[Cite as *Capital One Bank v. Brown*, 2009-Ohio-3074.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91934

CAPITAL ONE BANK

PLAINTIFF-APPELLANT

vs.

LINDA D. BROWN

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cleveland Municipal Court
Case No. 2007 CVF 026316

BEFORE: Cooney, A.J., Boyle, J., and Celebrezze, J.

RELEASED: June 25, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Plaintiff-appellant, Capital One Bank ("Capital One"), appeals the municipal court's decision denying prejudgment interest on its motion for default judgment and granting interest at the statutory rate. Finding some merit to the appeal, we reverse and remand.

{¶ 2} This case arose when Capital One filed a complaint seeking $1,876.51 from defendant-appellant Linda Brown ("Brown"), which included the principal unpaid credit card charges of $1,018.70 and prejudgment interest of $857.81. Brown never answered, and Capital One sought a default judgment.

{¶ 3} A magistrate heard the case and determined that Capital One had not proven that it was entitled to prejudgment interest or a higher rate of interest than provided by statute. Capital One objected to this decision, but the trial court adopted it and entered judgment in the amount of $1,018.70 plus 8 percent interest from June 12, 2008.

{¶ 4} Capital One now appeals, raising two assignments of error for our review.

Civ.R. 55: Default Judgment

{¶ 5} Civ.R. 55(A) provides in pertinent part:

> "(A) Entry of judgment. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing *** to the court ***. ***If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an

> investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties."

{¶ 6} "[A] default judgment is proper [under Civ.R. 55] when *** a defendant has not contested the plaintiff's allegation by pleading or 'otherwise defend[ing]' such that no issues are present in the case." *Reese v. Proppe* (1981), 3 Ohio App.3d 103, 3 Ohio B. 118, 443 N.E.2d 992.

{¶ 7} Furthermore, under Civ.R. 8(D), allegations in a complaint to which a responsive pleading is required are admitted when not denied in the responsive pleading. "In other words, if a party fails to deny the specific allegations of a complaint against it, those allegations are considered admitted by the party." *Burdge v. On Guard Sec. Servs., Inc.*, Hamilton App. No. C-050522, 2006-Ohio-2092. See, also, *Reese*. Thus, when a defendant fails to contest the allegations raised in the complaint, "it is proper to render a default judgment against the defendant as liability has been admitted or 'confessed' by the omission of statements refuting the plaintiff's claims."

{¶ 8} In the instant case, the trial court granted default judgment in Capital One's favor, but failed to deem as admitted each of the allegations of the complaint, including the contract rate of interest.

{¶ 9} In the first assignment of error, Capital One alleges that the trial court was obligated to award prejudgment interest at the contract rate. We agree.

{¶ 10} This court held in *Waina v. Abdallah*, Cuyahoga App. No. 86629, 2006-Ohio-2090, ¶39-40:

> "In a breach of contract case between private parties where liability is established, the trial court does not have discretion in awarding prejudgment interest. *Reminger & Reminger Co., L.P.A. v. Fred Siegel Co.* (Mar. 1, 2001), Cuyahoga App. No. 77712, citing *Dwyer Elec., Inc. v. Confederated Builders, Inc.* (Oct. 29, 1998), Crawford App. No. 3-98-18. Specifically *** where a party has been granted judgment on an underlying contract claim, that party is entitled to prejudgment interest as a matter of law. Id.
>
> "In determining whether to award prejudgment interest pursuant to R.C. 1343.03(A), an aggrieved party should be compensated for the lapse of time between accrual of the claim and judgment. *Royal Elec. Constr. Corp. v. Ohio State Univ.*, 73 Ohio St.3d 110, 116, 1995-Ohio-131, 652 N.E.2d 687. Accordingly, the only issue for resolution by a trial court in claims made pursuant to R.C. 1343.03(A) is how much interest is due the aggrieved party. Id. In order to determine this, the trial court must make a factual determination as to 'when interest commences to run, i.e., when the claim becomes "due and payable," and to determine what legal rate of interest should be applied.' *Dwyer Elec.*, supra; quoting *Royal Elec.*, 73 Ohio St.3d at 115. Thus, while the right to prejudgment interest in a contract claim is a matter of law, the amount awarded is based on the court's factual determination of an accrual date and interest rate. Id."

{¶ 11} Therefore, Capital One is entitled to prejudgment interest. The magistrate concluded, and the trial court agreed, that the parties had a contractual relationship. But the magistrate found that although Capital One had "submitted proof of a contractual relationship," it had "submitted no evidence that [Brown] ever signed a document agreeing either to prejudgment interest or to a higher rate of interest than provided by statute."

{¶ 12} However, as this court found in *Discover Financial Serv., Inc. v. Belmont*, Cuyahoga App. No. 86336, 2006-Ohio-1539, ¶4, when the credit card holder uses a card, he or she is then bound to the terms of the credit card agreement. The agreement in the instant case set interest at 25 percent. Brown

has not contested this in the trial court or on appeal. Therefore, the court erred in failing to award prejudgment interest at the contract rate.

{¶ 13} Accordingly, we sustain the first assignment of error.

{¶ 14} In the second assignment of error, Capital One claims that the trial court erred in requiring additional evidence before granting a default judgment. Specifically, Capital One faults the trial court for requiring it to produce documents showing Brown's signature in order to determine the contract interest rate. However, Civ.R. 55(A) clearly allows the trial court to make an investigation and conduct a hearing as it deems necessary to establish the truth of any averment. Therefore, the second assignment of error is overruled.

{¶ 15} Accordingly, we reverse and remand for the municipal court to determine the date on which Brown's debt became due and payable and to calculate and award prejudgment and post-judgment interest at the contract rate.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and

FRANK D. CELEBREZZE, JR., J., CONCUR