

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

255 FIFTH STREET HOLDINGS LLC,	:	APPEAL NO. C-200083
	:	TRIAL NO. A-1607098
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	<i>OPINION.</i>
CHEMED SISLIN, LLC,	:	
CHEMED PAULSON, LLC,	:	
CHEMED ANDERSON, LLC,	:	
CHEMED ROSDEN, LLC,	:	
CHEMED LEUNG, LLC,	:	
CHEMED MYERS, LLC,	:	
CHEMED HUECKELR, LLC,	:	
CHEMED OJONG, LLC,	:	
CHEMED 350, LLC,	:	
CHEMED COMET, LLC,	:	
CHEMED MALL, LLC,	:	
CHEMED BERKOVICH, LLC,	:	
CHEMED DESERPA ONCE, LLC,	:	
CHEMED DESERPA TWO, LLC,	:	
CHEMED WALLMAN, LLC,	:	
CHEMED RUTNER, LLC,	:	
CHEMED GRIMM, LLC,	:	

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CHEMED POXON-TURNER, LLC, :

CHEMED WESTER, LLC, :

CHEMED D BARBEE, LLC, :

CHEMED KOHL, LLC, :

CHEMED ZARO, LLC, :

CHEMED UHLMAN, LLC, :

CHEMED FLYNN, LLC, :

CHEMED BROWN, LLC, :

CHEMED J BARBEE, LLC, :

CHEMED NUSSBAUM FLP, LLC, :

CHEMED HARRIS, LLC, :

CHEMED BERGEN, LLC, :

CHEMED WRNTSMITH, LLC, :

CHEMED NEWCOMER, LLC, :

CHEMED STAUFFER, LLC, :

and

CHEMED STULIK, LLC, :

Defendants-Appellants. :

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Appeal Dismissed

Date of Judgment Entry on Appeal: November 10, 2020

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Porter, Wright, Morris and Arthur, L.L.P., James P. Botti and Christopher D. Cathey, for Plaintiff-Appellee,

Robbins, Kelly, Patterson and Tucker, L.P.A., and Michael Galasso, and Cohen, Todd, Kite and Stanford, L.L.C., and Donald J. Rafferty, for Defendants-Appellants.

CROUSE, Judge.

{¶1} This appeal arises from plaintiff-appellee’s (“Lender”) foreclosure on a leasehold mortgage on real property located at 255 Fifth Street, Cincinnati, Ohio. The loans to defendants-appellants, a collection of 33 tenants-in-common (collectively “Borrowers”) reached maturity on May 11, 2016. Borrowers failed to pay the balance of the loans as required, creating an event of default. Lender filed a motion for partial summary judgment on its foreclosure claim and a motion for partial summary judgment on its claim that it is entitled to prematurity rental receipts collected by Borrowers. Borrowers did not contest the foreclosure claim, and Lender’s motion for partial summary judgment on that issue was granted by the trial court and was not appealed. Borrowers filed a cross-motion for partial summary judgment on the issue of the prematurity rental receipts.

{¶2} On November 12, 2019, the magistrate granted Lender’s motion and denied Borrowers’ cross-motion. Borrowers filed objections to the magistrate’s decision. On February 7, 2020, the trial court issued an entry overruling Borrowers’ objections and adopting the magistrate’s decision. Borrowers have appealed the trial court’s entry, arguing in one assignment of error that the court erred in granting Lender’s motion for partial summary judgment on the prematurity rental receipts, and denying its cross-motion for partial summary judgment.

{¶3} The trial court’s February 7, 2020 judgment entry is not a final appealable order. Thus, we dismiss the appeal for lack of jurisdiction.

No Final Appealable Order

{¶4} As an appellate court, we only have jurisdiction to review “judgments or final orders” of lower courts. *B & J Elec. Co., Inc. v. City of Cincinnati*, 1st Dist. Hamilton No. C-190368, 2020-Ohio-3869, ¶ 7.

{¶5} A magistrate’s decision remains interlocutory until a trial court (1) rules on any objections, (2) adopts, modifies, or rejects the magistrate’s decision, and (3) enters a judgment that determines all the claims for relief. *Id.*; Civ.R. 53(D)(4)(a-e). To satisfy the third requirement,

The entry should ‘clearly and finally dispose of the dispute between the parties,’ and contain ‘a statement of the relief to which the parties are entitled’ that is ‘definite enough to be susceptible to further enforcement and provide sufficient information to enable the parties to understand the outcome of the case.’

In re A.T., 1st Dist. Hamilton Nos. C-160597, C-160598 and C-160599, 2017-Ohio-5821, ¶ 7, quoting *Alexander v. LJF Mgt., Inc.*, 1st Dist. Hamilton No. C-090091, 2010-Ohio-2763, ¶ 13.

{¶6} The trial court’s February 7, 2020 entry does not satisfy the third requirement of a final order in cases involving magistrate decisions. In its entry, the trial court overruled Borrowers’ objections and adopted the magistrate’s decision, but it did not enter its own judgment “clearly and finally” disposing of the issue or determining the parties’ obligations or the relief to which Lender was entitled. *Contrast B&J Elec. Co., Inc.* at ¶ 8. We follow this court’s prior decision in *In re A.T.* at ¶ 10, where we found that a similar judgment entry was not final and appealable.

{¶7} The magistrate’s decision also failed to state the parties’ obligations or the relief to which Lender was entitled. After analyzing the applicable law and facts of the case, the magistrate stated that Lender was entitled to the prematurity rental receipts, granted Lender’s motion for partial summary judgment and denied Borrowers’ motion for partial summary judgment. The decision did not specify the relief to which Lender was entitled—i.e., the amount of money being awarded.

{¶8} Lender claims that it is entitled to a judgment against Borrowers in the amount of \$2,835,000 plus interest at a rate of five percent per annum, but this language appears nowhere in the magistrate’s decision or the trial court’s entry. Because the trial court’s entry did not clearly and finally dispose of the issues between the parties, we find that it is not a final appealable order.

{¶9} Shortly before oral argument, Borrowers filed a motion for a stay of execution with this court. Due to our lack of jurisdiction, we dismiss that motion.

Conclusion

{¶10} Without a final appealable order, we lack jurisdiction to consider the appeal or Borrowers’ motion for a stay of execution. Therefore, both are dismissed.

Appeal dismissed.

MYERS, P.J., and WINKLER, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.