[Cite as *Kulton v. Hoffer*, 2009-Ohio-5943.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

JOYCE A. KULTON	C.A. No. 24738
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
PAUL R. HOFFER	BARBERTON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO
Appellee	CASE No. CVF 0900445

DECISION AND JOURNAL ENTRY

Dated: November 10, 2009

BELFANCE, Judge.

INTRODUCTION

{¶1} Plaintiff-Appellant Joyce A. Kulton appeals from a default judgment entered in her favor by the Barberton Municipal Court. Kulton challenges the prejudgment interest rate awarded by the trial court. In her sole assignment of error, Kulton asserts that the trial court erred by awarding a default judgment at a rate of interest less than the rate of interest stipulated in the contract between the parties in violation of R.C. 1343.02. For the reasons set forth below, we sustain Kulton's assignment of error and reverse.

FACTS

{¶2} In 2003, Joyce A. Kulton retained Attorney Paul R. Hoffer to represent her in filing a personal injury suit. The Summit County Court of Common Pleas dismissed Kulton's case with prejudice pursuant to Civ.R. 41(B)(3). Kulton, believing her case to be dismissed due to Hoffer's negligence, retained new counsel to pursue a legal malpractice claim against Hoffer.

{¶3} On December 21, 2007, Kulton and Hoffer entered into a Settlement and Release Agreement ("Agreement") to settle the legal malpractice claim for $10,000. In 2008, Hoffer made payments to Kulton totaling $3,500, but failed to make the final payment of $6,500. Kulton filed a breach of contract claim in Barberton Municipal Court. Hoffer did not timely file an answer to the complaint. Kulton submitted a proposed entry to the trial court providing for default judgment in her favor. The entry further provided that prejudgment interest would be at the rate of 8%. The trial court signed the entry, but crossed off 8% and inserted 5%, the current statutory interest rate at the time, in its place. Kulton moved for a nunc pro tunc entry to correct the order to reflect the 8% interest rate specified in the settlement agreement. The trial court denied the motion. Kulton now appeals, seeking the 8% interest rate. In her sole assignment of error, Kulton asserts that the trial court erred by awarding a default judgment at a rate of interest less than the rate of interest stipulated in the contract between the parties in violation of R.C. 1343.02.

{¶4} As Hoffer did not file an appellate brief, this Court "may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action." App.R. 18(C).

ASSIGNMENT OF ERROR

{¶5} In her sole assignment of error, Kulton argues that the trial court erred in awarding prejudgment interest at the statutory rate instead of the contractual rate, and, in doing so, violated Section 1343.02 of the Ohio Revised Code.

{¶6} As Kulton is challenging only the rate of interest, she presents a question of law. *John Soliday Financial Group, LLC v. Stutzman*, 9th Dist. No. 08CA0046, 2009-Ohio-2081, at ¶¶5-6. Also, "[b]ecause this assignment of error raises issues of law only, our review is de

novo." *State v. Hochstetler*, 9th Dist. No. 03CA0025, 2004-Ohio-595, at ¶10. "A de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination." *Rusov v. Ansley*, 9th Dist. No. 23748, 2007-Ohio-7022, at ¶12.

{¶7} Both Ohio Revised Code sections 1343.02, titled "Computation of interest[,]" and 1343.03, titled "Rate of interest on contracts, book accounts and judgments; commencement of interest on judgments[,]" address the interest rate to be awarded when a contract exists. R.C 1343.02 provides that:

> "Upon all judgments, decrees, or orders, rendered on any bond, bill, note, or other instrument of writing containing stipulations for the payment of interest in accordance with section 1343.01 of the Revised Code, interest shall be computed until payment is made at the rate specified in such instrument."

While R.C. 1343.03(A) states that:

> "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."

Thus, according to the plain language of both R.C. 1343.02 and 1343.03, if there is a written contract specifying the rate of interest, the creditor is entitled to interest at the rate provided in the contract. We note that Ohio courts have applied both sections when awarding interest at the contract rate. However, R.C. 1343.03 has been applied more frequently. See, e.g., *First Bank of Ohio v. Wigfield*, 10th Dist. Nos. 07AP-561, 07AP-562, 2008-Ohio-1278; *K. Ronald Bailey & Assoc. Co., L.P.A. v. McQuaide* (May 24, 2002), 6th Dist. No. E-02-006; *P. & W.F., Inc. v. CSU Pizza, Inc.* (1993), 91 Ohio App.3d 724; *Ohio Valley Mall Co. v. Fashion Gallery, Inc.* (1998),

129 Ohio App.3d 700; for cases applying R.C. 1343.02, see, e.g., *Capital Fund Leasing, L.L.C., v. Garfield* (1999), 135 Ohio App.3d 579; *Markan v. Sawchyn* (Dec. 22, 1983), 8th Dist. No. 46885.

{¶8} In this case, Kulton has asked us to apply R.C. 1343.02. Applying either R.C. 1343.02 or R.C. 1343.03 to the facts of this case, yields an identical result - if there is a valid contract stipulating an interest rate permitted under the relevant provisions of the Ohio Revised Code, the interest rate stipulated in the contract applies.

{¶9} The Agreement in the case sub judice provides in pertinent part:

> "1. ATTORNEY agrees to pay CLIENT the sum of $10,000.00 at 0.00% interest over time in 12 consecutive installments of an amount no less than $250.00 each month on or before the 21st day of each month commencing December 21, 2007 with a final balloon payment of the balance then due and owing on or before the 31st day of December, 2008.
>
> "3. ATTORNEY agrees that time is of the essence and in the event of his default of over ten (10) days in making of any payment provided for, CLIENT may at her option, declare all the remainder of said debt due and collectible, * * *. In the event of default of over ten (10) days in the making of any payments herein provided for or in the event the remainder of the debt is declared to be due, interest shall accrue at the rate of eight percent (8.00%) per annum, computed monthly."

The contractual provisions addressing nonpayment or default are unambiguous. The relevant statute, R.C. 1343.02, is also unambiguous and clear in its requirements. All requirements of this statute are met here. Having been awarded default judgment on April 6, 2009, Kulton is a judgment creditor. The parties had a written contract in the form of a Settlement and Release Agreement signed on December 21, 2007. The contract unambiguously provided an 8% interest rate for money that would become due and payable at a future time (by December 31, 2008). Also, as the parties had stipulated a rate of interest different from the statutory rate and not exceeding the maximum rate of 8%, their stipulated rate is in compliance with R.C. 1343.01.

Thus, Kulton is entitled to this stipulated interest rate pursuant to R.C. 1343.02. Kulton's assignment of error has merit.

CONCLUSION

{¶10} In light of the foregoing, we reverse the judgment of the Barberton Municipal Court and remand for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Barberton Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

DAVID R. KENNEDY, Attorney at Law, for Appellant.

PAUL R. HOFFER, Attorney at Law, for Appellee.