

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

OHIO NEIGHBORHOOD FINANCE, INC. :	:	Appellate Case No. 23676
dba CASHLAND	:	
	:	
Plaintiff-Appellant	:	Trial Court Case No. 09-CVF-804
	:	
v.	:	
	:	
	:	(Civil Appeal from Montgomery
	:	County
SALVADOR GONZALEZ	:	Area II Court)
	:	
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 10th day of December, 2010.

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ANTHONY M. SHARETT, Atty. Reg. #0076607, and M. BRECK VALENTINE, Atty. Reg. #0083696, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215

Attorney for Plaintiff-Appellant

SALVADOR GONZALEZ, 7600 North Swan Lake Drive, Huber Heights, Ohio 45424
Defendant-Appellee, *pro se*

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BROGAN, J.

{¶ 1} Appellant Ohio Neighborhood Finance, Inc. (“Ohio Neighborhood”) appeals the decision of the Montgomery County Area II Court, granting judgment against Salvador Gonzalez for the sum of \$591.79, plus costs and attorneys’ fees,

plus post-judgment interest at 5% per annum. Ohio Neighborhood argues that the trial court improperly lowered the rate of interest from 25% to 5%, because Ohio Neighborhood and Gonzalez agreed upon the 25% interest rate, and that amount should be enforced. Since the agreed upon interest rate in the contract was 25%, that amount should be applied to the judgment. For the following reasons, we reverse the judgment of the trial court.

I

{¶ 2} On January 17, 2009, Ohio Neighborhood made a loan to Gonzalez for the amount of \$500.00. Aside from repaying the \$500.00, Gonzalez agreed to a loan origination charge of \$30.00, and a credit investigation fee of \$10.00. After the fees and interest, Gonzalez was required to pay an aggregate sum of \$544.79 due January 30, 2009. In the “Promise to Pay” section of the customer agreement that Gonzalez signed, it states in pertinent part:

{¶ 3} “You promise to pay us \$500.00 (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.”

{¶ 4} On January 30, 2009, Gonzalez was unable to repay the loan. After Ohio Neighborhood demanded the amount be repaid, Gonzalez failed to repay the amount due under the loan agreement.

{¶ 5} Ohio Neighborhood filed a complaint in the Montgomery County Area II Court, seeking judgment against Gonzalez for the amount of \$591.79 plus the interest of 25% per annum beginning on the date of default, along with court costs

and reasonable attorneys' fees as permitted by statute and contract. Gonzalez failed to respond or plead to the complaint, and Ohio Neighborhood filed its motion for default judgment.

{¶ 6} On August 26, 2009, the trial court journalized the judgment entry and awarded Ohio Neighborhood \$591.79, plus court costs and attorneys' fees. Instead of awarding the interest rate of 25%, the trial court awarded 5% interest per annum on the unpaid principal from the date of judgment.

II

{¶ 7} Ohio Neighborhood puts forth one assignment of error, which states as follows:

{¶ 8} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REDUCING TO 5% PER ANNUM, THE INTEREST RATE ON THE DEBT IN THE DEFAULT JUDGMENT GRANTED IN FAVOR OF APPELLANT OHIO NEIGHBORHOOD FINANCE, INC."

{¶ 9} Ohio Neighborhood argues that it is permitted by statute to contract a loan with an interest rate as long as that interest rate does not exceed 25%, and since both parties agreed upon that amount of interest, the trial court may not unilaterally alter the amount of interest. We agree.

{¶ 10} R.C. 1343.03(A) states, in pertinent part:

{¶ 11} "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.”

{¶ 12} When construing R.C. 1343.03(A), if a written loan agreement contains an agreed upon interest rate, that interest rate should be applied to the judgment, as long as that rate is permitted by law. *American General Finance, Inc. v. Bauer* (May 4, 2001), Delaware App. No. 00CAG8023.

{¶ 13} In the present case, the agreed upon interest rate was at 25% which is permissible, and that rate should have been applied to the judgment.

{¶ 14} Ohio Neighborhood's assignment of error is sustained.

III

{¶ 15} Ohio Neighborhood's assignment of error being sustained, the judgment of the trial court is reversed and remanded for a judgment consistent with this opinion.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

Anthony M. Sharett

M. Breck Valentine
Salvador Gonzalez
Hon. James A. Hensley, Jr.