

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
GENERAL DIVISION

DUSHON L. JOHNSON,]	CASE NO. 06CVH12-16423
]	JUDGE BENDER
Plaintiff,]	MAGISTRATE BROWNING
vs.]	
WILLIE HARVEY, et al.,]	
Defendants.]	

MAGISTRATE'S DECISION

Issued this 18th day of August 2009.

BROWNING, M.

Pursuant to Civ. R. 53 and Local R. 99, the undersigned Magistrate conducted the jury-waived trial of this civil action on April 6 and 7, 2009. Plaintiff, Dushon Johnson, testified in her case in chief and presented the testimony of Gary Koonce and Defendant Willie Harvey, the latter as if upon cross-examination. Defendant Willie Harvey testified in his case in chief and presented the testimony of Timothy Harvey and Plaintiff, the latter as if upon cross-examination. Numerous exhibits were admitted into evidence and are in the custody of Court Reporter William Zaremba.

The Magistrate, as the trier of fact, had the opportunity to observe the appearance of each witness upon the stand and his or her manner of testifying. As the trier of fact, the Magistrate had the opportunity to consider the reasonableness of each witness's testimony, the opportunity that each witness had to see, hear, and know the things concerning which he or she testified, and each witness's accuracy of memory, frankness or lack of frankness, intelligence, interest, and

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bias. Having had that opportunity, the Magistrate found Plaintiff and Gary Koonce to be very credible and therefore assigned significant weight to their testimony. The Magistrate found Timothy Harvey to be somewhat credible and therefore assigned some weight to his testimony. The Magistrate found Defendant Willie Harvey to be barely credible and therefore assigned little, if any, weight to his testimony.

Having weighed the credible evidence admitted at trial, and having taken judicial notice of the contents of the Court's file, the Magistrate hereby renders the following decision on the merits of Plaintiff's Amended Complaint, filed on May 8, 2007.

FINDINGS OF FACT

The Magistrate finds that the following facts, and only the following facts, have been proved by a preponderance of the credible evidence. If the Magistrate has not made a factual finding that a party believes the Magistrate should have made, it is because the Magistrate has concluded that there is not a preponderance of credible evidence to support such a finding.

1. All of the events that gave rise to this action occurred in Franklin County, Ohio.
2. Defendant Willie Harvey (Harvey) was the sole shareholder and officer of, and did business as, Defendant Gahanna Drywall Contractors, Inc. (GDC), an Ohio corporation. Harvey, doing business as GDC, provided construction services to individuals and businesses. Harvey was the only signatory on GDC's bank account. As GDC's sole shareholder and officer, Harvey exercised total and exclusive control over all aspects of GDC's operations. Harvey's control over GDC was so complete that GDC had no separate mind, will, or existence of its own.
3. Harvey, doing business as GDC, operated out of his personal residence located at 209 Highbury Crescent, Gahanna, Ohio 43230. Harvey, doing business as GDC, did not have a

storefront or a retail business establishment with a fixed location, where the goods and services involved in this action were offered for sale.

4. Plaintiff, Dushon Johnson (Johnson), is an individual who lived at 3951 Spectacle Drive, Columbus, Ohio 43230 (Property). The Property was Johnson's personal residence.

5. On or before November 19, 2005, Harvey met with Johnson at the Property to negotiate a contract for Harvey, doing business as GDC, to remodel Johnson's basement.

6. On November 22, 2005, Harvey, doing business as GDC, prepared and submitted a written "Proposal" to Johnson, to remodel Johnson's basement for \$10,775, a price that was later reduced to \$10,000. Johnson accepted the Proposal and thereby entered into a contract with Harvey, doing business as GDC, for the work described in the Proposal (Contract). All of the negotiations regarding the Contract took place at the Property. The Contract did not disclose that Johnson had a right to an estimate, and the Contract did not include a statement that the price quoted to Johnson would be binding for a period of five days. The Contract did not provide any information regarding Johnson's right to cancel the Contract.

7. During the negotiations, Harvey gave his business card to Johnson. The card contained Harvey's name, the initials "GDC," an address, and two telephone numbers, and represented that Harvey did "remodeling[.]"

8. On November 22, 2005, Johnson signed the Contract and gave Harvey a deposit of \$5,000. The deposit was made by a personal check drawn on Johnson's checking account and made payable to "Gahanna Drywall." Harvey deposited the check into GDC's bank account. Harvey did not give a written receipt to Johnson for the deposit.

9. Defendant Bill Taylor (Taylor) was present on November 22, 2005 when Johnson entered into the Contract with Harvey, doing business as GDC. Harvey represented to Johnson

that Taylor was Harvey's "right hand man" and that Taylor would be working on Johnson's basement. However, Harvey also represented to Johnson, and Johnson understood, that Harvey would be in charge of the work and that Harvey would be orchestrating the job. Harvey told Johnson that he was a "professional" and that the work would be done "professionally."

10. Taylor owed money to Harvey. Harvey therefore arranged to have Taylor work on Johnson's basement as a way for Taylor to repay his debt to Harvey. That arrangement was never disclosed to Johnson, and she learned about it only when Harvey testified about it at his deposition on January 28, 2009.

11. Sometime after November 22, 2005, Harvey began working on Johnson's basement, assisted by Taylor.

12. Johnson gave two additional deposits to Harvey. On December 2, 2005, Johnson deposited \$2,500 with Harvey and, on December 20, 2005, Johnson deposited another \$2,500 with Harvey. The deposits were made by personal checks drawn on Johnson's checking account and made payable to "Gahanna Drywall." Harvey deposited both checks into GDC's bank account. Harvey did not give written receipts to Johnson for the deposits.

13. After Johnson gave Harvey the final deposit on December 20, 2005, Harvey and Taylor stopped working on Johnson's basement.

14. On or about January 9, 2006, Johnson telephoned Harvey to complain about the poor quality of the work that had been done at the Property, and the fact that the work had ceased. Harvey became sarcastic with Johnson and said that he would "get to it" but that he had other jobs he was also working on.

15. On or about January 9, 2006, Johnson sent a written list to Harvey, of items that still needed to be completed in the basement. On January 24, 2006, Taylor prepared a "punch list" of items to be completed by Harvey, which Harvey reviewed and approved.

16. Harvey ignored Johnson's requests to complete the work at the Property, evaded his responsibilities, established and maintained a pattern of inefficiency, and refused to complete the work under the Contract. Rather than work with Johnson to complete the work under the Contract, Harvey, by his own admission at trial, decided that he would simply "take [his] chances in court."

17. The Property is located in the city of Columbus, Ohio. The Columbus Building Code requires licenses, permits, and inspections for the type of work contained in the Contract. Harvey failed to obtain the required licenses, permits, and inspections from the City of Columbus Department of Development. For example, he failed to obtain building permits, plumbing permits and inspections, electrical permits and inspections, and mechanical permits and inspections for the work performed at the Property.

18. On April 18, 2007, Harvey received notice, from Johnson's attorney, that Johnson was cancelling the Contract pursuant to R.C. 1345.22 and that Johnson was demanding the return of all of the money she had paid to Harvey. Harvey did not return any of Johnson's money.

19. On June 5, 2007, in the Franklin County Municipal Court, Harvey pled guilty to violating Columbus Building Code 4117.107(A) on or about November 22, 2005, "by undertaking or performing work or [representing] himself as ready and able to perform the work of a Department licensed contractor within the corporate limits without first obtaining a department issued license, to wit: REMODELED BASEMENT, INSTALLED PLUMBING I.E. HALF BATH, SHOWER, SINK & TOILET AND SOME ELECTRICAL LIGHTING at 3951

SPECTACLE DR., Columbus, Ohio, without first obtaining the required Home Improvement Contractor license from the department. (Emphasis in original.)”

20. The work that Harvey, assisted by Taylor, performed at the Property was of poor quality and not workmanlike. Some of the work had to be removed in order to obtain the proper permits and inspections from the Columbus Department of Development. The Columbus Department of Development required Johnson to repair and correct most of the work that Harvey, assisted by Taylor, performed at the Property.

21. Johnson spent \$20,474.99 to remove, repair, and correct the inferior work that Harvey, assisted by Taylor, performed at the Property. Johnson also experienced significant aggravation as a proximate result of the substandard work that Harvey, assisted by Taylor, performed, and as a proximate result of having to have much of that work redone.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of Plaintiff's Amended Complaint.

2. The purpose of the Ohio Consumer Sales Protection Act (CSPA), R.C. 1345.01 through R.C. 1345.13, is to protect consumers from the harm of deceptive or unconscionable sales practices. *Charvat v. Farmers Ins. Columbus, Inc.*, 178 Ohio App. 3d 118, 2008-Ohio-4353, at ¶20. The CSPA is intended to give protection to consumers from unscrupulous suppliers of goods or services in a more efficient, expedient, and affordable manner than would be available in a common law tort or contract action. *Id.* The CSPA has a remedial purpose and must accordingly be liberally construed in favor of consumers. *Id.* Although the CSPA uses the words “unfair” and “deceptive,” a consumer is not required to demonstrate that a supplier

intended to be unfair or deceptive. *Frey v. Vin Devers, Inc.* (1992), 80 Ohio App.3d 1, 6. It is how the consumer views an act or statement that determines whether it is unfair or deceptive. *Id.*

3. Harvey and his corporation, GDC, were “supplier[s]” as that term is defined in R.C. 1345.01(C). Johnson was a “consumer” as that term is defined in R.C. 1345.01(D). The Contract was a “consumer transaction” as that term is defined in R.C. 1345.01(A).

4. Harvey, doing business as GDC, committed unfair and deceptive acts and practices in connection with a consumer transaction, the Contract, in violation of R.C. 1345.02(B)(1), by representing to Johnson that the subject of the consumer transaction, the remodeling of Johnson’s basement, had performance characteristics or benefits that it did not have.

5. Harvey, doing business as GDC, committed unfair and deceptive acts and practices in connection with a consumer transaction, the Contract, in violation of R.C. 1345.02(B)(2), by representing to Johnson that the subject of the consumer transaction, the remodeling of Johnson’s basement, was of a particular standard, quality, grade, or style, when it was not.

6. Harvey, doing business as GDC, committed unfair and deceptive acts and practices in connection with a consumer transaction, the Contract, in violation of R.C. 1345.02(B)(5), by representing to Johnson that the subject of the consumer transaction, the remodeling of Johnson’s basement, had been supplied in accordance with a previous representation, when it had not.

7. Harvey, doing business as GDC, committed unconscionable acts and practices in connection with a consumer transaction, the Contract, in violation of R.C. 1345.03(A), as illustrated by R.C. 1345.03(B)(3), by knowing at the time the consumer transaction was entered

into of the inability of the consumer, Johnson, to receive a substantial benefit from the subject of the consumer transaction, the remodeling of her basement.

8. Harvey, doing business as GDC, committed unconscionable acts and practices in connection with a consumer transaction, the Contract, in violation of R.C. 1345.03(A), as illustrated by R.C. 1345.03(B)(5), by requiring the consumer, Johnson, to enter into a consumer transaction on terms that the supplier, Harvey, knew were substantially one-sided in favor of the supplier.

9. Harvey, doing business as GDC, committed unconscionable acts and practices in connection with a consumer transaction, the Contract, in violation of R.C. 1345.03(A), as illustrated by R.C. 1345.03(B)(6), by knowingly making a misleading statement of opinion on which the consumer, Johnson, was likely to rely to her detriment.

10. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-11(A)(5), by failing to conform to the requirements of R.C. 1345.21 to 1345.27, which are specific provisions relating to cancellation.

11. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-05(G), by failing, prior to commencement of any repair or service, to provide a form to Johnson that included estimate-choice language, or to provide a written quotation of the price that included a statement that the quotation would be binding upon the supplier, Harvey, for a period of five days.

12. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-07(B)(5), by failing to give a written

receipt for Johnson's initial deposit and including on the receipt whether the deposit was refundable, and/or under what conditions it was refundable.

13. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-07(C), by failing to give written receipts stating the dates and amounts paid for each and every subsequent deposit made by Johnson, which receipts were also to state the remaining balance due.

14. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-05(D)(9), by representing to Johnson that repairs had been made or services had been performed when such was not the case.

15. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-05(D)(11), by materially understating or misstating to Johnson the estimated cost of repairs or services.

16. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices, in violation of Ohio Adm. Code 109:4-3-05(D)(12), by failing to provide the consumer, Johnson, with a written itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they were used, remanufactured, or rebuilt, if not new, and the cost thereof to the consumer, Johnson, the amount charged for labor, and the identity of the individual(s) performing the repairs or services.

17. Harvey, doing business as GDC, committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, acts and practices that have been determined by Ohio courts to violate R.C. 1345.02 and R.C. 1345.03, and said acts and

practices were committed by Harvey after those decisions were made available for public inspection under R.C. 1345.05(A)(3). Those acts and practices included the following:

- a. Harvey, doing business as GDC, failed to perform services in a competent, satisfactory, and workmanlike manner and then failed or refused to correct the substandard work or defect. *Maimon v. Day*, PIF No. 10001095; *Celebrezze v. Goldstein*, PIF No. 10000196; *Beckman v. Squire*, PIF No. 10001760.
- b. Harvey, doing business as GDC, knowingly breached the Contract with Johnson. *Brown v. Spears*, PIF No. 10000403.
- c. Harvey, doing business as GDC, failed to include all material statements in the written Contract. *Montgomery v. Automotive Warranty Corp., Inc.*, PIF No. 10002104; *Lardakis v. Martin*, PIF No. 10001436.
- d. Harvey, doing business as GDC, failed to comply with the Ohio Home Solicitation Sales Act. *Beckman v. Squire*, PIF No. 10001760; *Teeters Constr. v. Dort*, PIF No. 10002511. [See Findings of Fact Nos. 27 through 31.]
- e. Harvey, doing business as GCD, made misleading statements or statements of opinion to Johnson at the time Harvey signed the Proposal, which Harvey knew Johnson would rely on to her detriment. *Montgomery v. Marcum*, PIF No. 10002049.
- f. Harvey, doing business as GDC, consistently maintained a pattern of inefficiency, incompetency, or continually stalled and evaded his legal obligations to Johnson, and Harvey thereby committed an unconscionable act or practice in violation of R.C. 1345.03(A). *Brown v. Lyons*, PIF No. 10000304; *Beckman v. Squire*, PIF No. 10001760.
- g. The failure of Harvey, doing business as GDC, to respond to repeated calls and messages from Johnson was an unfair, deceptive, and unconscionable act. *Beckman v. Squire*, PIF No. 10001760.
- h. Harvey, doing business as GDC, failed to secure permits for those home improvements for which permits were required by local ordinance, and he failed to subcontract electrical and plumbing work to persons licensed to perform such work. *Slotkin v. Toth*, PIF No. 10001761; *Hechko v. Thermal Master, Inc.*, PIF No. 10001712.
- i. Harvey's practice of accepting deposits, down payments, or other payments of money toward the purchase of consumer goods or services without evidencing such payments with dated receipts stating whether the money was refundable and the conditions or terms under which refunds would be made was unfair and

deceptive in violation of R.C. 1345.02. *Celebrezze v. Goldstein*, PIF No. 10000196.

- j. Harvey's failure to include on receipts for deposits whether the deposits were refundable, and/or under what conditions they were refundable, was a violation of the CSPA. *Clemons v. Holmes*, PIF No. 10001774; *Montgomery v. Marcum*, PIF No. 10002049.

18. Revised Code 1345.09 provides:

§ 1345.09. Private remedies

For a violation of Chapter 1345. of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, **the consumer may rescind the transaction or recover, but not in a class action, three times the amount of the consumer's actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages** or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

(F) The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply:

(2) The supplier has knowingly committed an act or practice that violates this chapter.

(G) As used in this section, "actual economic damages" means damages for direct, incidental, or consequential pecuniary losses resulting from a violation of Chapter 1345. of the Revised Code and does not include damages for noneconomic loss as defined in section 2315.18 of the Revised Code. (Emphasis added.)

19. Pursuant to the unambiguous language of R.C. 1345.09(B), once a plaintiff has established the existence of a previously adopted rule or a previously decided, publicly available decision, and has elected to recover treble damages, the plaintiff is “entitled to” treble damages. *Pep Boys - - Manny, Moe & Jack of Delaware, Inc. v. Vaughn*, Franklin App. No. 04AP-1221, 2006-Ohio-698, at ¶41. Consequently, after a plaintiff satisfies the predicate requirements, R.C. 1345.09(B) mandates that a trial court award treble damages to the plaintiff. *Id.*

20. By definition and practice, a corporation is a distinct legal entity, separate and apart from the natural individuals who formed it and own it. *Janos v. Murduck* (1996), 109 Ohio App. 3d 583, 587. As such, shareholders, officers, and directors will generally not be held personally liable for the debts of a corporation. *Lewis v. DR Sawmill Sales, Inc.*, Franklin App. No. 04AP-1096, 2006-Ohio-1297, at ¶27.

21. A limited exception to this rule exists, however, and is embodied by the Supreme Court of Ohio’s decision in *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.* (1993), 67 Ohio St. 3d 274. The court therein held that the corporate veil could be pierced to allow creditors to personally reach shareholders who had used the corporation for criminal or fraudulent purposes:

*** The corporate form may be disregarded and individual shareholders held liable for wrongs committed by the corporation when (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.

Id. at paragraph three of the syllabus.

22. As stated in Finding of Fact No. 2, Harvey's control over GDC was so complete that GDC had no separate mind, will, or existence of its own. Furthermore, the Magistrate concludes that Harvey exercised his control over GDC in such a manner as to commit fraud or an illegal act against Johnson, and Johnson was damaged as a proximate result of such control and wrong. Under such circumstances, the corporate form of GDC must be disregarded and the individual shareholder, Harvey, must be held liable for the wrongs committed by the corporation. The Magistrate concludes that GDC's corporate veil must be pierced and that Harvey, as the sole and controlling shareholder, must be held liable for the wrongs committed upon Johnson by GDC.

23. A contract to perform work imposes on the contractor the duty to perform the work in a workmanlike manner. *Mitchem v. Johnson* (1966), 7 Ohio St. 2d 66, paragraph three of the syllabus. "Workmanlike manner" has been defined as "the way work is customarily done by other contractors in the community." *Winner Bros., LLC v. Seitz Elec., Inc.*, Darke App. No. 1740, 2009-Ohio-2316, at ¶31. The work performed by Harvey, doing business as GDC, and Taylor at the Property was not performed in a "workmanlike manner." Harvey, doing business as GDC, therefore breached his duty to Johnson to perform the Contract work in a workmanlike manner.

24. Where a contractor fails to perform in a workmanlike manner, the proper measure of damages is the cost to repair the damage to the condition contemplated by the parties at the time of the contract. *Barton v. Ellis* (1986), 34 Ohio App. 3d 251, 253. In order to place a building in the condition contemplated by the parties at the time of the contract, "the repair of deficient work may involve both additional activities necessitated by the deficient work, and

activities previously omitted, but necessary, to proper performance in a workmanlike manner.”
Id. at 254.

25. Pursuant to R.C. 1345.09(B), Johnson is entitled to recover from Harvey, doing business as GDC, three times the amount of Johnson’s actual economic damages, plus an amount not exceeding five thousand dollars in noneconomic damages. As defined by R.C. 1345.09(G), Johnson’s “actual economic damages” are \$20,474.99. Johnson is therefore entitled to recover from Harvey, doing business as GDC, three times that amount, or \$61,424.97, plus \$5,000 in noneconomic damages.

26. Harvey, doing business as GDC, knowingly committed all of the above unfair, deceptive, and unconscionable acts and practices in violation of the CSPA. Pursuant to R.C. 1345.09(F)(2), the Court may therefore award a reasonable attorney’s fee to Johnson.

27. The purpose of the Ohio Home Solicitation Sales Act (HSSA), R.C. 1345.21 to R.C. 1345.28, is to provide the consumer with a weapon against high-pressure sales tactics occurring in the consumer’s home. *R. Bauer & Sons Roofing & Siding, Inc. v. Kinderman* (1992), 83 Ohio App. 3d 53, 63.

28. Harvey and GDC were “seller[s]” as that term is defined in R.C. 1345.21(C).

29. Johnson was a “buyer” as that term is defined in R.C. 1345.21(D).

30. The Contract that Johnson signed on November 22, 2005 was a “home solicitation sale” of “consumer goods or services” as those terms are defined in R.C. 1345.21(A), R.C. 1345.21(B), and R.C. 1345.21(E).

31. Pursuant to R.C. 1345.23, there are mandatory requirements for disclosures and notices, and the failure to comply with those specific requirements is a violation of the HSSA. *Teeters Constr. v. Dort*, 142 Ohio Misc. 2d 1, 2006-Ohio-7254, at ¶¶28-29. Harvey, doing

business as GDC, violated the HSSA as follows: (A) he failed to provide Johnson with the statutory notice required by R.C. 1345.23(B)(1) on the face of the Proposal; (b) he failed to provide Johnson with detachable forms in duplicate with the statutory language required by R.C. 1345.23(B)(2) to exercise cancellation; and (c) he commenced performing services for Johnson while the right to cancel had not expired, that is, while the statutory notices of cancellation had not yet been provided to Johnson.

DECISION

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is the Magistrate's decision that Plaintiff, Dushon Johnson, is entitled to a judgment in her favor on the Amended Complaint, against Defendants Willie Harvey and Gahanna Drywall Contractors, Inc., who are jointly and severally liable to Plaintiff, in the principal amount of \$66,424.97, plus interest on that amount at the legal rate from the date of judgment, and costs in accordance with Civ. R. 54(D).

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is the Magistrate's decision that, pursuant to R.C. 1345.09(F)(2), Plaintiff, Dushon Johnson, is entitled to recover a reasonable attorney's fee from Defendants Willie Harvey and Gahanna Drywall Contractors, Inc., who are jointly and severally liable to Plaintiff, the amount of the reasonable attorney's fee to be determined at a later hearing.

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is the Magistrate's decision that, pursuant to Civ. R. 55(A), Plaintiff, Dushon Johnson, is entitled to a default judgment in her favor on the Amended Complaint, against Defendant Bill Taylor, inasmuch as Defendant Bill Taylor has failed to plead or otherwise defend the Amended Complaint as provided by the Civil Rules.

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is the Magistrate's decision that, pursuant to Civ. R. 55(A), Defendants Willie Harvey and Gahanna Drywall Contractors, Inc., are entitled to a default judgment in their favor against Defendant Bill Taylor, on the Cross Claim of Defendants Willie Harvey and Gahanna Drywall Contractors, Inc., against Defendant Bill Taylor, filed on March 14, 2008, inasmuch as Defendant Bill Taylor has failed to plead or otherwise defend the Cross Claim as provided by the Civil Rules.


MAGISTRATE PAMELA BROER BROWNING

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION IN THE FOREGOING MAGISTRATE'S DECISION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

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