[Cite as *John Soliday Fin. Group, L.L.C. v. Wetzl*, 2010-Ohio-756.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

JOHN SOLIDAY FINANCIAL GROUP, LLC, PLAINTIFF-APPELLANT, V. BETTY M. WETZL, DEFENDANT-APPELLEE.	)	CASE NO. 09-MA-04 OPINION

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 08CV2139
JUDGMENT:	Reversed and Modified
APPEARANCES: For Plaintiff-Appellant	Attorney Frederick Stratmann Cheek Law Offices, LLC 471 E. Broad St., 12th Floor Columbus, Ohio 43215
For Defendant-Appellee	No brief filed

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: February 25, 2010

[Cite as *John Soliday Fin. Group, L.L.C. v. Wetzl*, 2010-Ohio-756.]
DONOFRIO, J.

{¶1} Plaintiff-appellant John Soliday Financial Group (Soliday Financial) appeals a summary judgment enter in its favor in the Mahoning County Common Pleas Court and takes issue with the interest rate awarded by the trial court.

{¶2} On July 22, 2003, defendant-appellee Betty Wetzl bought a used 1996 Ford Taurus from Pro Car Auto Group Inc. (Pro Car) located at 4508 Mahoning Avenue, Youngstown, Ohio 44515, under a "RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT." The car, including sales tax, cost $8,730.13. Pro Car sold Wetzl a six month/12,000 miles "Service Contract" for the car which cost an additional $699.00. The contract also provided for a "Documentary Fee" of $50.00 and "FILING FEES" of $20.25." Less a $500.00 down payment, the amount financed was $8,999.38 at an annual percentage rate of 24.95 percent resulting in a finance charge of $3,981.38.[1] The amount financed ($8,999.38) and the finance charge ($3,981.38) totaled $12,980.76 which was to be paid in 78 bi-weekly payments of $166.42 beginning August 8, 2003. The contract also contained an assignment provision which assigned the contract and security agreement to Atlantic Financial Services Inc. (Atlantic Financial).

{¶3} Wetzl defaulted on the contract on or about August 31, 2005, with a balance of $5,503.33. Just two years after Wetzl purchased the car from Pro Car for over $8,000.00, the vehicle was repossessed and sold at auction for only $900.00. Those proceeds were subtracted from Wetzl's balance, but another $350.00 in repossession costs were added to it for a total deficiency of $4,953.33. In December 2007, Atlantic Financial assigned the contract to Ameristar Financial Company, LLC which in turn assigned it to John Soliday.

{¶4} On May 22, 2008, Soliday Financial sued Wetzl for the deficiency balance. Soliday Financial filed for default judgment on July 21, 2008. On August 1, 2008, counsel for Wetzl filed a motion requesting leave to plead and the trial court granted the motion. On September 15, 2008, Soliday Financial filed a Notice of

---

[1] Under R.C. 2905.21(H) a rate exceeding 25 per cent annually is criminal usury. Any person who knowingly engages in criminal usury is guilty of a felony of the fourth degree. R.C. 2905.22(A)(2)(B).

Service of Request for Admissions and Request for Production of Documents. Wetzl never answered these requests. At the time of assignment to Soliday Financial, the outstanding balance was $4,953.33.

{¶5} Upon motion, the trial court awarded Soliday Financial summary judgment on November 18, 2008. The judgment entry awarded Soliday Financial $4,953.33 plus interest at the rate of 8 percent since August 31, 2005. This timely appeal follows.

{¶6} Initially, it should be noted that Wetzl has failed to file a brief in this matter. Therefore, we may accept Soliday Financial's statement of the facts and issues as correct and reverse the judgment if Soliday Financial's brief reasonably appears to sustain such action. App.R.18(C).

{¶7} Soliday Financial's sole assignment of error is:

{¶8} "The trial court abused its discretion by awarding Appellant future interest at the statutory rate. Appellee had stipulated to paying a higher interest rate in writing in the contract, and further admitted owing the higher rate through her refusal to answer a Request for Admissions."

{¶9} An appellate court reviews a trial court's decision in awarding interest for an abuse of discretion. *Cincinnati Ins. Co. v. First National Bank* (1980), 63 Ohio St.2d 220, 226, 17 O.O.3d 136, 407 N.E.2d 519. Abuse of discretion means the court's decision was unreasonable, unconscionable, or arbitrary. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140.

{¶10} The applicable statutory provision that governs the interest rate relevant to Soliday Financial's judgment is R.C. 1343.03(A), which provides that:

{¶11} "[W]hen 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." (Emphasis added.)

{¶12} Ohio courts have held that interest rates higher than the statutory rates are permissible when provided for in the contract. *Capital Fund Leasing, L.L.C. v. Garfield* (1999), 135 Ohio App.3d 579, 582, 735 N.E.2d 23, 24; *Classic Funding v. Burgos*, 8th Dist. No. 80844, 2002-Ohio-6047. As indicated in R.C. 1343.03(A), in order for a rate, other than the statutory rate of interest to apply, two prerequisites must be met: (1) there must be a written contract between the parties; and (2) the contract must provide a rate of interest with respect to money that becomes due and payable. *Hobart Bros. Co. v. Welding Supply Serv., Inc.* (1985), 21 Ohio App.3d 142, 144, 21 OBR 152, 486 N.E.2d 1229; *Chappell Door Co. v. Roberts Group, Inc.* (May 6, 1991), 12th Dist. No. CA90-09-013. For there to be a written contract, "there must be a writing to which both parties have assented." *Hobart* at 144, 486 N.E.2d 1229. Once a judgment is rendered, the interest rate in the contract will continue to govern until the amount due is paid. *Ashville Bank v. Higley* (Jan. 27, 1987), 4th Dist. No. 85-CA-43, citing *Hobart*.

{¶13} In *Progressive Parma Care v. Weybrecht*, 8th Dist. No. 89953, 2008-Ohio-213, appellee signed a contract which required payment upon the bill, with an 18 percent per annum interest rate if bills were not paid. Appellee incurred unpaid charges of $15,485.95. Appellant entered suit to recover charges and the trial court granted appellant's unopposed motion for summary judgment. The judgment entry stated that appellant was entitled to "$15,485.95, plus interest thereon at [legal interest] per annum." Id. at ¶4. The trial court had crossed out the 18 percent interest and inserted "legal interest" in its place. Id. at ¶5. On appeal the appellant argued, "the trial court erred when it entered judgment for 'legal interest' when the contract between the parties * * * provided for an 18 percent rate." Id. The court of appeals held that appellant was entitled to the 18 percent interest rate as agreed upon in the writing. Id. at ¶9.

{¶14} Similarly, in the present case, the parties have a written contract specifying an interest rate higher than the statutory amount. The parties stipulated to this amount in writing through the Retail Installment Credit Contract, which Wetzl signed and partially paid. The trial court found the contract existed and that Wetzl breached the contract, holding her liable to Soliday Financial. In the contract, Wetzl agreed to pay the principal amount of $8,999.38, "plus finance charges accruing on the unpaid balance at the rate of 24.95 percent per year from [July 22, 2003] until paid in full." The trial court's judgment at the statutory interest rate, as opposed to the interest rate of 24.95 percent, contravenes the "preference to enforcing the stipulated rate of interest contained in a contract assented to by the parties, rather than applying the statutory default rate." *Capital Fund Leasing*, 135 Ohio App.3d at 582, 735 N.E.2d 23. See, also, *Ohio Valley Mall Co. v. Fashion Gallery Inc.* (1998), 129 Ohio App.3d 700, 705, 719 N.E.2d 8, 719 N.E.2d 8 (holding that when parties to a written contract agree to an interest rate exceeding the statutory amount, R.C. 1343.03[A] mandates that post-judgment interest be assessed at the contractual rate). According to R.C. 1343.03 and the contract, Soliday Financial is entitled to the 24.95 percent interest rate, and the trial court erred when it disregarded the contractual stipulation.

{¶15} Accordingly, Soliday Financial's sole assignment of error has merit.

{¶16} The judgment of the trial court is hereby reversed and modified to reflect an interest rate of 24.95 percent.

Vukovich, P.J., concurs.
DeGenaro, J., concurs.