[Cite as *Hulse v. Angala*, 2010-Ohio-365.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93547

JUNE HULSE

PLAINTIFF-APPELLEE

vs.

MICHAEL ANGALA, ET AL.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-657191

BEFORE: Sweeney, J., Rocco, P.J., and Boyle, J.
RELEASED: February 4, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Michael Angala ("defendant"), appeals the amount awarded in the trial court's granting summary judgment to plaintiff-appellee, June Hulse ("plaintiff"), in this breach of contract claim. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} In January 2007, plaintiff and defendant entered into a contract to terminate various business relationships. As part of this contract, defendant agreed to pay plaintiff $55,000 by March 23, 2007, to satisfy a $50,000 loan that plaintiff made to defendant. The contract further stated that if defendant failed to repay the $55,000 by the due date, "defendant will pay $2,000 per month along with 18% per annum interest on the then current balance starting on March 23, 2007 until paid in full."

{¶ 3} Defendant failed to pay plaintiff any money by March 23, 2007. However, defendant paid plaintiff $2,000 on April 23, 2007 and $500 on August 27, 2007.

{¶ 4} On April 18, 2008, plaintiff filed suit against defendant, alleging several causes of action, and the trial court dismissed all claims except breach of contract. The court granted summary judgment to plaintiff, awarding her "$55,000 plus interest at the rate of 18% from March 23, 2007 * * * [and] interest at the statutory rate of 5% from the date of judgment." The court also credited defendant $2,500 for monies paid.

{¶ 5} Defendant appeals and raises one assignment of error for our review:

{¶ 6} "I. The trial court erred in granting judgment in the entire amount of the obligation as there was no acceleration clause in the termination of relationship agreement."

{¶ 7} Appellate review of granting summary judgment is de novo. Pursuant to Civ.R. 56(C), the party seeking summary judgment must prove that 1) there is no genuine issue of material fact; 2) they are entitled to judgment as a matter of law; and 3) reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 662 N.E.2d 264.

{¶ 8} As defendant is not challenging liability in the instant case, we analyze only the breach of contract damages awarded to plaintiff. Defendant argues that the agreement between the parties is an installment contract, which is a "contract requiring or authorizing * * * payments in separate increments, to be separately accepted." Black's Law Dictionary (7 Ed.1999) 323. Generally, breach of an installment contract does not necessarily constitute breach of the entire agreement. See *U.S. Bank Natl. Assn. v. Gullotta*, 120 Ohio St.3d 399, 2008-Ohio-6268, 889 N.E.2d 987. However, "[t]he parties * * * may avoid the operation of this rule by including an acceleration clause in the agreement * * *, [which] requires the * * * obligor to pay part or all of the balance sooner than the date or dates specified for payment upon the occurrence of some event or circumstance described in the contract * * *." Id. at ¶30 (internal citations omitted). Defendant further argues that because the agreement does not

contain an acceleration clause, "plaintiff may recover only the payments due at the pleading date."

{¶ 9} In the instant case, the pertinent terms of the contract between the parties are as follows:

{¶ 10} "[Defendant] agrees that he will pay $55,000.00 by March 23, 2007 to [plaintiff]. If [defendant] does not pay the $55,000.00 in full by March 23, 2007, then [defendant] will pay $2,000.00 per month along with 18% per annum interest on the then current balance starting on March 23, 2007 until paid in full * * *. $55,000.00 will be accepted in full accord and satisfaction of the $50,000.00 loan, provided that it is paid on or before March 23, 2007."

{¶ 11} When the court granted summary judgment to plaintiff, it found "that there are no genuine issues of material fact, and that June Hulse is entitled to judgment as a matter of law." It is uncontested that defendant breached the agreement to pay plaintiff $55,000 by March 23, 2007. In plaintiff's complaint, she prays for breach of contract damages in the amount of $52,500 plus 18% per annum interest. We find no error in the court's decision to award these damages, plus 5% interest from the date of judgment.

{¶ 12} Plaintiff met her burden on summary judgment proving that no genuine issue of material fact existed and that she was entitled to judgment as a matter of law. This burden then shifted to defendant to provide evidence showing that a genuine issue of material fact did exist for trial. *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 674 N.E.2d 1164. A review of the record shows that

defendant failed to meet this burden. Defendant opposed summary judgment at the trial court level with two arguments: First, that plaintiff failed to present evidence of the amount owed, and second, that the agreement was an installment contract that failed to include an acceleration clause. However, there is nothing in the record to support these arguments. The agreement, on its face, is evidence of the amount owed. Furthermore, the terms of this agreement are unambiguous: "[defendant] agrees that he will pay $55,000.00 by March 23, 2007 to [plaintiff]."

{¶ 13} Defendant's argument that the remaining language in the agreement renders it an installment contract is unsupported by law. Rather, we find that the language in question concerns prejudgment interest.

{¶ 14} Prejudgment interest on damage awards arising out of breach of contract is governed by R.C. 1343.03(A), which entitles the creditor to interest at a variable statutory rate, "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." Additionally, in *Nakoff v. Fairview Gen. Hosp*. (1997), 118 Ohio App.3d 786, 787-88, 694 N.E.2d 107 this Court concluded that "postjudgment interest may be calculated on prejudgment interest and * * * is not compounded interest. * * * [P]rejudgment interest shall be merged with the underlying damages award for purposes of postjudgment interest."

{¶ 15} In the instant case, the court granted plaintiff's motion for summary judgment and awarded damages in the amount of the contract (less a $2,500 credit), with the stipulated prejudgment interest rate of 18%, plus postjudgment interest at the statutory rate of 5%. We find no error in this award.

{¶ 16} Accordingly, defendant's assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas 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.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
MARY J. BOYLE, J., CONCUR