IN THE SUPREME COURT OF OHIO

CASE NO. 09 - 0170

MARCIA A. MAYER, et al	)On Appeal from
	)Court of appeals Eleventh Appellate District
Appellees	)
	) Court of Appeals Case Nos.
vs.	)2008-G-2826, 2827 and 2828 (Consolidated)
	)
MARIO MEDANCIC, et al.,	)**RELATED CASE: (Discretionary Appeal)**
	)**SUPREME COURT CASE NO.2008-2363**
Appellants	)

REPLY TO APPELLEES' MOTION TO DISMISS CERTIFIED CONFLICT

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REPLY TO APPELLEES' MOTION TO DISMISS

Now come Defendant-Appellants and say that Plaintiff-Appellees' Motion to Dismiss Certified Conflict should be denied for the following reason as is more fully set forth below:

Defendant-Appellants contend that a conflict exists between the Eleventh Appellate District's decision in *Mayer v. Medancic* with respect to an award of compound interest.

The Eleventh Appellate District's decision in *Mayer* awarded compound interest absent a contractual or statutory provision for compound interest.

Thirty Four Corp. V. Sixty Seven Corp., as Appellees themselves state at page 5 of their Motion to Dismiss, "concerned whether compound interest could be awarded upon default where 'no evidence (was) presented that the note in question was anything other than a six-percent simple interest loan'."

The Tenth Appellate Court accordingly refused to award compound interest.

The obvious reason why the *Thirty Four* Court did not consider *State, ex rel. Bruml* is that the *Bruml* case was inapplicable. In *Bruml,* the note contained a specific provision for interest on interest, providing that interest was to be computed every six months and either paid directly to the creditor or added to the principal, upon which interest was to be computed in successive six-month periods.

No such provision was contained in the note in question in *Thirty Four*, nor in *Mayer*.

The conflict between *Mayer* and *Thirty Four* prompted the Eleventh Appellate District to certify the following question to the Supreme Court: When a written instrument sets forth a specific rate of interest to be paid, and there is a default in the payment of that interest, is the

creditor entitled to compound interest, even absent a statute or provision therefore in the written instrument, pursuant to the rule in *State ex rel Bruml v. Brooklyn* (1943) 141 Ohio St. 593:"

CERTIFIED ON QUESTION OF LAW, NOT FACT

Bruml was based upon this court's decision that the instrument in question bore compound interest because it specifically provided that interest was to be computed every six months and either paid directly to the creditor or added to the principal, in which case that interest, along with the principal to which it was added, would bear interest each succeeding six months... in short, interest upon interest.

But *Bruml* is inapplicable to the facts in *Thirty Four Corp.* or in the Mayer case, as neither provided for interest on interest as did *Bruml.*

Why would the *Thirty Four Corp* case discuss *Bruml* when *Bruml* was not applicable? Indeed, the Eleventh Appellate District in the instant case also ignored other Appellate cases that held what the Court called the general rule that a writing bore simple interest, absent a statutory or contractual provision for compound interest. It is a question of law, not fact.

CONCLUSION

Appellants urge this Court to determine that a conflict does, in fact, exist as to the granting of compound interest absent a statutory or contractual provision therefore. *Thirty Four Corp. v. Sixty Seven Corp.* said compound interest in such a case is improper. The Eleventh Appellate District Court did not agree. Appellees' Motion to Dismiss should be denied.

Respectfully submitted,

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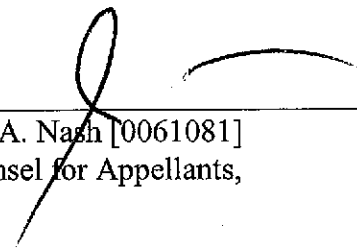
CERTIFICATE OF SERVICE

A copy of the foregoing has been served on Timothy T. Brick and Catherine Peters, Counsel for Plaintiffs-Appellees, Marcia A. Mayer and Robert Mayer at GALLAGHER SHARP, Bulkley Building, Sixth Floor, 1501 Euclid Avenue, Cleveland, OH 44115-2108 by regular mail on February 11, 2009.



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