

[Cite as *Dutro Used Cars, Inc. v. Naylor*, 2009-Ohio-2914.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DUTRO USED CARS, INC.

Plaintiff-Appellant

-vs-

LORI A. NAYLOR

Defendants-Appellees

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. CT08-0049

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court,
Case No. CVF 0800644

JUDGMENT:

Reversed and Final Judgment Entered

DATE OF JUDGMENT ENTRY:

June 18, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellees

JAMES L. BLUNT, II.
445 Longview Avenue
Mansfield, Ohio 44903

Hoffman, P.J.

{¶1} Plaintiff-appellant Dutro Used Cars, Inc. appeals the August 19, 2008 Judgment Entry of the Muskingum County Court entering default judgment against Defendant-appellee Lori A. Naylor.

STATEMENT OF THE CASE

{¶2} On June 13, 2008 Appellant filed a complaint in case number CVF 0800644 in the Muskingum County Court alleging the following: Appellee executed a promissory note of June 3, 2006, for a loan used to purchase a vehicle from Appellant in the amount of \$4,477.15, plus interest at 17% per annum. Appellee defaulted on the terms of the promissory note in failing to make the loan payments when due. There remained an outstanding balance due of \$1,703.82 as of November 21, 2007 with interest due thereafter at 17.0% per annum as stated in the promissory note.

{¶3} On August 18, 2008, Appellant moved for default judgment on the complaint.

{¶4} On August 19, 2008, the trial court granted the motion for default, entering judgment in favor of Appellant in the amount of \$1,703.82 and statutory interest.

{¶5} Appellant now appeals, assigning as error:

{¶6} "I. THE TRIAL COURT ERRED BY FAILING TO GRANT THE PLAINTIFF THE CONTRACTUAL INTEREST RATE, PURSUANT TO OHIO REVISED CODE 1343.03."

{¶7} Appellant argues the trial court improperly entered judgment including the statutory interest rate; rather than the contractual interest rate of 17%.

{¶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, this Court held when a written contract contains a legal rate of interest then the rate should be applied to the judgment.

{¶11} Based upon the above, we sustain Appellants assignment of error. The August 19, 2008 Judgment Entry of the Muskingum County Court is reversed.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ John W. Wise _____
HON. JOHN W. WISE

s/ Julie A. Edwards _____
HON. JULIE A. EDWARDS

