

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

CitiFinancial, Inc.

Court of Appeals No. L-11-1114

Appellant

Trial Court No. CI0201004120

v.

Thomas Bihn, et al.

**DECISION AND JUDGMENT**

Appellees

Decided: November 18, 2011

\* \* \* \* \*

Howard B. Hershman, for appellant.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} Plaintiff-appellant, CitiFinancial, Inc., appeals the May 2, 2011 judgment of the Lucas County Court of Common Pleas, which granted appellant's motion for default judgment against defendants-appellees, Thomas Bihn and Barbara Bihn. In granting the motion, the court also awarded appellant interest at the statutory rate from the date of judgment on its claim for breach of contract.

{¶ 2} Appellant challenges the trial court's judgment through the following assignment of error:

{¶ 3} "The trial court erred as a matter of law in failing to grant judgment in favor of plaintiff/appellant for the amount due upon its promissory note together with interest at the rate set forth in the promissory note."

{¶ 4} On July 23, 2008, appellees signed a promissory note in connection with a loan agreement that they had executed with appellant. The note stated the interest rate for the loan was 19.39 percent. The note also stated that upon the borrower's default, appellant could require the borrower to repay the entire total of unpaid payments, less a refund of unearned interest and any credit life insurance and credit accident and health insurance premiums.

{¶ 5} On May 24, 2010, appellant filed a complaint in the court below alleging that appellees were in default on the note and owed appellant the sum of \$15,654.28. Appellant then demanded judgment in that amount plus interest at the rate of 19.39 percent from April 12, 2010. Appellees did not file an answer and on July 27, 2010, appellant filed a motion for default judgment.

{¶ 6} On August 5, 2010, the lower court granted appellant's motion for default judgment. On August 11, 2010, appellant filed a motion for reconsideration of the interest rate granted on the default judgment. On September 8, 2010, the motion for reconsideration was denied and appellant filed a notice of appeal. The appeal was dismissed, sua sponte, based on this court's determination that the order being appealed

from entered judgment as to one defendant only and, thus, it was not a final and appealable order as required under R.C. 2505.02 and Civ.R. 54(B).

{¶ 7} On November 29, 2010, appellant filed a motion for default judgment and for judgment nunc pro tunc. On May 2, 2011, the trial court entered judgment against both defendants in the amount of \$15,654.28, plus interest at the statutory rate from the date of judgment and costs of the action as a full and complete adjudication of all claims against all defendants. Appellant now challenges the court's award of interest at the statutory rate and asserts that it was entitled to interest at the rate provided for in the promissory note. Appellees have not filed a brief.

{¶ 8} An award of prejudgment interest as to claims arising out of a breach of contract is governed by R.C. 1343.03(A). *Galmish v. Cicchini* (2000), 90 Ohio St.3d 22, 33. R.C. 1343.03(A) states in pertinent part:

{¶ 9} "[W]hen money becomes due and payable upon any \* \* \* note, \* \* \* and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of \* \* \* 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 the contract."

{¶ 10} "For entitlement to a rate different than the statutory rate of interest to be charged, R.C. 1343.03(A) sets forth two requisites: (1) there must be a written contract

between the parties, and (2) the contract must provide a rate of interest with respect to money that becomes due and payable." *CitiFinancial, Inc. v. Barrett*, 6th Dist. No. L-07-1058, 2008-Ohio-1558, ¶ 8, quoting *Yager Materials, Inc. v. Marietta Indus. Ent., Inc.* (1996), 116 Ohio App.3d 233, 235-236.

{¶ 11} In the instant case, there was a promissory note executed on July 23, 2008, between the parties. The promissory note provided that "if Borrower defaults, Lender may require Borrower to repay the entire unpaid total of payments, less a refund of unearned interest and any credit life insurance and credit accident and health insurance premiums." The interest rate set forth in the note was 19.39 percent. This is the rate at which interest accrued under the contract and thus, the interest rate which the trial court should have awarded appellant. *CitiFinancial, Inc. v. Barrett*, at ¶ 9, citing *Progressive Parma Care, LLC v. Weybrecht*, 8th Dist. No. 89953, 2008-Ohio 213; *Toledo Area Community Credit Union v. Chapman*, 5th Dist. No. 2007CA0003, 2007-Ohio-925. Therefore, appellant's assignment of error is well-taken.

{¶ 12} On consideration whereof, the court finds that substantial justice was not done the party complaining and the judgment of the Lucas County Court of Common Pleas is reversed. This case is remanded to the court for entry of a judgment consistent with this decision. Pursuant to App.R. 24, appellees are ordered to pay the costs of this appeal.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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