

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

| | | |
|--|---|------------------------|
| OHIO NEIGHBORHOOD FINANCE, INC., dba CASHLAND | : | JUDGES: |
| | : | Sheila G. Farmer, P.J. |
| | : | W. Scott Gwin, J. |
| | : | Julie A. Edwards, J. |
| Plaintiff-Appellant | : | |
| | : | Case No. 09CA000034 |
| -vs- | : | |
| | : | |
| | : | |
| | : | <u>OPINION</u> |
| AMBER EVERT | : | |
| Defendant-Appellee | : | |

CHARACTER OF PROCEEDING: Civil Appeal from Mt. Vernon Municipal Court Case No. 09 CVF 524

JUDGMENT: Affirmed In Part and Reversed In Part

DATE OF JUDGMENT ENTRY: February 22, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

RODERICK LINTON BELFANCE
Steven W. Mastrantonio
1500 One Cascade Plaza
Akron, Ohio 44308

AMBER EVERT
6925 County Road 19
Marengo, Ohio 43334

Edwards, J.

{¶1} Appellant, Ohio Neighborhood Finance, Inc., dba Cashland, appeals a judgment of the Mount Vernon Municipal Court granting their motion for default judgment on a breach of contract claim. Appellee is Amber Evert.

STATEMENT OF FACTS AND CASE

{¶2} On February 14, 2009, appellee visited a Cashland Financial Services store in Mount Vernon, Ohio, and borrowed \$500.00. She signed a contract pursuant to which she agreed to an interest rate of 25% on the loan.

{¶3} Appellee defaulted on the loan. Appellant filed the instant action in Mount Vernon Municipal Court on June 12, 2009. Appellee did not answer or defend the action. Appellant filed a motion for default judgment. The court granted the motion for default judgment on August 26, 2009, awarding damages of \$592.16 at an interest rate of 5%, and denying attorney fees. Appellant assigns two errors on appeal:

{¶4} “I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY GRANTING STATUTORY INTEREST ON A JUDGMENT WHERE THERE WAS A WRITTEN CONTRACT THAT CLEARLY PROVIDED FOR A HIGHER RATE OF INTEREST IN ACCORDANCE WITH R.C. 1321.571.

{¶5} “II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY REFUSING TO ALLOW THE PLAINTIFF TO COLLECT REASONABLE ATTORNEY’S FEES AS ALLOWED BY R.C. 1321.57(H).”

I

{¶6} Appellant argues that the court erred in awarding 5% interest rather than 25% as provided by the contract. R.C. 1321.571 provides:

{¶7} “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 per cent.”

{¶8} R.C. 1343.03 provides in pertinent part:

{¶9} “(A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, 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. Notification of the interest rate per annum shall be provided pursuant to sections 319.19, 1901.313, 1907.202, 2303.25, and 5703.47 of the Revised Code.”

{¶10} The contract in this case, which was attached to the complaint and filed with the motion for default judgment, provided for interest at the rate of 25%, the maximum rate allowed by R.C. 1321.571. This court has previously held that when a written contract contains a legal rate of interest, then the contractual rate should be applied to the judgment. *American General Finance, Inc. v. Bauer* (2001), Delaware

App. No. 00CAG08023; *Dutro Used Cars, Inc. v. Taylor*, Muskingum App. No. CT08-0050, 2009-Ohio-2908, ¶9-10.

{¶11} The trial court erred in applying the statutory interest rate of 5% to the judgment instead of 25% as agreed upon by contract. The first assignment of error is sustained.

II

{¶12} Appellant argues that the court erred in failing to award attorney fees in accordance with R.C. 1321.57(H), which provides in pertinent part:

{¶13} “In addition to the interest and charges provided for by this section, no further or other amount, whether in the form of broker fees, placement fees, or any other fees whatsoever, shall be charged or received by the registrant, except costs and disbursements in connection with any suit to collect a loan or any lawful activity to realize on a security interest or mortgage after default, including reasonable attorney fees incurred by the registrant as a result of the suit or activity and to which the registrant becomes entitled by law.”

{¶14} Similarly, the contract provided:

{¶15} “As permitted under Ohio Revised Code Section 1321.57(H)(1) or any other applicable laws, if we file a lawsuit against you to collect any amounts owed by you under this Customer Agreement, you agree to pay us for all of the collections (sic) costs we incur. These collection costs are in addition to the Total of Payments and may include the costs of any attorney’s fees we incur in connection with the referral of this loan to an attorney to collect this loan after default.”

{¶16} However, appellant did not present any evidence of the amount of attorney fees incurred in the action, and the proposed default judgment entry appellant submitted to the court did not include a dollar amount of attorney fees, but awarded “attorney fees pursuant to R.C. 1321.57 and contract.” Appellant did not request a hearing on the amount of attorney fees. Although the statute allows an award of reasonable attorney fees and the contract provided for the possibility of attorney fees, appellant presented nothing to the court from which the court could determine the amount of attorney fees incurred in pursuing the action against appellant. Based on the lack of any evidence before the court on the amount of attorney fees incurred in the action, the court did not err in failing to award attorney fees.

{¶17} The second assignment of error is overruled.

{¶18} The judgment of the Mount Vernon Municipal Court is affirmed in part and reversed in part. This cause is remanded to that court with instructions to award interest at the contract rate of 25%. Appeal costs to be split evenly between the parties.

By: Edwards, J.
Farmer, P.J. and
Gwin, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/W. Scott Gwin

JUDGES

JAE/d1210

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

| | | |
|---|---|---------------------|
| OHIO NEIGHBORHOOD FINANCE, INC. dba CASHLAND | : | |
| | : | |
| | : | |
| Plaintiff-Appellant | : | |
| | : | |
| | : | |
| -vs- | : | JUDGMENT ENTRY |
| | : | |
| AMBER EVERT | : | |
| | : | |
| | : | |
| Defendant-Appellee | : | CASE NO. 09CA000034 |

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Mt. Vernon Municipal Court is affirmed in part and reversed in part. Costs assessed 50% to appellant and 50% to appellee. This cause is remanded to that court with instructions to award interest at the contract rate of 25%.

s/Julie A. Edwards_____

s/Sheila G. Farmer_____

s/W. Scott Gwin_____

JUDGES