[Cite as *Ohio Receivables, L.L.C. v. Guice*, 2011-Ohio-1293.]

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

OHIO RECEIVABLES LLC	C.A. No. 10CA009813
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JOSEPH GUICE	LORAIN MUNICIPAL COURT COUNTY OF LORAIN, OHIO
Appellee	CASE No. 05CVF1362

DECISION AND JOURNAL ENTRY

Dated: March 21, 2011

MOORE, Judge.

{¶1} Appellant, Ohio Receivables LLC, appeals from the judgment of the Lorain Municipal Court. This Court vacates.

I.

{¶2} Appellee, Joseph Guice, did not file a responsive brief on appeal. Therefore, this Court "may accept [Ohio Receivables] statement of the facts and issues as correct and reverse the judgment if [Ohio Receivables'] brief reasonably appears to sustain such action." App.R. 18(C). Guice has not appeared at any stage of the proceedings.

{¶3} In 1995, Guice entered into a retail installment contract and security agreement with Bob Morris Pontiac & GMC Truck for the purchase of a used automobile. The contract included an annual percentage rate of 25 percent. The contract further included a clause that provided for an interest rate of 25 percent on any judgment based upon the contract. After Guice defaulted, Ohio Receivables purchased the obligation and obtained a default judgment. The

default judgment entered in 2005 totaled $10,600.21, including a principal amount of $4,471.00 and $6,129.21 in interest. The default judgment included the contractual interest rate of 25 percent. Shortly thereafter, Ohio Receivables began garnishing Guice's wages.

{¶4} On January 20, 2010, the magistrate of the municipal court sua sponte scheduled a hearing for February 10, 2010 in this matter. Ohio Receivables appeared through its counsel at the hearing. Mr. Guice did not appear. On March 12, 2010, the magistrate filed a decision recommending that the court amend the judgment to $984.32 and the post-judgment interest rate to four percent. On April 5, 2010, the trial court adopted the magistrate's decision and independently set forth the recommended judgment amount and interest rate.

{¶5} Ohio Receivables timely filed a notice of appeal. It has raised three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT LACKS JURISDICTION WITHOUT A MOTION BY ANY PARTY AND FOUR YEARS POST-JUDGMENT TO ORDER STATUTORY POST[-]JUDGMENT INTEREST IN LIEU OF THE CONTRACT INTEREST RATE IN VIOLATION OF REVISED CODE § 1343.03."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT LACKED JURISDICTION TO, SUA SPONTE, DETERMINE THAT THE RATE OF INTEREST SOUGHT WAS UNCONSCIONABLE FOUR YEARS AFTER JUDGMENT IS GRANTED."

ASSIGNMENT OF ERROR III

"THE TRIAL COURT LACKED JURISDICTION TO, SUA SPONTE, MODIFY THE POST[-]JUDGMENT INTEREST RATE TO THE 2010 STATUTORY RATE RATHER THAN THE STATUTORY RATE THAT APPLIED AT THE TIME THE JUDGMENT WAS ORIGINALLY GRANTED FOUR YEARS AFTER A JUDGMENT WAS GRANTED."

{¶6} In its assignments of error, Ohio Receivables contends that the trial court lacked jurisdiction to sua sponte amend the interest rate associated with the judgment to the statutory rate rather than the rate provided in the underlying contract. We agree, and vacate the judgment.

> "Jurisdiction is a question of law, which this Court reviews de novo. *CommuniCare Health Servs., Inc. v. Murvine*, 9th Dist. No. 23557, 2007-Ohio-4651, at ¶13. 'A de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination.' *State v. Consilio*, 9th Dist. No. 22761, 2006-Ohio[-]649, at ¶4." *Ohio Receivables, LLC v. Landaw*, 9th Dist. No. 09CA0053, 2010-Ohio-1804, at ¶6.

{¶7} This case is nearly identical to *Landaw*. In *Landaw*, we examined the jurisdiction of a court to modify a prior judgment when neither party has petitioned for a modification. We observed that "'[a] trial court has no authority to vacate its final orders *sua sponte*.'" (Italics sic.) Id., quoting *Mathias v. Dutt* (Feb. 20, 2002), 9th Dist. No. 20577, at *1. We further stated that "[w]hen neither party has petitioned a court for modification of a judgment entry, the court may not effectively vacate a prior order by entering a new one sua sponte." Id., citing *Mathias*, 9th Dist. No. 20577, at *2. We held that under those circumstances, the court lacked jurisdiction to modify its entry. Id., citing *Mathias*, 9th Dist. No. 20577, at *1-2. "'If a trial court lacks jurisdiction, any order it enters is a nullity and is void.'" Id., quoting *Fifth St. Realty Co. v. Clawson* (June 14, 1995), 9th Dist. No. 94CA005996, at *2.

{¶8} In this case, it is unclear how and why this matter was before the trial court. However, from the limited record before us, it does not appear that Appellee sought modification of the judgment. In *Landaw*, neither party sought from the court a modification of the judgment entry. The trial court sua sponte modified its final judgment. The trial court, therefore, acted without jurisdiction. Id. "As such, the court's [April 5, 2010] judgment is a nullity and must be vacated pursuant to this Court's inherent authority to vacate void judgments." Id. at ¶7, citing *Van DeRyt v. Van DeRyt* (1996), 6 Ohio St.2d 31, 36. As we have said in another case of this

nature, "[i]t is the legislature's role to make the law and the judiciary's role to interpret the law. * * * Although [we] may not agree with the result and question its fairness, [we are] bound nonetheless." *Ohio Neighborhood Fin., Inc. v. McGeorge*, 9th Dist. No. 24110, 2011-Ohio-577 (Carr, J., concurring in judgment only).

III.

{¶9} Ohio Receivables' assignments of error are sustained. The Lorain Municipal Court's April 5, 2010 judgment entry is vacated and the August 19, 2005 default judgment entry is reinstated.

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Lorain Municipal Court, County of Lorain, 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 to Appellant.

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CARLA MOORE
FOR THE COURT

WHITMORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

AARON J. WILSON, Attorney at Law, for Appellant.

JOSEPH GUICE, pro se, Appellee.