

[Cite as *Settler's Village Condominium v. Nestor*, 2011-Ohio-1690.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95302**

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**SETTLER'S VILLAGE CONDOMINIUM**

PLAINTIFF-APPELLEE

vs.

**ROBERT M. NESTOR, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-587237

**BEFORE:** Jones, J., Celebrezze, P.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** April 7, 2011

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LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Robert Nestor (“Nestor”), appeals the trial court’s judgment denying his motion for relief from judgment. We reverse and remand.

### I. Procedural History and Facts

{¶ 2} Plaintiff-appellee, Settler’s Village Condominium, initiated this foreclosure action against Nestor in March 2006. Nestor answered and counterclaimed in April 2006.<sup>1</sup>

{¶ 3} In December 2006, Settler’s Village filed a motion for summary judgment. Nestor was granted an extension of time until February 28, 2007 to oppose the motion; no

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<sup>1</sup>Settler’s Village also filed an amended complaint, which Nestor never answered, but the trial court denied Settler’s Village’s motion for default judgment on the amended complaint.

opposition was filed by Nestor prior to February 28. On April 3, 2007, the trial court granted Settler's Village's motion, and on April 4 the magistrate filed his decision. Also on April 4, Nestor filed a motion for summary judgment and a brief in opposition to Settler's Village's summary judgment motion. On April 11, Nestor objected to the magistrate's decision.

{¶ 4} On April 17, Nestor's motion for summary judgment was denied. In May 2007, the trial court overruled Nestor's objections to the magistrate's decision, adopted the magistrate's decision, and ordered a decree of foreclosure. Nestor appealed. This court affirmed the trial court's judgment granting summary judgment in favor of Settler's Village. *Settler's Village Condominium v. Nestor*, Cuyahoga App. No. 90028, 2008-Ohio-7146. The Ohio Supreme Court declined jurisdiction. *Settler's Village Condominium v. Nestor*, 120 Ohio St.3d 1420, 2008-Ohio-6166, 897 N.E.2d 654.

{¶ 5} The property was sold at Sheriff's sale in May 2009. In June 2009, Settler's Village filed a motion for deficiency judgment with a supporting affidavit. A July 2009 entry purporting to grant the motion appears on the docket. Later that month, Nestor filed a motion for a hearing on the deficiency motion, which the trial court denied as moot. A September 2009 entry appears on the docket, purporting to grant judgment in favor of Settler's Village, and against Nestor, in the amount of \$16,974.83, at 8 percent interest.

{¶ 6} In May 2010, Nestor filed a motion for relief from judgment. Settler's Village opposed the motion, and the trial court denied Nestor's motion.

{¶ 7} Nestor assigns the following errors for our review:

{¶ 8} “I. The court did not grant a valid deficiency judgment.

{¶ 9} “II. The court erred by not treating the motion for deficiency judgment as a motion for summary judgment.

{¶ 10} “III. The trial court erred by not granting appellant’s Civil Rule 60(B) motion for relief from judgment.”

## II. Law and Analysis

{¶ 11} We find the first assignment of error to be dispositive for the following reasons. The first entry relating to the deficiency judgment appears on the docket as being filed on July 8, 2009. Although it was stamped as having being “processed” through the clerk of courts’ imaging department, it was not file- stamped. Equally significant, it was not signed.

{¶ 12} The second entry relating to the deficiency judgment appears on the docket as being filed on September 4, 2009. The file stamp, however, is dated July 8, 2009. Again, equally significant, it was not signed by the judge assigned to the case. Rather, another signature, illegible except for the first letter of “J,” was placed above the signature line for the judge’s name, with a date of “6-7-09.” Next to the signature line for the judge’s name are the initials “JD,” which correspond to the initials of the judge’s bailiff.

{¶ 13} Civ.R. 58(A) provides in relevant part that, “upon a decision announced, \* \* \* the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal.”

{¶ 14} These entries do not constitute judgments under Civ.R. 58. The first entry was neither file-stamped nor signed, and the second entry was not signed by a judge. Accordingly, the first assignment of error is sustained; the case is remanded with instructions to vacate the above-mentioned entries. Because we find that the entries that were the subject of Nestor's motion for relief from judgment must be vacated, the judgment denying the motion for relief is void and we need not consider the third assignment of error. The remaining assignment of error is moot. See App.R. 12(A)(1)(c).

Reversed and remanded for further proceedings consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

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LARRY A. JONES, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and  
SEAN C. GALLAGHER, J., CONCUR

