

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

PHOENIX FINANCIAL SOLUTIONS,  
INC. AN ASSIGNEE OF: DUTRO  
USED CARS, INC.  
Plaintiff-Appellant

-vs-

JODI NICHOLS

Defendant-Appellee

: JUDGES:  
:  
: Hon. William B. Hoffman, P.J.  
: Hon. Sheila G. Farmer, J.  
: Hon. Patricia A. Delaney, J.

: Case No. CT2013-0013

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County  
Court, Case No. CVF-1201014

JUDGMENT:

REVERSED & REMANDED

DATE OF JUDGMENT ENTRY:

November 19, 2013

APPEARANCES:

For Plaintiff-Appellant:

JAMES L. BLUNT  
445 Longview Ave.  
Mansfield, OH 44903

For Defendant-Appellee:

JODI NICHOLS, pro se  
44 Village Green Court  
Crooksville, OH 43731

*Delaney, J.*

{¶1} Appellant Phoenix Financial Solutions, Inc., an Assignee of: Dutro Used Cars, Inc., hereby appeals from the February 12, 2013 Consent Judgment Entry entered in the Muskingum County Court. Appellee Jodi Nichols is pro se and did not file a brief.

{¶2} This case is factually and procedurally similar to Phoenix Financial Solutions, Inc., an Assignee of: Dutro Used Cars, Inc. v. Jackson, 5th Dist. Muskingum No. CT2013-0019, which is decided upon the same rationale as the instant case.

### **FACTS AND PROCEDURAL HISTORY**

{¶3} Appellee bought a car from Dutro Used Cars, Inc. and signed a promissory note with interest at a rate of 21.0% and then failed to remit the payments as required by the promissory note. The debt was assigned to appellant on September 28, 2012, and appellant filed a complaint in the Muskingum County Court on December 27, 2012 for the deficiency balance, requesting the contractual rate of interest from the date of sale of the repossessed vehicle.

{¶4} Appellant served the summons and complaint upon appellee by certified mail which appellee signed for on January 8th, 2013.

{¶5} On February 12, 2013, the trial court granted a Consent Judgment Entry against appellee, but *sua sponte* reduced the interest rate in the entry from the agreed-upon contractual rate to the statutory rate.

{¶6} Appellant now appeals from the February 12, 2013 Consent Judgment Entry of the trial court.

{¶7} Appellant raises one assignment of error:

**ASSIGNMENT OF ERROR**

{¶8} “1. THE TRIAL COURT ERRED BY FAILING TO GRANT PLAINTIFF THE CONTRACTUAL RATE OF INTEREST, PURSUANT TO OHIO REVISED CODE 1343.03, AS AGREED TO BY DEFENDANT ON A CONSENT TO JUDGMENT.”

**ANALYSIS**

{¶9} Appellant argues the trial court improperly entered judgment including the statutory interest rate instead of the contractual interest rate. In light of our decision in *Dutro Used Cars, Inc. v. Spohn*, 5th Dist. Muskingum No. CT08-0047, 2009-Ohio-2912, we agree, and therefore we reverse the judgment of the trial court.

{¶10} Appellant argues the trial court improperly reduced the interest rate from the contractual rate of 21.0% to the statutory rate. Ohio Revised Code Section 1343.03 states in pertinent part:

(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. (Emphasis added.)

{¶11} As we stated above, we have previously held when a written contract contains a legal rate of interest then the rate should be applied to the judgment. *Dutro Used Cars, Inc.*, supra, 2009-Ohio-2912, ¶ 9, citing *Amer. Gen. Fin., Inc. v. Bauer*, 5th Dist. Delaware No. 00CAG08023, unreported, 2001 WL 498508 (May 4, 2001).

### **CONCLUSION**

{¶12} We therefore sustain appellant's sole assignment of error. The judgment of the Muskingum County Court is reversed and this matter is remanded for further proceedings in accord with this opinion.

By: Delaney, J. and

Hoffman, P.J.

Farmer, J., concur.

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HON. PATRICIA A. DELANEY

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HON. WILLIAM B. HOFFMAN

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HON. SHEILA G. FARMER