

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Ohio Neighborhood Finance
Inc. d/b/a Cashland

Appellant

v.

Mark Powell

Appellee

Court of Appeals No. L-09-1258

Trial Court No. CVF 09 11232

DECISION AND JUDGMENT

Decided: April 16, 2010

* * * * *

Steven W. Mastrantonio and M. Elizabeth Vollmar, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Ohio Neighborhood Finance, Inc., appeals from a decision of the Toledo Municipal Court granting appellant a default judgment against appellee, Mark Powell. For the reasons that follow, we reverse.

{¶ 2} On March 6, 2009, appellee visited a Cashland Financial Services store in Toledo, Ohio, and borrowed \$1,261.95 which included fees and interest. He signed a contract in which he agreed to an interest rate of 25 percent on the loan. Appellee

defaulted on the loan. Appellant then filed the instant action in Toledo Municipal Court on June 3, 2009. Appellee did not answer or defend the action. On August 19, 2009, appellant filed a motion for default judgment which was granted on August 28, 2009. The court awarded damages of \$1,084.45 at an interest rate of 5 percent. Appellant now appeals setting forth the following assignment of error:

{¶ 3} "The trial court erred as a matter of law by granting statutory interest on a judgment where there was a written contract that clearly provided for a higher rate of interest in accordance with R.C. 1321.571."

{¶ 4} Appellant argues that the court erred in awarding 5 percent interest rather than 25 percent as provided by the contract. R.C. 1321.571 provides:

{¶ 5} "As an alternative to the interest permitted in division (A) of section 1321.57 and in division (B) of section 1321.58 of the Revised Code, a registrant may contract for and receive interest at any rate or rates agreed upon or consented to by the parties to the loan contract or open-end loan agreement, but not exceeding an annual percentage rate of twenty-five per cent."

{¶ 6} R.C. 1343.03 provides in pertinent part:

{¶ 7} "(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."

{¶ 8} The contract in this case, which was attached to the complaint and filed with the motion for default judgment, provided for interest at the rate of 25 percent, the maximum rate allowed by R.C. 1321.571. When a written contract contains a legal rate of interest, then the contractual rate should be applied to the judgment. *Am. Gen. Fin., Inc. v. Bauer* (May 4, 2001), 5th Dist. No. 00CAG08023; *Dutro Used Cars, Inc. v. Taylor*, 5th Dist. No. CT08-0050, 2009-Ohio-2908, ¶ 9-10. Here, the trial court erred in applying the statutory interest rate of 5 percent to the judgment instead of 25 percent as agreed upon by contract. Accordingly, appellant's sole assignment of error is found well-taken. Accord, *Ohio Neighborhood Fin., Inc. v. Evert*, 5th Dist. No. 09CA000034, 2010-Ohio-797.

{¶ 9} On consideration whereof, the order of the Toledo Municipal Court is reversed. This matter is remanded to said court for further proceedings consistent with this decision. It is ordered that appellee pay court costs of this appeal, pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.