[Cite as *Ohio Neighborhood Fin. Inc. v. Christie*, 2010-Ohio-5017.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94821

OHIO NEIGHBORHOOD FINANCE INC. DBA CASHLAND

PLAINTIFF-APPELLANT

vs.

PHELLIP CHRISTIE

DEFENDANT-APPELLEE

JUDGMENT: REVERSED AND REMANDED

Civil Appeal from the
Parma Municipal Court
Case No. 09 CVF 03473

BEFORE: Boyle, J., Stewart, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: October 14, 2010

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MARY J. BOYLE, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Plaintiff-appellant, Ohio Neighborhood Finance, Inc., d.b.a. Cashland ("Cashland"), appeals from the judgment of the Parma Municipal Court granting it a judgment against defendant-appellee, Phellip Christie, in the amount of $1,009.56, plus costs and interest. Specifically, Cashland appeals the trial court's sua sponte reduction of the rate of interest from 25 percent per annum to 4 percent per annum. For the reasons stated below, we reverse.

{¶ 3} This action arises out of a loan agreement executed between Cashland and Christie. According to the terms of the loan agreement,

Cashland loaned Christie $890 on May 15, 2009 in exchange for Christie agreeing to pay (1) a loan origination charge of $100, (2) a credit investigation fee of $10, (3) the precomputed loan of $890, and (4) interest at a rate of 25 percent per annum — all due on May 29, 2009, for a combined total of $1,009.56. The agreement further provided that the interest at a rate of 25 percent per annum continued to accrue until the loan amount was paid in full. These terms are outlined in the section of the agreement titled "Promise to Pay," which states the following:

{¶ 4} "You promise to pay us $1,000 (the principal amount on this loan) plus interest at a rate of 25% per annum on the principal outstanding for the time outstanding from the date of this Customer Agreement until paid in full. Interest shall be computed daily upon the principal balance outstanding by using the simple interest method, assuming a 365-day year. You agree that we may initiate the ACH (as defined below) or negotiate your personal check in the amount of $1009.56 on or after the Payment Date as payment under this Customer Agreement."

{¶ 5} On May 29, 2009, Christie's account had insufficient funds to cover the repayment amount for the loan. Cashland demanded payment but Christie failed to pay any amount on the loan. Consequently, on August 21, 2009, Cashland commenced the underlying action in municipal court, seeking to recover the amount owed under the agreement. After Christie failed to respond

or otherwise appear, Cashland moved for default judgment in the amount of $1,009.56, plus an award of interest of 25 percent per annum from the date of default, along with court costs. The trial court granted Cashland's motion but reduced the amount of interest from 25 percent per annum to 4 percent per annum. From this decision, Cashland appeals, raising a single assignment of error:

{¶ 6} "The trial court committed reversible error in reducing to 4% per annum, the interest rate on the debt in the default judgment granted in favor of appellant Ohio Neighborhood Finance, Inc."

{¶ 7} Initially, we note that Cashland is a registrant under the Ohio Mortgage Loan Act ("OMLA"), R.C. 1321.51, et seq., and that the agreement specifically provided that it is governed in accordance with Ohio law and the OMLA.

{¶ 8} Generally, under the OMLA, a registrant, such as Cashland, may contract for and receive interest at a rate not exceeding 21 percent per year on the unpaid principal balances of a precomputed loan. See R.C. 1321.57(A). The OMLA, however, also contains an alternative interest rate provision, R.C. 1321.571, which provides as follows:

{¶ 9} "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 percent."

{¶ 10} Relying on R.C. 1321.571, Cashland argues that the interest provided under the agreement is lawful and should have been enforced by the trial court. We agree. Here, the uncontroverted evidence shows that Cashland and Christie entered into a loan agreement and agreed to an interest rate not exceeding an annual percentage rate of 25 percent. Thus, given the clear statutory authority that allows Cashland to impose a maximum annual interest rate of 25 percent, and the absence of any reason or evidence that the contract shall not be enforced, the trial court should have enforced the interest rate agreed to by the parties. Indeed, "when a written contract contains a legal rate of interest then the rate should be applied to the judgment." *Dutro Used Cars, Inc. v. Taylor*, 5th Dist. No. CT08-0050, 2009-Ohio-2908, ¶9.

{¶ 11} Cashland's sole assignment of error is sustained.

{¶ 12} The judgment of the trial court is reversed, and the case is remanded for the trial court to issue an order consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and
JAMES J. SWEENEY, J., CONCUR