

IN THE SUPREME COURT OF OHIO

08-2363

MARCIA A. MAYER, et al

Appellees

vs.

MARIO MEDANCIC, et al.,

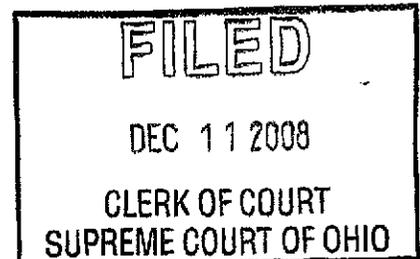
Appellants

)On Appeal from
)Court of appeals Eleventh Appellate District
)
) Court of Appeals Case Nos.
)2008-G-2826, 2827 and 2828 (Consolidated)
)
)
)
)

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANTS MARIO MEDANCIC, ET AL.

JOEL A. NASH (0061081)
4325 Mayfield Road
Cleveland, Ohio 44121
Tel. (216) 691-3000
FAX.(216) 291-1207
Counsel for Appellants

PAUL T. MURPHY (0016470)
Paul T. Murphy Co., L.P.A.
5843 Mayfield Road
Mayfield Heights, Ohio 44124
Tel.(440) 473-1025
FAX (440) 473-9595
Counsel for Appellees



EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST. 1 - 2

STATEMENT OF THE CASE AND FACTS. 2 - 3

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW 3 - 6

PROPOSITION OF LAW NO. 1. 3 - 5

Simple interest is to be awarded on a judgment when there is no specific agreement to compound interest or a statutory provision authorizing compound interest.

O.R.C. 1343.03 (“EXHIBIT A”).

Section 5703.47 of the Revised Code

Bank One Steubenville NA v. Buckeye Union Ins. Co., 114 Ohio App. 3d 248

Lerner v. Saveco Ins. Co., 171 Ohio App. 3d 570

State, ex rel. Bruml v. Brooklyn (1943), 141 Ohio St. 593, 599

State ex rel Elyria v. Trubey, 20 Ohio App 3d 8, 20

Testamentary Trust of Hamm (1997) 124 Ohio App. 3d 683, 707 N.E. 2d 524

Thirty Four Corp. V. Sixty Seven Corp., 91 Ohio Ap. 3d 818

Viock et al v. Stowe-Woodward Co., 59 Ohio App 3d, 68

PROPOSITION OF LAW NO. 2. 5 - 6

A trial court may not extend the 30-day appeal period as provided in App. R. 4 by reissuing an earlier entry and labeling it a “nunc pro tunc” entry and adding the words “this is a final appealable order” and “there is no just cause for delay.”

App. R.4

App. R. 14(B)

O.R.C. 2502.02

Roth v. Roth, 65 Ohio App. 3d 768, Syllabus 2.

CONCLUSION 7

PROOF OF SERVICE 7

APPENDIX

OPINION OF THE 11TH DISTRICT COURT EXHIBIT A
OF APPEALS (October 28, 2008)

JUDGMENT ENTRY OF THE GEAUGA COUNTY EXHIBIT B
COMMON PLEAS COURT (April 19, 2006)

JUDGMENT ENTRY OF THE GEAUGA COUNTY EXHIBIT C
COMMON PLEAS COURT (March 4, 2008)

O.R.C. 1343.03 EXHIBIT D

**EXPLANATION OF WHY THIS IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST**

I. The Court of Appeals in this case held that post-judgment interest on notes payable with interest “per annum” was to be compound, not simple, interest, although nothing in the notes or any other agreement between the parties provided for compound interest.

If this decision remains undisturbed, Ohioans who have signed promissory notes, be they secured by real estate or otherwise, will be required to pay compound interest rather than simple interest even though they did not agree to pay compound interest.

This is of great interest especially in view of the current volume of real estate foreclosure cases where many, if not all, of the mortgage notes involved are payable with interest per annum with no provision for compound interest.

Many of the Ohio Appellate Courts now hold that compound interest is payable only where there is a specific contractual or statutory provision for compound interest.

The Ohio Supreme Court has not addressed this issue.

Ohioans throughout the state who have or may sign promissory notes payable with interest “per annum” and find those notes in litigation in the 11th District Court of Appeals will be faced with compound interest rather than simple interest even though they did not agree to pay compound interest.

Ohioans will be rightfully concerned with this issue.

II. Also of public or great general interest to litigants and their attorneys is this Court of Appeals ruling that the trial court can extend the 30-day appeal period provided in Appellate Rule 4 simply by reissuing a previous Judgment Entry in identical language, but labeling it a nunc pro tunc entry and adding the words “no just cause for delay.”

The Appellate court in this case approved the extension of the 30-day appeal period in the above matter by determining that the reissued entry was not a nunc pro tunc entry but a modification of the former entry, although nothing in the later entry changed or modified anything in the earlier, 2-year-old entry.

The above issues should be clarified by the Supreme Court so that Ohioans are not left in a quandary as to when an instrument for the payment of money bears compound not simple interest, and if a “nunc pro tunc” entry repeating an earlier entry extends the 30-day appeal period.

STATEMENT OF THE CASE AND FACTS

Facts relevant to this Appeal are as follows:

1. Three members of the Medancic family executed separate mortgage notes in favor of Appellees, who took judgments on said notes in September, 2000 in three (3) separate foreclosure actions which were consolidated.

The consolidated cases were appealed on three (3) occasions and the judgments were affirmed.

Subsequently, a dispute arose between the parties as to whether the judgments bore simple or compound interest, and the parties submitted the dispute to the trial court for resolution.

The trial court ruled that the judgments should be computed at simple interest in its Judgment Entry of April 19, 2006 (“Exhibit B”).

Appellants tendered a check to Appellees on or about January 18, 2007 in the amount of \$276,326.99, which was the amount of the judgments computed at simple interest, but Appellees refused to negotiate the check because of the simple interest computation.

On March 9, 2008 the court on a motion requesting the court to resolve the interest dispute again, filed its nunc pro tunc entry (“Exhibit C”) which was identical to its April 19, 2006 entry determining that the judgments in this case should bear simple interest, except that it added the words “no just cause for delay” and that “this was a final appealable order” to their “nunc pro tunc” entry.

Appellees appealed the nunc pro tunc entry on March 9, 2008 within the 30-day appeal period from the filing of the “nunc pro tunc” entry.

The appellate court accepted jurisdiction and reversed the trial court, ruling that post-judgment interest should be compounded for the reasons set forth in its entry filed on October 28, 2008 (“Exhibit A”).

Appellants herein question the Appellate Court’s jurisdiction to hear the Appeal as it was not filed within 30 days from the April 19, 2006 entry and also argue against reversal of the trial court’s ruling in both its 2006 and 2008 entries finding that the judgments herein bear simple, not compound interest.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1

Simple interest is to be awarded on a judgment when there is no specific agreement to compound interest or a statutory provision authorizing compound interest.

The 11th District Court of appeals herein determined that Appellants should pay compound interest on judgments obtained by Appellees on notes that did not provide for the payment of compound interest.

The decision ignores the holdings of many Ohio appellate courts and O.R.C. 1343.03 (“EXHIBIT D”).

O.R.C. 1343.03 provides that “when money becomes due and payable upon any . . . note, or other instrument of writing . . . And upon all judgments, decrees and orders of any judicial tribunal for the payment of money . . . 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.

“Simple interest is to be used when there is no specific agreement to compound interest or a statutory provision authorizing the compound interest.” *State ex rel Elyria v. Trubey*, 20 Ohio App 3d 8, 20.

Indeed, the 11th Circuit itself held in 1897 that the granting of compound interest on a judgment is an abuse of discretion, finding that there is no support for the computation of compound interest rather than simple interest. *Testamentary Trust of Hamm* (1997) 124 Ohio App. 3d 683, 707 N.E. 2d 524.

Other Ohio Appellate Courts that require a contractual provision before awarding compound interest are the following: *Viock et al v. Stowe-Woodward Co.*, 59 Ohio App 3d, 68; *Bank One Steubenville NA v. Buckeye Union Ins. Co.*, 114 Ohio App. 3d 248; and *Thirty Four Corp. V. Sixty Seven Corp.*, 91 Ohio Ap. 3d 818.

In reaching its decision herein, the Court of Appeals relied on the 1943 case of *State, ex rel. Bruml v. Brooklyn* (1943), 141 Ohio St. 593, 599 which held, “under a contract for the payment of interest at a specified rate annually, wherein there is a default of payment of such interest when due, interest on interest will be computed at the regular rate.”

However, nothing in the *Bruml* case provided for compound interest. In that case the Plaintiffs were holders of bonds that provided for payment of interest at a stated rate payable semi-annually, the interest payments going directly to the holder or added each six months to the principal. The court granted an interest on interest computation since that was the clear

understanding of the parties.

But “interest on interest” is not compound interest. And the bonds contained a written provision for interest on interest.

In *Lerner v. Saveco Ins. Co.*, 171 Ohio App. 3d 570, the court stated that “interest on interest is not compound interest without a contract or statutory provision providing for compound interest.”

There is no contractual or statutory provision providing for compound interest in any of the notes or written agreements signed by Appellants. Therefore, the decision of the 11th District Court of Appeals should be reversed.

PROPOSITION OF LAW NO. 2

A trial court may not extend the 30-day appeal period as provided in App. R. 4 by reissuing an earlier entry and labeling it a “nunc pro tunc” entry and adding the words “this is a final appealable order” and “there is no just cause for delay.”

Prior to the appeal herein this case had been to the Court of Appeals of the 11th District three (3) previous times affirming the judgments herein, as related in the Court’s decision of October 28, 2008 from which this appeal was taken (“Exhibit A”).

Thereafter, a dispute arose as to whether the judgments should bear simple or compound interest. The dispute was brought to the trial court by motion and the court issued its ruling in an entry filed on April 19, 2006, holding that the judgments bore simple, not compound interest.

No appeal was taken from that entry.

On March 4, 2008, almost two (2) years later, the trial court filed an entry identical to the April 19, 2006 entry but labeling it a “nunc pro tunc” entry and adding, at the end, the words “this is a final appealable order” and “no just cause for delay”.

Appellees herein appealed that order on April 2, 2008 and the Court of Appeals entertained the appeal.

Appellants herein contend that the appeal was improvidently allowed as it was beyond the 30-day appeal period mandated by App. R.4 and that the trial court could not extend that period by almost two (2) years simply by filing an entry in 2008 identical to the 2006 entry except for the new label and the additional words which did not change the original order in any way.

App. R. 4 provides that “a party shall file the notice of appeal required by App. R. 3 within 30 days of the entry of the judgment or order appealed . . . “

App. R. 14(B) provides that “. . . The court may not enlarge or reduce the time for filing a notice of appeal or a motion to certify . . .”

O.R.C. 2502.02 provides in part:

(B) An order is a final appealable order that may be reviewed, affirmed, modified or reversed with or without retrial when it is one of the following . . .

(2) an order that affects a substantial right upon a summary application in an action after judgment . . .”

“Generally, an appeal cannot be taken from a judgment nunc pro tunc but must have been taken from the order intended to be corrected thereby.” *Roth v. Roth*, 65 Ohio App. 3d 768, Syllabus 2.

The trial court’s entry of April 19, 2006 affected a substantial right of the appellees and should have been appealed pursuant to App. R. 4 within 30 days of that entry, not after the March 4, 2008 “nunc pro tunc” entry.

CONCLUSION

Appellants contend that the 11th District Court of Appeals erred in finding that the judgments in this case bore compound interest rather than simple interest, there being no contractual or statutory provision for compound interest.

Appellants also contend that the trial court's "nunc pro tunc" entry of March 9, 2008 repeating its entry of April 19, 2006 was improper in that it purported to extend the 30-day appeal period for its 2-year old entry; that, therefore, Appellees' Notice of Appeal dated April 2, 2008 was out of rule and should have been rejected by the appellate court.

Respectfully submitted,

Joel A. Nash [0061081]
Counsel for Appellants,
4325 Mayfield Road, Cleveland, OH 44121
(216) 691-3000

CERTIFICATE OF SERVICE

A copy of the foregoing has been served on Appellees, Marcia A. Mayer and Robert Mayer at 11154 Sperry Road, Chesterland OH 44026 and on Paul T. Murphy, Attorney for Appellees at 5843 Mayfield Road, Mayfield Heights, OH 44124 by regular mail on December 8, 2008.

Joel A. Nash [0061081]
Counsel for Appellants,

FILED

IN COURT OF APPEALS

STATE OF OHIO

OCT 28 2008

IN THE COURT OF APPEALS

COUNTY OF GEAUGA

SS. DENIS M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

ELEVENTH DISTRICT

MARCIA A. MAYER, et al.,

Plaintiffs-Appellants,

CASE NOS. 2008-G-2826

2008-G-2827

- vs -

2008-G-2828

MARIO MEDANCIC, et al.,

Defendants-Appellees.

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Geauga County Court of Common Pleas is reversed and these matters are remanded for further proceedings consistent with this opinion.

It is the further order of this court that appellees are assessed costs herein taxed. The court finds there were reasonable grounds for this appeal.


JUDGE COLLEEN MARY O'TOOLE

FOR THE COURT

12/6/12

FILED
IN COURT OF APPEALS
OCT 28 2008
DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

MARCIA A. MAYER, et al., : OPINION
Plaintiffs-Appellants, : CASE NOS. 2008-G-2826
- vs - : 2008-G-2827
MARIO MEDANCIC, et al., : 2008-G-2828
Defendants-Appellees. :

Civil Appeal from the Court of Common Pleas, Case Nos. 98 F 000851, 98 F 000850 and 98 F 000515.

Judgment: Reversed and remanded.

Paul T. Murphy, Paul T. Murphy Co., L.P.A., 5843 Mayfield Road, Cleveland, OH 44124 (For Plaintiffs-Appellants).

Joel A. Nash, 4325 Mayfield Road, Cleveland, OH 44121 (For Defendants-Appellees).

COLLEEN MARY O'TOOLE, J.

{¶1} Marcia and Robert Mayer appeal from the March 4, 2008 "nunc pro tunc" judgment entry of the Geauga County Court of Common Pleas, awarding them simple interest on three promissory notes, in these consolidated cases stemming from certain actions in foreclosure of parcels of real estate in Geauga County, Ohio. We reverse and remand.

{¶2} These cases have a tortured history. This is the fourth appeal. See, e.g., *Mayer v. Medancic* (Dec. 21, 2001), 11th Dist. Nos. 2000-G-2311, 2000-G-2312, and 2000-G-2313, 2001 Ohio App. LEXIS 5863, dissenting opinion at 2001 Ohio App.

LEXIS 6098 ("*Mayer I*"); *Mayer v. Medancic*, 11th Dist. Nos. 2002-G-2431, 2002-G-2432, and 2002-G-2433, 2003-Ohio-5355 ("*Mayer II*"); *Mayer v. A-Custom Builders, Inc.*, 11th Dist. No. 2004-G-2563, 2005-Ohio-2083 ("*Mayer III*"). In 1992, the Mayers entered an agreement to sell two parcels of property to appellees, Mario Medancic, Marija Medancic, Mladen Medancic, and Karoline Medancic. See, e.g., *Mayer II* at ¶2. On or about July 3, 1995, Mladen and Karoline Medancic executed a promissory note in the amount of \$20,000 in favor of the Mayers, secured by a mortgage deed. *Mayer I* at 3. It was payable no later than November 1, 1995, *Id.*; and, carried interest in the amount of thirteen percent, per annum. December 11, 1995, Mladen and Karoline Medancic executed another promissory note in favor of the Mayers, in the amount of \$67,000, also secured by a mortgage deed. *Id.* at 2-3. This note was payable no later than November 1, 1997, *Id.* at 2; and carried interest in the amount of ten percent, per annum. Finally, on or about January 8, 1996, A-Custom Builders (evidently, a corporation owned or controlled by the Medancic family), executed a promissory note in the amount of \$37,500 in favor of the Mayers. *Id.* at 2. This note was payable no later than November 1, 1997, *Id.*; and, carried interest in the amount of twelve percent, per annum.

{¶3} In 1998, the Mayers filed their three complaints in foreclosure against the Medancics. *Mayer I* at 2-3. The Medancics answered and counterclaimed for breach of contract. *Id.* at 4. The trial court consolidated the actions; and, bench trial was held in December 1999. *Id.* at 5. In September 2000, the trial court issued two judgment entries. *Id.* It ruled in favor of the Mayers regarding their foreclosure actions, and ordered the Medancics to pay on the promissory notes, with interest at the amounts

specified therein. Cf. *Id.* It further ordered that portions of various contracts for the purchase of land between the parties be rescinded, due to mutual mistake, and that the Mayers refund some \$148,000 to the Medancics' corporate entity, A-Custom Builders. *Id.* at 6-7. The trial court issued a nunc pro tunc entry in October 2000.

{¶4} The appeal by the Medancics in *Mayer I* ensued. In relevant part, this court affirmed the trial court's judgment regarding the foreclosures. *Id.* at 29. This court remanded for clarification or recalculation regarding the amount of the refund owed by the Mayers. *Id.* at 29-30. The trial court issued a new judgment entry in March 2002, ordering the Mayers to refund \$178,000. *Mayer II* at ¶11. The Mayers appealed, *Id.* at ¶1; and, this court reversed and remanded for clarification. *Id.* at ¶45. The trial court then decided the Mayers should refund \$148,000. *Mayer III* at ¶13. The Medancics appealed; and, this court affirmed. *Id.* at ¶36.

{¶5} The parties continued to dispute various issues in the trial court. January 13, 2006, the Medancics filed a motion to modify the rate of post-judgment interest owed on the notes, from that set forth in those instruments, to the statutory rate. Hearing was held before the trial court on this and other issues January 17, 2006. The trial court ordered that the Mayers brief their contention that interest on the notes should be at the rate set forth therein, and should be compounded. They did so; and, the Medancics opposed.

{¶6} April 19, 2006, the trial court filed a judgment entry, pertaining not merely to the interest rate question, but the continued viability of the \$37,500 judgment entry against A-Custom Builders, the identities of the parties in these actions, and whether set-off could be allowed. Regarding the interest rate question, the trial court, relying on

the opinion of the Eighth District Court of Appeals in *Capital Fund Leasing, L.L.C. v. Garfield* (1999), 135 Ohio App.3d 579, determined that R.C. 1343.02, governing judgments on certain written instruments, applied, and that the Mayers were entitled to interest on the notes, post-judgment, at the rates set forth in the notes. The trial court rejected the Mayers' contention they were entitled to compound interest. The trial court further ordered the parties to brief the other issues contained in the judgment entry.

{¶7} Further disputes continued between the parties. Finally, March 4, 2008, the trial court filed an agreed judgment entry, noting the conclusion of the balance of the disputes remaining between the parties. In paragraph 4 of this judgment entry, the trial court stated the Mayers disputed the conclusion set forth in the April 19, 2006 judgment entry that they were entitled only to simple, rather than compound, interest on the notes. The trial court ordered that its April 19, 2006 judgment entry be refiled, with appropriate Civ.R. 54(B) language, so the Mayers could appeal this issue. That same day, the April 19, 2006 judgment entry was refiled, with the additional language: "[t]his Court is entering final judgment as to the issue of interest, there being no just reason for delay. This is a final appealable order."

{¶8} April 2, 2008, the Mayers noticed this appeal, assigning a single error:

{¶9} "The trial court erred in ordering the interest on the three Promissory Notes to be calculated as simple interest instead of compound interest."¹

{¶10} Prior to reaching the assignment of error, we must decide whether we have jurisdiction to hear this appeal. The Medancics argue we do not. They argue that

1. We note that the Mayers have filed a reply brief in this appeal, which does not incorporate a table of contents, as required by rule. Nevertheless, we are allowing the reply brief in, but have not considered it in rendering this decision.

the trial court's April 19, 2006 judgment entry, determining the Mayers were owed simple interest, at the rates specified in the notes, was not an interlocutory order, but a final appealable order as to that issue. Consequently, they believe the Mayers are outside the 30 day time limit for noticing an appeal, set forth at App.R. 4(A).

{¶11} The Medancics cite to R.C. 2502.02, defining final appealable orders, which provides, in relevant part:

{¶12} "(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶13} ****

{¶14} "(2) An order that affects a substantial right *** upon a summary application in an action after judgment; *** [.]"

{¶15} The trial court's April 19, 2006 judgment entry was made in response to the Medancic's motion to modify post-judgment interest from the rates contained in the notes, to the statutory rate. They consider their motion to modify as being in the nature of a "summary application." They are certainly correct that it was made "after judgment" – the trial court found them in default on the notes in the autumn of 2000. They correctly note that the order affected a substantial right of the Mayers – i.e., the amount of interest they could collect from the Medancics. The Medancics further contend the issue of set-off, also mentioned by the trial court in its April 19, 2006 judgment entry had already been disposed of by this court by our decision in *Mayer I*. Consequently, the Medancics assert that the Mayers could, and should, have appealed the April 19, 2006 judgment entry, instead of the March 4, 2008 "nunc pro tunc" entry.

{¶16} An appellate court has a duty to examine its jurisdiction, and must dismiss an appeal if jurisdiction is lacking. *Whitaker-Merrell Co. v. Geupel Constr. Co.* (1972), 29 Ohio St.2d 184, 186. The office of a nunc pro tunc judgment entry is merely to correct a clerical error, or clarify the true purpose of a judgment already made. Cf. *State v. Shamaly*, 8th Dist. No. 88409, 2007-Ohio-3409, at ¶8, fn. 1. Thus, a true entry nunc pro tunc relates back to the filing of the original judgment entry, and does not extend the time for appeal. *Id.*

{¶17} In this case, we find that the judgment entry of March 4, 2008, was not a true nunc pro tunc entry. It modified, rather than clarified, the April 19, 2006 judgment entry of the trial court. We respectfully disagree with the Medancic's argument that the only issue still pending before the trial court in April 2006 was the question of what interest rates applied to the notes. Even if the question of set-off had already been disposed of by our decision in *Mayer I*, other disputes remained pending before the trial court, many of which were simply not touched on by the April 19, 2006 judgment entry.² This is evinced by the voluminous filings made by each side in the period since the filing of that entry.

{¶18} Thus, the March 2008 judgment entry does not relate back to that of April 19, 2006, and this court has jurisdiction to hear the appeal.

{¶19} Promissory notes are written contracts. *JP Morgan Chase Bank v. Murdock*, 6th Dist. No. L-06-1153, 2007-Ohio-751, at ¶27. Consequently, we review decisions regarding them de novo.

2. We further note that it appears, from the record that the Medancics were arguing in favor of set-off in April 2006.

{¶20} The trial court relied on the decision of the Eighth District in *Capital Fund Leasing, L.L.C.*, supra, for the proposition that R.C. 1343.02 controlled the rates of interest derived from the notes in this case. That statute provides: "[u]pon 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." From this, the trial court determined the Mayers were entitled to interest at the rates contained in the three notes, not the statutory interest rate. It further determined that the interest should be simple, not compound, as the notes contain no provision for the latter.

{¶21} On appeal, as in the trial court, the Mayers point to the decision of the Supreme Court of Ohio in *State, ex rel. Bruml v. Brooklyn* (1943), 141 Ohio St. 593, 599, for the proposition that, "[u]nder a contract for the payment of interest at a specified rate annually, whereon there is a default of payment of such interest when due, interest on interest will be computed at the regular rate." *Bruml* remains good law. See, e.g., *In re: Conneaut Metalcasters, Inc. v. Emco Wheaton, Inc.* (C.A. 6, 1997), 1997 U.S. App. LEXIS 23780, at 18-19; *Safdi v. Gallegos* (July 16, 1999), 1st Dist. Nos. C-980814 and C-980857, 1999 Ohio App. LEXIS 3294, at 12-14.³

{¶22} In this case, the Medancics have been in default in payment of interest on the notes for years. Consequently, under the authority of *Bruml*, the Mayers are entitled

3. As additional authority, the Medancics have submitted the recent decision of the Supreme Court of Ohio in *Minster Farmers Coop. Exchange Co., Inc. v. Meyer*, 117 Ohio St.3d 459, 2008-Ohio-1259, for the proposition that the Mayers are limited to receiving statutory interest on the subject notes. We respectfully find the case inapplicable, as it turns upon the Supreme Court's determination that invoices or account statements unilaterally setting forth interest terms are not written contracts. *Id.* at ¶28-29.

to compound interest on each note, at the rates specified in the notes.

{¶23} The judgment of the Geauga County Court of Common Pleas is reversed, and these matters are remanded for further proceedings consistent with this opinion.

{¶24} It is the further order of this court that appellees are assessed costs herein taxed.

{¶25} The court finds there were reasonable grounds for this appeal.

DIANE V. GRENDELL, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

2006 APR 19 PM 1:33

MARCIA A. MAYER, et al., : CASE NO. 98F000851
CLEVELAND COURTS : 98F000850
GEAUGA COUNTY : 98F000515
(Consolidated)

Plaintiffs, : JUDGE DAVID L. FUHRY

-vs- :

MARIO MEDANCIC, et al., : JUDGMENT ENTRY

Defendants. :

This matter comes on for consideration pursuant to oral hearing of January 17, 2006 dealing with the parties' continuing dispute over who owes how much. That hearing dealt primarily with the "how much" issue and revolved around the calculation of interest.

Defendants claim, first, that the judgment against them on the notes should be simple interest and not compounded annually. Second, they claim the post-judgment interest rate should be 10% because the notes don't provide for a different interest rate upon default in payment.

Plaintiffs claim Defendants' argument as to compounding is "preposterous". However, nowhere in the notes is the compounding of interest provided for. Interest simply accrues on the principal and at a stated rate per annum. Judgments themselves accrue interest at a stated rate per annum. It is uncontroverted that judgments accrue simple interest only, unless compounding is specifically provided for.

The Court finds that Plaintiffs' affidavit that compound interest was implied or intended is not sufficient to overcome the plain meaning provided by the language of the notes. Principal was to accrue interest computed at a certain rate, and no compounding is provided for.

As to Plaintiffs' second claim, it is asserted that Defendants' interest rate does not default to the lesser statutory judgment rate just because a judgment has been rendered, or because the notes don't contain an express provision as to what rate of interest applies in the event of default.

The Court has waded into what seems to be a labyrinth of cases concerning this issue. The Court finds the case of Capital Fund Leasing, LLC vs. Garfield, 135 O App 3d 579, 8TH Dist. CA, best sums up this Court's sentiments as apply to this case. R.C. Section 1343.03 doesn't apply if 1347.02 does apply. R.C. Section 1343.02 does apply because the instrument specifies a rate. Therefore, the Plaintiff's position is adopted as to this issue, and that post-judgment interest rate is the same as that provided for in the instrument..

WHEREFORE, the Court 's order of January 5, 2006 controls as to the amount of interest owed.

The Court further finds that the parties need to dispose of the issue as to whether the Court's order filed September 5, 2000 and awarding Plaintiffs judgment against Defendant A-Custom Builders in the amount of \$37,500.00 is viable and not provided for in the Court's January 5, 2006 ruling. The Defendant A-Custom Builders has the burden of establishing that the \$37,500.00 has been satisfied, or that it should be disregarded at this point.

The Court further finds that the parties have left much to be desired in arguing the set-off issue.

First, who are the parties, according to Defendants, as to each of the three consolidated cases?

Second, if they are not identical, why is set-off appropriate?

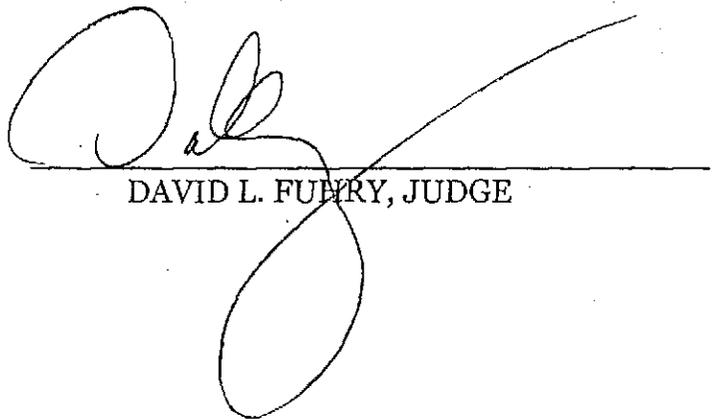
Third, the Court was unaware that almost six years ago the trial court directed there be no set-off between the parties. That this escaped the Court's notice is not

surprising since the parties have been contesting this matter for about eight years, and there are volumes of files and papers in the Court's file.

What was the rationale behind this order? The Defendants have the burden of demonstrating why it should be countermanded now since it is a pre-existing Court order.

WHEREFORE, the Defendant shall have twenty-one (21) days to address the issue of the viability of the \$37,500.00 judgment; as well as the three issues relating to identifying the parties and the issue of set-off; Plaintiffs shall have twenty-one (21) days from date of service of Defendants' argument to respond.

IT IS SO ORDERED.



DAVID L. FURRY, JUDGE

cc: Paul T. Murphy, Esq.
Joel Nash, Esq.

FILED
IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO
2008 MAR -4 PM 3:05

MARCIA A. MAYER, et al. :
CLERK OF COURTS :
GEAUGA COUNTY :
CASE NO. 98F000851
98F000850
98F000515
(Consolidated)

Plaintiffs, : JUDGE DAVID L. FUHRY

-vs- :

MARIO MEDANCIC, et al., : NUNC PRO TUNC
JUDGMENT ENTRY

Defendants. :

This matter comes on for consideration pursuant to oral hearing of January 17, 2006 dealing with the parties' continuing dispute over who owes how much. That hearing dealt primarily with the "how much" issue and revolved around the calculation of interest.

Defendants claim, first, that the judgment against them on the notes should be simple interest and not compounded annually. Second, they claim the post-judgment interest rate should be 10% because the notes don't provide for a different interest rate upon default in payment.

Plaintiffs claim Defendants' argument as to compounding is "preposterous". However, nowhere in the notes is the compounding of interest provided for. Interest simply accrues on the principal and at a stated rate per annum. Judgments themselves accrue interest at a stated rate per annum. It is uncontroverted that judgments accrue simple interest only, unless compounding is specifically provided for.

The Court finds that Plaintiffs' affidavit that compound interest was implied or intended is not sufficient to overcome the plain meaning provided by the language of the notes. Principal was to accrue interest computed at a certain rate, and no compounding is provided for.

As to Plaintiffs' second claim, it is asserted that Defendants' interest rate does not default to the lesser statutory judgment rate just because a judgment has been rendered, or because the notes don't contain an express provision as to what rate of interest applies in the event of default.

The Court has waded into what seems to be a labyrinth of cases concerning this issue. The Court finds the case of Capital Fund Leasing, LLC vs. Garfield, 135 O App 3d 579, 8TH Dist. CA, best sums up this Court's sentiments as apply to this case. R.C. Section 1343.03 doesn't apply if 1347.02 does apply. R.C. Section 1343.02 does apply because the instrument specifies a rate. Therefore, the Plaintiff's position is adopted as to this issue, and that post-judgment interest rate is the same as that provided for in the instrument..

WHEREFORE, the Court 's order of January 5, 2006 controls as to the amount of interest owed.

The Court further finds that the parties need to dispose of the issue as to whether the Court's order filed September 5, 2000 and awarding Plaintiffs judgment against Defendant A-Custom Builders in the amount of \$37,500.00 is viable and not provided for in the Court's January 5, 2006 ruling. The Defendant A-Custom Builders has the burden of establishing that the \$37,500.00 has been satisfied, or that it should be disregarded at this point.

The Court further finds that the parties have left much to be desired in arguing the set-off issue.

First, who are the parties, according to Defendants, as to each of the three consolidated cases?

Second, if they are not identical, why is set-off appropriate?

Third, the Court was unaware that almost six years ago the trial court directed there be no set-off between the parties. That this escaped the Court's notice is not

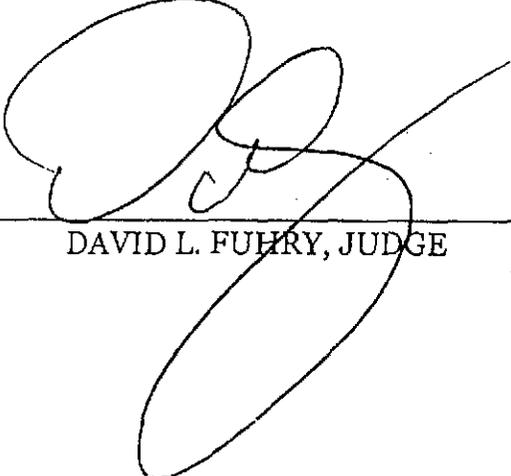
surprising since the parties have been contesting this matter for about eight years, and there are volumes of files and papers in the Court's file.

What was the rationale behind this order? The Defendants have the burden of demonstrating why it should be countermanded now since it is a pre-existing Court order.

WHEREFORE, the Defendant shall have twenty-one (21) days to address the issue of the viability of the \$37,500.00 judgment; as well as the three issues relating to identifying the parties and the issue of set-off; Plaintiffs shall have twenty-one (21) days from date of service of Defendants' argument to respond.

This Court is entering final judgment as to the issue of interest, there being no just reason for delay. This is a final appealable order.

IT IS SO ORDERED.



DAVID L. FUHRLY, JUDGE

cc: Paul T. Murphy, Esq.
Joel Nash, Esq.