

[Cite as *Dutro Used Cars, Inc. v. Spohn*, 2009-Ohio-2912.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DUTRO USED CARS, INC.

Plaintiff-Appellant

-vs-

JONATHON SPOHN

Defendants-Appellees

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. CT08-0047

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court,
Case No. CVF 0800648

JUDGMENT:

Reversed and Final Judgment Entered

DATE OF JUDGMENT ENTRY:

June 18, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellees

JAMES L. BLUNT, II.
445 Longview Avenue
Mansfield, Ohio 44903

Hoffman, P.J.

{¶1} Plaintiff-appellant Dutro Used Cars, Inc. appeals the August 19, 2008 Judgment Entry of the Muskingum County Court entering default judgment against Defendant-appellee Jonathon Spohn.

STATEMENT OF THE CASE

{¶2} On June 13, 2008 Appellant filed a complaint in the Muskingum County Court, case number CVF 0800648, alleging the following: Appellee executed a promissory note of June 15, 2007, for a loan used to purchase a vehicle from Appellant in the amount of \$4,602.65, plus interest at 21% per annum. Appellee defaulted on the terms of the promissory note in failing to make the loan payments when due. There remained an outstanding balance due of \$2,653.84 as of February 27, 2008 with interest due thereafter at 21.0% per annum as stated in the promissory note.

{¶3} On August 18, 2008, Appellant moved for default judgment on the complaint. On August 19, 2008, the trial court granted the motion for default, entering judgment in favor of Appellant in the amount of \$2,653.84 and statutory interest.

{¶4} Appellant now appeals, assigning as error:

{¶5} "I. THE TRIAL COURT ERRED BY FAILING TO GRANT THE PLAINTIFF THE CONTRACTUAL INTEREST RATE, PURSUANT TO OHIO REVISED CODE 1343.03."

{¶6} Appellant argues the trial court improperly entered judgment including the statutory interest rate; rather than the contractual interest rate of 21%.

{¶7} Ohio Revised Code Section 1343.03 states, in pertinent part:

{18} “(A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. Notification of the interest rate per annum shall be provided pursuant to sections 319.19, 1901.313, 1907.202, 2303.25, and 5703.47 of the Revised Code.” (Emphasis added.)

{19} In *American General Finance, Inc. v. Bauer* (2001), Delaware App. No. 00CAG08023, this Court held when a written contract contains a legal rate of interest then the rate should be applied to the judgment.

{¶10} Based upon the above, we sustain Appellant's assignment of error. The August 19, 2008 Judgment Entry of the Muskingum County Court is reversed.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DUTRO USED CARS, INC.	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JONATHON SPOHN	:	
	:	
Defendant-Appellee	:	Case No. CT08-0047

For the reasons stated in our accompanying Memorandum-Opinion, the August 19, 2008 Judgment Entry of the Muskingum County Court is reversed. Judgment is entered in favor of Plaintiff Dutro Used cars, Inc. in the amount of \$2,653.84 plus interest at the rate of 21% per annum from February 27, 2008, plus court costs. Appeal costs to Appellee.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS