

RENDERED: APRIL 10, 2015; 10:00 A.M.  
TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-002121-DG

SERVICE FINANCIAL COMPANY

APPELLANT

ON DISCRETIONARY REVIEW  
FROM FRANKLIN CIRCUIT COURT  
v. HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 13-XX-00003

ASHLEY NICOLE WARE, A/K/A  
ASHLEY NICHOLE WARE

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\*

BEFORE: ACREE, CHIEF JUDGE; STUMBO AND TAYLOR, JUDGES.

ACREE, CHIEF JUDGE: We granted discretionary review in this case to address Service Financial Company's appeal of the Franklin Circuit Court's November 22, 2013 opinion affirming a Franklin District Court order of default judgment that

limited post-judgment interest on a retail installment contract to 12% per annum.

For the following reasons, we affirm.

The Appellant is the assignee of a Retail Installment Contract. Appellee Ashley Ware executed that contract, thereby agreeing to pay a certain sum of money in exchange for a used automobile. She failed to perform as promised. Appellant brought suit in Franklin District Court to collect the balance owed and Ware failed to respond to the complaint.

Appellant moved for a default judgment claiming the amount Ware owed was a liquidated sum and claiming pre-judgment and post-judgment interest at the rate of 15% per annum. Without ruling whether the amount Ware owed was liquidated or unliquidated, the district court denied the claim of 15% post-judgment interest and allowed only 12% post-judgment interest. Appellant appealed that judgment to Franklin Circuit Court.

Appellant argued before the circuit court that KRS<sup>1</sup> 360.040 requires that when a judgment is “rendered for accruing interest on a written obligation, it shall bear interest in accordance with the instrument reporting such accruals . . . .” KRS 360.040. The amount owed, claimed Appellant, was a liquidated sum bearing interest according to the contract of 15% and that the statute mandated an award of post-judgment interest at the rate of 15%. The circuit court disagreed.

That court held that “[t]he initial claim was for unliquidated damages and then the District Judge reduced the claim to a judgment, thus the District Judge had

---

<sup>1</sup> Kentucky Revised Statutes

the discretion to set a reasonable interest rate” which it did at 12%. Thus, the circuit court interpreted the district court judgment first as being based on the factual finding that Appellant’s damages claim was unliquidated. Second, applying KRS 360.040, the circuit court concluded that “when a claim for unliquidated damages is reduced to judgment, such judgment may bear less interest than twelve percent (12%) if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less than twelve percent (12%) . . . .” KRS 360.040.

If the district court had expressly found that the damage claim was unliquidated, we would be compelled to reverse that finding. Liquidated damages are those which are “[m]ade certain or fixed by agreement of parties or by operation of law.” *Nucor Corp. v. General Elec. Co.*, 812 S.W.2d 136, 141 (Ky. 1991); *3D Enterprises Contracting Corp. v. Louisville & Jefferson Cnty. Metro. Sewer Dist.*, 174 S.W.3d 440, 450 (Ky. 2005). A classic example of liquidated damages is “an unpaid fixed contract price.” *Nucor*, 812 S.W.2d at 141. The damages in this case were at all times determinable, fixed, non-speculative, and clear. “Mere computation” was all that was needed to establish with “reasonable certainty” the damages owed from “an unpaid fixed contract price.” *3D Enterprises*, 174 S.W.3d at 450. The claim was liquidated.

However, this does not justify reversing the district court judgment. “[T]he judgment of a lower court can be affirmed for any reason in the record.” *Fischer v. Fischer*, 348 S.W.3d 582, 591 (Ky. 2011) (citations omitted). We affirm the

district court's judgment on the alternative ground that the contract sued upon is a Retail Installment Contract in which Ware agreed to pay a finance charge but did not agree to the accrual of interest at any rate, much less a rate in excess of that stated in KRS 360.040.

To further explain our reasoning, we consider the transaction and applicable law more closely.

In 2010, Ware purchased a 1998 Nissan automobile for \$5,995.00. The transaction was memorialized in a Retail Installment Contract. Such contracts are governed by KRS 190.090 to KRS 190.140. Those statutes include the following definition:

“Retail installment contract” means any agreement, entered into in this state, evidencing a retail installment sale of a motor vehicle, other than for the purpose of resale, pursuant to which title to, or a lien upon the motor vehicle is retained by the retail seller as security for the retail buyer's obligation. This term includes a mortgage, conditional sale contract or any contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to the *time sale price* of the motor vehicle and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming for no additional consideration or for nominal additional consideration, the owner of such motor vehicle . . . .

KRS 190.090(3) (emphasis added).

Ware's Retail Installment Contract included a “Finance Charge” of \$1,182.65 which she was to pay in addition to the “Cash Price” of the vehicle listed

on the contract as \$5,995.00. The term “Finance Charge” is also defined by statute.

“Finance charge” means that part of the *time sale price* by which it exceeds the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees included in the retail installment sale;

KRS 190.090(10) (emphasis added).

Both these definitions employ the term “time sale price” which is defined in the chapter of the Kentucky Revised Statutes governing contracts of all kinds, Chapter 371.

“Time sale price” means the total of the cash sale price of the goods or services and the amount, if any, included for insurance, if a separate identified charge is made therefor, and the official fees and the *time price differential*.

KRS 371.210(12) (emphasis added). And “time price differential” is also defined by this statute.

“Time price differential” *however denominated or expressed*, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys fees, court costs, or official fees.

KRS 371.210(9) (emphasis added).

In Ware’s contract, the time price differential was “denominated or expressed” as a finance charge of \$1,182.65. This sum was calculated by the

dealer who sold Ware the vehicle in accordance with KRS 190.110; the dealer applied the maximum permissible finance charge. That statute states in part:

The finance charge allowed by this subsection may be precomputed by using an add-on method. If the finance charge in a retail installment sale is precomputed it shall not exceed the following rates:

Class 1. Any new or used motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made--eleven dollars (\$11) per one hundred dollars (\$100) of principal balance, as determined pursuant to KRS 190.100(2), per year of the contract.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of one (1) or two (2) years prior to the year in which the sale is made--thirteen dollars (\$13) per one hundred dollars (\$100) of principal balance, as determined pursuant to KRS 190.100(2), per year of the contract.

Class 3. All other motor vehicles not in class 1 or 2--fifteen dollars (\$15) per one hundred dollars (\$100) of principal balance, as determined pursuant to KRS 190.100(2), per year of the contract.

KRS 190.110(1). Because Ware's vehicle was not new and was manufactured more than two (2) years prior to the sale, the vehicle was categorized as a Class 3 vehicle. This allowed the time price differential, denominated as a finance charge, to "be precomputed by using an add-on method [at] fifteen dollars (\$15) per one hundred dollars (\$100) of principal balance . . . per year of the contract[.]" *Id.* In conformity with this law, the Retail Installment Contract set the time price differential, stated in the contract as the "Annual Percentage Rate," at "15%."

Although KRS 190.110(4) authorizes that, “[a]lternatively [to the time price differential method of calculating the finance charge], the seller may, at his option, compute the finance charge . . . on a simple interest basis[.]” Ware’s seller did not so elect. This contract bore no interest – only a time price differential.

There are only two circumstances under which a court may deviate from the statutory post-judgment interest rate of 12% expressed in KRS 360.040. One circumstance is where the claim is for unliquidated damages. The claim here was for liquidated damages; therefore, this is not a basis for awarding other than 12% post-judgment interest. The second circumstance is where a party has agreed to “accruing interest on a written obligation [in which case] it shall bear interest in accordance with the instrument reporting such accruals . . . .” KRS 360.040. Ware did not agree to accruing interest in the Retail Installment Contract; she did not sign an instrument reporting the accrual of interest at any rate. She agreed only to purchase a vehicle at a price determined by adding (1) the cost of the vehicle if she had paid cash and (2) the time price differential.

For the foregoing reasons, we affirm the Franklin Circuit Court’s Opinion and Order affirming the Franklin District Court’s March 29, 2013 default judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

David R. Deatrck, Jr.

Amanda L. Baker  
Louisville, Kentucky