**[Cite as *Ohio Neighborhood Fin., Inc. v. McGeorge*, 2011-Ohio-577.]**

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

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| OHIO NEIGHBORHOOD FINANCE, INC. dba CASHLAND<br><br>Appellant<br><br>v.<br><br>REBECCA MCGEORGE<br><br>Appellee | C. A. No. 25410<br><br>APPEAL FROM JUDGMENT ENTERED IN THE STOW MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 10 CVF 0404 |

DECISION AND JOURNAL ENTRY

Dated: February 9, 2011

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MOORE, Judge.

**{¶1}** Appellant, Ohio Neighborhood Finance, Inc. d/b/a Cashland, appeals from the default judgment by the Stow Municipal Court, which awarded Cashland $563.11 but reduced the interest rate to four percent from the requested rate of twenty-five percent. This Court reverses and remands.

I.

**{¶2}** As stated in the customer agreement attached to its complaint, Cashland is registered with the Ohio Department of Commerce, Division of Financial Institutions pursuant to the Ohio Mortgage Loan Act ("OMLA"), R.C. 1321.51-.60. On September 10, 2009, Cashland made a pre-computed loan to Rebecca McGeorge. The customer agreement, signed by Ms. McGeorge, contained a "Promise to Pay" section, which read:

> "You promise to pay us $540.00 (the Principal Amount of 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. Interest shall be

> computed daily upon the principal balance outstanding by using the simple interest method, assuming a 365-day year."

This principal amount consisted of a thirty-dollar loan origination fee, ten-dollar credit check fee, and the actual $500 loan. The agreement specified that Ms. McGeorge would owe $548.11 on October 2, 2009.

**{¶3}** On October 2, Ms. McGeorge had insufficient funds in her bank account when Cashland attempted to withdraw the amount she owed on her loan. In accordance with the loan agreement, Cashland charged Ms. McGeorge twenty dollars for the failed transaction, which Ms. McGeorge paid on October 21. Cashland also added a fifteen dollar late fee to the outstanding balance of the loan. On February 1, 2010, Cashland filed a complaint, listing as damages the original amount due, and the fifteen-dollar late fee for a total of $563.11.

**{¶4}** When Ms. McGeorge did not respond following service, Cashland moved for a default judgment. It requested the court award it $563.11 in damages and impose interest at the contracted rate of twenty-five percent on the principal amount less the fees, or $500, from October 2, 2009. The trial court awarded Cashland the damages it sought, but only granted interest at a rate of four percent annually, which was the statutory rate allowed under R.C. 1343.03(A). Cashland has appealed.

II.

**ASSIGNMENT OF ERROR**

> "THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REDUCING TO 4% PER ANNUM, THE INTEREST RATE ON THE DEBT IN THE DEFAULT JUDGMENT GRANTED IN FAVOR OF APPELLANT OHIO NEIGHBORHOOD FINANCE, INC."

**{¶5}** Cashland's sole assignment of error is that the trial court erred in reducing the interest rate from twenty-five percent to four percent. "'Because this assignment of error raises

issues of law only, our review is de novo.'" *John Soliday Financial Group, LLC v. Stutzman*, 9th Dist. No. 08CA0046, 2009-Ohio-2081, at ¶6, quoting *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.'" *Soliday* at ¶6, quoting *Rusov v. Ansley*, 9th Dist. No. 23748, 2007-Ohio-7022, at ¶12.

**{¶6}** Because Ms. McGeorge 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 appears to sustain such action." App.R. 18(C).

**{¶7}** In its judgment entry, the trial court did not specify why it reduced the interest rate to four percent. Cashland argues, however, the trial court erred to the extent that it relied upon R.C. 1343.03(A), which provides that:

> "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*." (Emphasis added.)

R.C. 1343.03(A) entitles a judgment creditor "to a contractual interest rate instead of the statutory rate 'when (1) the parties have a written contract, and (2) that contract provides a rate of interest with respect to money that becomes due and payable.'" *Soliday* at ¶7, quoting *First Bank of Ohio v. Wigfield*, 10th Dist. Nos. 07AP-561 & 07AP-562, 2008-Ohio-1278, at ¶20. The loan agreement specified that Ms. McGeorge would pay "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."

**{¶8}** The interest rate specified in a contract must be allowed by law before a court may impose it on the judgment award. *Ohio Neighborhood Financial, Inc. v. Farley*, 2d Dist. No. 23939, 2010-Ohio-6097, at ¶12. As a registrant under the OMLA, Cashland may charge an interest rate of up to twenty-five percent per year. R.C. 1321.571.

**{¶9}** The loan agreement between Cashland and Ms. McGeorge was a written contract that specified the rate of interest to be paid on the amount outstanding. Further, the specified interest rate was a lawful rate. See R.C. 1321.571. Therefore, the trial court erred when it set the interest rate for the default judgment award at four percent. Cashland's sole assignment of error is sustained.

III.

**{¶10}** Cashland's assignment of error is sustained. The judgment of the Stow Municipal Court is reversed, and the cause is remanded for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Stow 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.

CARLA MOORE
FOR THE COURT

BELFANCE, P. J.
CONCURS

CARR, J.
CONCURS IN JUDGMENT ONLY, SAYING:

**{¶1}** It is the legislature's role to make the law and the judiciary's role to interpret the law. The legislature has spoken on this issue and has enacted legislation that allows interest at a rate of up to 25 percent. Although I may not agree with the result and question its fairness, I am bound nonetheless.

APPEARANCES:

ANTHONY M. SHARETT, and M. BRECK ROESCH, Attorneys at Law, for Appellant.