[Cite as *Hajjar Family Revocable Trust v. Flan Wa Allen L.L.C.*, 2009-Ohio-5156.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

HAJJAR FAMILY REVOCABLE TRUST, et al. Appellees v. FLAN WA ALLAN LLC, et al. Appellants	C. A. No. 24547 APPEAL FROM JUDGMENT ENTERED IN THE AKRON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 07CV13838

DECISION AND JOURNAL ENTRY

Dated: September 30, 2009

WHITMORE, Judge.

{¶1} Defendants-Appellants, Flan Wa Allan LLC and its president, Malek Al Banna (collectively "Al Banna"), appeal from the decision of the Municipal Court of Akron denying his objections to the magistrate's decision to award default judgment and damages to Plaintiffs-Appellees, Hajjar Family Revocable Family Trust and Shaker Hajjar, Trustee (collectively "Hajjar"). This Court affirms in part and reverses in part.

I

{¶2} As an initial matter, this Court notes that Hajjar failed to file a brief in the instant appeal. Therefore, "[p]ursuant to App.R. 18(C), this Court may accept [Al Banna's] statement of the facts and issues as presented in [his] brief as correct and reverse the judgment of the trial court if [Al Banna's] brief reasonably appears to sustain such action." *Kimbel v. Clark*, 9th Dist. No. 23169, 2006-Ohio-6959, at ¶2, quoting *Bank of New York v. Smith*, 9th Dist. No. 21534, 2003-Ohio-4633, at ¶2.

{¶3} The unconventional procedural history of this case necessitates a detailed outline of the parties' filings and the court's entries in response. In October 2007, Al Banna and Hajjar executed a twenty-one month lease for a commercial restaurant and bar property owned by Hajjar. Al Banna failed to submit his November 2007 lease payment to Hajjar, so Hajjar issued Al Banna a three-day notice to vacate the premises, pursuant to the forcible entry and detainer requirements set forth in R.C. 1923.04. On November 27, 2007, Hajjar filed a complaint seeking a writ of restitution and damages based on Al Banna's failure to pay rent ("the initial complaint"). The magistrate scheduled the matter for hearing on December 17, 2007. Al Banna did not file an answer, nor did he appear at the hearing. The magistrate entered judgment granting Hajjar's writ of restitution and the trial court approved and adopted the magistrate's decision the same day as the hearing.

{¶4} On February 8, 2008, Hajjar filed a motion for default judgment, which the trial court granted the same day. In the order granting the default judgment, the trial court ordered a hearing on the issue of damages. On April 15, 2008, the magistrate held a hearing on damages at which only Hajjar and his counsel appeared. Based on the testimony and evidence presented during the hearing, the magistrate awarded damages of $9,310, plus costs and post-judgment interest. These findings were set forth in the magistrate's decision filed on May 15, 2008. The trial court did not immediately adopt or approve the magistrate's findings.

{¶5} On May 27, 2008, Al Banna filed objections to the magistrate's decision alleging that he was not served with notice of the damages hearing and asserting that he had a valid defense to the initial complaint, based on a settlement agreement executed by the parties, which he incorporated by reference into his objections. Al Banna simultaneously filed a motion to enforce the settlement agreement between the parties. Al Banna attached to his motion a copy of

a settlement agreement executed between the parties on December 7, 2007, ten days after Hajjar filed the initial complaint. Under the terms of the settlement, Al Banna agreed to "turn over possession of the leased premises to Hajjar" and in exchange, "Hajjar *** agree[d] not to pursue [the] breach of the lease agreement" against Al Banna. Neither party had moved to dismiss the initial complaint based on the settlement agreement.

{¶6} The trial court held a hearing on Al Banna's motions on June 25, 2008. The hearing was held by a visiting judge and "took place in chambers, off the record, and the outcome of the discussion was not journalized" according to one of the trial court's later journal entries. For reasons that are not clear from the record, the visiting judge entered an order on June 25, 2008, permitting Hajjar to file an amended complaint ("the amended complaint") and Al Banna to file an amended answer, and set the matter for trial in September 2008.

{¶7} Accordingly, Hajjar filed the amended complaint, in which he asserted a claim for damages based on the parties' lease as well as a second count for breach of the settlement agreement. Al Banna filed an untimely answer denying Hajjar's allegations and asserting several affirmative defenses. The matter then proceeded to trial which spanned two separate days in October.

{¶8} Following trial, the court issued an opinion on November 26, 2008, in which it: adopted the magistrate's December 2007 decision issuing the writ of restitution (despite having properly done so already in December 2007); adopted the magistrate's May 2008 decision on damages (specifying that default judgment was properly granted in the amount of $9,310, plus costs and interest); determined that Al Banna's objections to the magistrate's decision were not timely filed and that he had not overcome the presumption of proper service of the hearing notice; determined that Al Banna's objections should have been denied by the trial court at the

June 25 hearing; and concluded that the underlying default judgment remained "because it was never properly vacated." The court also concluded, however, that the December 2007 settlement agreement was valid, that Al Banna had breached the settlement agreement and that based on his breach, Hajjar "was free to pursue this claim[,]" presumably the suit for breach of the settlement agreement and damages.

{¶9} On December 4, 2008, however, the court entered another order in which it declared that its November 26, 2008 ruling "effectively rendered moot the Amended Complaint and Amended Answers by the parties" and concluded that "[t]he Amended Complaint and Amended Answers are hereby STRICKEN, and judgment stands as entered."

{¶10} Al Banna timely appeals from the trial court's November 2008 order and asserts eight assignments of error for our review. We rearrange and combine some assignments of error for ease of analysis.

II

Assignment of Error Number Seven

> "EITHER JUDGE ANNALISA S. WILLIAMS DID NOT HAVE AUTHORITY TO GRANT AN ORDER IN THIS CASE (SPECIFICALLY TO REVIEW AND APPROVE THE ORDER OF MAGISTRATE ALBRECHT DATED DECEMBER 17, 2007 AND GRANT A MOTION FOR DEFAULT JUDGMENT ON FEBRUARY 8, 2008) OR JUDGE MCCARTY DID NOT HAVE AUTHORITY TO GRANT AN ORDER IN THIS CASE (SPECIFICALLY TO REVIEW AND APPROVE THE ORDERS OF MAGISTRATE ALBRECHT DATED DECEMBER 17, 2007 AND MAY 15, 2008) AND THEREFORE THE ORDERS (sic) WITHOUT JURISDICTION AND VOID."

{¶11} In his seventh assignment of error, Al Banna asserts that under Sup.R. 36(B)(1) the trial court erred by permitting both Judge Williams and Judge McCarty to issue orders in this case. He asserts that it is plain error for more than one judge to make rulings in a case and that

the orders entered by the judge who was not appropriately assigned this case should be considered void for lack of jurisdiction. We disagree.

{¶12} We recognize that Al Banna does not challenge the trial court's subject matter jurisdiction in this case. Rather, he "attack[s] [] the authority of the judge to act within [the municipal court's] subject matter jurisdiction and thus, the challenge can be forfeited." *State v. Jackson*, 9th Dist. No. 24142, 2008-Ohio-6938, at ¶9. When an objection is forfeited at the trial, a party waives all but plain error on appeal. *Howell v. Wittman*, 9th Dist. No. 23924, 2008-Ohio-2429, at ¶22. "[T]he application of the plain error doctrine [in civil cases] is reserved for the rarest of circumstances." Id. at ¶23. "The plain error doctrine should not be applied to reverse a civil judgment in order to allow the presentation of issues which could have easily have been raised and determined in the initial trial." *White v. Artistic Pools, Inc.*, 9th Dist. No. 24041, 2009-Ohio-443, at ¶8, quoting *Patio Enclosures, Inc. v. Four Seasons Marketing Corp.*, 9th Dist. No. 22458, 2005-Ohio-4933, at ¶72. Nor can it be applied unless the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, [consequently] challenging the legitimacy of the underlying judicial process itself." *White* at ¶8, quoting *Patio Enclosures* at ¶72.

{¶13} Though Al Banna makes a general assertion that the involvement of more than one judge in his case constitutes "serious and plain error[,]" he does not identify how he was prejudiced by such error or how such error compromised the fairness or integrity of his case. *White* at ¶8. Moreover, we note that Al Banna could have easily raised this matter in the trial court, but failed to do so. Id. Thus, we do not consider the use of more than one judge in this case as evidence of the rare circumstances that constitute plain error. *Howell* at ¶23. Accordingly, Al Banna's seventh assignment of error is without merit.

Assignment of Error Number Eight

"MAGISTRATE ALBRECHT DID NOT HAVE LEGAL AUTHORITY TO HEAR THIS MATTER AND ISSUE DECISIONS DATED DECEMBER 17, 2007, FEBRUARY 8, 2008 OR MAY 15, 2008 AND THEREFORE THE ORDERS ARE WITHOUT JURISDICTION AND VOID."

{¶14} In his eighth assignment of error, Al Banna challenges the jurisdictional basis of the magistrate, arguing that the trial court failed to properly assign the magistrate to act in this case. He asserts that the lack of a journal entry evidencing a magistrate being assigned to the case supports a conclusion that she was without authority to hear and issue decisions in this case. He also alleges that the trial court failed to independently review and consider the magistrate's decision pursuant to Civ.R. 53(D)(4)(d). We disagree.

{¶15} The Supreme Court has noted that "Civ.R. 53 do[es] not specify the form of the reference order nor do[es] [it] require the court to journalize an individual order of reference for each issue submitted." *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, at ¶21, quoting *In re Morales* (Apr. 12, 2001), 8th Dist. No. 78271, at *7. Additionally, "[t]here is no specific requirement, limitation, or restriction on the manner or method of the court entering an order of reference." *In re Morales*, at *7. Pursuant to AMCR No. 29 of the Akron Municipal Court, "magistrates *** may hear *** Forcible Entry and Detainer proceedings under O.R.C. 1923, including second causes of action for money damages." Thus, the magistrate presiding over this case was acting under the authority of the municipal court's local rules, so there was no need for an order stating the same to be journalized in this case. *State ex rel. Nalls* at ¶21.

{¶16} Though Al Banna argues that the trial court did not sufficiently review the magistrate's findings, his only support for this argument is his general assertion that the court "fail[ed] to *** consider the decision[] for a significant amount of time[.]" While the trial court did not issue a ruling on the objections until November 26, 2008, the ruling thoroughly addressed

the merits of Al Banna's objections. Civ.R. 53 does not impose a timeframe within which a trial court must rule on a party's objections to a magistrate's finding. Furthermore, Al Banna has provided no authority to support his conclusion that the length of time it took the court to adopt the magistrate's findings somehow equates to a failure by the court to independently review such findings pursuant to Civ.R. 53. Al Banna's eighth assignment of error is not well taken.

Assignment of Error Number Four

> "THE TRIAL COURT ERRED IN FINDING THAT APPELLANTS DID NOT PROPERLY AND TIMELY OBJECT TO THE MAGISTRATE'S DECISION DATED MAY 15, 2008 WHEN IN FACT APPELLANTS FILED DEFENDANTS (sic) OBJECTION TO MAGISTRATE'S DECISION 05/15/08 WITH REQUEST FOR HEARING ON MAY 27, 2008, WITHIN THE FOURTEEN (14) DAYS OF THE DECISION AS PERMITTED BY CIVIL RULE 53."

{¶17} In his fourth assignment of error, Al Banna asserts that the trial court erred when it denied his objections to the magistrate's finding because they were untimely and were unsupported by any evidence that service was not proper.

{¶18} Civ.R. 53 (D)(3)(b)(i) requires that objections to a magistrate's decision be filed "within fourteen days of the filing of the [magistrate's] decision[.]" The record reveals that on May 15, 2008, the magistrate issued her decision calculating the damages award. Al Banna's objections were filed May 27, 2008, twelve days after the magistrate's decision assessing the damages award against him. Thus, it is clear that Al Banna's objections were timely filed. Moreover, we note that the trial court concluded that Al Banna failed to provide sufficient evidence to support a claim that he was not properly served with notice of the damages hearing. Civ.R. 55(A), however, only requires that a notice of the damages hearing be served upon a "party *** [who] has *appeared* in the action." (Emphasis added.) Thus, Hajjar was not required under the Civil Rules to serve Al Banna with notice of the hearing. *Windy Hills Hardwoods, Inc.*

v. Caravona, 9th Dist. No. 21700, 2004-Ohio-1589, at ¶8. To the extent the trial court erred in concluding that Al Banna's objections were untimely and inappropriately addressed the propriety of service related the damages hearing, we agree that the trial court erred in doing so. Because the entry of default judgment was otherwise proper, however, such error was harmless. Civ.R. 61.

Assignment of Error Number One

> "THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANTS' MOTION TO ENFORCE THE WRITTEN SETTLEMENT AGREEMENT SIGNED DECEMBER 7, 2008 WHICH WAS: EXECUTED BY ALL PARTIES; SPECIFICALLY REFERENCED THE TRIAL COURT CASE; AND, INCLUDED A COMPLETE AND MUTUAL RELEASE BETWEEN THE PARTIES."

Assignment of Error Number Two

> "THE TRIAL COURT ERRED IN FAILING TO CONDUCT A HEARING ON DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT PRIOR TO GRANTING JUDGMENT ON NOVEMBER 26, 2008."

Assignment of Error Number Five

> "THE TRIAL COURT ERRED IN FINDING THAT APPELLANTS DID NOT 'REQUEST THAT THE CASE BE DISMISSED WHILE ALLOWING THE COURT TO EXERCISE CONTINUING JURISDICTION TO ENFORCE THE SETTLEMENT AGREEMENT' WHEN IN FACT THE APPELLANTS FILED ON MAY 27, 2008 A MOTION TO ENFORCE SETTLEMENT AGREEMENT DATED 12/07/07 AND REQUEST FOR HEARING."

{¶19} In his first, second, and fifth assignments of error, Al Banna essentially alleges that the trial court erred in multiple ways when it entered default judgment against him. Specifically, he argues that the trial court erred by failing to grant his motion to enforce the settlement agreement because it demonstrates that the parties had entered into a valid settlement agreement to resolve the initial complaint. Based on the terms of the settlement agreement, Al Banna argues that the trial court should have dismissed the initial complaint and then addressed

his motion to enforce the settlement agreement to determine if either party had breached the terms of that agreement.

{¶20} In his second assignment of error, Al Banna asserts that the trial court erred by failing to hold a hearing on his motion to enforce the parties' settlement agreement. Similarly, he argues in his fifth assignment of error, that upon the filing of his motion to enforce the settlement agreement, the court had evidence that the parties had agreed to resolve the initial complaint which in effect, serves as a dismissal of that complaint. He asserts that the trial court erred when it concluded that neither party requested the initial complaint be dismissed because both parties sought to enforce the settlement agreement resolving that complaint; Al Banna through his motion to enforce and Hajjar through the amended complaint he filed alleging breach of the settlement agreement.

{¶21} This Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. Additionally, "a trial court's decision to grant default judgment is reviewed under an abuse of discretion standard." *Miller v. McStay*, 9th Dist. No. 23369, 2007-Ohio-369, at ¶5. Under this standard, we must determine whether the trial court's decision was arbitrary, unreasonable, or unconscionable - not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶22} The Supreme Court has noted that "[d]efault, under *** Civ.R. 55(A), is a clearly defined concept. A default judgment is a judgment entered against a defendant who has failed to timely plead in response to an affirmative pleading." *Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp. Assn.* (1986), 28 Ohio St.3d 118, 121. The record reveals that Al Banna's first pleading was filed in the trial court on May 27, 2008, despite the initial complaint having been

filed six months earlier and default judgment having been entered over three months earlier. Additionally, the pleading Al Banna filed was not an answer or even a request for leave to file an answer; instead, he filed a motion to enforce a purported settlement agreement which he alleged contained a "complete and mutual release" resolving the matter, yet had never been filed with the trial court by either party. Not only was Al Banna's pleading well outside Civ.R. 12(A)(1)'s 28-day timeframe within which he needed to file an answer, he failed to act in accordance with Civ.R. 6(B)(2), which provides that such a late filing can only be accomplished "upon motion" and "where the failure to act was the result of excusable neglect." Civ.R. 6(B)(2). Thus we do not consider the motion to be a timely responsive pleading as contemplated under Civ.R. 55 governing default judgment. See, e.g., *Akron v. Obuch*, 9th Dist. No. 23951, 2008-Ohio-3110, at ¶10-14 (noting that a defendant must oppose a party's allegations by either pleading or otherwise defending against the allegations and concluding that filing a notice of appearance and attending the hearing on damages did not satisfy Civ.R. 55); see, also, *Taylor v. Marshall* (Aug. 30, 1988), 3d Dist. No. 3-86-16, at *3 (concluding that the existence of settlement discussions "did not relieve the defendants of their obligation to file an answer in the first instance or in the alternative to otherwise respond to the motion for default judgment").

{¶23} Additionally, we heed the Supreme Court's warning "that the integrity of procedural rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment." *Miller v. Lint* (1980), 62 Ohio St.2d 209, 215. Thus, we apply the Supreme Court's logic in concluding that "the failure of [Al Banna] to comply, even substantially, with the procedures outlined in the Civil Rules subjected [him] to the motion for a default judgment, and [Hajjar], having complied with the Civil Rules, had a right to have [his] [default judgment] motion *** decided before the cause proceeded to trial on its

merits." Id. at 214. Thus, the trial court was not obligated to hold a hearing, or even consider, the merits of his motion to enforce the parties' purported settlement agreement.

{¶24} Based on the foregoing, we conclude that the trial court did not err by denying Al Banna's motion for a hearing, and further, by not granting his motion to enforce the settlement agreement, because there remained a valid default judgment against him to which he had failed to properly respond pursuant to the Civil Rules. In doing so, however, we note the magistrate's findings of fact as to Hajjar's damages claim exceeds the scope of the relief sought in the initial complaint. In Count Two of Hajjar's initial complaint, he sought damages for unpaid rent on the property and "additional damages and expenses [Hajjar expected to incur] in the process of removing [Al Banna] from the premises." The magistrate's findings from the damages hearing, however, awarded Hajjar $5,600 for four month's unpaid rent and $3,710 in other damages. The magistrate's decision includes the following statement with respect to the damages calculation of $3,710:

> "The damages is (sic) comprised of property removed from the premises including a slicing machine valued at $1800, a french fry cutter valued at $140, 2 Budweiser signs valued at $500 each, a clock valued at $40, and 6 steam pans valued at $120 each for $720. Hajjar did not have receipts with him; the values given were his opinion based on their current value, not purchased as new items."

{¶25} Thus, it is evident from the magistrate's findings that she awarded damages to Hajjar for items Al Banna removed from the rental property without authorization, which would fall outside of the scope of the relief sought in Count Two, as these damages were not "damages [or] expenses [incurred] in the process of removing [Al Banna] from the premises." Rather, the $3,710 damages award related to the alleged theft or conversion of Hajjar's personal property, which would have required him to amend his initial complaint or file a separate cause of action in order to obtain such relief. Though the trial court properly adopted the magistrate's decision

with respect to granting default judgment against Al Banna, it erred in adopting the corresponding damage award, as the award exceeded the scope of relief requested in Hajjar's initial complaint.

{¶26} Having considered Al Banna's first, second, and fifth assignments of error, we affirm the entry of default judgment against Al Banna, but reverse the damages award as it exceeds the scope of relief requested in the initial complaint and should have been limited to the $5,600 in unpaid rent as prayed for in Count Two.

Assignment of Error Number Three

> "THE TRIAL COURT ERRED IN FINDING THE APPELLANTS' ALLEGED BREACH OF THE SETTLEMENT AGREEMENT PERMITTED THE PLAINTIFF TO CONTINUE TO PURSUE THE UNDERLYING LITIGATION OF CLAIMS."

Assignment of Error Number Six

> "THE TRIAL COURT ERRED IN ADOPTING THE MAGISTRATE'S DECISION OF MAY 15, 2008 WHEN THE FINDINGS OF THE MAGISTRATE WERE SUBSEQUENTLY CONTRADICTED BY THE MANIFEST WEIGHT OF THE EVIDENCE AT TRIAL."

{¶27} In his third assignment of error, Al Banna argues that, having found that the settlement agreement was valid, the trial court erred by permitting Hajjar to proceed on his claims against Al Banna because the terms of the settlement agreement purported to resolve the underlying claims. Therefore, the trial court was without authority to proceed on the initial complaint and according to Al Banna, could only address the issue of whether there was a breach of the settlement agreement.

{¶28} In his sixth assignment of error, Al Banna asserts that Hajjar's testimony as to whether he had paid rent was inconsistent and therefore the trial court erred in adopting the

magistrate's decision which included such a finding. Additionally, he argues that there was no testimony at trial to support the damages finding made by the magistrate.

{¶29} The record reveals that, in its December 2008 order, the trial court struck the amended complaint and Al Banna's answer thereto. Having struck the basis upon which the October trial was held and instead, having adopted the magistrate's decisions related to the initial complaint, any alleged errors as to the amended complaint or the evidence adduced at that trial in support of that complaint are moot. See, e.g., *State v. Palmer* (Aug. 29, 1996), 7th Dist. No. 89-B-28, at *6 (concluding appellant's alleged error as to testimony admitted at trial was moot based on the testimony being stricken from the record).

III

{¶30} For the foregoing reasons, this Court affirms the judgment of the Akron Municipal Court with respect to the entry of default judgment against Al Banna, however, we reverse the damages award associated with the entry of default and remand the matter for proceedings consistent with this opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to all parties.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
CONCURS, SAYING:

{¶31} I concur in the majority's judgment and its opinion, except the statement of the applicable standard of review in paragraph 21.

CARR, J.
DISSENTS, SAYING:

{¶32} I respectfully dissent.

{¶33} As the Supreme Court of Ohio noted in *State v. Harrison*, Slip Opinion No. 2009-Ohio-3547, at ¶34, "[t]he journey this case has taken is lamentable. We hope it will never be repeated." Four separate judges, as well as a magistrate, played a role in deciding this case and, at times, their rulings were seemingly inconsistent. The end result was a judgment entry upholding a default judgment despite the fact that the trial court recognized that a settlement agreement had been reached. To compound all of this, there is no final, appealable order, in my opinion, and none of these issues are reviewable.

{¶34} This Court has held:

> "This Court only has jurisdiction to hear appeals from final appealable orders. R.C. 2505.02; *Hodson v. Hodson*, 9th Dist. No. 22799, 2006-Ohio-652, at ¶4. In order for a judgment to be final and appealable, a trial court cannot merely adopt a magistrate's decision; it must enter its own judgment that sets forth 'the outcome of the dispute and the remedy provided.' *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 218.
>
> "'Adopting the [magistrate's decision] and entering judgment is necessarily a two-step process. The trial court may indicate that it has considered the report, the objections of the parties, and the arguments of counsel, and thereafter may order that the findings of the [magistrate] be adopted by the court. However, this type of recitation alone does not constitute an entry of judgment. The trial court must then enter its own independent judgment disposing of the matters at issue between the parties, such that the parties need not resort to any other document to ascertain the extent to which their rights and obligations have been determined.' *Reiter v. Reiter* (May 11, 1999), 3d Dist. No. 5-98-32, quoting *Daly v. Martin* (May 14, 1997), 9th Dist. No. 2599-M." *Miller v. McStay*, 9th Dist. No. 22918, 2006-Ohio-2282, at ¶4.

{¶35} In its November 26, 2008 judgment entry, the trial court adopted the magistrate's decision of December 17, 2007, allowing the writ to issue, and also adopted the magistrate's decision of May 15, 2008, granting default judgment against Flan Wa Allan LLC and Mark Al Banna, in the amount of $9,310 plus court costs and interest at a statutory rate of 8% from the date of judgment. By merely identifying and adopting the magistrate's decisions, the trial court did not independently enter judgment. This Court has stated that an "order is not an order of a court of record unless certain formalities have been met." *Harkai*, 136 Ohio App.3d at 217. "Thus, only a judge, not a magistrate, may terminate a claim or action by entering judgment." Id. at 216-17. Therefore, because the trial court did not independently enter judgment, I would hold that the judgment entry from which Al Banna appeals is not a final, appealable order.

APPEARANCES:

MICHAEL J. CALLOW, Attorney at Law, for Appellants.

E. SPENCER MUSE, Attorney at Law for Appellees.