Third District Court of Appeal

State of Florida

Opinion filed August 5, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-0062
Lower Tribunal No. 17-10961

World O World Corporation,
Appellant,

vs.

Maritza Patino,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick, and Valerie R. Manno-Schurr, Judges.

Neil Rose (Hollywood), for appellant.

Maritza Patino, in proper person.

Before SALTER, SCALES, and LINDSEY, JJ.

PER CURIAM.

World O World Corporation appeals the dismissal with prejudice of its action for breach of contract for failure to make payments due under a note and mortgage.

The lower court dismissed this case on the basis that the interest rate being charged was usurious. Because it was not, we reverse.

World O World Corporation ("Lender") brought a claim against Maritza Patino ("Borrower") and Juan Gomez for breach of a contract for failure to make payments on a mortgage note.[1] The lower court conducted a non-jury trial and granted a directed verdict based on Borrower's affirmative defense of usury. Thereafter, the lower court entered an order of dismissal with prejudice. This appeal followed.

Our standard of review on questions of law is de novo. Southern Baptist Hospital of Florida, Inc. v. Welker, 908 So. 2d 317 (Fla. 2005).

There are four requisites of a usurious transaction: "(1) There must be a loan express or implied; (2) An understanding between the parties that the money lent shall be returned; (3) That for such a loan a greater rate of interest than is allowed by law shall be paid or agreed to be paid, as the case may be; and (4) There must exist a Corrupt intent to take more than the legal rate for the use of the money loaned." Dixon v. Sharp, 276 So. 2d 817, 819 (Fla. 1973) (citing Stewart v. Nangle,

[1] Maritza Patino is the only appellee in this appeal. Juan Gomez, Luz Marina Perez, as well as Patino filed a separate appeal in case 3D20–0263. We consolidated case 3D20-0062 with case 3D20-0263, but only for the "purpose of traveling together." We do not reach 3D20-0263 because briefing is not yet completed. In addition, Patino did not file a cross-appeal in this appeal (3D20-0062) and is, thus, not entitled to any affirmative relief herein.

103 So. 2d 649 (Fla. 2d DCA 1958); Clark v. Grey, 132 So. 832 (Fla. 1931)). The purpose of statutes prohibiting usury "is to bind the power of creditors over necessitous debtors and prevent them from extorting harsh and undue terms in the making of loans." Id. at 820.

It is well-settled that the determination of whether a transaction is either civilly or criminally usurious is made at the inception of the loan. Velletri v. Dixon, 44 So. 3d 187, 189 (Fla. 2d DCA 2010) (citing Home Credit Co. v. Brown, 148 So. 2d 257, 259 (Fla. 1962); Oregrund Ltd. P'ship v. Sheive, 873 So. 2d 451, 458-59 (Fla. 5th DCA 2004)). The usurious nature of a contract "depends upon the liability of the borrower under its terms, or, to put it another way, upon what may be demanded of the borrower, under the terms of the contract, rather than what is demanded from him." McTigue v. Am. Sav. & Loan Ass'n of Florida, 344 So. 2d 254, 256 (Fla. 4th DCA 1977) (quoting First Mortg. Corp. of Vero Beach v. Stellmon, 170 So. 2d 302, 305 (Fla. 2d DCA 1964)).

Lender attached the note, mortgage, and an account statement to the complaint. The note provides for a legal rate of interest and there is a contractual limitation agreed to by the parties, which applies in the event of default, to the maximum interest allowed by law. Thus, viewing the terms of the transaction at inception, there is no violation of the usury laws.

At trial, Borrower presented expert testimony that a demand made by Lender for excessive interest constituted usury. It did not. "[A]n otherwise non-usurious loan does not become usurious merely because usurious interest is claimed or demanded under it." Id. "A holding that a mere Demand for usurious interest unjustified by any contractual requirement to pay it, renders the loan usurious, would mean, for example, that an utterly baseless claim for 17% interest upon a simple note which plainly provides for only 9% would invalidate the transaction itself. This cannot be and is not the law." Valliappan v. Cruz, 917 So. 2d 257, 260 n.1 (Fla. 4th DCA 2005) (quoting McTigue, 344 So. 2d at 255). But this is what happened below. As such, the trial court erred in dismissing the complaint.

Accordingly, we reverse the order of dismissal and remand for further proceedings consistent herewith.

Reversed and remanded.