[Cite as *Mayer v. Medancic*, 2010-Ohio-6252.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

MARCIA A. MAYER, et al.,	:	**O P I N I O N**
Plaintiffs-Appellees,	:	**CASE NOS. 2010-G-2956 2010-G-2958**
- vs -	:	**and 2010-G-2959**
MARIO MEDANCIC, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case Nos. 98 F 000851, 98 F 000850 and 98 F 000515.

Judgment: Affirmed.

Timothy T. Brick and *Timothy J. Fitzgerald*, Gallagher, Sharp, Fulton & Norman, Sixth Floor, Bulkley Building, 1501 Euclid Avenue, Cleveland, OH 44115-2108 (For Plaintiffs-Appellees).

Joel A. Nash, 4325 Mayfield Road, Cleveland, OH 44121 (For Defendants-Appellants).

COLLEEN MARY O'TOOLE, J.

{¶1} Mario, Marija, Karoline and Mladen Medancic appeal from the judgment of the Geauga County Court of Common Pleas, calculating and awarding Marcia and Robert Mayer interest on three promissory notes. We affirm.

{¶2} This case has a lengthy history. See, e.g., *Mayer v. Medancic*, 11th Dist. Nos. 2008-G-2826, 2008-G-2827, and 2008-G-2828, 2008-Ohio-5531, at ¶2 ("*Mayer* IV"). This is the fifth appeal to this court. Cf. id. The dispute originated from an agreement between the parties to purchase real estate in Chester Township, Geauga

County, Ohio. *Mayer v. Medancic*, 124 Ohio St.3d 101, 2009-Ohio-6190, at ¶3 ("*Mayer* V"). As the Supreme Court of Ohio stated in *Mayer* V, at ¶3:

{¶3} "As a result of the agreement, [the Medancics] executed three promissory notes in favor of [the Mayers], each secured by a mortgage deed. The July 3, 1995 promissory note for $20,000 was payable no later than November 1, 1995, and set forth a 13 percent per annum interest rate. The December 11, 1995 note for $67,000 was payable no later than November 1, 1997, and carried a ten percent per annum interest rate. Finally, the January 8, 1996 note for $37,500 was payable no later than November 1, 1997, and set forth a 12 percent per annum interest rate."

{¶4} In 1998, the Mayers filed three foreclosure actions, asserting the Medancics had failed to pay either the principal or interest due on the notes. *Mayer* V at ¶4. Eventually, the trial court ruled in favor of the Mayers, determining that they were entitled to foreclosure, payment of the principal on the notes, and interest at the rates specified in the notes. Id. at ¶5. The actions resulting in the appeal to this court in *Mayer* IV, and to the Supreme Court of Ohio in *Mayer* V, ensued. The Supreme Court described them succinctly as follows:

{¶5} "The instant appeal arises from a January 2006 motion filed by [the Medancics] to declare the rate of postjudgment interest owed on the notes to be the statutory rate set forth in R.C. 1343.03. In response to appellants' motion, [the Mayers] argued that they were entitled to postjudgment interest at the rates set forth in the notes and that the interest should be compounded annually until the debt is paid. In April 2006, the trial court held that pursuant to R.C. 1343.02, [the Mayers] were entitled to

postjudgment interest at the rates set forth in the notes and rejected [the Mayers'] claim that they were entitled to compound interest.

{¶6} "In February 2008, an entry titled 'Agreed Judgment Entry' was filed that purported to resolve all remaining disputes between the parties. However, [the Mayers] objected to the agreed entry, arguing that they were entitled to compound interest. In light of [the Mayers'] objection, in March 2008, the trial court refiled its April 2006 judgment entry with the additional language that there was 'no just reason for delay' so that [the Mayers] could appeal the court's denial of compound interest to the Eleventh District Court of Appeals. The court of appeals reversed the trial court's judgment on the authority of *State ex rel Bruml v. Brooklyn* (1943), 141 Ohio St. 593, 599, ***, holding that because *Bruml* allowed the collection of 'interest on interest,' [the Mayers] were entitled to compound interest at the rates specified in the notes. *Mayer v. Medancic*, Geauga App. Nos. 2008-G-2826, 2008-G-2827, 2008-G-2828, 2008-Ohio-5531, ¶21-22.

{¶7} "The case is now before us on our acceptance of a discretionary appeal and our recognition of a conflict between the Eleventh District Court of Appeals decision and the Tenth District's decision in *Thirty Four Corp. v. Sixty Seven Corp.* (1993), 91 Ohio App.3d 818, ***. *Mayer v. Medancic*, 121 Ohio St.3d 1422, 2009-Ohio-1296, ***, and 121 Ohio St.3d 1424, 2009-Ohio-1296, ***. The conflict certified for our review is the following: '(w)hen a written instrument sets forth a specific rate of interest to be paid, and there is a default in the payment of that interest, is the creditor entitled to compound interest, even absent a statute or provision therefore in the written instrument, pursuant to the rule in *State ex rel Bruml v. Brooklyn* (1943), 141 Ohio St. 593, ***?' Id.

{¶8} "[The Medancics] ask the court to reverse the judgment of the Eleventh District Court of Appeals and hold that [the Mayers] are entitled to simple interest. [The Medancics] maintain that because neither the notes nor the applicable statutory provision provides for compound interest, only simple interest has accrued. [The Medancics] further argue that the Eleventh District erred in reading *Bruml* to require the compounding of interest here and that unlike the case at bar, *Bruml* involved investment bonds that expressly provided for periodic payments of interest on interest.

{¶9} "In contrast, [the Mayers] contend that the Eleventh District correctly relied on *Bruml*, 141 Ohio St. 593, ***, and properly held that they were entitled to compound interest. [The Mayers] claim that simple interest will not make them whole for [the Medancics'] failure to pay on the promissory notes for more than a decade, and therefore, they must receive compound interest. Finally, [the Mayers] maintain that the 'unrefuted evidence' establishes that the parties intended that the interest on the promissory notes be compound, not simple." *Mayer* V at ¶7-11. (Parallel citations omitted.)

{¶10} The Supreme Court of Ohio then determined that this court's reliance in *Mayer* IV on the decision in *Bruml* was error, and that the Mayers were only entitled to simple interest. In relevant part, the court concluded:

{¶11} "'Generally, a right to interest on unpaid obligations accrues on the date of scheduled payment, and runs until paid (***).' *Lehman v. Lehman* (May 4, 1995), Cuyahoga App. No. 67483, 1995 Ohio App. LEXIS 1851, ***. Principal and interest earned on the notes were due on November 1, 1995, and November 1, 1997. Therefore, pursuant to R.C. 1343.02, simple interest continues to accrue on the

principal and interest due on the notes at the rates set forth therein from those dates until payment is made.

{¶12} "***

{¶13} "Because there is neither a statutory provision providing for compound interest nor an express agreement between the parties, [the Mayers] are entitled to simple, not compound, interest. However, the interest that accrues is calculated on the entire amount due at the time of the default, including both the principal and the interest due and payable at that time. Accordingly, we answer the certified question in the negative, reverse the decision of the court of appeals, and remand this case to the trial court for further proceedings consistent with this opinion." *Mayer* V at ¶26-27. (Parallel citation omitted.)

{¶14} On remand, the trial court sua sponte ordered the parties to submit their positions as to further proceedings. The Mayers submitted their own calculation of the interest owed them on the three notes; and, the Medancics filed an objection. February 2, 2010, the trial court filed a judgment entry approving the Mayers' position, and ordering them to submit an appropriate judgment entry. February 26, 2010, the trial court filed that judgment entry, awarding interest on each note at the rate specified therein. The particular amount owed on each note was calculated as of March 1, 2010. That same day, the Medancics filed their opposition to the judgment entry calculating interest. The trial court overruled this objection by a judgment entry filed March 11, 2010.

{¶15} March 25, 2010, the Medancics noticed this appeal. They assign three errors:

{¶16} "[1.] The Trial Court erred in awarding interest-on-interest on the notes Plaintiffs' (sic) obtained from Defendants in these consolidated cases.

{¶17} "[2.] The Trial Court erred in computing interest to March 1, 2010 instead of March 4, 2008.

{¶18} "[3.] The trial court erred in computing post-judgment interest at the contract rate rather than the statutory rate."

{¶19} By their first assignment of error, the Medancics contend that the trial court improperly followed the ruling of the Supreme Court of Ohio in *Mayer* V, that the Mayers were due simple interest on the notes in question, including both principal and accrued interest, from the time of default. The Medancics contend that the only issue before the Supreme Court of Ohio in *Mayer* V was whether the Mayers were owed compound or simple interest, and that any further holding of the Supreme Court of Ohio in that case was mere obiter dicta, and not binding on the trial court on remand.

{¶20} We respectfully disagree. As the Mayers point out, "a 'cause properly appealed to [the Supreme Court of Ohio] is here for the proper determination of all questions *presented by the record* (***)' (*Winslow v. Ohio Bus Line Co.* (1947), 148 Ohio St. 101) *** [.]" *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280, fn. 1. (Emphasis sic.) In determining whether the Mayers were due compound or simple interest, the Supreme Court of Ohio necessarily was presented with the issue of whether that interest pertained solely to the principal on the notes, or the accrued interest as well. Further, neither the trial court, nor this court has the power to ignore a ruling by the Supreme Court of Ohio. Cf. *Transamerica Ins. Co. v. Nolan* (1995), 72 Ohio St.3d 320, 323. In *Mayer* V, the Supreme Court directed the trial court how it was

to calculate interest on the notes in question. The trial court, and this court, are strictly bound to follow that ruling.

{¶21} The first assignment of error lacks merit.

{¶22} By their second assignment of error, the Medancics contend the trial court erred in calculating interest on the notes through March 1, 2010, instead of March 4, 2008. On March 4, 2008, the parties had entered an agreed judgment entry, purportedly settling all differences between them, save for the calculation of interest on the notes, which was specifically preserved for the appeal resulting in *Mayer* IV and *Mayer* V. The Medancics argue that, the other disputes between the parties being settled, there was nothing after March 4, 2008, to which further interest on the notes could attach.

{¶23} We respectfully disagree. As the Mayers point out, in *Staunton v. The Home Bldg. & Sav. Co.* (1942), 140 Ohio St.121, at paragraph one of the syllabus, the Supreme Court of Ohio held:

{¶24} "Where a party to an action is given judgment including interest at a rate less than that claimed, such party, by accepting the amount found due by the trial court with a reservation of the right of appeal in respect of the balance of interest claimed, does not thereby waive the right of appeal with respect to the question of the proper amount of interest due. (*Beals v. Lewis*, 43 Ohio St., 220, approved and followed.)"

{¶25} Further, in *Mayer* V, the Supreme Court of Ohio specifically held that the interest on these notes would continue to accrue until payment was made. Id. at ¶26. That "payment" necessarily includes interest on unpaid interest – which was not calculated properly until the trial court filed the judgment entry subject of this appeal.

{¶26} The second assignment of error lacks merit.

{¶27} By their third assignment of error, the Medancics contend the trial court erred in calculating postjudgment interest at the rates specified in the notes, R.C. 1343.02, rather than at the statutory rate, R.C. 1343.03. As the Mayers note, both the trial court initially, and this court in *Mayer* IV, held that postjudgment interest should be calculated at the rate specified in the notes. As the Supreme Court of Ohio observed in *Mayer* V, the Medancics did not raise this as error on that appeal, leading the Supreme Court to proceed on the basis that R.C. 1343.02 applied to this matter. This issue is now law of the case, and may no longer be questioned. Cf. *Transamerica Ins. Co.* at 323.

{¶28} The third assignment of error lacks merit.

{¶29} The judgment of the Geauga County Court of Common Pleas is affirmed.

{¶30} It is the further order of this court that appellants are assessed costs herein taxed.

{¶31} The court finds there were reasonable grounds for this appeal.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.