

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. 09CA000033
-vs-	:	
	:	
	:	
	:	<u>OPINION</u>
PEGGY WILKINSON	:	
Defendant-Appellee	:	

CHARACTER OF PROCEEDING: Civil Appeal from Mt. Vernon Municipal Court Case No.09 CVF 554

JUDGMENT: Reversed and Remanded

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

PEGGY WILKINSON
4761 Owl Creek Road
Mount Vernon, Ohio 43050

Edwards, J.

{¶1} Plaintiff-appellant, Ohio Neighborhood Finance, Inc. dba Cashland, appeals from the August 26, 2009, Judgment Entry of the Mount Vernon Municipal Court granting a default judgment against defendant-appellee Peggy Wilkinson.

STATEMENT OF THE FACTS AND CASE

{¶2} On June 19, 2009, appellant Ohio Neighborhood Finance, Inc. dba Cashland filed a complaint against appellee Peggy Wilkinson. Appellant, in its complaint alleged, on or about January 19, 2009, it had loaned appellee the principal amount of \$500.00 and that appellee had signed a contract to pay the loan back. Appellant further alleged that appellee had defaulted on the loan. In its complaint, appellant sought judgment against appellee in the amount of \$547.74, plus interest at the rate of 25% per annum from February 9, 2009, and attorney fees. The contract signed by appellee had contained an agreed interest rate of 25%.

{¶3} After appellee failed to file an answer to the complaint, appellant, on August 24, 2009, filed a Motion for Default Judgment against appellee. Pursuant to a Judgment Entry filed on August 28, 2009, the trial court granted appellant's Motion for Default Judgment and granted appellant a judgment against appellee in the amount of \$547.74. However, while appellant, in the Judgment Entry that it submitted to the trial court, requested interest at the rate of 25% per annum, the trial court reduced such amount to 5% per annum, the statutory rate of interest.

{¶4} Appellant now raises the following assignment of error on appeal:

{¶5} "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.”

I

{¶6} Appellant, in its sole assignment of error, argues that the trial court erred by granting statutory interest at the rate of 5% per annum when there was a written contract that provided for a higher rate of interest in accordance with R.C. 1321.571. We agree.

{¶7} The parties’ agreement states that it “will be governed by the laws of the State of Ohio, including the Mortgage Loan Act, Ohio Revised Code Sections 1321.51 to 1321.60,....” R.C. Section 1321.571 provides as follows: “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} Ohio Revised Code Section 1343.03 states, 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. (Emphasis added.)

{¶10} In *American General Finance, Inc. v. Bauer* (2001), Delaware App. No. 00CAG08023, 2001 WL 498508, this Court held that when a written contract contains a legal rate of interest then that rate should be applied to the judgment. See *also Dutro Used Cars, Inc. v. Gooden*, Muskingum App. No. CT08-0048, 2009-Ohio-2913.

{¶11} Because the loan in this case provided for an agreed interest rate of 25% per annum as provided for in R.C. 1321.571, we find that the trial court erred in imposing the statutory rate of 5% per annum.

{¶12} Appellant's sole assignment of error is, therefore, sustained.

{¶13} Accordingly, the judgment of the Mount Vernon Municipal Court is reversed and this matter is remanded to the trial court for further proceedings.

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

