

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TREASURER OF STARK COUNTY

Plaintiff-Appellee

-VS-

CUSTOM DESIGN TECHNOLOGIES,
INC., ET AL.

Defendant-Appellant

: JUDGES:
: Hon. W. Scott Gwin, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John F. Boggins, J.

: Case No. 2002CA00039

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2001CV02722

JUDGMENT:

Vacated and remanded

DATE OF JUDGMENT ENTRY:

August 26, 2002

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

ROSS RHODES
110 Central Plaza S., Suite 510
P.O. Box 10049
Canton, OH 44702

ANDREW J. MICHAELS
840 S. Medina Line Road

Farmer, J.

{¶1} On October 3, 2001, appellee, the Stark County Treasurer, filed a complaint in foreclosure for delinquent real estate taxes against appellant, Custom Design Technologies, Inc., and others appearing to have an interest in the subject property.

{¶2} On January 16, 2002, appellee filed a motion for summary judgment. By judgment entry filed January 17, 2002, the trial court granted said motion.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶4} “THE SUMMARY JUDGMENT ORDER ISSUED ONE DAY AFTER THE FILING OF THE MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF-APPELLEE, TREASURER OF STARK COUNTY, IS VOID AS HAVING BEEN ISSUED IN VIOLATION OF THE REQUIREMENTS OF CIVIL RULE 56(C) WHICH PROVIDES THAT THE MOTION FOR SUMMARY JUDGMENT TO BE SERVED AT LEAST 14 DAYS BEFORE THE TIME FIXED FOR HEARING.”

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{¶5} Appellant’s assignment of error challenges the trial court’s granting of the motion for summary judgment one day after the motion was filed. Appellant argues it was not given the opportunity to be heard.

{¶6} In his response brief at 2, appellee concedes the issue. Therefore the assignment of error is granted. The judgment entry granting summary judgment to appellee is vacated and the case is remanded to the trial court for further proceedings.

{¶7} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby vacated and remanded.

By Farmer, J.

Gwin, P.J. and

Boggins, J. concur

topic: summary judgment granted one day after filing, app'ee conceded issue.