

IN THE SUPREME COURT OF OHIO

ROBERT H. DUES,	:	CASE NO. 06-1069
	:	
Appellant/Cross-Appellee,	:	On Appeal from the Court of Appeals of
	:	the Third Appellate Judicial District of
	:	Ohio, Shelby County
v.	:	
	:	
MINSTER FARMERS COOPERATIVE	:	Court of Appeals
EXCHANGE COMPANY, INC.	:	Case No. 17-05-28
	:	
Appellee/Cross-Appellant.	:	

MERIT BRIEF OF APPELLANT/CROSS-APPELLEE ROBERT H. DUES

Bryan A. Niemeyer (0068255)
FAULKNER, GARMHAUSEN,
KEISTER & SHENK
A Legal Professional Association
Courtview Center – Suite 300
100 South Main Avenue
Sidney, Ohio 45365
(937) 492-1271 (telephone)
(937) 498-1306 (facsimile)
bniemeyer@fgks-law.com
Counsel for Appellant/Cross-Appellee,
Robert H. Dues

Michael A. Burton (0064921)
15 Willipie Street, Suite 300
P.O. Box 33
Wapakoneta, Ohio 45895-0033
(419) 738-8195 (telephone)
(419) 738-8182 (facsimile)
wlawmab@bright.net
Counsel For Appellee/Cross-Appellant,
Minster Farmers Cooperative Exchange
Company, Inc.

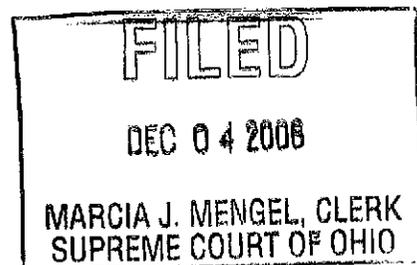


TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....ii

STATEMENT OF FACTS..... 1

ARGUMENT.....2

Proposition of Law No. I: Invoices and account statements, provided to a purchaser after each individual transaction on a book account, do not constitute a “written contract” under R.C. 1343.03(A) for purposes of imposing an interest rate other than as set forth by statute.....2

Proposition of Law No. II: Even if a purchaser could be deemed to have assented to a non-statutory interest rate set forth in invoices and account statements, such assent cannot exist when the interest rate as calculated by the seller and disclosed to the purchaser is inconsistent with the written interest rate set forth on those documents, preventing a “meeting of the minds” with respect to that interest rate.....6

CONCLUSION 8

PROOF OF SERVICE.....9

APPENDIX

TABLE OF AUTHORITIES

CASE LAW: Page

<i>Berdyck v. Shinde</i> (1998), 128 Ohio App. 3d 68	7
<i>Bunnell Electric, Inc. v. Ameriwash</i> (May 23, 2005), Warren App. No. CA2004-01-009, 2005 WL 1201563	4
<i>Hobart Bros. Co. v. Welding Supply Services, Inc.</i> (1985), 21 Ohio App. 3d 142	4
<i>Irwin v. Bank of Bellefontaine</i> (1856), 6 Ohio St. 81	3
<i>Kut Kwick Corp. v. North Dixie Parts and Services, Inc.</i> (Apr. 21, 1998), Montgomery App. No. CA10678, 1988 WL 38130.....	4
<i>Moots v. Hilbert</i> (Dec. 11, 1980), Union App. No. 14-80-6, 1980 WL 351937	5
<i>Noroski v. Fallet</i> (1982), 2 Ohio St.3d 77	6
<i>Olander & Brophy v. Northeastern Pools</i> (Jan. 7, 1991), Stark App. No. CA-8219, 1991 WL 6268	4
<i>State ex rel. City of Elyria v. Trubey</i> (1984), 20 Ohio App. 3d 8.....	7
<i>Stewart v. Trumbull County Bd. of Elections</i> (1973), 34 Ohio St.2d 129	3
<i>Sys. Data, Inc. v. Visi Trak Corp.</i> (Ohio Mun. 1995), 72 Ohio Misc.2d 8.....	7
<i>Talbott v. State</i> (1916), 5 Ohio App. 262	3
<i>WC Milling, LLC v. Grooms</i> (2005), 164 Ohio App. 3d 45	4
<i>Yager Materials, Inc. v. Marietta Indus. Enterprises, Inc.</i> (1996), 116 Ohio App. 3d 234	4
<i>Youngstown Club v. Porterfield</i> (1970), 21 Ohio St.2d 83.....	3

STATUTES:

R.C. § 1301.03	5
R.C. § 1302.10	4, 5
R.C. § 1343.03	passim

STATEMENT OF FACTS

This is a simple case involving the proper method of computing interest in an open account. Appellant Robert H. Dues (“Dues”) set up an open account with Appellee The Minster Farmers Cooperative Exchange Company, Inc. (“Minster Farmers”) in or around 1982. (October 14, 2005 Order-Entry of the Shelby County Court of Common Pleas). Minster Farmers alleges that Dues owes it in excess of \$40,000, which amount represents interest charges that were compounded monthly at 2% per month. (See Account Statement, Minster Farmers’ Exhibit “B” at the July 6, 2005 trial). Minster Farmers asserts it is entitled to interest at the rate of two percent (2%) per month, compounded monthly, on the account of Dues. The basis for Minster Farmers assertion is that its invoices and delivery tickets stated that interest would be charged at the rate of “2% per month (24% per annum).”

The trial court concluded that because a contract between merchants was implied under the UCC provisions of the Ohio Revised Code based on the actions of the parties, Dues thereby accepted the interest rate stated on Minster Farmers’ invoices and account statements. (See Decision Order-Entry of the Shelby County Court of Common Pleas dated October 14, 2005, a copy of which is included in the Appendix at p. 18). The trial court further held that R.C. § 1343.03(A)(1) was inapposite to this matter because the case involved a transaction between merchants governed by the Uniform Commercial Code, who have bargained for this finance charge provision. *Id.* In so holding, the trial court granted Minster Farmers’ Motion for Summary Judgment without even addressing the issue of the method by which Minster Farmers compounded interest. *Id.*

Dues timely filed a Notice of Appeal in the Ohio Third District Court of Appeals. The Court of Appeals issued its Opinion in this matter on April 17, 2006 in which it reversed the trial

court's decision on the compounding interest issue, but upheld the trial court's finding that a "contract existed between two merchants under the U.C.C.", and that the written contract requirements of R.C. § 1343.03(A) were, therefore satisfied. Dues timely filed a Notice of Appeal to this Court on June 1, 2006 (App. p. 1) and, after submitting a Memorandum in Support of Jurisdiction, this Court accepted this appeal¹.

ARGUMENT

Proposition of Law No. I: Invoices and account statements, provided to a purchaser after each individual transaction on a book account, do not constitute a "written contract" under R.C. § 1343.03(A) for purposes of imposing an interest rate other than as set forth by statute.

Minster Farmers did not establish at the trial court level that a "written contract" existed such that it could charge non-statutory interest on the account of Appellant Robert H. Dues ("Dues"), merely relying upon inconspicuous notations in invoices and account statements that interest would be charged at the rate of "2% per month (24% per annum)." The interest a creditor is entitled to charge is specifically governed by R.C. § 1343.03(A), which provides in part:

[W]hen money becomes due and payable upon any ... book account ... 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 that contract.

(emphasis added). The question before this Court is whether invoices and account statements, which are not signed and are not provided to the debtor until after the parties have reached an

¹ Dues proceeded *pro se* in the trial court and court of appeals. He retained the undersigned to appeal this matter to this Court.

agreement with respect to the particular transactions constituting the book account, constitute a “written contract” as required by R.C. § 1343.03(A).

While the legislature has not provided further guidance as to what constitutes a “written contract,” the legislative intent of the “written contract” requirement is readily apparent: in order to charge non-statutory interest, a creditor must obtain the written assent of the debtor to that rate of interest. The right of a court to interpret a statute is based upon there being some apparent uncertainty of meaning or ambiguity. However, when the language of the statute is plain and clear and conveys a definite meaning, there is no need to resort to rules of statutory construction. *Provident Bank v. Wood* (1973), 36 Ohio St. 3d 101. If interpretation or construction of a statute becomes necessary, a court must look to the language of the statute itself in attempting to ascertain the legislative intent. *Stewart v. Trumbull County Bd. of Elections* (1973), 34 Ohio St. 2d 129. In examining the actual language of a statute, it is settled that the words should be given their common, ordinary and accepted meaning unless the legislature has expressed a contrary intention. *Youngstown Club v. Porterfield* (1970), 21 Ohio St. 2d 83. Likewise, although a construction should be avoided which is contrary to the general spirit of the statute, *Irwin v. Bank of Bellefontaine* (1856), 6 Ohio St. 81, the spirit of an act should not be permitted to override the effect of words of clear import. *Talbott v. State* (1916), 5 Ohio App. 262. Black’s Law Dictionary defines a “written contract” as “one which in all its terms is in writing.” *Black’s Law Dictionary* (1990), 6th ed., p. 325. A contract implied by the UCC based on the facts and circumstances of the transaction does not satisfy the “written contract” requirement set forth in R.C. § 1343.03(A).

All Ohio appellate districts that have considered the issue, with the exception of the Third District Court of Appeals, from which court this appeal lies, have correctly held that interest

terms set forth in invoices and accounts statements are insufficient to establish a “written contract” for purposes of R.C. 1343.03(A). See *Kut Kwick Corp. v. North Dixie Parts and Services, Inc.* (Apr. 21, 1998), Montgomery App. No. CA10678, 1988 WL 38130; *Yager Materials, Inc. v. Marietta Indus. Enterprises, Inc.* (1996), 116 Ohio App. 3d 234; *Olander & Brophy v. Northeastern Pools* (Jan. 7, 1991), Stark App. No. CA-8219, 1991 WL 6268; *Hobart Bros. Co. v. Welding Supply Services, Inc.* (1985), 21 Ohio App. 3d 142; *Bunnell Electric, Inc. v. Ameriwash* (May 23, 2005), Warren App. No. CA2004-01-009, 2005 WL 1201563; *WC Milling, LLC v. Grooms* (2005), 164 Ohio App. 3d 45. While the facts of these cases vary, the central theme is consistent: a creditor cannot establish the assent of a debtor to a non-statutory interest rate by sending invoices and account statements to the debtor after-the-fact, without obtaining the debtor’s signature or other written assent to that interest rate.

Grooms, like this case, involves an attempt to charge interest at a non-statutory rate on the account of a farmer. In *Grooms*, the court held that there was not a “written contract” sufficient to meet the requirements of R.C. § 1343.03, where the only written documents containing the interest rate were invoices and monthly statements. *Id.* at 52. This was the case even though the invoices and monthly statements came over a period of time and the debtor made several payments on his account, similar to the situation involving Dues in the case at bar. *Id.* at 48.

In its decision below, the Third District relied on the argument that the interest rate in the invoices and account statements were proposals for additions to the parties’ contract, to which Dues assented by failing to object to that interest rate in a timely manner. See Opinion at 7. The basis for the court’s improper conclusion was R.C. 1302.10, the Uniform Commercial Code’s “battle of the forms” provision. R.C. 1302.10 essentially deals with the issue of when an offer is

accepted and the effectiveness of any additional terms in the acceptance in a transaction between merchants. Initially, it should be noted that, while the UCC is applicable to the transactions that are reflected in a book account between a seller of goods and a farmer such as Dues, R.C. 1302.10 has no application to the question at issue. At issue is an interest rate that is only set forth in documents provided to Dues after the offer and acceptance had taken place. Therefore, R.C. 1302.10, and the issue of how an acceptance may alter the terms of an offer in a transaction between merchants, is inapplicable for purposes of determining whether non-statutory interest should apply.

R.C. 1302.10 also has no effect on the requirement in R.C. 1343.03(A) that a non-statutory interest rate be set forth in a “written contract.” R.C. 1343.03(A) is a statutory subsection that specifically addresses when a non-statutory interest rate can be charged on a book account. R.C. 1302.10, on the other hand, is a general statute addressing when a merchant can be deemed to have assented to additional terms in an acceptance of goods in a commercial transaction. As a matter of statutory construction, a specific statute (such as R.C. 1343.03(A)) is controlling over a general statute (such as R.C. 1302.10). *Moots v. Hilbert* (Dec. 11, 1980), Union App. No. 14-80-6, 1980 WL 351937. That is particularly true when the statutory scheme of the general statute itself provides a similar limitation. See Official Comment 1 to R.C. 1301.03 (the UCC does not displace any other principles of law or equity “except insofar as they are explicitly displaced” by a particular UCC provision). Thus, to the extent R.C. 1302.10 could be applicable in this case, it does not displace or otherwise affect the specific requirement in R.C. 1343.03(A) that a non-statutory interest rate be set forth in a “written contract.”

In this case, Dues received invoices and account statements that stated interest would be charged at the rate of “2% per month (24% per annum).” There was no evidence before the trial

court that Dues ever signed any document that established the interest rate to be charged on the account. There was also no evidence that Dues otherwise assented to any interest rate that Minster Farmers now is attempting to charge him. Without written assent by Dues to a non-statutory interest rate, that interest rate cannot be applied to the book account.

The trial court erred in granting summary judgment to Minster Farmers, inasmuch as that judgment includes interest at a non-statutory rate. The invoices and account statements provided by Minster Farmers to Dues are not sufficient, as a matter of law, to create a “written contract” under R.C. 1343.03(A) for the imposition of a non-statutory interest rate. This Court should uphold the sound decisions of the Second, Fourth, Fifth and Tenth appellate districts in this State that have steadfastly required written assent to a non-statutory interest rate being charged in circumstances such as the instant action. The Third District erred in concluding that a contract implied under the UCC provisions of this State due to the actions of the parties is sufficient to constitute a “written contract” as required by R.C. 1343.03.

Proposition of Law No. II: Even if a purchaser could be deemed to have assented to a non-statutory interest rate set forth in invoices and account statements, such assent cannot exist when the interest rate as calculated by the seller and disclosed to the purchaser is inconsistent with the written interest rate set forth on those documents, preventing a “meeting of the minds” with respect to that interest rate.

Notwithstanding whether or not invoices and account statements are sufficient to constitute a “written contract” for purposes of R.C. 1343.03(A), ordinary contract principles establish that Dues and Minster Farmers never had an agreement on the interest that could be charged, and as a result statutory interest applies. A basic principle of contract law is that a contract term cannot be enforceable against a party unless the parties reached a “meeting of the minds” with respect to that term. *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79.

The invoices and account statements provided to Dues by Minster Farmers attempt to impose an interest rate of “2% per month (24% per annum)” by inconspicuously stating as such near the bottom of the documents. However, the account statements reflect, in the actual calculations of interest, a rate of 2% compounded monthly. These two interest rate terms are inherently in conflict. Interest charged at 2%, compounded monthly, results in an actual annual interest rate of over 30%. The written interest rate on the other hand, is simple interest that does not compound monthly (hence the fact that the 2% monthly rate, when multiplied by 12 months, equals the 24% annual rate). Furthermore, unless specifically stated otherwise, interest on a contract is simple, not compounding, interest. *State ex rel. City of Elyria v. Trubey* (1984), 20 Ohio App. 3d 8; *Berdyck v. Shinde* (1998), 128 Ohio App. 3d 68. Therefore, there can be no argument as to what Minster Farmers intended by stating interest would be charged at “2% per month (24% per annum).” Absent a specific reference to the compounding of interest, the rate must be simple interest as a matter of law.

Since the interest rate written into the invoices and account statements is different than the interest rate reflected in the actual calculations in the account statements, the question becomes: To what interest rate can Minster Farmers assert that Dues assented? The answer is neither. The parties could not have had a “meeting of the minds” with respect to a non-statutory interest rate because Minster Farmers “offered” two different rates. *See Sys. Data, Inc. v. Visi Trak Corp.* (Ohio Mun. 1995), 72 Ohio Misc.2d 8 (there can be no “meeting of the minds” as to non-statutory interest rate to be applied to a book account when 3 different interest rates appear on the various invoices between the parties, and as a result a statutory interest rate must be applied). In addition, and as an extension of Proposition of Law No. I, it is not possible for a “meeting of the minds” to exist when the interest rate was never provided to Dues until after the

transactions in question were complete, since he did not receive the documents relied upon by Minster Farmers to establish a non-statutory interest rate until days or weeks after each transaction for which the charges were incurred had been completed.

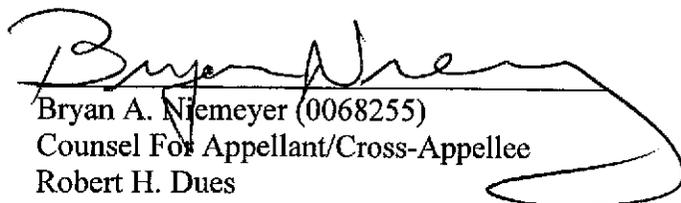
There was never a “meeting of the minds” between Dues and Minster Farmers with respect to the interest to be charged on Dues’ account. Without a “meeting of the minds” as to what non-statutory interest rate applies, the rate to be applied must be that provided for by statute (i.e. R.C. § 1343.03).

CONCLUSION

The trial court erred in granting summary judgment to Minster Farmers, which judgment included non-statutory interest. The invoices and account statements relied upon by Minster Farmers do not constitute a “written contract” for purposes of applying non-statutory interest under R.C. § 1343.03(A). Furthermore, the evidence established that there was no “meeting of the minds” between the parties as to interest because Minster Farmers charged a rate other than that which appeared on its invoices and account statements thereby making it impossible for Dues to have assented to any particular rate of interest.

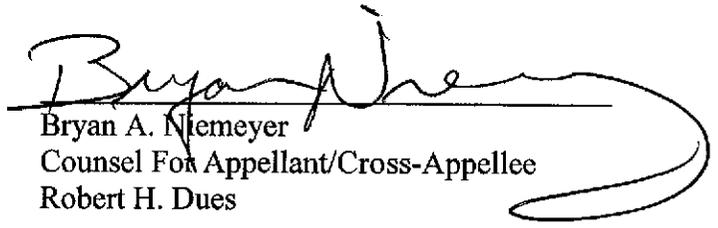
This Court should reverse the appellate court’s decision on Dues’ Assignments of Error I, II, III, IV, V, VI, VII, IX, X, and XIII to that court, and hold that Minster Farmers is not entitled to interest other than at the statutory rate. This Court should also remand this case to the trial court for calculation of interest using the proper statutory interest rate.

Respectfully submitted,


Bryan A. Niemeyer (0068255)
Counsel For Appellant/Cross-Appellee
Robert H. Dues

PROOF OF SERVICE

I certify that a copy of this Brief of Appellant/Cross-Appellee Robert H. Dues was sent by ordinary U.S. mail to counsel for Appellee/Cross-Appellant, Minster Farmers Cooperative Exchange Company, Inc. on this 1st day of December 2006.


Bryan A. Niemeyer
Counsel For Appellant/Cross-Appellee
Robert H. Dues

APPENDIX

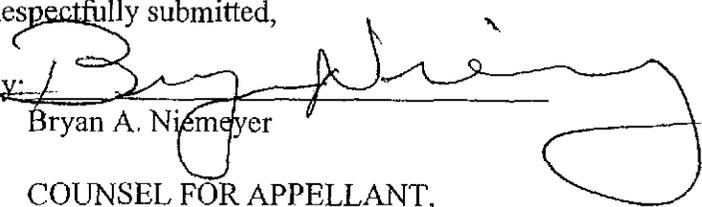
	<u>Page</u>
Notice of Appeal of Appellant Robert H. Dues to Ohio Supreme Court Filed June 1, 2006.....	1
Journal Entry of Third District Court of Appeals Dated April 17, 2006.....	3
Opinion of Third District Court of Appeals Dated April 17, 2006	4
Decision Order-Entry of Shelby County Court of Common Pleas Dated October 14, 2005	18
R.C. § 1301.03.....	22
R.C. § 1302.10.....	24
R.C. § 1343.03.....	27

Notice of Appeal of Appellant Robert H. Dues

Appellant Robert H. Dues hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Shelby County Court of Appeals, Third Appellate District, entered in Court of Appeals Case No. 17-05-28 on April 17, 2006.

This case is of public and great general interest.

Respectfully submitted,

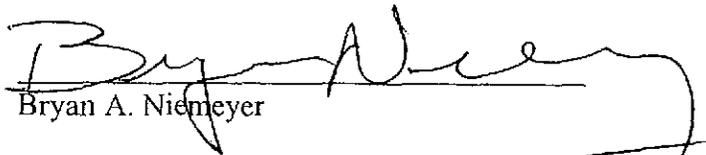
By: 

Bryan A. Niemeyer

COUNSEL FOR APPELLANT,
ROBERT H. DUES

Proof of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for Appellee Minster Farmers Cooperative Exchange Company, Inc. on May ~~30~~ 2006.


Bryan A. Niemeyer

COUNSEL FOR APPELLANT,
ROBERT H. DUES

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

SHELBY COUNTY

FILED
COURT OF APPEALS
APR 17 2006
SHELBY COUNTY, OHIO
17-05-28

MINSTER FARMER'S COOPERATIVE
EXCHANGE COMPANY, INC.

CASE NUMBER

PLAINTIFF-APPELLEE

JOURNAL

v.

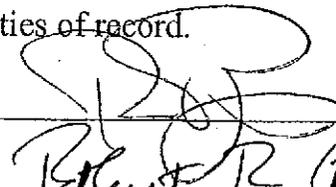
ENTRY

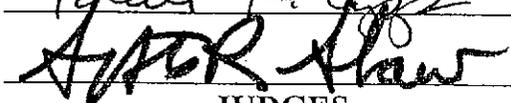
ROBERT H. DUES

DEFENDANT-APPELLANT

For the reasons stated in the opinion of this Court rendered herein, it is the judgment and order of this Court that the judgment of the trial court is affirmed in part and reversed in part with costs to be divided equally between the parties for which judgment is rendered and this cause is remanded to that court for further proceedings consistent with the opinion and judgment of this Court.

It is further ordered that the Clerk of this Court certify a copy of this judgment to that court as the mandate prescribed by Appellate Rule 27 or by any other provision of law, and also furnish a copy of any opinion filed concurrently herewith directly to the trial judge and parties of record.



Robert R. Goss


Arthur H. Shaw
JUDGES

DATED: April 17 , 2006

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SHELBY COUNTY**

**MINSTER FARMER'S COOPERATIVE CASE NUMBER 17-05-28
EXCHANGE COMPANY, INC.**

PLAINTIFF-APPELLEE

v.

OPINION

ROBERT H. DUES

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed in part and reversed in part.

DATE OF JUDGMENT ENTRY: April 17, 2006

ATTORNEYS:

**ROBERT DUES
In Propria Persona
6052 Short Road
Houston, OH 45333
Appellant.**

**MICHAEL A. BURTON
Attorney at Law
Reg. #0064921
113 North Ohio Avenue, Suite 502
Sidney, OH 45365
For Appellee.**

Rogers, J.

{¶1} Defendant-Appellant, Robert H. Dues, appeals a judgment of the Shelby County Court of Common Pleas, granting judgment in favor of Plaintiff-Appellee, Minster Farmers Cooperative Exchange Company, Inc. (“Minster Farmers”). On appeal, Dues asserts several errors relating to the trial court’s finding that he was a merchant, the trial court’s finding that the transaction involved goods, the trial court’s finding that Minster Farmers could charge an interest rate above the statutory interest rate and the trial court’s finding that Minster Farmers could compound interest. Additionally, Dues asserts that the trial court erred in failing to address his affirmative defense and other issues raised in his trial brief. Finding that the trial court properly determined that a contract existed between the parties, but erred in determining the terms of that contract, the judgment of the trial court is affirmed in part and reversed in part.

{¶2} In August of 1982, Dues acquired one share of common stock in Minster Farmers, which is a commercial farm elevator. Since acquiring his one share in 1982, Dues has maintained a commercial account with Minster Farmers, purchasing feed, fuel and other miscellaneous farm supplies. Each month, Minster Farmers sent Dues a monthly statement showing what he had purchased. Dues does not dispute that he purchased the various items stated on the account.

Additionally, the monthly statement stated that a finance charge would be assessed on unpaid balances.

{¶3} In January of 1998, Minster Farmers increased its finance charges from one and one half a percent to two percent per month. While Minster Farmers claims that it had sent a letter informing its customers of these changes, Dues denies receiving a copy of that letter. Nevertheless, Dues admits that each monthly statement included the following statement regarding finance charges: “2% FINANCE CHARGE PER MONTH AFTER 30 DAYS. (24% ANNUAL).”

{¶4} Over the years, Dues made payments on his account; however, in 2002, Dues stopped making regular payments on his Minster Farmers account. No payments have been made on the account since July 2002.

{¶5} In February of 2005, Minster Farmers filed a complaint against Dues seeking thirty-seven thousand eight hundred thirty-seven dollars and fifty-eight cents for the unpaid balance on his account. Subsequently, Dues filed his answer pro se. In July of 2005, a bench trial was held on Minster Farmers’ complaint, with Dues representing himself.

{¶6} In October of 2005, in a written judgment entry, the trial court found in Minster Farmers favor. Specifically, the trial court found that Dues’ account with Minster Farmers was a transaction for goods between merchants pursuant to R.C. 1302.01(A)(5). Therefore, the trial court found that Ohio’s version of the

Uniform Commercial Code (“U.C.C.”) governed those transactions. Finding that the finance terms of two percent per month on any unpaid balance, which was found on the monthly statements, constituted a contract, to which Dues had never objected, and that R.C. 1343.03(A)(1) was inapplicable to the instance transaction, the trial court awarded judgment in favor of Minster Farmers in the sum of forty thousand nine hundred and ninety dollars.

{¶7} It is from this judgment Dues appeals, presenting the following assignments of error for our review.

Assignment of Error No. I

The Trial Court erred when it awarded Judgment in favor of the Plaintiff/Appellee in the sum of \$40,990.00.

Assignment of Error No. II

The Trial Court erred when it found Plaintiff/Appellee entitled as of April 30, 2005, to a finance charge of two percent, per month thereafter to the date of this judgment.

Assignment of Error No. III

The Trial Court erred when it allowed Plaintiff/Appellee to compound interest.

Assignment of Error No. IV

The Trial Court erred when it held that Defendant/Appellant was held to pay the two percent per month finance charge provision on the amounts not paid by the end of the following month.

Assignment of Error No. V

The Trial Court erred when it found the Third Appellate District case of *Champaign Landmark v. Dean McCullough*, 3rd Appellate District, 1990 Ohio App.Lexus 5279 (sic.) to be applicable.

Assignment of Error No. VI

The Trial Court erred when it found that the Defendant/Appellant clearly knew and understood how the finance charges worked on his account.

Assignment of Error No. VII

The Trial Court erred when it found that there was a contract between the Plaintiff/Appellee and the Defendant/Appellant regarding the financed charges.

Assignment of Error No. VIII

The Trial Court erred when it ignored Defendant/Appellants' (sic.) affirmative defense being the Plaintiff/Appellee's (sic.) use of the U.S. Mail to collect the compounding interest.

Assignment of Error No. IX

The Trial Court erred when it found that none of the exceptions in R.C. 1301.10 are applicable to the instant case.

Assignment of Error No. X

The Trial Court erred when it found that R.C. 1301.10 is applicable to this analysis.

Assignment of Error No. XI

The Trial Court erred when it held that transactions between the Defendant/Appellant and Plaintiff/Appellee were for "goods".

Assignment of Error No. XII

The Trial Court erred when it determined that the farm supplies purchased are “goods” pursuant to Ohio Revised Code 1302.01(A)(8).

Assignment of Error No. XIII

The Trial Court erred when it denied Defendant/Appellant’s (sic.) reliance on R.C. Section 1343.03(A)(1).

Assignment of Error No. XIV

The Trial Court erred when it found Defendant/Appellant to be a “merchant”, (sic.) as pursuant to R.C. 1302.01(A)(7).

Assignment of Error No. XV

The Trial Court erred when it found Defendant/Appellant to be a “merchant”, (sic.) as pursuant to R.C. 1302.01(A)(5).

Assignment of Error No. XVI

The Trial Court erred when it ignored or otherwise failed to address any of the Defendant/Appellant’s (sic.) issues raised in the BREIF OF DEFENDANT.

{¶8} Due to the nature of the assignments of error, we elect to address them out of order.

Assignments of Error Nos. XI & XII

{¶9} In the eleventh and twelfth assignments of error, Dues asserts that the trial court erred in finding that the transactions between Minster Farmers and Dues were for goods. Because these assignments of error are interrelated, we will address them together.

{¶10} R.C. 1302.01(A)(8) provides the following definition of goods

*** * * means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities, and things in action. 'Goods' also includes * * * growing crops * * *.**

{¶11} Based upon the above definition, it is clear that Minster Farmers sale of feed, fertilizer, fuel and other farm supplies fall within the definition of goods. Thus, the trial court did not err in finding that the transactions between Minster Farmers and Dues were for goods. Accordingly, the eleventh and twelfth assignments of error are overruled.

Assignments of Error Nos. XIV & XV

{¶12} In the fourteenth and fifteenth assignments of error, Dues asserts that the trial court erred in finding Dues was a "merchant" pursuant to R.C. 1302.01(A)(7) and R.C. 1302.01(A)(5). Because these assignments of error are interrelated, we will address them together.

{¶13} Dues is clearly a merchant under the definition section of the sales provisions of Ohio's U.C.C. R.C. 1302.01(A)(5) & (A)(7) provide in pertinent part as follows:

'Merchant' means a person who deals in goods of the kind or otherwise by the person's occupation holds the person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary who by the agent's, broker's, or

other intermediary's occupation holds the person out as having such knowledge or skill.

* * *

'Between merchants' means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

{¶14} A farmer, such as Dues, with over twenty years of experience in the farming industry and whose sole and primary income source was farming, is "chargeable with the knowledge or skill of merchants" referred to in R.C. 1302.01(A)(7). It is well accepted that farmers, such as Dues, are merchants under the terms provided in R.C. 1302.01(A)(5) and (A)(7). *Farmers Comm. Co. v. Burks* (1998), 130 Ohio App.3d 158, 164; *Burkhart v. Marshall* (1989), 63 Ohio App.3d 281. Thus, the trial court did not err in finding that Dues was a merchant under R.C. 1302.01(A)(5) & (A)(7).

{¶15} Accordingly, the fourteenth and fifteenth assignments of error are overruled.

Assignments of Error Nos. I, II, III, IV, V, VI, VII, IX, X, & XIII

{¶16} In the first and third assignments of error, Dues asserts that the trial court erred in awarding judgment in favor of Minster Farmers, based upon Minster Farmers compounding of interest charges. In the second and fourth assignments of error, Dues asserts that the trial court erred in finding that Minster Farmers was entitled to a finance charge of two percent per month. In the fifth assignment of error, Dues asserts that the trial court erred in following *Champaign Landmark v.*

Dean McCullough (Nov. 27, 1990), 3d Dist. No. 6-89-17. In the sixth assignment of error, Dues asserts that the trial court erred in finding that Dues understood how the finance charges were computed. In the seventh assignment of error, Dues asserts that the trial court erred in finding that there was a contract between Minster Farmers and Dues. In the ninth and tenth assignments of error, Dues asserts that the trial court erred in finding that R.C. 1301.10 was applicable and that the exceptions of R.C. 1301.10 were inapplicable in this case. In the thirteenth assignment of error, Dues asserts that the trial court erred in finding that R.C. 1343.03(A)(1) was inapplicable in this case. Because all of these assignments of error are interrelated, we will address them together.

{¶17} In the above assignments of error, Dues contends that the trial court erred in granting judgment in favor of Minster Farmers, based upon the amount of interest and the compounding manner in which such interest is being computed. Essentially, Dues asserts the trial court erred in applying the U.C.C and granting judgment for an interest rate over the statutory interest rate of ten percent pursuant to R.C. 1343.03. Furthermore, Dues argues that the trial court erred in allowing the judgment amount to include interest that was computed in a compounding manner.

{¶18} Based upon the above, it is clear that the parties are merchants pursuant to R.C. 1302.01(A)(5). This Court has previously held that finance

charges on a monthly statement between merchants constitute a contract between the parties. *Hamilton Farm Bureau Cooperative v. Ridgway Hatcheries*, 3d Dist. No. 9-03-45, 2004-Ohio-809, ¶18. In *Hamilton*, the plaintiff sought recovery of approximately seventeen thousand dollars for an unpaid account balance, where the defendant was objecting to finance charges. *Id.* at ¶¶1-7. Additionally, both parties were merchants, and the defendant had written a letter objecting to the plaintiff's interest being charges. *Id.* at ¶¶4,15. In *Hamilton*, applying the U.C.C., this Court held the following:

In the case sub judice, Ridgway Hatcheries continued to pay on the monthly statements, at least as to the principal, and continued to order goods from Hamilton Farm despite the inclusion of the added term for finance charges. Ridgway Hatcheries failed to make any objections as to the term for finance charges until approximately a year after the term appeared on the monthly statements, and then only objected after receiving written correspondence from Hamilton Farm attempting to recover the balance due on the account. Such inaction by Ridgway Hatcheries constitutes an acceptance of the added term of finance charges to the contract between the parties and also constitutes an agreement between the parties as to the amount of the account stated. Ridgway Hatcheries was under a duty to examine its monthly statements for incorrect accounting and its lack either to do so or to object to such is acquiescence on the part of Ridgway Hatcheries to the new terms of the contract.

Id. at ¶18. Having found that a contract existed based upon the terms of the invoice, this Court affirmed the trial court's decision.

{¶19} Here, it is clear that because Dues received invoices, which included the “2% FINANCE CHARGE PER MONTH AFTER 30 DAYS. (24% ANNUAL)” language, each month for approximately three years prior to objecting to the interest being charged. Thus, following *Hamilton*, the U.C.C. is applicable herein and a contract between the parties existed as to the above terms.

{¶20} Dues goes on to assert that under R.C. 1343.03(A) and *Champaign Landmark, Inc. v. McCullough*, supra, the trial court erred in allowing an interest rate grater than the statutory interest rate. R.C. 1343.03(A) provides the following:

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.

{¶21} In *Champaign Landmark*, this Court adopted the trial court’s opinion as its own. *Champaign Landmark*, supra. Based upon similar facts, this Court applied R.C. 1343.03(A) and found that a written contract existed. *Id.* The

Champaign Landmark case also involved a finance charge whereby the terms were 2% monthly, 24% annually, and the plaintiff argued that it could charge compounding interest. *Id.* In *Champaign Landmark*, we affirmed the trial court in finding that the “plaintiff has computed its service charge on its unpaid balance including prior service charges. This compounds interest and will amount to more than a 24% annual percentage rate on the principal balance which the Court finds was the contemplated rate.” *Id.* Thus, in affirming the trial court’s decision, this Court disallowed the plaintiff in *Champaign Landmark* to compute interest on a compounding basis, where the terms of the contract stated that a 24% annual percentage rate would apply.

{¶22} Thus, under *Champaign Landmark* and R.C. 1343.03(A), the terms of the invoice also establish a written contract. As noted above, the terms of the contract, which appears on every invoice, the letter Minster Farmers claims it sent, and all Minster Farmers’ pleadings, include the 2% per month and 24% annual language. Thus, following the rationale of *Champaign Landmark*, we find that the trial court’s allowance of compounding interest to be charged under the terms of this contract is clearly error.

{¶23} Thus, we affirm the trial court’s finding that a contract existed between two merchants under the U.C.C., and find that the trial court did not err in applying an interest rate above the statutory rate provided in R.C. 1343.03(A).

Accordingly, assignments of error two, four, five, six, seven, nine, ten and thirteen are overruled. However, this case must be remanded to the trial court for a proper judgment determination based upon an interest rate of 24% per year. As such, assignments of error one and two are sustained.

Assignments of Error Nos. VIII & XVI

{¶24} In the eighth assignment of error, Dues asserts that the trial court erred by not addressing Dues' affirmative defense. In the sixteenth assignment of error, Dues asserts that the trial court erred by not addressing issues raised by Dues in his trial brief. Because these assignments of error are related, we will address them together.

{¶25} App.R. 16(A)(7) requires that an appellant's brief contain the following:

An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶26} Dues' brief fails to provide reasons in support, with citations to proper authority, on the above assignments of error. Furthermore, the record is completely void of any evidence to support his assertions. Accordingly, the eighth and sixteenth assignments of error are overruled.

Case No. 17-05-28

{¶27} Having found no error prejudicial to appellant in assignments of error two, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen, but having found error prejudicial to appellant in assignments of error one and three, we affirm in part, reverse in part, and remand the matter for further proceedings consistent with this opinion.

*Judgment affirmed in part
and reversed in part.*

SHAW and CUPP, JJ., concur.

r

STATE OF OHIO, SHELBY COUNTY SS

I, Michele K. Mumford, Clerk of the Common Pleas Court, do hereby certify that the foregoing to be a full, true and correct copy of the original as the same appears on file in my office.

MICHELE K. MUMFORD CLERK

By Mary Lou Deffen
Deputy

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SHELBY COUNTY CLERK

IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

THE MINSTER FARMERS
COOPERATIVE EXCHANGE
COMPANY, INC.

Plaintiff,

vs.

ROBERT DUES

Defendant.

CASE NO. 05CV000048

DECISION
ORDER-ENTRY

* * * * *

This matter came on for trial before the Court on the Plaintiff's (Minster Farmers Cooperative Exchange) Complaint and the Defendant's (Robert Dues) Answer. At issue, is whether the Plaintiff's interest charges to Defendant's account are legally assessable and, therefore, collectible.

The facts in this case disclose that the Plaintiff is a commercial, farm elevator operating as a farm cooperative. The Defendant is a farmer and a member of a cooperative since March 1982. Over the years, the Defendant has purchased thousands of dollars worth of goods from the Plaintiff in the form of feed, gasoline, and other farm related supplies. Plaintiff has brought this action seeking the balance due on its account with the Defendant. The Defendant does not dispute that he purchased the various items stated on the account, but disputes that the Plaintiff can charge his account the interest and/or the finance charges as set forth in the itemized account

attached to Plaintiff's Complaint. In short, Defendant argues that Plaintiff's interest and/or finance charges as assessed, constitute interest on interest and are further uncollectible as per Section 1343.03 of the Ohio Revised Code.

The Court does not find the Defendant's arguments persuasive for the following reasons.

Ohio Revised Code Section 1302.01(A)(8) defines goods as:

"Goods" means all things...which are moveable at the time of identification to the contract for sale other than the money in which the price is to be paid,... "Goods" also includes...growing crops...

R.C. 1302.01(A)(5) defines a merchant as:

"Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices for goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment...

R.C. 1302.01(A)(7) defines merchants as:

"Between merchants" means any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Defendant Dues had an account with Minster Farmers for over 20 years. Minster Farmers sold him goods in the form of hog feed, fertilizer and other farm supplies. It is undisputed that Dues has farmed for a number of years and that farming is his sole or primary source of income. It is well settled law in Ohio, that transactions such as those at issue are for goods and further that farmers with Dues' experience are merchants pursuant to R.C. 1302.01(A)(5). Adams Landmark Inc. v. Eddie Moore, 4th Appellate District, 1987 Ohio App. Lexus 2513.

Accordingly, between merchants, if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, a contract exists unless written notice of objection to its contents is given

within ten days after it is received. See R.C. 1302.04(B). From the exhibits and affidavits attached to Plaintiff's memorandum, it is clear that over the years, Defendant Dues received several, if not hundreds, of pieces of correspondence from the Plaintiff in the form of letters, delivery tickets, monthly invoices and monthly statements, each one advising the Defendant and reaffirming the two percent, per month finance charge provision on the amounts not paid by the end of the following month. These documents are representative of the hundreds of items of correspondence that Dues would have received over the years which all would have contained the same language. Defendant Dues admitted all fuel delivery tickets and invoices he received from Plaintiff contained similar finance charge language. The Defendant never objected orally or in writing to any of these hundreds of pieces of correspondence. The Court finds that Defendant Dues clearly knew and understood how the finance charges worked on his account.

R.C. Section 1302.10 is applicable to this analysis. It provides that a written confirmation of a transaction sent within a reasonable time operates as an acceptance even though it states additional or different terms. Additional terms are to be construed as proposals for addition to the contract, between merchants. The terms become part of the contract unless one of the exceptions in R.C. Section 1302.10 is applied. This Court finds that none of the exceptions are applicable to the instant case.

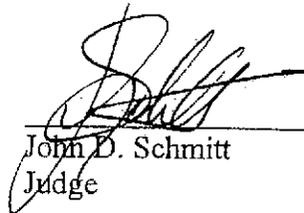
Defendant's reliance on R.C. Section 1343.03(A)(1) is misplaced because the instant transaction was between merchants governed by the Uniform Commercial Code, who have bargained for this finance charge provision. The Court finds the Third Appellate District case of Champaign Landmark v. Dean McCullough, 3rd Appellate District, 1990 Ohio App. Lexus 5279 to be applicable. In Champaign Landmark the Court upheld a two percent monthly finance

charge. The Court reasoned that Champaign Landmark's customer knew of the credit policy, took advantage of the discount policy and paid finance charges.

Accordingly, the Court finds that there was a contract between Plaintiff and the Defendant regarding the finance charges to which Defendant is legally bound.

The Court finds in favor of the Plaintiff and against the Defendant. Judgment is awarded in favor of the Plaintiff against the Defendant in the sum of \$40,990.00 as of April 30, 2005, plus a finance charge of two percent, per month thereafter, to the date of this judgment. Thereafter, interest will accrue on said judgment at the legal rate of interest.

IT IS SO ORDERED.



John D. Schmitt
Judge

cc: Michael A. Burton

Robert Dues
6052 Short Rd.
Houston, OH 45333

Pursuant to Civil Rule 58 (B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgment and the date of entry upon the journal of the filing.



R.C. § 1301.03

C

BALDWIN'S OHIO REVISED CODE ANNOTATED

Baldwin's Ohio Revised Code Annotated Currentness

TITLE XIII. COMMERCIAL TRANSACTIONS

Title XIII. Commercial Transactions (Refs & Annos)

CHAPTER 1301. GENERAL PROVISIONS

Chapter 1301. General Provisions (Refs & Annos)

CONSTRUCTION, APPLICATION, AND SUBJECT MATTER OF RC CHAPTERS 1301 TO 1310

Construction, Application, and Subject Matter of Rc Chapters 1301 to 1310

→ 1301.03 Supplementary general principles of law applicable

Unless displaced by the particular provisions of Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code, the principals of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement their provisions.

(1996 S 155, eff. 8-15-96; 1992 H 693, eff. 11-6-92; 129 v 13; UCC 1-103)

HISTORICAL AND STATUTORY NOTES

Ed. Note: Former 1301.03 repealed by 129 v 13, eff. 7-1-62; 1953 H 1, eff. 10- 1-53; GC 8106.**Amendment Note:** 1996 S 155 removed a reference to Chapter 1306.

UNIFORM COMMERCIAL CODE (UCC)

1961:*Official Comment*

1. While this section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Act, the principle has been stated in more detail and the phrasing enlarged to make it clear that the "validating", as well as the "invalidating" causes referred to in the prior uniform statutory provisions, are included here. "Validating" as used here in conjunction with "invalidating" is not intended as a narrow word confined to original validation, but extends to cover any factor which at any time or in any manner renders or helps to render valid any right or transaction.

2. The general law of capacity is continued by express mention to make clear that section 2 of the old Uniform Sales Act (omitted in this Act as stating no matter not contained in the general law) is also consolidated in the present section. Hence, where a statute limits the capacity of a non-complying corporation to sue, this is equally applicable to contracts of sale to which such corporation is a party.

3. The listing given in this section is merely illustrative; no listing could be exhaustive. Nor is the fact that in some sections particular circumstances have led to express reference to other fields of law intended at any time to suggest the negation of the general application of the principles of this section.

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R.C. § 1301.03

LEGISLATIVE SERVICE COMMISSION

1961:

This section slightly expands RC 1303.47, 1313.74, 1323.50, 1339.13, 1705.20, and 4965.42. The references to validating and estoppel are new.

R.C. § 1301.03, OH ST § 1301.03

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Page 1

R.C. § 1302.10

C

BALDWIN'S OHIO REVISED CODE ANNOTATED

Baldwin's Ohio Revised Code Annotated Currentness

TITLE XIII. COMMERCIAL TRANSACTIONS

Title XIII. Commercial Transactions (Refs & Annos)

CHAPTER 1302. SALES

Chapter 1302. Sales (Refs & Annos)

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

Form, Formation, and Readjustment of Contract

→ 1302.10 Additional terms in acceptance or confirmation

(A) A definite and seasonable expression of acceptance or a written confirmation that is sent within a reasonable time operates as an acceptance even though it states terms additional or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(B) The additional terms are to be construed as proposals for addition to the contract. Between merchants, the terms become part of the contract unless one of the following applies:

(1) The offer expressly limits acceptance to the terms of the offer.

(2) They materially alter it.

(3) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(C) Conduct by both parties that recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case, the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code.

(1996 S 155, eff. 8-15-96; 1992 H 693, eff. 11-6-92; 129 v 13; UCC 2-207)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 1996 S 155 removed a reference to Chapter 1306 from division (C).

UNIFORM COMMERCIAL CODE (UCC)

1961:

Official Comment

1. This section is intended to deal with two typical situations. The one is the written confirmation, where an agreement has been reached either orally or by informal correspondence between the parties and is followed by one

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APP 24

R.C. § 1302.10

or both of the parties sending formal memoranda embodying the terms so far as agreed upon and adding terms not discussed. The other situation is offer and acceptance, in which a wire or letter expressed and intended as an acceptance or the closing of an agreement adds further minor suggestions or proposals such as "ship by Tuesday," "rush," "ship draft against bill of lading inspection allowed," or the like. A frequent example of the second situation is the exchange of printed purchase order and acceptance (sometimes called "acknowledgement") forms. Because the forms are oriented to the thinking of the respective drafting parties, the terms contained in them often do not correspond. Often the seller's form contains terms different from or additional to those set forth in the buyer's form. Nevertheless, the parties proceed with the transaction. <Comment 1 was amended in 1966.>

2. Under this Article [RC Ch 1302] a proposed deal which in commercial understanding has in fact been closed is recognized as a contract. Therefore, any additional matter contained in the confirmation or in the acceptance falls within subsection (2) [(B)] and must be regarded as a proposal for an added term unless the acceptance is made conditional on the acceptance of the additional or different terms. <Comment 2 was amended in 1966.>

3. Whether or not additional or different terms will become part of the agreement depends upon the provisions of subsection (2) [(B)]. If they are such as materially to alter the original bargain, they will not be included unless expressly agreed to by the other party. If, however, they are terms which would not so change the bargain they will be incorporated unless notice of objection to them has already been given or is given within a reasonable time.

4. Examples of typical clauses which would normally "materially alter" the contract and so result in surprise or hardship if incorporated without express awareness by the other party are: a clause negating such standard warranties as that of merchantability or fitness for a particular purpose in circumstances in which either warranty normally attaches; a clause requiring a guaranty of 90% or 100% deliveries in a case such as a contract by cannery, where the usage of the trade allows greater quantity leeways; a clause reserving to the seller the power to cancel upon the buyer's failure to meet any invoice when due; a clause requiring that complaints be made in a time materially shorter than customary or reasonable.

5. Examples of clauses which involve no element of unreasonable surprise and which therefore are to be incorporated in the contract unless notice of objection is seasonably given are: a clause setting forth and perhaps enlarging slightly upon the seller's exemption due to supervening causes beyond his control, similar to those covered by the provision of this Article [RC Ch 1302] on merchant's excuse by failure of presupposed conditions or a clause fixing in advance any reasonable formula of proration under such circumstances; a clause fixing a reasonable time for complaints within customary limits, or in the case of a purchase for sub-sale, providing for inspection by the sub-purchaser; a clause providing for interest on overdue invoices or fixing the seller's standard credit terms where they are within the range of trade practice and do not limit any credit bargained for; a clause limiting the right of rejection for defects which fall within the customary trade tolerances for acceptance "with adjustment" or otherwise limiting remedy in a reasonable manner (see Sections 2-718 and 2-719 [RC 1302.92 and 1302.93]).

6. If no answer is received within a reasonable time after additional terms are proposed, it is both fair and commercially sound to assume that their inclusion has been assented to. Where clauses on confirming forms sent by both parties conflict each party must be assumed to object to a clause of the other conflicting with one on the confirmation sent by himself. As a result the requirement that there be notice of objection which is found in subsection (2) [(B)] is satisfied and the conflicting terms do not become a part of the contract. The contract then consists of the terms originally expressly agreed to, terms on which the confirmations agree, and terms supplied by this Act, including subsection (2) [(B)]. The written confirmation is also subject to Section 2-201 [RC 1302.04]. Under that section a failure to respond permits enforcement of a prior oral agreement; under this section a failure to respond permits additional terms to become part of the agreement. <Comment 6 was amended in 1966.>

7. In many cases, as where goods are shipped, accepted and paid for before any dispute arises, there is no question whether a contract has been made. In such cases, where the writings of the parties do not establish a contract, it is

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R.C. § 1302.10

not necessary to determine which act or document constituted the offer and which the acceptance. See Section 2-204 [RC 1302.07]. The only question is what terms are included in the contract, and subsection (3) [(C)] furnishes the governing rule. <Comment 7 was added in 1966.>

LEGISLATIVE SERVICE COMMISSION

1961:

(1) [(A)] The general rule in Ohio holds that the proposal of new terms in an acceptance constitutes a counter offer when the new terms are material to the contract; see cases cited at 11 OJur 2d, Contracts § 31. In so far as this section treats such a proposal as an acceptance and a separate proposal for another contract unless acceptance is made "expressly" conditional on the new terms, there is a substantial change in present law. Where the new terms do not vary materially, there is no change in present law. *Smith v Shanks*, 9 NP(NS) 508, 21 D 817; affirmed 82 OS 389 (1908).

(2) [(B)] The distinctions drawn are new, but the special treatment of merchants may be compared to those cases where silence is deemed to be an acceptance or other assent; see *Muller v Cincinnati H and D R Co*, 13 D Repr 903, 2 Cin Supr Ct R 280 (1872).

(3) [(C)] This provision is similar to RC 1315.04 which provides that a contract may be inferred from the action of the parties; see also 11 OJur 2d, Contracts § 29.

R.C. § 1302.10, OH ST § 1302.10

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R.C. § 1343.03



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TITLE XIII. COMMERCIAL TRANSACTIONS

Title XIII. Commercial Transactions

CHAPTER 1343. INTEREST

Chapter 1343. Interest (Refs & Annos)

→1343.03 Rate of interest on contracts, book accounts and judgments; commencement of interest on judgments

(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.

(B) Except as provided in divisions (C) and (D) of this section and subject to section 2325.18 of the Revised Code, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct or a contract or other transaction, including, but not limited to a civil action based on tortious conduct or a contract or other transaction that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid and shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the judgment, decree, or order is rendered. That rate shall remain in effect until the judgment, decree, or order is satisfied.

(C)(1) If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case, interest on the judgment, decree, or order shall be computed as follows:

(a) In an action in which the party required to pay the money has admitted liability in a pleading, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(b) In an action in which the party required to pay the money engaged in the conduct resulting in liability with the deliberate purpose of causing harm to the party to whom the money is to be paid, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(c) In all other actions, for the longer of the following periods:

(i) From the date on which the party to whom the money is to be paid gave the first notice described in division

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R.C. § 1343.03

(C)(1)(c)(i) of this section to the date on which the judgment, order, or decree was rendered. The period described in division (C)(1)(c)(i) of this section shall apply only if the party to whom the money is to be paid made a reasonable attempt to determine if the party required to pay had insurance coverage for liability for the tortious conduct and gave to the party required to pay and to any identified insurer, as nearly simultaneously as practicable, written notice in person or by certified mail that the cause of action had accrued.

(ii) From the date on which the party to whom the money is to be paid filed the pleading on which the judgment, decree, or order was based to the date on which the judgment, decree, or order was rendered.

(2) No court shall award interest under division (C)(1) of this section on future damages, as defined in section 2323.56 of the Revised Code, that are found by the trier of fact.

(D) Division (B) of this section does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct or a contract or other transaction, and division (C) of this section does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct, if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code.

(2004 H 212, eff. 6-2-04; 2001 S 108, § 2.01, eff. 7-6-01; 2001 S 108, § 2.02, eff. 7-6-01; 1996 H 350, eff. 1-27-97 [FN1]; 1982 H 189, eff. 7-5-82; 1980 H 28; 129 v 13)

[FN1] See Notes of Decisions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

UNCODIFIED LAW

2004 H 212, § 3, eff. 6-2-04, reads:

The interest rate provided for in division (A) of section 1343.03 of the Revised Code, as amended by this act, applies to actions pending on the effective date of this act. In the calculation of interest due under section 1343.03 of the Revised Code, in actions pending on the effective date of this act, the interest rate provided for in section 1343.03 of the Revised Code prior to the amendment of that section by this act shall apply up to the effective date of this act, and the interest rate provided for in section 1343.03 of the Revised Code as amended by this act shall apply on and after that effective date.

2001 S 108, § 1, eff. 7-6-01, reads:

It is the intent of this act (1) to repeal the Tort Reform Act, Am. Sub. H.B. 350 of the 121st General Assembly, 146 Ohio Laws 3867, in conformity with the Supreme Court of Ohio's decision in *State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward* (1999), 86 Ohio St.3d 451; (2) to clarify the status of the law; and (3) to revive the law as it existed prior to the Tort Reform Act.

2001 S 108, § 3, eff. 7-6-01, reads, in part:

(A) In Section 2.01 of this act:

(4) Sections 163.17, 723.01, 1343.03, 1775.14, 2305.01, 2305.11, 2305.35, 2307.33, 2307.71, 2307.72, 2307.73, 2307.78, 2315.20, 2317.62, 2323.51, 2744.04, 4112.99, 4909.42, 5591.36, and 5591.37 of the Revised Code are revived and supersede the versions of the same sections that are repealed by Section 2.02 of this act.

HISTORICAL AND STATUTORY NOTES

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R.C. § 1343.03

Ed. Note: 1343.03 is analogous to former 1309.03, repealed by 129 v 13, eff. 7- 1-62.

Ed. Note: The amendment of this section by 1996 H 350, eff. 1-27-97, was repealed by 2001 S 108, § 2.02, eff. 7-6-01. See *Baldwin's Ohio Legislative Service Annotated*, 1996, page 10/L-3357, and 2001, page 6/L-1441, or the OH-LEGIS or OH-LEGIS-OLD database on Westlaw, for original versions of these Acts.

Amendment Note: 2004 H 212 rewrote this section, which prior thereto read:

"(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 of ten per cent per annum, and no more, 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.

"(B) Except as provided in divisions (C) and (D) of this section, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct, including, but not limited to a civil action based on tortious conduct that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid.

"(C) Interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid if, upon motion of any party to the action, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case

"(D) Divisions (B) and (C) of this section do not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code."

Amendment Note: 1996 H 350 rewrote this section, which prior thereto read:

"(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 of ten per cent per annum, and no more, 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.

"(B) Except as provided in divisions (C) and (D) of this section, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct, including but not limited to a civil action based on tortious conduct that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid.

"(C) Interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid, if, upon motion of any party to the action, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a

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R.C. § 1343.03

good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case.

"(D) Divisions (B) and (C) of this section do not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code."

R.C. § 1343.03, OH ST § 1343.03

Current through 2006 File 145 of the 126th GA (2005-2006),
apv. by 11/27/06, and filed with the Secretary of State by 11/27/2006.

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END OF DOCUMENT

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