

[Cite as *Ohio Neighborhood Fin., Inc. v. Massey*, 2011-Ohio-2165.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio Neighborhood Finance Inc.,	:	
dba Cashland,	:	
	:	No. 10AP-1020
Plaintiff-Appellant,	:	(M.C. No. 2010CVF-015636)
	:	
v.	:	No. 10AP-1121
	:	(M.C. No. 2010CVF-015089)
Jasper Massey and	:	
Rashard Mills,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on May 5, 2011

Bricker & Eckler LLP, Anthony M. Sharett, and Samir B. Dahman, for appellant.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Plaintiff-appellant, Ohio Neighborhood Finance Inc., dba Cashland ("Cashland"), appeals two judgments of the Franklin County Municipal Court. While the trial court granted default judgment in Cashland's favor, Cashland contends here that the court applied an incorrect interest rate on judgments regarding loans Cashland provided to defendants-appellees, Jasper Massey (in 10AP-1020) and Rashard Mills (in 10AP-1121) (collectively, "appellees"). Having concluded that the trial court did not err

by denying Cashland's request for relief from judgment under Civ.R. 60(B) regarding its loan to Massey, we affirm in that case. Having concluded that the trial court erred in its application of interest with respect to Cashland's loan to Mills, we reverse in that case.

No. 10AP-1020: Jasper Massey

{¶2} Cashland filed a complaint against Massey, alleging that he had defaulted on a loan from Cashland. Cashland sought to recover its principal (\$200), a loan origination fee (\$15), a credit investigation fee (\$10), and interest at the rate of 25 percent. Cashland also sought an award for a returned check fee (\$20) and a late charge (\$15). Massey did not file an answer to the complaint.

{¶3} In an entry filed on August 2, 2010, the trial court granted judgment in favor of Cashland in the amount of \$260.00, plus costs and interest at the rate of four percent. Cashland did not appeal the decision.

{¶4} On September 20, 2010, Cashland filed a motion for relief, contending that the trial court erred by imposing a rate of interest at four percent. In an entry filed on October 7, 2010, the trial court denied Cashland's motion.

{¶5} Cashland appealed and raises the following assignment of error:

The Trial Court Abused Its Discretion In Denying Cashland's Motion For Relief Because Cashland Timely Presented A Meritorious Claim Under The Ohio Civil Rules.

{¶6} Before the trial court, Cashland moved for relief from judgment pursuant to Civ.R. 60(B). Under Ohio law, in order to prevail on a motion for relief from judgment, the movant must establish the following three elements: (1) the movant has a meritorious claim to present if relief is granted; (2) the movant is entitled to relief under one of the grounds set forth in Civ.R. 60(B)(1) through (5); and (3) the motion has been

made within a reasonable time. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus. We will not reverse a trial court's determination of whether to grant a motion under Civ.R. 60(B) absent an abuse of the trial court's discretion. *Chase Manhattan Bank v. Jenkins*, 10th Dist. No. 06AP-1192, 2007-Ohio-3622, ¶11.

{¶7} Cashland argues here, as it did before the trial court, that it satisfies each element of the test for 60(B) relief. Cashland contends the following: (1) it has a meritorious claim to present, i.e., that the trial court erred when it applied an interest rate of four percent; (2) it is entitled to relief under Civ.R. 60(B)(1) (because the trial court made a mistake when it applied the wrong interest rate) and Civ.R. 60(B)(5) (because the judgment does not reflect the true understanding of the parties); and (3) it brought its motion within a reasonable time.

{¶8} We conclude, however, that the trial court did not abuse its discretion by denying Cashland's request for relief under Civ.R. 60(B). Cashland could have raised all of its claims on appeal of the August 2, 2010 judgment, just as it raised these claims in its appeal regarding its loan to Mills. It may not substitute a motion for relief under Civ.R. 60(B) for a timely appeal or to extend the time for perfecting an appeal from the original judgment. *State ex rel. Durkin v. Ungaro* (1988), 39 Ohio St.3d 191, 192. Therefore, we overrule Cashland's assignment of error as to Massey.

Case No. 10AP-1121: Rashard Mills

{¶9} Cashland filed a complaint against Mills, alleging that he had defaulted on a loan provided by Cashland. Cashland sought to recover the principal of the loan (\$500), a loan origination fee (\$30), a credit investigation fee (\$10), and interest at the

rate of 25 percent. Cashland also sought an award for a returned check fee (\$20) and a late charge (\$27). Mills did not answer the complaint.

{¶10} In an entry filed on November 3, 2010, the trial court granted judgment in favor of Cashland in the amount of \$592.90, plus costs and interest at the rate of four percent.

{¶11} Cashland filed a timely appeal and raises the following assignment of error:

The Trial Court Committed Reversible Error In Reducing To 4% Per Annum, The Interest Rate On Mills' Debt In The Default Judgment Granted In Favor Of Appellant Ohio Neighborhood Finance, Inc.

{¶12} In this assignment, Cashland contends that the trial court erred when it applied an interest rate of four percent, rather than the contractual rate of 25 percent. Because it presents questions of law, we apply de novo review.

{¶13} The loan agreement signed by Mills provided the following:

You promise to pay us \$540.00 (the Principal Amount on this loan) plus interest at a rate of 25% per annum on the principal outstanding for the time outstanding from the date of this Customer Agreement until paid in full.

{¶14} The Ohio Mortgage Loan Act, R.C. 1321.51-.60, et seq., requires certain loan providers, including Cashland, to register with the Ohio Department of Commerce. As a registrant under the Act, Cashland is subject to the following requirements concerning interest that may be applied to a loan.

{¶15} R.C. 1321.57(A) provides a maximum interest rate of 21 percent, as follows:

Notwithstanding any other provisions of the Revised Code, a registrant may contract for and receive interest, calculated

according to the actuarial method, at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan.

{¶16} R.C. 1321.571 provides an alternative interest rate of 25 percent, as follows:

As an alternative to the interest permitted in division (A) of section 1321.57 * * *, 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.

{¶17} It is unclear to us why the General Assembly provided an interest rate of 21 percent in one section and then provided an alternative rate of 25 percent in the very next section, using substantially similar language. Nevertheless, we will not second-guess the wisdom of the General Assembly. R.C. 1321.571 expressly allows a registrant to provide an alternative interest rate up to 25 percent, as long as the amount is part of a consensual contract between the parties. The undisputed evidence shows that Cashland and Mills agreed to an interest rate of 25 percent. Therefore, the interest rate of 25 percent is lawful, and the trial court erred by not applying it.

{¶18} R.C. 1343.03(A) does not require a different result. That section applies a statutory rate of interest to a judgment, but, as this court has stated, that statutory rate "is simply a default rate to be charged should the parties not contract otherwise." *First Bank of Ohio v. Wigfield*, 10th Dist. No. 07AP-561, 2008-Ohio-1278, ¶19, citing *Ohio Valley Mall Co. v. Fashion Gallery, Inc.* (1998), 129 Ohio App.3d 700, 704. R.C. 1343.03(A) states that the statutory rate applies unless that contract provides a different interest rate, "in which case the creditor is entitled to interest at the rate provided in that contract."

{¶19} Applying this provision, a judgment creditor is entitled to an interest rate in excess of the statutory rate when (1) the parties have a written contract, and (2) that contract provides an interest rate for money that becomes due and payable. *Wigfield*, ¶20, citing *Hobart Bros. Co. v. Welding Supply Serv., Inc.* (1985), 21 Ohio App.3d 142, 144. Here, it is undisputed that Cashland and Mills entered into a written contract that provides an interest rate of 25 percent. Therefore, that rate of interest applies to the judgment against Mills, and the trial court erred by applying a different rate. Accordingly, we sustain Cashland's assignment of error.

{¶20} In conclusion, having overruled Cashland's assignment of error in case No. 10AP-1020, we affirm the judgment of the Franklin County Municipal Court in that case. Having sustained Cashland's assignment of error in case No. 10AP-1121, we reverse the judgment of the Franklin County Municipal Court in that case. We remand the latter case to the trial court for application of an interest rate of 25 percent and a new calculation of damages.

Judgment affirmed in case No. 10AP-1020.
Judgment reversed,
cause remanded with instructions in case No. 10AP-1121.

BROWN and KLATT, JJ., concur.
