Pursuant to R.C. § 2323.52(D)(1), this Court hereby orders and prohibits Lasson from doing any of the following without first obtaining leave from this Court:

- Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- Continuing any legal proceedings that the he has instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of this *Decision*; and
- Making any application, other than an application for leave to proceed as provided by R.C. § 2323.52(F)(1), in any legal proceedings instituted by the vexatious litigator or another person in the court of claims or in a court of common pleas, municipal court, or county court.

Pursuant to R.C. § 2323.52(F)(1), before Lasson may institute any legal proceeding in a civil action, continue any currently pending legal proceeding or civil action, or make any other application, he must file with this Court–specifically, Judge Dennis Langer–a written request for leave to proceed. The written request must demonstrate to the satisfaction of this Court that

the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application.

Regarding Ohio appellate courts:

Pursuant to R.C. § 2323.52(D)(3), this Court hereby orders and prohibits Lasson from doing any of the following without first obtaining leave from the appropriate appellate court:

- Institute legal proceedings in a court of appeals;
- Continue any legal proceedings he has instituted in a court of appeals prior to entry of the order; and
- Make any application, other than the application for leave to proceed allowed by R.C. § 2323.52(F)(2), in any legal proceedings instituted by him or another person in a court of appeals.

Pursuant to R.C. § 2323.52(F)(2), before Lasson may institute any legal proceeding in a court of appeals, or continue any legal proceeding in a court of appeals, or make any other application in a court of appeals, he must file a written application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The written request must demonstrate to the satisfaction of the appellate court that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.

Additional Administrative Provisions

For purposes of R.C. § 2323.52(E), this Court expressly orders that this Decision remain in force indefinitely.

For purposes of R.C. § 2323.52(H), this Court orders the Montgomery County Clerk of the Courts to forthwith send a certified copy of this *Decision* to the Supreme Court of Ohio for

publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

Pursuant to R.C. § 2323.52(I), whenever it appears by suggestion of the parties or otherwise that Lasson, as a person found to be a vexatious litigator, has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so, the court in which the legal proceedings are pending shall dismiss the proceedings or application.

VI. JURISDICTIONAL DETERMINATION

Based on the foregoing dispositions, this Court raises sua sponte whether the instant *Decision* constitutes a final and appealable order. See *Lewis*, 2003-Ohio-2476 at ¶ 19. Furthermore, in the December 4, 2006 *Memorandum* filed by Lasson, he also requests that any applicable decisions be designated as final and appealable. Limited to the dispositions in the instant *Decision* only,[12] this Court hereby addresses the pertinent jurisdictional requirements. Notably, this Court has identified the pertinent constitutional, statutory, and procedural rule provisions in the *Jurisdiction Decision*, which are adopted as though fully set forth herein. To facilitate the analysis, this Court addresses the disposition of the vexatious litigator claim, then the disposition of the CSPA claim.

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[12] For purposes of completeness, this Court finds that the other decisions concurrently filed with the instant *Decision* are ripe for a finality determination. Specifically, the disposition of the amount of sanctions is not a final or appealable order. Similarly, the disposition of the discovery-related motions is also not a final or appealable order.

A. Pursuant to R.C. § 2505.02(B) and 2505.03(A), the vexatious litigator determination constitutes a final and appealable order.

As discussed above, a cause of action to declare a party as a vexatious litigator is established by express statutory provision in R.C. § 2323.52. This Court's research has identified no analogous action at law or suit in equity that existed prior to 1853. Therefore, this Court finds that a vexatious litigator cause of action constitutes a "special proceeding" as that term is defined in R.C. § 2505.02(A)(2).

Furthermore, this Court is mindful that the constitutional, see *Mayer*, supra, determination that Lasson is a vexatious litigator will clearly affect his Ohio constitutional, statutory, and procedural rights pertaining to commencing and maintaining civil litigation and appeals. Accordingly, the vexatious litigator disposition affects a "substantial right" as that term is defined in R.C. § 2505.02(A)(1).

For purposes of defining a final order, R.C. § 2505.02(B) provides three alternative categories. Based on the analysis above, this Court determines that the vexatious litigator disposition satisfies R.C. § 2505.02(B)(2), which involves "[a]n order that affects a substantial right made in a special proceeding * * *." Id. Therefore, by operation of statutory law, this Court finds that the partial summary judgment regarding the vexatious litigator claim is a final order.

This determination of finality, however, is incomplete if the provisions of Civ. R. 54(B) apply and are not satisfied. See *Denham v. City of New Carlisle* (1999), 86 Ohio St. 3d 594, 596 (citing *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St. 3d 86, 88) ("An order of a court is final and appealable only if it meets the requirements of both Civ. R. 54(B) and R.C. 2505.02.") Initially, this Court notes that clearly some of Coleman's claims remain pending

and accordingly Civ. R. 54(B) is not satisfied. However, Civ. R. 54(B) expressly provides that a trial court may "certify" as a final order a decision that satisfies the statutory provisions but otherwise would be interlocutory because of other unresolved claims.

The guidance provided by Ohio precedent to determine whether a Civ. R. 54(B) certification is appropriate has been set forth in the *Jurisdiction Decision* at 5-6. Applying that analysis, this Court is mindful of the immediate impact of a vexatious litigator determination. The need for immediate review strongly outweighs the general disfavor for split trials and appeals. Therefore, for purposes of this Court's partial summary judgment determination that Lasson is a vexatious litigator, there is no just reason for delay.

B. Because the decision regarding Coleman's CSPA claim does not satisfy any of the finality alternatives provided in R.C. § 2505.02(B), the partial summary judgment determination of Coleman's CSPA claim is not final or appealable and a Civ. R. 54(B) certification would be legally immaterial.

Regarding the partial summary judgment in favor of Coleman regarding her CSPA claim against Lasson, this Court has noted above that some of Coleman's claims in the *First Amended Complaint* remain pending. Although the partial summary judgment resolves the CSPA claim, it does not in effect determine the entire civil action or prevent a judgment on the remaining claims. Therefore, R.C. § 2505.02(B)(1) does not apply.[13] For purposes of completeness, this Court notes that because no statutory finality applies, a Civ. R. 54(B)

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[13] Notably, the determination in the *Jurisdiction Decision* regarding the *Summary Judgment Dec.* is distinguishable from the instant determination regarding the CSPA claim in the *MPSJ*. This Court expressly found that "insofar as the *Summary Judgment Dec.* has sustained summary judgment in favor of Coleman and against Lasson on **all of Lasson's claims**, that determination appears to satisfy R.C. § 2505.02(B)(1)." *Jurisdiction Decision* at 4 (emphasis added). In contrast, the *MPSJ* does not address all of Coleman's claims against Lasson. The vexatious litigator determination is final and appealable due to a different subdivision of R.C. § 2505.02(B), but none of the subdivisions apply to the CSPA determination.

certification would be legally immaterial. See *Wyse v. Ameritech Corp.*, 2d Dist. Case No. 21371, 2006-Ohio-979, ¶ 4.

C. Finality Conclusion

Therefore, based on the foregoing analysis, the portion of the instant *Decision* granting summary judgment and finding that Lasson is a vexatious litigator is immediately final and appealable. However, because statutory finality is lacking, the portion of the instant *Decision* granting summary judgment in favor of Coleman and against Lasson on the CSPA claim is NOT final or appealable.

AS ADDRESSED ABOVE, PART OF THIS DECISION CONSTITUTES A FINAL APPEALABLE ORDER. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL REGARDING THAT PORTION WITHIN THIRTY (30) DAYS.

SO ORDERED:

DENNIS J. LANGER, JUDGE

To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

DENNIS J. LANGER, JUDGE

Copies of this Decision, Order and Entry were forwarded to all parties listed below by ordinary mail this filing date.

Plaintiff G. Lasson, d/b/a/ Windstar III, pro se,
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Montgomery County Clerk of Courts

JULENE POWERS, Bailiff (937-225-4055).

9/25/00

FILED

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

KAREN SUTHERLAND, et al.,	:	CASE NO. 99-776
Plaintiffs,	:	(Judge Mary E. Donovan) (Magistrate Timothy N. O'
-vs-	:	
		DECISION AND ENTRY GRANTI
JERRY LASSON	:	PLAINTIFFS' MOTION FOR
dba MASADA III COMPANY and		SANCTIONS
dba RTO HOMES and	:	
dba BEST HOMES and		
dba RENT TO OWN HOMES,	:	
Defendant.	:	

: :

On August 24, 2000, Plaintiffs filed a motion for sa related to discovery defaults. On August 30, 2000, the mot set for hearing. The hearing was to be held on September 1 at 11:00 a.m. The matter came on for hearing on September 1 at 11:00 a.m. Plaintiffs appeared at the hearing by their a J. Joseph Walsh. Defendant failed to appear for the hearin

In April of 2000, Plaintiffs served on Defendant a interrogatories and a request for production of documents. I 2000, Greg Engler entered his appearance as attorney for De Plaintiffs' counsel asked Mr. Engler about the responses discovery that had been sent to Defendant in April. Mr indicated that he did not know about the discovery mater would find out about them from his client. Soon thereaf

COURT'S EXHIBIT Decision 1-4

On August 15, 2000, Defendant did provide some responses discovery request. Some of the discovery requests were not re to. Those items which were responded to were, in many answered in a handwritten fashion. The responses were illegil to many of the requests for production of documents, Defendar on the discovery paper "see following," but did not att documents or any other responses. On August 24, 2000, Pl filed their motion for sanctions for failure to provide di In informal discussions, Defendant made some promises to pro discovery but he failed to execute those promises.

Civil Rule 37 (D) provides in pertinent part that if fails to serve answers or objections to interrogatories s under Rule 33, after proper service of the interrogatories serve a written response to a request for inspection submitt Rule 34, after proper service of the request, the court in w action is pending on motion and notice may make such orders i to the failure as are just, and among others, it may take an authorized under subsections (a), (b), and (c) of subdivisio of this rule.

Defendant has failed to serve answers or object interrogatories submitted under Rule 33, after proper serv interrogatories, and has failed to serve a written respor request for inspection submitted under Rule 34, after proper of the request.

Civil Rule 37 (B)(2) provides in pertinent part that t may refuse to allow the disobedient party to support o

introducing designated matters in evidence. Civil Rule 37 (B)

The Plaintiffs have prayed for the sanction of pre Defendant from presenting evidence in support of his counte This relief is consistent with the sanctions provided in Civ 37. The Magistrate believes the Defendant should be sancti this matter. The discovery requests have been outstandin substantial period of time and Defendant has either only pa responded, in some instances, or has not responded at al relief sought by Plaintiffs is proportionate in nature bec does not amount to a default judgment, but it does prohi prosecution of the counterclaim. In this case much of the d is directed toward eliciting information regarding Def counterclaim. Accordingly, Plaintiffs' motion is well take is hereby **GRANTED** to the extent that Defendant is not perm introduce any documents or evidence relating to the counter provide support of the counterclaim.

Plaintiffs have sought through discovery production documents related to the sales of the property that is the su this controversy after the Plaintiffs vacated the same. D has failed to provide those documents. This information is i for Plaintiffs' prosecution of their complaint. Defendant i **ORDERED** to produce those documents regarding the subsequent of the real estate that is the subject of this dispute wit **days of the date of the filing of this entry.**

In view of the interlocutory nature of this ruling, co may file objections thereto (if desired) after the Magistra

pursuant to Civ. R. 53(E). See, Lyons v. Smith (1977), Mon
Case No. 76-1475, unreported.

Timothy N. O'Conn
Timothy N. O'Connell, Mag

Copies of the above were sent to all parties listed bel
by ordinary mail this date of filing.

J. Joseph Walsh, Attorney for Plaintiffs
130 West Second Street, Suite 840
Dayton, Ohio 45402 222-1148

Gerald Lasson, Defendant
P.O. Box 4
Dayton, Ohio 45404

LOIS TIPTON, Magistrate's Bailiff

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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

KAREN SUTHERLAND AND DAVID THACKER, et al.,

Plaintiff(s),

v.

JERRY LASSON dba MASADA III COMPANY and dba RTO HOMES and dba BEST HOMES and dba RENT TO OWN HOMES,

Defendant(s).

CASE NO.

JUDGE MARY E. DONOVAN

DECISION, ENTRY AND ORDER OVERRULING DEFENDANTS' OBJECTIONS TO MAGISTRATE'S DECISION

This matter is before the Court on Defendants' Amended Objections to Magistrate's Decision, filed February 27, 2001.

FIRST OBJECTION: THE MAGISTRATE DID NOT ALLOW DEFENDANT TO HAVE A JURY TRIAL BEFORE A JUDGE.

No objection by Defendant was made to a trial before Magistrate Tim O'Connell. Any objection has been waived. In fact, Defendant fails to recollect his agreement to a trial before the Magistrate.

SECOND OBJECTION: THE MAGISTRATE WAS WRONG IN NOT GIVING EQUAL PROTECTION UNDER THE LAW OR FOLLOWING DUE PROCESS.

In this objection, Defendants contend that it appeared the Magistrate was biased in favor of the Plaintiffs, and that virtually all of the Magistrate's discovery-related decisions f[illegible] the Plaintiffs. Defendants' contentions are extremely broad and fail to set forth any

for believing any particular decision was biased or unfair. The mere fact that the magistrate decided certain matters in the Plaintiffs' favor does not prove his decisions were unjust or unwarranted.

Defendants apparently discovered certain notes allegedly generated by the Magistrate in the case file. Although Defendants did not cite specific portions of the notes in their objections, they interpreted them as an indication that the Magistrate had decided the path the decision would take before the trial occurred. These notes were not a part of the record, nor were they attached as an exhibit to Defendant's objection. Moreover, they were open to varying interpretation and may have constituted nothing more than the Magistrate's pretrial research and preparation.

Thus, Defendants' second objection to the Magistrate Decision is not well taken.

THIRD OBJECTION: THE MAGISTRATE IGNORED THE LEASE AGREEMENT, CERTAIN TESTIMONY, AND CERTAIN RULES OF LAW.

The primary issue in this case is whether the "Land Contract Purchase Agreement" Plaintiffs entered into with Defendant Lasson on September 14, 1998 constitutes a Land Installment Contract. It appears obvious that Defendant Lasson intentionally disguised the documents relating to the transaction at issue to create the illusion that Defendants had entered into a Land Installment Contract. Now he must face the consequences for having succeeded in doing so.

Indeed, Defendant admits that the words "Land Contract" were placed on the agreement to permit the availability of tax advantages for the buyers. He has additionally noted that if a document looks like a land contract and it appears that purchasers have been making payments pursuant to it for a substantial period of time, they will be viewed in a more favorable light when dealing with lenders in securing an end loan once the land contract is terminated.

Defendant Lasson insists this agreement is an agreement between two parties that one will sell the real estate to the other on the condition that the seller delivers good title and the buyer delivers an agreed upon purchase price ast closing. However; the agreement, as stated, bears no resemblance to such a transaction. As a result of Defendant Lasson's deception, the Court is left with the responsibility of determining the nature of the agreement and its enforceability.

The contract substantially complies with the statutory requirements set forth in R.C. 5312.02(A), which applies to land installment contracts. After determining the agreement to be a land installment contract, the Court must examine its validity. The agreement bears no witness to the vendor's signature nor is it notarized. Because the contract fails to meet the requirements of R.C. 5301.01 pertaining to the validity of land installment contracts, it is unenforceable.

Defendants further argue that the Magistrate ignored the fact that the Defendants did not breach the contract or force the Plaintiff's to leave the property. The Plaintiffs, Defendants allege, left the property on their own accord, and thus breached the contract. Actually, the failure of the parties to properly execute their contract caused a month-to-month tenancy to be created.

When a tenant occupies a premises under these circumstances, and vacates at the end of the month, after fully prepaying the required rental payment, the tenant is not liable to the lessor for the rental installments accruing after the tenant has vacated the property.

FOURTH OBJECTION: THE MAGISTRATE'S DECISION MUST BE REVERSED BECAUSE HE IMPERMISSIBLY IGNORED NUMEROUS UNTRUTHS SET FORTH BY THE PLAINTIFFS.

In this objection, Defendants cite a number of instances in which they contend that the Plaintiffs gave false testimony. With respect to these allegations, the Magistrate made

permissible credibility judgements based on the evidence presented at trial. Therefore, no reversal is warranted.

FIFTH OBJECTION: THE PLAINTIFFS ARE NOT ENTITLED TO EQUITABLE RELIEF.

It appears that Defendant Lasson, who had experience and sophistication with respect to real estate dealings took advantage of an 18 year-old Plaintiff, who had no experience in real estate dealings. She did not even possess a high school education. Defendant Lasson insisted on Plaintiff's payment of $20,00 to secure the house, while quoting another couple the amount of $2,300 to secure it.

After the termination of Plaintiff's agreement with him, Defendant Lasson resold the property to two additional buyers, requiring only $4,000 to secure the property. Further evidence of bad faith may be inferred from the unequal bargaining positions of the parties.

It is clear that Lasson retained a $20,000 identifiable benefit. Plaintiffs, who enjoyed the benefit of possession of the property for only four months, suffered a $20,000 identifiable loss.

The Magistrate made provision for Defendant Lasson to be reimbursed for the reasonable expenses incurred as a result of the Plaintiffs' termination of the contract. He permitted the $20,000 repayment to Defendant to be reduced by the fair rental value of the property for the months of November and December. He permitted a further reduction of the repayment, allowing a subtraction of Lasson's advertising, utility, and clean-up and repair costs, incurred as a result of Plaintiffs' decision to vacate the property.

SIXTH OBJECTION: THE MAGISTRATE REFUSED TO PERMIT DEFENDANTS TO PRESENT COUNTERCLAIMS AT TRIAL.

Defendants were not permitted to present evidence with respect to certain counterclaim allegations because of court-ordered sanctions as a result of their failure to properly comply

with Plaintiffs' discovery requests.

SEVENTH OBJECTION: THE MAGISTRATE IMPROPERLY MARKED COURT FILES TO SHOW DEFENDANT LASSON'S NAME AS GERALD LASSON RATHER THAN JERRY LASSON.

Any inadvertence in placing an inaccurate name on a pleading does not affect the substance of the Magistrate's decision or the Court's ruling in this matter.

EIGHT OBJECTION: THE MAGISTRATE DID NOT PERMIT PLAINTIFFS TO BRING IN THE MOTHERS OF THE PLAINTIFFS AS THIRD PARTIES.

The mothers of the Plaintiffs were not legally interested parties pursuant to applicable rules of civil procedure. Therefore, they were properly excluded as parties to the suit.

NINTH OBJECTION: PLAINTIFFS ATTORNEY GOT MORE RAPID RESPONSES FROM THE MAGISTRATE. THE MAGISTRATE DECIDED A NUMBER OF ISSUES AT AN UNCALLED HEARING THAT DEFENDANT WAS UNABLE TO ATTEND BECAUSE OF HIS WIFE'S MEDICAL EMERGENCY.

This assertion is totally without merit based upon the record before the Court.

TENTH OBJECTION: THE MAGISTRATE IGNORED THE FACT THAT THE PLAINTIFFS DENIED ALL DEFENDANTS' ALLEGATIONS.

The Plaintiffs were free to deny the Defendants' allegations, and the Magistrate is empowered to determine the credibility of their testimony.

In view of the foregoing ruling, Defendants' Objections to the Magistrate's Decision are OVERRULED in their entirety.

SO ORDERED:

MARY E. DONOVAN, JUDGE

Copies of this Decision, Order and Entry were forwarded to all parties listed below by ordinary mail this filing date.

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A013101

Case: 1999 CV 00776
DR1: RP

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MONTGOMERY COUNTY, OHIO

SCANNED

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

KAREN SUTHERLAND,	:	CASE NO. 1999 CV-0776
Plaintiff/Judgment Creditor,	:	(Judge Mary E. Donovan) (Magistrate Timothy N. O'Connell)
-vs-	:	
	:	
GERRY LASSON,	:	MAGISTRATE'S DECISION GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES
Defendant/Judgment Debtor.	:	
	:	
	:	

By order of the Court dated November 22, 1999, this case was referred to the Magistrate for trial and decision on all issues of fact and law. On February 18, 2003, Plaintiff, Karen Sutherland, filed this motion for award of attorney fees pursuant to R.C. 2323.51 for frivolous conduct. Defendant, Gerry Lasson, filed a motion contra to Plaintiff's frivolous conduct motion on March 14, 2003. The Magistrate conducted a hearing on Plaintiff's motion for attorney fees on June 6, 11, 12, and 13, 2003. Plaintiff was represented by counsel at the hearing, and Defendant appeared Pro Se. This matter is now ready for decision.

FACTUAL BACKGROUND

Defendant was involved in the rent-to-own real estate business. He operated a sole proprietorship under many business names: RTO/ Best Homes, Best Homes & Manag

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Decision 1-C

Affordable Homes, Beta Gamma I, Affordable Best Homes Company, Miami Valley Best Homes, Best Homes, and other variations. Plaintiff was a customer of Defendant's and obtained a judgment against him.

In seeking to enforce the judgment, Plaintiff pursued a non-wage garnishment of an account under the name of Miami Valley Best Homes Mortgage Trust Account at Huntington National Bank. The address and phone number on the said account was the same one used with most of Defendant's DBAs: P.O. Box 3027, Springfield, Ohio, 44501, Phone 937-325-7495.

The Ohio Secretary of State certifies that the Miami Valley Best Homes & Management Co., Ltd. is an Ohio corporation in good standing. Defendant owns shares of the Lasson Family Partnership, which has an interest in the said corporation.

Defendant filed an eviction suit regarding the real estate transaction he entered into with Keith and Debra Howard. The Plaintiff in that action was, "G. Lasson dba Beta Gamma I." On a credit report done regarding the Howards by Credit Infonet, Inc., Miami Valley Best Homes reported its involvement as holder of a real estate mortgage with the Howards.

Paul and Kimberly Remsen were also customers of Defendant, and received at least one check from the subject account. The check was signed by Joan Lasson and Carol Cotterman. Joan Lasson and Carol Cotterman worked as bookkeeper and assistant secretary, respectively, for Defendant under his other DBAs and are co-signors on the subject account.

Following the garnishment of the said account, Defendant filed a request for a hearing to dispute it. Plaintiff then filed this motion asserting that such request constitutes frivolous conduct.

LAW AND ANALYSIS

Plaintiff brings the motion for attorney fees pursuant to R.C. 2323.51 (B) (1) which states, in relevant part: "Subject to divisions (B) (2) and (3), (C), and (D) of this section, at any time prior to the commencement of the trial in a civil action or within twenty-one days after the entry of judgment in a civil action, the court may award court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal to any party to the civil action adversely affected by *frivolous conduct*. . . ." Emphasis added.

R.C. 2323.51 (B) (2) sets forth the procedure the court must follow before awarding attorney fees pursuant to R.C. 2323.51 (B) (1). In accordance with R.C. 2323.51 (B) (2), the Magistrate conducted hearings on June 6, 11, 12, and 13, 2003, to determine if Defendant's request for a hearing pursuant to R.C. 2716.13 was frivolous and, if Defendant's conduct was frivolous, if the Plaintiff was adversely affected by the frivolous conduct. Plaintiff's counsel and Defendant were present at the hearings.

The trial court can award the Plaintiff attorney fees pursuant to R.C. 2323.51 (B) (1) only if Defendant's conduct was frivolous. R.C. 2323.51 (A) (1) defines "conduct" to include the taking of any action in connection with a civil action. Following the filing of a non-wage garnishment to satisfy Plaintiff's judgment against Defendant, Defendant requested a hearing pursuant to R.C. 2716.13. Defendant's action is obviously considered "conduct," as it was in connection with the civil action that Plaintiff pursued.

Plaintiff alleges that Defendant's request for a hearing pursuant to R.C. 2716.13 was frivolous conduct according to R.C. 2323.51 (A) (2) (a) which states, in relevant part: "(a) Conduct...of the other party to a civil action...that satisfies either of the following: (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal. (ii) It is not warranted under

the existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law." Plaintiff does not argue under subsection (i), but under subsection (ii), asserting that Defendant's request for a hearing was "not warranted under the existing law."

Defendant, like any judgment debtor, may request a hearing regarding the garnishment of his property if he disputes it. R.C. 2716.13(C)(2) However, Ohio R. Civ. P. 11 dictates that any document of a civil action must be signed such, "that to the best of the...party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Therefore, the question is whether or not Defendant filed his request for a hearing with good faith or if he was engaging in frivolous conduct, and unduly obstructing Plaintiff's satisfaction of the judgment.

First, however, recall that Defendant is pro se. The United States Supreme Court has voiced its opinion regarding pro se litigants and frivolous conduct. "[T]he Court waives filing fees and cost for indigent individuals in order to promote the interests of justice. The goal of fairly dispensing justice, however is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests. *Pro se* petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources because they are not subject to the financial considerations–filing fees and attorney's fees–that deter other litigants from frivolous petitions." *In Re Michael Sindram* (1991) 498 U.S. 177 at 179-80 (citations omitted). Therefore, Defendant faces a fairly stringent standard of review to show that he was not wasting the Court's resources.

The subject account is with Huntington National Bank under the business name of Miami Valley Best Homes Mortgage Trust Account. Defendant was involved in the rent-to-own real estate business. He operated under many business names: RTO/ Best Homes, Best Homes & Management Co., Ltd., Affordable Homes, Beta Gamma I, Affordable Best Homes Company, Miami Valley Best

Homes, Best Homes, and other variations. The address and phone number on the subject account was the same one used with most of his DBAs: P.O. Box 3027, Springfield, Ohio, 44501, Phone 937-325-7495.

Defendant presented an affidavit from the Ohio Secretary of State stating that the Miami Valley Best Homes & Management Co., Ltd. is an Ohio corporation in good standing. However, he failed to explain clearly the connection between the corporation and the subject account. The use of the name on the account being similar to, but not the same as, the name of the corporation is illustrative of Defendant's pattern of use of many names that are just slightly different to do business. This can mislead and deceive parties who are dealing with Defendant. Defendant alleges that he owns no shares in the corporation, yet he has presented no evidence to support such an allegation. He admits that he did have an interest in the Lasson Family Partnership, which owns shares of the corporation.

The evidence shows that the corporation, assuming it owns the account, permits Defendant to use the subject account as a "conduit." Defendant submitted a check (on the subject account) into the record that is made payable to Paul and Kimberly Remsen. The Remsens were customers of Defendant. Defendant was using the account as a "conduit" to pay mortgages.

There is even more evidence linking Defendant to Miami Valley Best Homes and Management Co., Defendant filed an eviction suit regarding the real estate transaction he entered into with Keith and Debra Howard. On a credit report done by Credit Infonet, Inc. regarding the Howards, Miami Valley Best Homes reported its involvement as holder of a real estate mortgage with the Howards. Defendant filed the eviction as a proprietor using the name Beta Gamma I, but the name of the corporation, at least, most of the words, is used as the holder of a mortgage on the Howard's credit

report. Therefore, the evidence suggests that both Defendant and Miami Valley Best Homes were one and the same party in this "Howard transaction."

While it is true that Joan Lasson's and Carol Cotterman's signatures are on the check (of the subject account) submitted in evidence, those women worked as the bookkeeper and assistant secretary, respectively, for the Defendant under his other DBAs. It follows logically that their names would be on such an account so that they might perform their job functions efficiently.

Another persuasive fact is one of omission, that no third party has come forward to claim any interest in this garnished account. Plaintiff is correct in asserting that this trust is simply an alter-ego of Defendant. Miami Valley Best Homes and Management Co., Ltd. is just another alias of the Defendant and should be subject to garnishment in order to settle judgments against him. There is no evidence Miami Valley Best Homes and Management Co. Ltd. observed corporate governance formalities. There is evidence from the Howard and Remsen cases, among others, that Defendant himself disregarded the separate corporate entity and treated the business of himself and that of the corporation as one in the same. According to the record, there is no evidence that the Defendant could have had a good faith belief that the subject account was not under his proprietorship. There being no factual basis in which to request a hearing to dispute the garnishment his action amounts to frivolous conduct, thus wasting the Court's time and resources.

Plaintiff has sought attorney fees which may be granted under R.C. 2323.51(B)(1). Plaintiff's attorney, J. Joseph Walsh, has submitted his itemized statement of time expended in this suit, which was estimated to be 17.9 hours. However, the hearing lasted longer than expected and therefore counsel requests an additional 5.5 hours, for a total of 23.4 hours. The Magistrate has reviewed the hours expended and has found them to be necessary and not unduly numerous for this particular case. Mr. Walsh charges one hundred eighty-five dollars ($185.00) per hour, which the Magistrate agrees

to be reasonable for a lawyer of such experience as Mr. Walsh. Therefore, Plaintiff is awarded four thousand three hundred twenty-nine dollars ($4,329.00), for attorney fees to pay for the cost of this frivolous conduct by the Defendant.

CONCLUSION

Accordingly, the Magistrate decides as follows:

1) that judgment be entered in favor of Plaintiff, Karen Sutherland, and against Defendant, Gerry Lasson, on Plaintiff's motion for attorney fees and court costs; and

2) that Defendant, Gerry Lasson, is ordered to pay Plaintiff's attorney fees in the amount of four thousand three hundred twenty-nine dollars ($4,329.00); and,

3) that Defendant, Gerry Lasson, pay the court costs of this action.

Counsel are referred to Ohio Civil R. 53 and Rule 2.31 of the Rules of Montgomery County Common Pleas Court regarding the filing of objections to the Magistrate's Decision.

A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by Civ. R. 53 (E)(3).

Timothy N. O'Connell

Timothy N. O'Connell, Magistrate

Copies of the above were sent to all parties listed below by ordinary mail this date of filing.

J. Joseph Walsh
111 West First Street, Suite 1000
Dayton, Ohio 45402
Attorney for Plaintiff 222-1148

Gerry Lasson
P.O. Box 30
Donnelsville, Ohio 45319-0030
Defendant, Pro Se 325-7495

SHERI HODSON, Magistrate's Bailiff

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

KAREN SUTHERLAND,	:	Case No. 99 CV 776
Plaintiff/Judgment Creditor,	:	(Judge Mary E. Donovan)
v.	:	**DECISION, ORDER AND ENTRY OVERRULING DEFENDANT'S**
GERRY LASSON,	:	**OBJECTIONS TO THE MAGISTRATE'S DECISION**
Defendant/Judgment Debtor.	:	

This matter is before the Court on Defendant Gerry Lasson's Objections to the Magistrate's Decision filed on July 14, 2003. Plaintiff Karen Sutherland did not file a memorandum opposing Defendant's Objections. The Magistrate's Decision at issue was filed on June 30, 2003.

In his Objections to the Magistrate's Decision, Defendant advances numerous arguments wherein he claims the Magistrate erred by granting Plaintiff's request for attorney's fees for frivolous conduct. In doing so, however, Defendant failed to provide the Court with a transcript of the proceedings wherein he was found to be liable for Plaintiff's attorney's fees. Moreover, Defendant did not provide the Court with any affidavits that would reinforce his position.

Curiously, Defendant is in possession of a C.D. of the hearing with Magistrate O'Connell conducted on June 6, 11, 12, and 13, 2003. In fact, Defendant has been in possession of the C.D. for several months. No transcript of the proceedings, however, has been filed with the Court. Without any record to review, it is impossible for the Court to verify the claims made by Defendant in his Objections. Most importantly, Defendant has had ample time

in which to have the record transcribed. He has not done so, nor has the Court been provided a copy of the C.D. by Defendant.

In light of this, Defendant's Objections, which contain mixed assertions of both fact and law, can only be viewed as bare assertions with no record to support them.

III. CONCLUSION

Accordingly, Defendant's Objections to the Magistrate's Decision Granting Plaintiff Attorney's Fees are hereby **OVERRULED**, and the Magistrate's Decision is adopted in its entirety, and:

> **1) that judgment be entered in favor of Plaintiff, Karen Sutherland, and against Defendant, Gerry Lasson, on Plaintiff's motion for attorney's fees and court costs;**
>
> **2) that Defendant, Gerry Lasson, is ordered to pay Plaintiff's attorney's fees in the amount of four thousand, three hundred twenty-nine dollars; and**
>
> **3) that Defendant, Gerry Lasson, pay the court costs of this action.**

SO ORDERED:

MARY E. DONOVAN, JUDGE

Copies of this Decision, Order and Entry were forwarded to all parties listed below by ordinary mail this filing date.

To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgement and its date of entry upon the journal.

Judge

J. Joseph Walsh
WALSH & REILING
Attorney for Plaintiff,
11 West First Street, Suite 1000
Dayton, Ohio 45402

Gerry Lasson
Pro Se Defendant
P.O. Box 30
Donnelsville, Ohio 45319-0030

TOM ROBERTS, Bailiff (937) 225-4376

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

SCANNED

BEST HOMES (A DBA OF G. A. LASSON),

Plaintiff(s),

v.

JOHN MARTZ, et al.,

Defendant(s),

v.

BRANDY TUTTLE, et al.,

Third Party Defendant(s).

CASE NO. 2002 CV 04216

JUDGE DENNIS J. LANGER

ORDER STAYING PROCEEDINGS AND SETTING TELEPHONE STATUS CONFERENCE

The Court hereby ORDERS this action stayed for a period of 6 months.

A telephone status shall be held March 20, 2003 at 8:30 a.m. **The Plaintiff, G. A. Lasson, shall call the Court at 8:30 a.m.**

SO ORDERED:

JUDGE DENNIS J. LANGER

Copies of this Order were sent today by ordinary mail to all parties listed below.

G. A. LASSON
DBA BEST HOMES
P. O. BOX 30
DONNELSVILLE, OH 45319
Plaintiff(s)

COURT'S EXHIBIT
Decision 2-4

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Sam Calabrese

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Attorney(s) for Third-Party Defendant(s)

223 3001

JULENE POWERS, Bailiff (937) 225-4055 / E-mail: powersj@montcourt.org

T

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

BEST HOMES (A DBA OF G.A. LASSON),

Plaintiff(s),

v.

JOHN MARTZ, et al.,

v.

BRANDY TUTTLE, et al.,

Third-Party Defendant(s).

CASE NO. 2002 CV 04216

JUDGE DENNIS J. LANGER

DECISION AND ORDER

The above-captioned suit is dismissed without prejudice for two reasons: First, the Plaintiff, G.A. Lasson, failed to comply with the court's order to call the court and participate in a telephonic conference on March 20, 2003 at 8:30 a.m. Second, it has been reported to the court at the time Mr. Lasson filed this suit he was in bankruptcy and may still be in bankruptcy court.

SO ORDERED:

DENNIS J. LANGER, JUDGE

Copies of the above were sent to all parties listed below by ordinary mail this date of filing.

G.A. LSSON
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Plaintiff(s)

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12-30-04

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

GERALD A. LASSON **Plaintiff(s),**	:	Case No. 2004 CV 04447
	:	Judge Michael T. Hall
v.	:	
MELISSA MILLER, et al. **Defendant(s),**	:	**DECISION, ORDER, AND ENTRY OVERRULING DEFENDANTS', MELISSA MILLER, ALAN A. BIEGEL AND ALAN A. BIEGEL CO., LPA, MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT;** **GRANTING DEFENDANTS UNTIL JAN. 24, 2005 TO FILE MOTION FOR SUMMARY JUDGMENT ON ANY REMAINING ISSUES;** **RESPONSE TO MOTION FOR SUMMARY JUDGMENT IS DUE FEB. 7, 2005;** **REPLY IS DUE FEB. 14, 2005;** **NON-ORAL HEARING SET FOR FEB. 15, 2005**

This matter is before the Court upon Defendants Melissa Miller, Alan A. Biegel and Alan A. Biegel Co., LPA's Motion to Dismiss and/or Motion for Summary Judgment filed on July 15, 2004. Plaintiff filed a Response Contra to the Motion to Dismiss and/or Motion for Summary Judgment on August 5, 2004.

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FACTS

Defendant Melissa Miller (hereinafter "Miller") entered into a purported lease purchase agreement for the property at 528 Oakview Drive, Kettering (hereinafter "property") with Gerald Lasson, who signed the contract as General Manager of The Southwest Ohio RTO Homes Co. (hereinafter "Plaintiff"). Miller filed suit for forcible entry and detainer in the Municipal Court of Kettering, Ohio. Possession of the subject property was granted to Miller. On July 4, 2004, Plaintiff filed a complaint with this Court against Miller, Alan A. Biegel, Alan A. Biegel Co., LPA, Carol Wyatt, and Joe Wyatt, alleging breach of contract, unjust enrichment, tortious interference with a contract, and conspiracy to commit a fraud. Defendants Miller, Alan A. Biegel, and Alan A. Biegel Co., LPA (hereinafter "Defendants") filed a Motion to Dismiss and/or for Summary Judgment with this Court alleging Plaintiff was not registered in compliance with R.C. 1329.01 and that Plaintiff's claims were barred by res judicata because of the Kettering Municipal Court's judgment. Plaintiff's response to the Defendants' motion alleges compliance with R.C. 1329.01 and is accompanied by a completed and time stamped Name Registration form.

STANDARD OF REVIEW

i. Summary Judgment

In *Harless v. Willis Day Warehousing Inc.* (1978), 54 Ohio St.2d 64, the Ohio Supreme Court stated that for summary judgment to be appropriate, it must appear that: "(1) There is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." Id. at 66; see also Ohio R. Civ. P. 56(C).

Furthermore, the moving party has the burden of showing that there is no genuine issue as to any material fact. *Harless*, 54 Ohio St.2d at 66.

The *Harless* Court also noted that Ohio R. Civ. P. 56(E) requires a party opposing a summary judgment motion to show specific facts demonstrating that there is a genuine issue of material fact. Id. at 65-66. Moreover, in a motion for summary judgment a non-movant may not rest on the mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial. *Van Fossen v. Babcock & Wing Co.* (1988), 36 Ohio St.3d 100, 117. A trial court must examine all appropriate materials filed before ruling on a motion for summary judgment. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358, 1992-Ohio-95.

Ohio R. Civ. P. 56(C) contains an inclusive list of the materials to be considered. "[T]he pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action" are the only appropriate materials a court may examine. Ohio R. Civ. P. 56(c); *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93, 1996-Ohio-107. In considering this motion for summary judgment, inferences drawn from the underlying facts will be viewed in a light most favorable to the non-moving party. Id. at 359; see also *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 333.

ii. Motion to Dismiss

In *York v. State Highway Patrol* (1991), 60 Ohio St.3d 143, the Ohio Supreme Court reiterated the standard for granting a motion to dismiss pursuant to Civ. R. 12(B)(6). The Court stated: "In *O'Brien v. University Community Tenant Union, Inc.* (1975), 42 Ohio St.2d 242, this court set forth the standard for granting a motion to dismiss pursuant to Civ. R. 12(B)(6).

Specifically, we held that in order for a court to dismiss a complaint for failure to state a claim upon which relief may be granted, it must appear 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief' *O'Brien*, 42 Ohio St.2d at 245, citing *Conley v. Gibson* (1957), 355 U.S. 41, 45. In the recent case of *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, we elaborated upon this standard, noting that '[i]n construing a complaint upon a motion to dismiss for failure to state a claim, we must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the nonmoving party.' *Id.* at 192, citing 2A Moore, Federal Practice (1985), Paragraph 12.07, at 2-5." *York* 60 Ohio St.3d at 144.

This standard is in accord with the notice requirements of both the Federal and Ohio Rules of Civil Procedure, and as such, a plaintiff is not required to prove his/her case. *York*, 60 Ohio St.3d at 145. "Consequently, as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." Id.

LAW AND ANALYSIS

The action of forcible entry and detainer is a speedy and summary method provided by law for the recovery of the possession of real estate. *Price v. Insande* (1923), 20 Ohio App. 19, 21-22, 153 N.E. 163. Therefore, the only question raised in the proceedings is the right of possession of real estate. Id. at 22. A judgment rendered in an action in forcible entry and detainer is not a bar to a later action brought by either party. R.C. 1923.03. "This statute is an exception to the general rule relative to *res judicata*, and leaves open for further consideration in a proper court disputes between the parties growing out of the same subject matter." *Price v. Insande* (1923), 20 Ohio App. at 22. However, a forcible entry and detainer action bars

relitigation of issues that were actually and necessarily decided in the former action. *Great Lakes Mall, Inc. v. The Deli Table* (Sept. 16, 1994), 11th Dist. No. 93-L-154.

Plaintiff's complaint alleges breach of contract, unjust enrichment, tortious interference with a contract, and conspiracy to commit fraud. None of these allegations were actually and necessarily decided in the forcible entry and detainer action before the Kettering Municipal Court. Therefore, the judgment rendered by the Kettering Municipal Court is not a bar to the current action brought by Plaintiff before this Court. Defendants' motion for summary judgment on the issue of whether the eviction action precludes this suit is hereby **Overruled**.

R.C. 1329.10 precludes two classes of claims until a fictitious name is reported or a trade name is registered: 1) actions commenced or maintained in a trade or fictitious name and 2) actions on account of any contracts made or transactions had in the trade or fictitious name. *Frate v. Al-Sol, Inc.* (1999), 131 Ohio App. 3d 283, 289, 722 N.E.2d 185; see also R.C. 1329.10. In the case sub judice, regardless of whether Plaintiff commenced this action in his own individual name, all of Plaintiff's claims are based on a contract made in the name of The Southwest Ohio RTO Homes Co.. Therefore, Plaintiff's claims fall under the second class of precluded claims, requiring Plaintiff's action not to be commenced or maintained until the name is registered.

Upon registration, an action may be commenced or maintained on any contracts or transactions entered into prior to compliance. Id. at 287. Attached to Plaintiff's Reply is a photocopy of a completed Ohio Secretary of State's Name Registration form with a "Received" stamp at the top providing the initials "DJM" and the date "7-27-04." Although the document is not certified or stipulated as evidence, for the purposes of this motion to dismiss under Civ.R. 12(B), the document will be treated as an amended allegation of the complaint. Therefore, since The Southwest of Ohio RTO Homes Co. has been registered, Plaintiff's claims may be commenced and Defendants' Motion to Dismiss is hereby **Overruled**.

CONCLUSION

For the reasons detailed herein, the Court hereby **Overrules** the Defendants', Melissa Miller, Alan A. Biegel and Alan A. Biegel Co., LPA, Motion to Dismiss and/or Motion for Summary Judgment. Nevertheless, it does appear that there may be other bases upon which a motion for summary judgment could be filed, and supported by affidavit or other evidence as required by rule. Accordingly, Defendant is granted leave to file a motion for summary judgment on or before January 24, 2005. Any response shall be filed on or before February 7, 2005, and any reply shall be due February 14, 2005. A non-oral hearing is set for February 15, 2005. Parties or counsel should not appear. This date is set only as a cut off for filing as provided in Civil Rule 56.

SO ORDERED:

Michael T. Hall

MICHAEL T. HALL, JUDGE

Copies of this Decision, Order and Entry were forwarded to all parties listed below by ordinary mail this filing date.

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Pro Se Plaintiff

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Attorney for Defendants

JIM FINNIGAN, Bailiff (937) 496-7951

12-30-04

1

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

	:	Case No. 04 CV 04447
GERALD A. LASSON, **Plaintiff(s),**	:	Judge Michael T. Hall
vs.	:	**DECISION, ORDER, AND ENTRY SUSTAINING DEFENDANTS CAROL AND JOE WYATT'S MOTION TO DISMISS**
MELISSA MILLER, et al., **Defendant(s).**	:	

This matter is before the Court upon Defendants Carol and Joe Wyatt's Motion to Dismiss filed on July 19, 2004. Plaintiff's Response to this motion was filed on August 5, 2004.

FACTS

Defendant Melissa Miller (hereinafter "Defendant") entered into a standard lease purchase agreement for the property at 528 Oakview Drive, Kettering (hereinafter "property") with Gerald Lasson, who signed the contract as General Manager of The Southwest Ohio RTO Homes Co. (hereinafter "Plaintiff"). Defendants Carol and Joe Wyatt (hereinafter "Defendants") are the alleged tenant/buyers of said property from Plaintiff. Plaintiff's complaint alleges breach of contract, unjust enrichment, tortious interference with a contract, and conspiracy to commit a fraud.

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Defendants move this Court to dismiss them as defendants in the matter since the Plaintiff's complaint fails to adequately plead any cause of action against them and they are not necessary parties to the action between the remaining parties names in Plaintiff's complaint.

STANDARD OF REVIEW

In *York v. State Highway Patrol* (1991), 60 Ohio St.3d 143, the Ohio Supreme Court reiterated the standard for granting a motion to dismiss pursuant to Civ. R. 12(B)(6). The Court stated: "In *O'Brien v. University Community Tenant, Union, Inc.* (1975), 42 Ohio St.2d 242, this court set forth the standard for granting a motion to dismiss pursuant to Civ. R. 12(B)(6). Specifically, we held that in order for a court to dismiss a complaint for failure to state a claim upon which relief may be granted, it must appear 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief' *O'Brien*, 42 Ohio St.2d at 245, citing *Conley v. Gibson* (1957), 355 U.S. 41, 45. In the recent case of *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, we elaborated upon this standard, noting that '[i]n construing a complaint upon a motion to dismiss for failure to state a claim, we must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the nonmoving party.' *Id.* at 192, citing 2A Moore, Federal Practice (1985), Paragraph 12.07, at 2-5." *York* 60 Ohio St.3d at 144.

This standard is in accord with the notice requirements of both the Federal and Ohio Rules of Civil Procedure, and as such, a plaintiff is not required to prove his/her case. *York*, 60 Ohio St.3d at 145. "Consequently, as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." Id.

LAW AND ANALYSIS

Regarding the Defendants, Plaintiff fails to state a claim upon which relief can be granted. Plaintiff's complaint states that Defendants are tenant/buyers who "desire to continue to perform per the contracts with [Plaintiff]." Other references to Defendants in the complaint concern claims against the other named defendants, but fail to allege any wrong doing on behalf of the Defendants. The Defendants Motion to Dismiss is hereby **Sustained.**

CONCLUSION

For the reasons detailed herein, the Court hereby **Sustains** the Defendants, Carol and Joe Wyatt's Motion to Dismiss.

SO ORDERED:

Michael T. Hall

MICHAEL T. HALL, JUDGE

Copies of this Decision, Order and Entry were forwarded to all parties listed below by ordinary mail this filing date.

Gerald A. Lasson
P.O. Box 30
Donnelsville, OH 45319
(937) 879-3961
Pro Se Plaintiff

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Attorney for Defendants

JIM FINNIGAN, Bailiff (937) 496-7951

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

GERALD A. LASSON, AFFORDABLE BEST HOMES	:	Case No. 2004 CV 4447
	:	Judge Michael T. Hall
Plaintiff,	:	
v.	:	**DECISION, ORDER, AND ENTRY SUSTAINING DEFENDANTS MILLER AND BIEGEL'S MOTION**
MELISSA MILLER, et al.	:	**FOR SUMMARY JUDGMENT; OVERRULING PLAINTIFF'S**
Defendants.	:	**MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court upon Defendants Melissa Miller and Alan A. Biegel's Motion for Summary Judgment filed on January 21, 2005 and Plaintiff Gerald A. Lasson's Motion for Summary Judgment filed on January 24, 2005. Motion Contra to Summary Judgment of Defendants Miller/Biegal was filed by Plaintiff on February 7, 2005.

FACTS

Defendant Melissa Miller (hereinafter "Miller") entered into a standard lease purchase agreement (hereinafter the "Agreement") for the property at 528 Oakview Drive, Kettering (hereinafter "property") with Gerald Lasson, who signed the contract as General Manager of The Southwest Ohio RTO Homes Co. (hereinafter "Plaintiff"). Miller filed suit for forcible entry and detainer in the Municipal Court of Kettering, Ohio, alleging that Plaintiff failed to

make its monthly payments under the Agreement. Possession of the subject property was granted to Miller.

Only July 4, 2004, Plaintiff filed a complaint with this Court against Miller, Alan A. Biegel (hereinafter "Biegel"), and Carol and Joe Wyatt for breach of contract, unjust enrichment, tortious interference with a contract, fraud, and conspiracy to commit a fraud. Carol and Joe Wyatt were dismissed upon entry of this Court filed on December 20, 2004.

Defendants Miller and Biegel seek summary judgment on all of Plaintiff's claims. Plaintiff seeks summary judgment on all of his claims as well.

STANDARD OF REVIEW

In *Harless v. Willis Day Warehousing Inc.* (1978), 54 Ohio St.2d 64, the Ohio Supreme Court stated that for summary judgment to be appropriate, it must appear that: "(1) There is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." Id. at 66; see also Ohio R. Civ. P. 56(C). Furthermore, the moving party has the burden of showing that there is no genuine issue as to any material fact. *Harless*, 54 Ohio St.2d at 66.

The *Harless* Court also noted that Ohio R. Civ. P. 56(E) requires a party opposing a summary judgment motion to show specific facts demonstrating that there is a genuine issue of material fact. Id. at 65-66. Moreover, in a motion for summary judgment a non-movant may not rest on the mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial. *Van Fossen v. Babcock & Wing Co.* (1988), 36 Ohio St.3d 100, 117. A trial court must examine all appropriate materials filed before ruling on a

motion for summary judgment. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358, 1992-Ohio-95.

Ohio R. Civ. P. 56(C) contains an inclusive list of the materials to be considered. "[T]he pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action" are the only appropriate materials a court may examine. Ohio R. Civ. P. 56(c); *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93, 1996-Ohio-107. In considering this motion for summary judgment, inferences drawn from the underlying facts will be viewed in a light most favorable to the non-moving party. Id. at 359; see also *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 333.

LAW AND ANALYSIS

"[A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some *evidence* of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond,

summary judgment, if appropriate, shall be entered against the nonmoving party." *Dresher v. Burt* (1996), 75 Ohio St. 3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264.

Plaintiff has not filed affidavits, depositions or any other evidence of the type listed in Civ.R. 56(C) for this Court to consider in determining either Plaintiff's or Defendant Miller and Biegel's motion for summary judgment. Because Plaintiff has not met his initial burden under Civ.R. 56, the Court hereby **Overrules** Plaintiff's Motion for Summary Judgment.

Defendants Miller and Biegel move for summary judgment on all of Plaintiff's claims pointing to the affidavits of Defendants Miller and Biegel, which state that because Plaintiff failed to make the monthly payments under the Agreement, Defendant Miller filed a Forcible Entry and Detainer action. Defendant Miller was awarded restitution of the premises as a result.[1] It is undisputed that the Agreement entered into by Plaintiff and Defendant Miller was a lease purchase agreement. Because the lease was forfeited by non-payment of the rent, the Kettering Municipal Court held that Defendant Miller was entitled to present possession of the real estate. The forfeiture of the lease ipso facto terminated Plaintiff's rights under the purchase agreement. See *Gardner v. Energy Research & Development Corp.* (March 11, 1983), 4th Dist. No. 1416. Plaintiff cannot subsequently bring claims against Defendant Miller and Biegel for breaching or violating those terminated rights.[2] Although Plaintiff's reply brief "incorporates all his pleadings from the Kettering complaint, the CPC complaint, and his request for summary judgment," unsupported allegations in the pleadings do not suffice to

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[1]A tenant who has breached an obligation imposed upon him by a written agreement is subject to a forcible entry and detainer action. R.C. 1923.02(9).

[2]Plaintiff's claims for fraud, conspiracy to commit fraud, breach of contract, and tortious interference with contract are based on Plaintiff's allegations that Defendant Miller and Biegel breached Plaintiff's rights under the purchase agreement. However, all the alleged wrongdoing occurred after Plaintiff breached the lease by non-payment of rent.

necessitate the denial of a summary judgment. *Harless*, supra, at 66. Plaintiff has not met his reciprocal burden under Civ.R. 56. Accordingly, there is no material issue of fact and Defendant's Miller and Biegel are entitled to judgment as a matter of law on Plaintiff's claims for fraud, conspiracy to commit fraud, breach of contract, and tortious interference with contract.

Plaintiff's remaining claim is for unjust enrichment. "[I]t is well settled that one who seeks equity must come into court with clean hands. To be entitled to relief one must have carried out as far as possible his or her own part of the contract." *Gerber v. Mok Sun Ho* (Sept. 30, 1999), 6th Dist. No. E-99-015, citing *McPherson v. McPherson* (1950), 153 Ohio St. 82, 91, 90 N.E.2d 675. See also *Langer v. Langer* (1997), 123 Ohio App.3d 348, 355, 704 N.E.2d 275. In this case, Plaintiff's violation of the lease agreement through non-payment caused the termination of the purchase agreement. Thus, Plaintiff cannot claim "clean hands" or a right to equitable relief. Accordingly, there is no material issue of fact and Defendants Miller and Biegel are entitled to judgment as a matter of law on Plaintiff's claim for unjust enrichment.

The Court hereby **Sustains** Defendant Miller and Biegel's Motion for Summary Judgment as to all of Plaintiff's claims.

CONCLUSION

For the reasons detailed herein, the Court hereby **Sustains** Defendant Miller and Biegel's Motion for Summary Judgment and **Overrules** Plaintiff's Motion for Summary Judgment. Judgment is entered for Defendants and against Plaintiff. Plaintiff shall pay the costs of this proceeding.

SO ORDERED:

Michael T. Hall

MICHAEL T. HALL, JUDGE

Copies of this Decision, Order and Entry were forwarded to all parties listed below by ordinary mail this filing date.

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Case: CA 021199
DKT: OE

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DAN FOLEY
CLERK OF COURTS
MONTGOMERY CO. OHIO

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

GERALD A. LASSON et al.	
Plaintiffs-Appellants	Appellate Case No. 21199
v.	Trial Court Case No. 04-CV-4447
MELISSA MILLER, et al.	
Defendants-Appellees	

DECISION AND ENTRY
January 19, 2006

PER CURIAM:

This matter comes for consideration by this Court on the "Announcement of Filing Ch. 11 Bankruptcy, Staying Action" filed by Appellants on November 28, 2005. Appellant, Gerald Lasson, states that Appellant, Affordable Best Homes, filed for Chapter 11 bankruptcy on October 12, 2005. Thus, Appellants claim that the above-captioned appeal is stayed until the bankruptcy proceedings have been resolved. Additionally, Appellants' request that upon the completion of the bankruptcy proceedings they be granted an extension of time to file a brief.

Appellees filed a motion to dismiss the appeal on December 16, 2005. Appellees assert that "Appellants are misrepresenting to the Court that this action is stayed by the filing of a Bankruptcy Petition."

The Bankruptcy Court's docket indicates that Appellant, Affordable Best Homes, did file for Chapter 11 bankruptcy on October 12, 2005. However, the docket also indicates that the case was closed and the matter dismissed on November 14, 2005. The dismissal of the case by the Bankruptcy Court terminates the automatic stay. *See* Section 362(c)(2)(B), Title 11, U.S. Code.

Upon due consideration of the foregoing, Appellees' "Motion to Dismiss Appeal" is OVERRULED, and to the extent Appellants' "Announcement of Filing Ch. 11 Bankruptcy, Staying Action" is a motion to stay the above-captioned appeal, it is also OVERRULED.

Additionally, IT IS HEREBY ORDERED that Appellants' request for an extension of time to file a brief is GRANTED. Appellants' brief shall be due within thirty (30) days of the journalization of this entry. This is the final extension for Appellants in this matter. Failure to file a brief within thirty (30) days of the journalization of this entry may result in dismissal of this appeal.

IT IS SO ORDERED.

JAMES A. BROGAN, Judge

MARY E. DONOVAN, Judge

Copies to:

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Alan Biegel
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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

GERALD A. LASSON et al.	:	
Plaintiffs-Appellants	:	Appellate Case No. 21199
v.	:	Trial Court Case No. 04-CV-4447
MELISSA MILLER, et al.	:	
Defendants-Appellees	:	

DECISION AND ENTRY
May 18, 2006

PER CURIAM:

This matter came to be considered upon the filing of a motion by Appellant, G. Lasson, requesting numerous actions from this Court. With regard to Appellant's request that Judge Mary E. Donovan be recused from this action, the motion is GRANTED. Judge Donovan will voluntarily recuse herself from participating in any future consideration of this appeal. Further, with regard to Appellant's information regarding the status of his bankruptcy filing, this Court will not change its position stated in the January 19, 2006 entry that the bankruptcy stay is overruled due to the dismissal of the bankruptcy action. Appellant has not provided this Court with any information to indicate that any bankruptcy case is currently pending. Appellant's motion for an extension of time to complete a brief is GRANTED. Appellant shall consult Ohio App.R. 16 for a description of what must be included in the brief. Finally, Appellant's request for oral argument is GRANTED. This

matter will be scheduled in a separate decision and entry upon the completion of briefing. This Court notes that this is a final extension that will be granted to Appellant for the filing of the brief.

IT IS SO ORDERED.

JAMES A. BROGAN, Judge

WILLIAM H. WOLFF, JR., Judge

Copies provided by the Court to:

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CA2:df

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

GERALD A. LASSON et al. *Plaintiffs-Appellants* v. MELISSA MILLER, et al. *Defendants-Appellees*	Appellate Case No. 21199 Trial Court Case No. 04-CV-4447

DECISION AND FINAL JUDGMENT ENTRY
September 20, 2006

PER CURIAM:

On June 7, 2006, Appellants filed a "Motion to Enlarge Appeal Brief Time and Memorandum." Appellants request that this Court "enlarge the briefing time, or put this appeal in abeyance/on hold until the Federal Court makes its decision on the Ch. 11 case."

In our decision and entry of May 18, 2006, we stated that "this Court will not change its position stated in the January 19, 2006 entry that the bankruptcy stay is overruled due to the dismissal of the bankruptcy action." Therefore, once again, Appellants' request to stay the above-captioned appeal is OVERRULED. Further, in our May 18, 2006 decision and entry, which granted Appellants' request for an extension to file its brief, we informed Appellants that "this is a final extension that will be granted to Appellant[s] for the filing of the brief." Accordingly, Appellants' request to enlarge the briefing time is OVERRULED and the above-captioned appeal is DISMISSED for failure to file a brief.

SO ORDERED.

THOMAS J. GRADY, Presiding Judge

JAMES A. BROGAN, Judge

MIKE FAIN, Judge

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