

[Cite as *Marshall v. Enviromatrix*, 2004-Ohio-5739.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84182

JAY R. MARSHALL	:	
	:	ACCELERATED DOCKET
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
ENVIROMATRIX, INC.	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT  
OF DECISION: October 28, 2004

CHARACTER OF PROCEEDING: Civil appeal from  
Common Pleas Court  
Case No. CV-468702

JUDGMENT: REVERSED AND REMANDED

DATE OF JOURNALIZATION: \_\_\_\_\_

APPEARANCES:

For Plaintiff-Appellant: CHRISTOPHER J. MALLIN  
367 North Cleveland Avenue  
Mogadore, Ohio 44260-2120

For Defendant-Appellee: KEITH E. BLAHA  
304 Plaza West Building  
20220 Center Ridge Road  
Rocky River, Ohio 44116

ANTHONY O. CALABRESE, JR., J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the trial court records and briefs of counsel.

{¶ 2} Appellant's first assignment of error is sustained. Although we agree with the trial court that "the debt owed to plaintiff is subordinate to the debt owed to the Dattilos," questions remain as to the veracity of appellee's claims of additional indebtedness. Appellee's argument that "no money was due to appellant under the note until all indebtedness to other individuals was completely liquidated," is inconsistent with its practice of initially paying appellant. Appellee has failed to show that the indebtedness owed to appellant should not be recognized.<sup>1</sup>

{¶ 3} Having reviewed the record, we find that neither party has submitted sufficient evidence such that reasonable minds could reach but one conclusion. The trial court erred by granting summary judgment.

{¶ 4} Appellant's second assignment of error is overruled as moot.

Judgment reversed and remanded.

This cause is reversed and remanded to the lower court for resentencing and for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee costs herein.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas

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<sup>1</sup>The definition of "subordinate" does not provide for the exclusion of that which is in a lower position.

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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ANTHONY O. CALABRESE, JR.  
JUDGE

ANNE L. KILBANE, P.J., and

JAMES J. SWEENEY, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).