

ORIGINAL

IN THE SUPREME COURT OF OHIO

OHIO NEIGHBORHOOD FINANCE, INC.,	:	
	:	
Plaintiff-Appellant,	:	Appeal from the Court of Appeals
	:	for the Ninth Judicial District
vs.	:	
	:	Court of Appeals
RODNEY SCOTT,	:	Case No. 11CA010030
	:	
Defendant-Appellee.	:	13-0103

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
PLAINTIFF-APPELLANT OHIO NEIGHBORHOOD FINANCE, INC.**

John W. Zeiger (0010707) (Counsel of Record)
 Stuart G. Parsell (0063510)
 ZEIGER, TIGGES & LITTLE LLP
 41 South High Street, Suite 3500
 Columbus, Ohio 43215
 Telephone: (614) 365-9900
 Facsimile: (614) 365-7900
zeiger@litoio.com
parsell@litoio.com

Rodney Scott
 250 13th Street
 Elyria, Ohio 44035
 Defendant-Appellee, *Pro Se*

Counsel for Plaintiff-Appellant
 Ohio Neighborhood Finance, Inc.

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**EXPLANATION OF WHY THIS CASE
IS OF PUBLIC AND GREAT GENERAL INTEREST**

“To interpret what is already plain is not interpretation, but legislation, which is not the function of the courts, but of the general assembly.”

[*Sears v. Weimer*, 143 Ohio St. 312, 316 (1944)]

Here, the Ninth District Court of Appeals, in a split decision, misconstrued the plain and unambiguous language of the Ohio Mortgage Loan Act (“MLA”), ignored this Court’s precedent regarding construction of statutes, and usurped the function of the General Assembly by legislatively rewriting the fundamental lending law of Ohio.¹ In doing so, it created a regulatory nightmare for the Ohio Department of Commerce (“Department”) and Ohio lenders by striking down the administrative interpretation that has controlled the licensing and examination review of Ohio lenders for more than thirty years – without even a passing reference (let alone deference) to the Department’s historic position.

Inasmuch as courts of appeal in six other districts have affirmed judgments based on the plain and unambiguous wording of the MLA that the Ninth District misconstrued, both the Department and lenders statewide are left in a quandary as to whether the Ninth District’s aberrational decision should be considered controlling and, if so, whether it is controlling only in the Ninth District or statewide. Discretionary review is required to provide both statewide uniformity as well as essential guidance to both the Department and the lending industry. Has the Department properly licensed Ohio’s MLA lenders for over thirty years or is the Ninth District correct that an entirely different regulatory approach is mandated?

The decision below did nothing less than gut the MLA. Purporting to interpret wording which both the Department and the lending industry have believed to be completely unambiguous

¹ The MLA is the general lending authority for all non-depository lenders in Ohio. The name of the statute was never updated from its original enactment.

for over three decades, the decision outlaws loans by MLA registered lenders that are repaid in full in a single payment (“a single installment loan”). To reach this conclusion, the decision construes the statutory definition of “interest-bearing loan” under R.C. 1321.51(F) in a manner that violates common sense, basic rules of grammar, and this Court’s precedent recognizing the Rule of the Last Antecedent (a modifying phrase refers solely to a word or phrase that immediately precedes it). *Hedges v. Nationwide Mutual Ins. Co.*, 109 Ohio St.3d 70, 75 (2006).

The Ninth District’s misreading of the MLA’s plain language resulted from the court’s belief that an entirely separate lending statute, Ohio’s Short-Term Loan Act (“STLA”), R.C. 1321.35-.48, was “intended” by the General Assembly to “proscribe” loans issued by MLA registered lenders like the “type of loan” here. But the court below cited not a word from the STLA to support its claim that it was intended to preempt the long-existing MLA – because that language simply does not exist. The dissenting opinion below got it exactly right in summing up the split majority’s fundamental flaw:

“[N]othing in the Short-Term Lender Act prohibits a loan under the Mortgage Loan Act that satisfies the requirements of the Mortgage Loan Act.”

[Decision at 11 (Dickinson, J., Dissenting)]

Perhaps most remarkably, the Ninth District completely failed to comment on *direct and controlling* language in the MLA that requires a conclusion directly opposite the court’s view that the STLA imposes new limitations on MLA lenders. While nothing in the STLA suggests it was intended to impose new limitations on, or otherwise preempt, lending under the MLA, the first eight words of the MLA statute could not be more clear: “*Notwithstanding any other provisions of the Revised Code,*” loans conforming to the MLA are permitted. R.C. 1321.57(A). Given this clear legislative mandate, how can anyone conclude that “[an]other provision of the Revised Code,” here the STLA, imposes new limitations on MLA loans as the decision below holds?

Based on these fundamental errors, the Ninth District held that Appellant Ohio Neighborhood Finance, Inc. dba Cashland (“Cashland”) cannot enforce its lending agreement with Appellee Rodney Scott (“Scott”) as would otherwise be permitted under the MLA. Rather, since the Ninth District concludes that single installment loans are precluded under the MLA, Cashland’s MLA loan agreement – the terms of which were reviewed by the Department before it approved Cashland’s application as an MLA registrant – must be treated as a STLA loan that is subject to the limitations imposed on STLA registrants. Limitations to which neither Scott nor Cashland ever assented; limitations imposed by a statute under which Cashland never sought to be registered and never sought to do business; limitations which the Department never once suggested were applicable to Cashland’s loans.

The public and great general interest in the issues raised by the decision below could not be more clear. First, the enormity of the impact of the decision cannot be overstated. The loan to Scott at issue here is not a single, isolated transaction. Rather, MLA registrants throughout Ohio have made literally tens of thousands of single installment loans to Ohioans. Indeed, the Department issued an MLA Annual Report disclosing that, *in 2009 alone, over 1.6 million MLA loans* – totaling over \$743 million – were “repayable as single payment demand loan[s.]” Ohioans’ demand for this type of lending has not abated since 2009, so untold thousands of Ohioans are potentially impacted by the decision below.

Second, the Ninth District decision threatens to undo decades of consistent and effective regulatory enforcement of the MLA by the State – enforcement that spanned both Democratic and Republican administrations. MLA registrants have been making single installment loans with the blessing of the Department and under its close supervision since 1979 (when the MLA was amended to allow its registrants to make interest bearing loans). And although the General Assembly expressly delegated responsibility for MLA licensure and enforcement to the

Department, *see* R.C. 1321.52-.55, the decision below utterly fails to recognize, let alone give the appropriate deference to, the Department's decades-old administrative application of the MLA.

The Department's historic position – supported by the direct statutory language of the MLA – is reflected by the process Cashland had to undertake to be approved as an MLA registrant. When Cashland applied for its MLA license in 2008, the Department required it to submit samples of the loan documents Cashland proposed to use. The Department did so to assure that Cashland's proposed loan agreements “are in compliance with the Ohio Mortgage Loan Act” before registration is approved. *See* Department's MLA Registration Application Form.

In response, Cashland submitted its sample Customer Agreement, which expressly provides for a single installment payment:

“Payment Schedule: **One payment** in the amount of \$_____ due on _____ (Payment Date).” (Emphasis added).

After receiving and reviewing Cashland's sample loan document, the Department approved Cashland's application and issued it a MLA registration. In doing so, the Department never suggested that a single installment loan was precluded under the MLA.

Since Cashland was granted MLA registration, the Department has annually renewed Cashland's MLA license and has conducted over 150 on-site examinations of Cashland's branch offices throughout Ohio (including the office where Scott obtained his loan) to ensure compliance under the MLA. Not once has the Department ever challenged – or even commented on – the single payment feature of Cashland's MLA loans. Nor has the Department ever asserted that the STLA limitations apply to Cashland's MLA loans. So the decision below turns the Department's interpretation of the MLA on its head, threatening havoc to its MLA enforcement efforts.

The Ninth District's opinion not only runs counter to the Department's historic enforcement position, it also runs headlong into the decisions of six other courts of appeal that

have upheld judgments for Cashland on single installment loans. *See, e.g., Ohio Neighborhood Finance, Inc. v. Christie*, 8th Dist. No. 94821, 2010-Ohio-5017, ¶ 10 (holding that Cashland had “clear statutory authority” under the MLA to charge an interest rate of 25% for a two-week, single installment loan); *Ohio Neighborhood Finance, Inc. v. Marsh*, 7th Dist. No. 09-MA-164, 2010-Ohio-3163, ¶¶ 10-11 (MLA permitted Cashland to charge 25% interest for two-week, single installment loan).² Given the conflicting decisions on the MLA following the decision below, how does the Department enforce the MLA on a uniform basis in all 88 counties? Does a different rule of law apply in the Ninth District than in the rest of Ohio? Is the Department’s examination for an MLA location in Summit County conducted under different standards than an examination of an MLA location in Hamilton County?

The decision below also muddles the regulatory picture for MLA lenders across the state. Cashland and its 700 Ohio employees fully intend to comply with Ohio law, but how can they determine what is required when the decision below is diametrically opposite of the plain statutory wording and the Department’s historic position? And how do MLA lenders respond to the overwhelming number of lender-borrower disputes that can arise when the long-time position of the Department is overthrown retroactively? Indeed, the court of appeals’ decision has already spawned two putative class action proceedings against Cashland: *Adams v. Ohio Neighborhood Finance, Inc.*, U.S. District Court, S.D. Ohio, Western Division, Case No. 1:12-cv-947, filed December 8, 2012; and the counterclaim filed on December 19, 2012 in *Ohio Neighborhood Finance, Inc. v. Leggett*, Case No. CV-12-796412, Cuyahoga County Common Pleas Court.

² See also *Ohio Neighborhood Finance, Inc. v. Adkins*, 7th Dist., 2010-Ohio-3164 (same); *Ohio Neighborhood Finance, Inc. v. Massey*, 10th Dist., 2011-Ohio-2165, ¶ 17 (holding that MLA’s 25% rate applied to Cashland’s loan); *Ohio Neighborhood Finance v. Dotson*, 4th Dist., 2010-Ohio-3366, ¶¶ 6–7; *Ohio Neighborhood Finance v. Powell*, 6th Dist., 2010-Ohio-1706, ¶ 8; *Ohio Neighborhood Finance, Inc. v. Wilkinson*, 5th Dist. 2010-Ohio-796, ¶ 11.

Third, the decision below, if not reviewed and reversed, will have far-reaching implications on all types of lenders who make loans under the MLA. The Ninth District's holding threatens each of these other MLA single installment lending programs:

- Agricultural loans to farmers to purchase supplies and seed, repayable in one installment due after crops are harvested.
- Tradesmen loans for funds to purchase materials for a project, repayable in one installment due after the project is completed and the customer has paid the tradesman.
- Certificate of deposit loans made to persons who have immediate cash needs but whose funds are tied up in a CD with a penalty for early withdrawal. These loans are repayable in one installment due when the CD matures.
- Investment loans made to individuals for making business and other investments. These loans are repayable in one installment when the individual expects to receive a return on the investment.

Single installment loans of these types have been made in Ohio under the MLA for over three decades; yet the court of appeals' holding would suddenly ban them all.

The court of appeals' decision abruptly turns a carefully regulated industry on its head, causing untold complications for the Department, the lending industry, and thousands of Ohioans. Where, as here, a decision ignores the plain language of the controlling statutes and conflicts with multiple other courts of appeal on issues of public and great statewide interest, this Court's discretionary review and definitive guidance are urgently needed.

STATEMENT OF THE CASE AND FACTS

I. Appellee Scott's Customer Agreement With Cashland

Cashland is a MLA registrant pursuant to R.C. 1321.53. As such, it is authorized to make loans consistent with the provisions of the MLA. R.C. 1321.57. Cashland has never sought registration under, nor proposed to do business under, the STLA.

On December 5, 2008, Rodney Scott entered into a Customer Agreement with Cashland for a \$500 loan due two weeks later on December 19, 2008. The loan agreement specifically stated that it is “governed by the laws of the State of Ohio, including the Mortgage Loan Act, Ohio Revised Code Section 1321.51 to 1321.60.” The agreement contained the same single installment language that was included in Cashland’s MLA form loan agreement that was approved by the Department of Commerce a few months earlier in 2008: “Payment Schedule: One payment in the amount of \$545.16 due on 12/19/08 (Payment Date).”

Cashland charged Scott a \$10 credit investigation fee and a \$30 loan origination fee and added the fees to the principal loan amount in accordance with the MLA. R.C. 1321.57(H)(1)(c) and 1321.57(J)(1), (3). As permitted by R.C. 1321.57 and R.C. 1321.571, Scott agreed to repay the principal amount “plus interest at a rate of 25% per annum on the principal outstanding for the time outstanding from the date of this Customer Agreement until paid in full.” The Contract expressly permitted Scott to prepay the loan in whole or part “at any time” without penalty. The Contract further explained that if Scott prepaid, less interest would accrue and thus Scott would owe less than \$545.16.

Scott defaulted on the loan by failing to make any payments by December 19, 2008.

II. Proceedings Below

After Cashland made unsuccessful efforts to collect the unpaid loan, it filed a complaint against Scott in the Elyria Municipal Court in Lorain County, Ohio on May 28, 2009. Scott never responded. On August 25, 2009, Cashland filed a motion for default judgment in the amount of \$570.16 (consisting of the amount Scott still owed plus a late charge and returned check fee). Cashland also sought interest at the contract rate of 25% pursuant to the MLA.

Despite Scott’s failure to appear and the lack of any opposition to Cashland’s claim, a Magistrate of the Elyria Municipal Court took it upon himself to hold an evidentiary hearing on

April 1, 2010 and then took an active role cross-examining Cashland's witness about Cashland's general business practices. On March 25, 2011, the Magistrate issued a decision, recommending that Cashland be granted judgment of only \$465 plus 8% interest. In doing so, the Magistrate ruled that Scott's loan was not permitted by the MLA. The Elyria Municipal Court subsequently adopted the Magistrate's decision without change.

On December 3, 2012, the Ninth District Court of Appeals issued a split decision affirming the trial court's judgment. The appellate court's decision and entry were filed on December 5, 2012. The court of appeals is the first appellate court in this State to hold that the MLA does not permit MLA registrants to make a single installment loan even though the MLA contains no such proscription.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Sections 1321.51(F) and 1321.57 of the Ohio Mortgage Loan Act ("MLA") permit MLA registrants to make single installment, interest-bearing loans.

Contrary to the holding below, the MLA plainly permits its registrants to make interest-bearing loans without requiring more than a single payment by the borrower. R.C. 1321.57(A) provides:

Notwithstanding any other provisions of the Revised Code, a registrant may contract for and receive interest ... at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan. Loans may be *interest-bearing* or precomputed. (Emphasis added).³

Although this language does not impose a minimum number of payments required for a MLA loan, the Ninth District nonetheless barred all single installment loans under the MLA. It did so by misconstruing the term "interest-bearing" loan as used in R.C. 1321.57(A).

³ R.C. 1321.571 permits an interest rate of 25 percent "[a]s an alternative to the interest permitted in division (A) of section 1321.57."

R.C. 1321.51(F) defines an interest-bearing loan: “[A] loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.” That is exactly how the operative language of Scott’s Contract expresses his debt and how interest is computed:

You promise to pay us \$500.00 (the Principal Amount of this loan) plus interest at a rate of 25% per annum on the principal outstanding for the time outstanding from the date of this Customer Agreement until paid in full. Interest shall be computed daily upon the principal balance outstanding by using the simple interest method, assuming a 365-day year.⁴

But the court of appeals held that Cashland’s loan agreement with Scott did not qualify under R.C. 1321.51(F) as an interest-bearing loan and that the MLA therefore does not permit it. The court reached this conclusion by finding an ambiguity in R.C. 1321.51(F) where none exists:

According to Cashland, “from time to time” modifies “unpaid principal balances outstanding[,]” and, therefore, a loan could be interest-bearing even if it was collected in a single installment. However, “from time to time” could just as readily modify “computed, charged, and collected[,]” which would require interest to be collected in multiple installments.... In other words, the statute is ambiguous.

[Court of Appeals’ Decision at 3]

This erroneous conclusion opened the door for the court of appeals to “interpret” R.C. 1321.51(F) of the MLA *in pari materia* with the court’s assumption as to the legislative intent behind adoption of the Short-Term Loan Act (“STLA”). Without reference to any provision of the STLA, the court concluded that the General Assembly intended the STLA to prohibit loans of short duration like the one Scott received from Cashland and, thus, an interest-bearing loan under R.C. 1321.51(F) must require more than a single installment. In other words, “from time to time” at the end of the definition of “interest-bearing loan” in R.C. 1321.51(F) somehow modifies the

⁴ R.C. 1321.51(F) distinguishes an interest-bearing loan from a precomputed loan, for which the debt is always expressed as a fixed amount of both principal and precomputed interest regardless of prepayment. R.C. 1321.51(G). As the court of appeals properly noted, Cashland’s loan to Scott is not a precomputed loan.

verb phrase “computed, charged, and collected” earlier in the sentence rather than modifying the immediately preceding phrase “unpaid principal balances outstanding.”

But the court’s analysis ignores basic rules of statutory construction. “[I]t is a cardinal rule of construction that where a statute is clear and unambiguous, there is no occasion to resort to the other means of interpretation.... An unambiguous statute is to be applied, not interpreted.” *State ex rel. Celebrezze v. Board of County Comm’rs of Allen County*, 32 Ohio St.3d 24, 27-28 (1987).

This Court, in *Tomasik v. Tomasik*, 111 Ohio St.3d 481 (2006), explained:

[T]he intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the law-making body, there is no occasion to resort to other means of interpretation. **The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed and hence no room is left for construction.**

[*Id.* at 483, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, Syllabus ¶ 2 (1902) (emphasis added)]

When reading a statute, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. This Court holds that one such grammatical rule is the **Rule of the Last Antecedent** – that is, a modifying phrase refers solely to the word or phrase that immediately precedes it. In *Hedges, supra*, the Court held:

R.C. 1.42 provides that “[w]ords and phrases [in a statute] shall be read in context and construed according to the rules of grammar and common usage.” **The rules of grammar are clear that referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent.**

[*Id.* at 75, citing *Indep. Ins. Agents of Ohio, Inc. v. Fabe*, 63 Ohio St.3d 310, 314 (1992) (emphasis added)]

Here, the plain meaning of interest-bearing loans under R.C. 1321.51(F) is obvious once the grammatical Rule of the Last Antecedent is properly applied. In the phrase “interest is

computed, charged, and collected on unpaid principal balances outstanding from time to time,” the preposition “from time to time” modifies its antecedent (the word that immediately precedes it), “outstanding,” to form the common adjectival participial phrase “outstanding from time to time.” That phrase in turn modifies its antecedent, “balances,” which is part of the noun phrase “unpaid principal balances.” Thus, a loan is “interest-bearing” under R.C. 1321.51(F) when interest is computed, charged, and collected based on the amount of the unpaid principal balance at any particular time. When the outstanding balance changes from time to time (as is the case when a borrower prepays), interest must be computed, charged and collected based on the resulting, lower principal balance. This is what distinguishes an interest-bearing loan from a precomputed loan for which a fixed, precomputed amount of interest is included in the debt owed.⁵

Cashland’s loan agreement with Scott provided that interest would be calculated daily based on the “principal balance outstanding” at the time of computation. It further stated that Scott could “reduce the amount of interest that will accrue” by prepaying some or all of the principal amount. The loan thus qualified as an interest-bearing loan under R.C. 1321.51(F). The decision below reaches the opposite conclusion only by ignoring the fundamental grammatical Rule of the Last Antecedent to find an ambiguity where none exists.

⁵ The phrase “outstanding from time to time” is commonly used to modify “principal balances” in financing transactions. *Malooof v. C.I.R.*, 456 F.3d 645, 649 (6th Cir. 2006) (“Borrower agrees to pay Bank interest on the unpaid principal balance **outstanding from time to time** on the Demand Loan”); *Prudential Ins. Co. of Am. v. City of Boston*, 479 B.R. 210 (1st Cir. 2012) (loan agreement provided that “interest on the principal balance of the Loan **outstanding from time to time** shall accrue from the Closing Date up to and including the Maturity Date....”); *Highlands Ind. Bank v. Pages-Morales*, 2012 WL 1802364, *3 (S.D. Fla. 2012) (guaranty defined indebtedness as “all of the principal amount **outstanding from time to time** and at any one or more times, accrued unpaid interest thereon”); *Gary Comer, Inc. v. Wallace*, 2001 WL 1173498, *1 (N.D. Ill. 2001) (“[i]nterest shall accrue ... on the unpaid principal amount of this Note **outstanding from time to time**....”); *In re Staley*, 2000 WL 33709684, *1 (Bankr. D.S.C. 2000) (promissory note specified “interest to be due and to accrue on the unpaid principal balance **outstanding from time to time** hereon from the date hereof until maturity”); *Smith v. Town North Bank*, 2012 WL 5499406, *3 (Tex. App. 2012) (guaranty defines indebtedness as “all of the principal amount **outstanding from time to time** and at any one or more times”); *Stepping Stone Homes, Inc. v. Wisconsin Public Service Corp.*, 2011 WL 3300200, *2 (Wis. App. 2011) (land contract provided that buyer would pay \$85,500 with interest “on the balance **outstanding from time to time**”).

Contrary to the conclusion below, the plain language of R.C. 1321.51(F) does not even speak to the number of installments for an interest-bearing loan; it simply states how the borrower's debt is expressed and how interest is determined. There is no language in R.C. 1321.51(F) stating that an interest-bearing loan cannot be a single installment loan. So long as interest is calculated based on whatever the principal balance is at that point in time, it does not matter whether the loan is structured to be paid in a single installment or over multiple installments. It is still an "interest-bearing loan" under R.C. 1321.51(F).

This is exactly how the statute has been applied by the Department, which has consistently permitted single installment loans under the MLA. The decision below fundamentally erred in failing to give deference to the Department's view. "It is a well-settled rule that courts, when interpreting statutes, *must* give due deference to an administrative interpretation formulated by an agency that has accumulated substantial expertise, and to which the General Assembly has delegated the responsibility of implementing the legislative command." *Swallow v. Industrial Comm'n of Ohio*, 36 Ohio St.3d 55, 57 (1988) (emphasis added); *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 468 (2004).

The court of appeals' decision casts aside over thirty years of regulatory enforcement of the MLA by interpreting R.C. 1321.51(F) of the MLA "*in pari materia*" with the court's assumption as to the legislative intent behind the STLA. But the lower court should never have resorted to the *in pari materia* rule of construction in the first place. That rule "is limited to those situations where some doubt or ambiguity exists in the wording of a statute." *State ex rel. Celebrezze*, 32 Ohio St.3d at 27-28. The rule was never meant to permit courts "to ignore the plain and unambiguous language in a statute in the guise of statutory interpretation." *State v. Krutz*, 28 Ohio St.3d 36, 37-38 (1986).

Proposition of Law No. II: The Short Term Loan Act, R.C. 1321.35 – R.C. 1321.48, does not prohibit registrants under the Ohio Mortgage Loan Act from making interest-bearing loans permitted by the express terms of R.C. 1321.57.

The court below also erroneously concluded that the limitations of the STLA applied to Cashland's loan made under the MLA. But under the express language of R.C. 1321.57(A), the MLA controls over the STLA even if the STLA contains provisions that are inconsistent with the MLA (which it does not). R.C. 1321.57(A) plainly states that MLA registrants may make interest-bearing loans "[n]otwithstanding any other provisions of the Revised Code." In contrast, the STLA has *no* language indicating that it overrides the MLA or other sections of the Revised Code.

Both the United States Supreme Court and this Court hold that a "notwithstanding" clause like the one contained in the MLA means what it says: the statute takes precedence over all others. Holding otherwise would render the "notwithstanding" language meaningless. In *Cisneros v. Alpine Ridge Group*, 508 U.S. 10 (1993), the Court held: "[I]n construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section." *Id.* at 18. The Court noted that courts "have interpreted similar 'notwithstanding' language ... to supersede all other laws, stating that a clearer statement is difficult to imagine." *Id. Accord: In re Eubanks*, 219 B.R. 468, 470 (6th Cir. BAP 1998) ("[t]he introductory phrase, '[n]otwithstanding subsection (b)(2),' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section"); *State ex rel. Carmean v. Board of Educ. of Hardin County*, 170 Ohio St. 415, 422 (1960) ("the General Assembly inserted the word, 'notwithstanding,' and by so doing clearly indicated its intent that proceedings under Section 3311.261, Revised Code, should take precedence over pending proceedings previously instituted under the other enumerated sections").

But here, the split decision below fails to even consider, much less discuss, the import of the “notwithstanding” language in R.C. 1321.57(A). Instead, the decision did just the opposite of what the MLA’s “notwithstanding” clause required – it ruled that the General Assembly intended the STLA “to proscribe” a two-week loan made by a MLA registrant under R.C. 1321.57(A). The court of appeals tried to justify its conclusion by reading the MLA and STLA *in pari materia*. But again, this rule of construction cannot be used to override the unambiguous “notwithstanding” clause set forth in R.C. 1321.57(A). *State v. Krutz*, 28 Ohio St.3d at 37-38.

Even if R.C. 1321.57(A) of the MLA did not contain a “notwithstanding” clause, the STLA contains no language prohibiting a MLA registrant from making a two-week, interest-bearing loan that is permitted by the MLA’s plain language. The court of appeals stated that the General Assembly “intended the Short-Term Lender Law to proscribe” a loan of this type, but it failed to identify the STLA’s prohibitory language because it doesn’t exist. The STLA’s restrictions on loans are expressly limited to loans made by a STLA “licensee,” which Cashland is not. R.C. 1321.39(B). And although R.C. 1321.36(A) prohibits persons from making “short-term loans” without a STLA license, R.C. 1321.35(A) defines a “short-term loan” as “a loan made pursuant to Sections 1321.35 to 1321.48 of the Revised Code [the STLA].” Thus, a “short-term loan” is defined as a loan made by a lender who is registered and makes loans under the STLA, rather than the MLA or another statute.

The Department – which is vested by the General Assembly with the responsibility of licensure under, compliance with, and enforcement of the STLA – and the Ohio Attorney General have adopted this same plain reading of the STLA. Shortly after the STLA was enacted, the Attorney General opined: “[T]he fact that R.C. 1321.35 defines ‘[s]hort-term loan’ as ‘a loan made pursuant to R.C. 1321.35-48’ makes it clear that the licensing applies only to lenders making loans under the Short-Term Loan Act, and not to all lenders of loans of short duration.” 2008 Ohio

Atty.Gen.Ops. No. 2008-036, at *3. The Attorney General noted that this reading “is consistent with the position taken by the Department of Commerce’s Division of Financial Institutions.” *Id.*

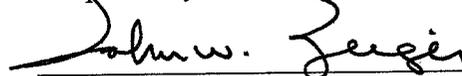
The ability of a MLA registrant to make loans under the plain language of the MLA does not render the STLA meaningless, as the court of appeals incorrectly determined. If a lender seeks to charge a 28% interest rate pursuant to R.C. 1321.40(A) or otherwise seeks to make a loan under the STLA, that lender must still comply with all of the STLA’s provisions.

The Ninth District’s unsupported conclusion concerning the intent of the STLA cannot override the unambiguous language of the MLA, which provides that a MLA registrant may make an interest-bearing loan “[n]otwithstanding any other provisions of the Revised Code.” R.C. 1321.57(A). *See Talbott v. State ex rel. Houston*, 5 Ohio App. 262, 269 (1916) (although “[t]he general policy, the spirit and the reason of an act may properly be applied to reconcile conflicting or doubtful provisions of an act, [it] can not be permitted to override the effect of words of clear import”).

CONCLUSION

For all of these reasons, Appellant Ohio Neighborhood Finance, Inc. (Cashland) requests the Court to accept jurisdiction over this case of public and great general interest.

Respectfully submitted,

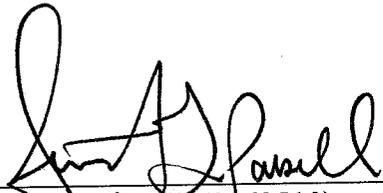


John W. Zeiger (0010707)
Stuart G. Parsell (0063510)
ZEIGER, TIGGES & LITTLE LLP
41 South High Street, Suite 3500
Columbus, Ohio 43215
Telephone: (614) 365-9900
Facsimile: (614) 365-7900
zeiger@litohio.com
parsell@litohio.com

Counsel for Plaintiff-Appellant
Ohio Neighborhood Finance, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. mail, postage prepaid, this 17th day of January, 2013 upon Appellee Rodney Scott, 250 13th Street, Elyria, Ohio 44035.


Stuart G. Parsell (0063510)

985-001:421120

APPENDIX

COURT OF APPEALS

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

OHIO NEIGHBORHOOD FINANCE, INC.

Appellant

v.

RODNEY SCOTT

Appellee

FILED IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
2012 DEC - 5 A 11:31
C.A. No. 09CA010030
CLERK OF COMMON PLEAS
9th APPELLATE DISTRICT
APPEAL FROM JUDGMENT
ENTERED IN THE
ELYRIA MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE No. 09CVF01488

DECISION AND JOURNAL ENTRY

Dated: December 3, 2012

BELFANCE, Judge.

{¶1} Ohio Neighborhood Finance, Inc., doing business as Cashland, appeals the judgment of the Elyria Municipal Court. For the reasons set forth below, we affirm.

I.

{¶2} On December 5, 2008, Cashland agreed to loan Mr. Scott \$500. The Customer Agreement signed by Mr. Scott set forth the "Payment Schedule" as "[o]ne payment in the amount of \$545.16 due on 12/19/08 (Payment Date)." On May 28, 2009, Cashland filed a complaint against Mr. Scott, alleging that he had not repaid the loan. It sought a judgment of \$570.16 against Mr. Scott along with 25% yearly interest.

{¶3} Mr. Scott did not respond to Cashland's complaint, and Cashland moved for default judgment. Following a hearing, the magistrate issued a decision, recommending that Cashland was only entitled to a judgment of \$465 at 8% annual interest because the loan failed to comply with the Ohio Mortgage Loan Act by issuing a loan not permitted by the Act. Cashland

objected to the magistrate's decision, but the trial court overruled its objections and entered the judgment recommended by the magistrate.

{¶4} Cashland has appealed, raising two assignments of error. Because the assignments of error are related, we address them together.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DETERMINING THAT THE OHIO MORTGAGE LOAN ACT ("MLA"), R.C. 1321.51, ET SEQ., DOES NOT APPLY TO THE LOAN AT ISSUE, AND THAT CASHLAND IS BARRED FROM COLLECTING INTEREST AND FEES ON THE LOAN AS AVAILABLE UNDER THE MLA.

ASSIGNMENT OF ERROR II

THE TRIAL COURT COMMITTED REVERSIBLE ERROR DETERMINING THAT CASHLAND VIOLATED THE OHIO MORTGAGE LOAN ACT ("MLA"), R.C. 1321.51, ET SEQ.

{¶5} Cashland argues the trial court erred when it overruled Cashland's objections to the magistrate's decision. According to Cashland, the loan in this case was permitted under the Ohio Mortgage Loan Act. Therefore, because Cashland is a registrant, it argues, it was entitled to charge the fees and rate of interest allowed by the Act. We disagree.

{¶6} This is a case of statutory interpretation, which we review de novo. "In determining how to apply a statute, our paramount concern is the legislative intent in enacting the statute. In determining legislative intent, the court first reviews the applicable statutory language and the purpose to be accomplished. In doing so, we must give effect to every word and clause in the statute." (Internal quotations and citation omitted.) *In re Estate of Centorbi*, 129 Ohio St.3d 78, 2011-Ohio-2267, ¶ 12. If a statute's language is clear and unambiguous, it is applied as written. *Id.* at ¶ 14. "Ambiguity exists if the language of the statute is susceptible of

more than one reasonable interpretation.” *Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St.3d 38, 40 (2001).

{¶7} The Ohio Mortgage Loan Act is codified in R.C. 1321.51 et seq. R.C. 1321.57(A) provides that,

[n]otwithstanding any other provisions of the Revised Code, a registrant [under the Ohio Mortgage Loan Act] may contract for and receive interest, calculated according to the actuarial method, at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan. Loans may be interest-bearing or precomputed.

There is no dispute that Cashland is a registrant under the Ohio Mortgage Loan Act. The issue in this case is whether the loan qualified as a permissible loan under the act. Cashland does not suggest that the loan in this case constituted a “precomputed loan” under the Ohio Mortgage Loan Act. *See* R.C. 1321.57(D)(1) (Precomputed loans “shall be repayable in monthly installments of principal and interest combined, except that the first installment period may exceed one month * * * and provided further that monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.”). Instead, it argues that Mr. Scott’s loan was an “interest-bearing loan.”

{¶8} An “[i]nterest-bearing loan” is “a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.” R.C. 1321.51(F). According to Cashland, “from time to time” modifies “unpaid principal balances outstanding[,]” and, therefore, a loan could be interest-bearing even if it was collected in a single installment. However, “from time to time” could just as readily modify “computed, charged, and collected[,]” which would require interest to be collected in multiple installments. *See* R.C. 1321.51(F). In other words, the statute is ambiguous. *Bailey*, 91 Ohio St.3d at 40.

{¶9} “In determining legislative intent when faced with an ambiguous statute, the court may consider several factors, including the object sought to be obtained, circumstances under which the statute was enacted, the legislative history, and the consequences of a particular construction.” *Id.* See also R.C. 1.49. Furthermore,

statutes which relate to the same general subject matter must be read in *pari materia*. And, in reading such statutes in *pari materia*, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes. The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. This court in the interpretation of related and co-existing statutes must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict.

(Internal quotations, citations, and emphasis omitted.) *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372 (1994). See also R.C. 1.47(B) (“[I]t is presumed that * * * [t]he entire statute is intended to be effective[.]”).

{¶10} At issue in this case is the interplay of two provisions of the Ohio Revised Code: the Short-Term Lender Law (R.C. 1321.35 et seq.) and the Ohio Mortgage Loan Act (R.C. 1321.51 et seq.). The General Assembly repealed the Check-Cashing Lender Law and enacted the Short-Term Lender Law in 2008. See Am.Sub.H.B. No. 545, 2008 Ohio Laws File 91. See also R.C. 1321.35-48. The Short-Term Lender Law contemplates a single payment loan and caps the total amount of a loan at \$500. R.C. 1321.39(A). It also requires that the duration of the loan be not less than 31 days. R.C. 1321.39(B). Registrants under the Short-Term Lender Law are also prohibited from charging an interest rate higher than 28 percent or additional fees such as a loan initiation fee. R.C. 1321.40(A); R.C. 1321.41(C). By contrast, while registrants under the Ohio Mortgage Loan Act (R.C. 1321.51 et seq.) cannot charge as high a rate of interest

as the licensees under the Short-Term Lender Law, they can charge additional fees, may make larger loans, and may secure loans with property. *See* R.C. 1321.57(G)-(J).

{¶11} Cashland argues that, as a registrant under the Ohio Mortgage Loan Act, it was permitted to issue the loan in this case because the Ohio Mortgage Loan Act permits single-payment loans. However, to construe R.C. 1321.51(F) and 1321.57(C)(1)(a) in the manner Cashland suggests would permit the registrants under the Ohio Mortgage Loan Act to issue the payday loans that Short-Term Lender Law seeks to regulate. Cashland suggests that the General Assembly intended to allow lenders to choose between the Short-Term Lender Law and the Ohio Mortgage Loan Act. If true, however, no payday lender will ever register under the Short-Term Lender law, and payday-loan lenders would be allowed to issue loans in greater amounts and shorter durations than allowed by the Short-Term Lender Law, all the while charging fees prohibited under the Short-Term Lender law. *See* R.C. 1321.39(A)-(B), 1321.41 (C). The effect would be to nullify the very legislation that is designed to regulate payday-type loans—a result at odds with the intent of the General Assembly.

{¶12} The General Assembly clearly intended the Short-Term Lender Law to proscribe the type of loan issued here, i.e. a loan that was to be repaid in full in two weeks. Thus, in considering the statutes in *pari materia*, we conclude that a loan is an interest-bearing loan under the Ohio Mortgage Loan Act only if interest is computed, charged, and collected from time to time. This reading is as logical and natural as the one suggested by Cashland but does not render the Short-Term Lender Law meaningless. *See* R.C. 1.47(B); *Limbach*, 71 Ohio St.3d at 372.

{¶13} Nevertheless, Cashland argues that the loan in this case was not a single-installment loan, noting that Mr. Scott could make multiple payments before the loan came due or, if he was unable to pay on time, he could “arrange for an extended payment plan, which

could involve multiple payments over time.” However, the loan expressly set forth the “Payment Schedule” as “[o]ne payment in the amount of \$545.16 * * *.” By the terms of the loan, there was only one scheduled payment, and, therefore, interest was not being computed, charged, and *collected* from time to time. The fact that the loan did not prohibit multiple payments does not somehow alter the nature of the loan from a single-installment loan into a multiple-installment loan. *Russin v. Shepherd*, 11th Dist. No. 2006-G-2708, 2007-Ohio-3206, ¶ 55.

{¶14} Because the interest would be collected all at once, the loan in this case was not an interest-bearing loan as defined by the Ohio Mortgage Loan Act. *See* R.C. 1321.51(F). Nor did it qualify as a precomputed loan. *See* R.C. 1321.57(D). Thus, it was not a loan permitted by the Ohio Mortgage Loan Act, *see* R.C. 1321.57(A), and, therefore, Cashland was limited to an interest rate of eight percent per annum. R.C. 1343.01(A) (“The parties to a bond, bill, promissory note, or other instrument of writing for the forbearance or payment of money at any future time, may stipulate therein for the payment of interest upon the amount thereof at any rate not exceeding eight per cent per annum * * *.”).

{¶15} Accordingly, the trial court did not err when it overruled Cashland’s objections to the magistrate’s decision. Cashland’s assignments of error are overruled.

III.

{¶16} Cashland’s assignments of error are overruled, and the judgment of the Elyria Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Elyria Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.



EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
CONCURS.

DICKINSON, J.
DISSENTING.

{¶17} The majority has correctly recognized that the disposition of this case hangs on whether the phrase “from time to time” in Section 1321.51(F) of the Ohio Revised Code refers to the interval at which interest must be “computed, charged, and collected” or whether it modifies the phrase “unpaid principal balances outstanding.” R.C. 1321.51(F). If “from time to time” modifies “computed, charged, and collected,” a loan is not an “[i]nterest-bearing loan” unless interest on the unpaid balance is computed from time to time, charged from time to time, and collected from time to time. If the phrase modifies “unpaid principal balances outstanding,” an

“[i]nterest-bearing loan” is any loan in which interest accrues on a periodic basis, so long as that interest is computed, charged, and collected at some time. Under the second construction, all of the interest on a loan could be computed, charged, and collected at a single time as long as the computation was based on whatever the unpaid principal balance was at particular intervals.

{¶18} “When construing statutes, ‘[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.’” *City of Lancaster v. Fairfield County Budget Comm’n*, 83 Ohio St. 3d 242, 244 (1998) (quoting R.C. 1.42). “Statutes and contracts should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced constructions” *Id.* (quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 627 (1902)). The most natural and obvious reading of Section 1321.51(F) is that the phrase “from time to time” modifies the words it immediately follows, which are “balances outstanding.” Accordingly, if a loan “expresse[s] [the debt owed] as the principal amount” and computes, charges, and collects interest on whatever the principal balance is at particular intervals, it qualifies as an “[i]nterest-bearing loan” under Section 1321.51(F).

{¶19} The Customer Agreement identified the \$500 that Neighborhood Finance loaned to Mr. Scott plus the loan origination charge and credit investigation fee as the “Principal Amount.” It also indicated that Neighborhood Finance would compute on a daily basis the amount of interest that Neighborhood Finance would charge and collect from Mr. Scott based on the “principal balance outstanding” at the time of computation. It further explained that Mr. Scott could “reduce the amount of interest that will accrue” on the loan by prepaying some or all of the Principal Amount. The Agreement, therefore, satisfied the requirements of an interest-bearing loan under Section 1321.51(F).

{¶20} The municipal court reasoned that, because balances under an interest-bearing loan are expected to be outstanding from time to time, the definition of an interest-bearing loan was inconsistent with a single-payment loan. There is, however, no requirement under Section 1321.51(F) that the interest on an interest-bearing loan be collected from time to time. So long as the interest on a loan is calculated based on whatever the principal balance is from time to time: whether the calculation is made daily, weekly, monthly, or at some other interval, it is not material whether the loan is structured to be paid in a single installment or over multiple installments. *See also* R.C. 1321.57(C)(1)(a) (“With respect to interest-bearing loans . . . [i]nterest shall be computed on unpaid principal balances outstanding from time to time, for the time outstanding.”).

{¶21} The municipal court also opined that the language of Section 1321.57(C)(1)(b) suggests that an interest-bearing loan requires multiple payments. Under 1321.57(C)(1)(b), “[a]s an alternative to the method of computing interest set forth in division (C)(1)(a) of this section, a registrant may charge and collect interest for the first installment period based on elapsed time from the date of the loan to the first scheduled payment due date, and for each succeeding installment period from the scheduled payment due date to the next scheduled payment due date, regardless of the date or dates the payments are actually made.” The court reasoned that, because Section 1321.57(C)(1)(b) refers to installment periods, the legislature must have expected that interest-bearing loans would not be single-payment loans. The plain language of Section 1321.57(C)(1)(b) explains, however, that it is merely an alternative to Section 1321.57(C)(1)(a). Under Section 1321.57(C)(1)(a), “[i]nterest shall be computed [on an interest-bearing loan] on unpaid principal balances outstanding from time to time, for the time

outstanding.” There is no language in Section 1321.57(C)(1)(a) that indicates that an interest-bearing loan cannot be a single-payment loan.

{¶22} The municipal court also pointed to Section 1321.57(C)(2)(a) to support its conclusion that an interest-bearing loan may not be a single-payment loan. Under Section 1321.57(C)(2)(a), “[i]nterest shall not be compounded, collected, or paid in advance. However, . . . [i]nterest may be charged to extend the first monthly installment period by not more than fifteen days, and the interest charged for the extension may be added to the principal amount of the loan.” Just because Section 1321.57(C)(2)(a) contains language applying, on a discretionary basis, to loans with monthly installment periods, however, does not mean that all interest-bearing loans must have monthly installment periods.

{¶23} The municipal court also concluded that the Customer Agreement more closely resembled the definition of a precomputed loan. Under Section 1321.51(G), a “[p]recomputed loan” means a loan in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all scheduled payments will be made when due.” While the Agreement did indicate the amount that it anticipated Mr. Scott “will have paid after [he had] made all payments as scheduled,” it left open the possibility that he could pay the loan in advance and, thereby, “reduce the amount of interest that will accrue.” The Agreement also did not include interest in its calculation of the “Principal Amount.” Rather, the “Principal Amount” included only the \$500 that Mr. Scott had financed plus a \$30 loan origination charge and a \$10 credit investigation fee. Under Section 1321.51(E), the definition of “[i]nterest” does not include “loan origination charges” or “other fees and charges specifically authorized by law.” A fee for “credit investigations not exceeding ten dollars” is authorized under Section 1321.57(H)(1)(c).

{¶24} The municipal court also concluded that the Customer Agreement was not governed by the Ohio Mortgage Loan Act because it “look[ed] like” the type of loan formerly regulated under Ohio’s Payday Loan Act and intended to be regulated under the more recent Short-Term Lender Act. Similarly, the majority has suggested that the General Assembly intended the Short-Term Lender Act to regulate this type of loan. Regardless of the intent of the General Assembly in replacing the Payday Loan Act with the Short-Term Lender Act, nothing in the Short-Term Lender Act prohibits a loan under the Mortgage Loan Act that satisfies the requirements of the Mortgage Loan Act. Although “[t]he general policy, the spirit and the reason of an act may properly be applied to reconcile conflicting or doubtful provisions of an act, [it] can not be permitted to override the effect of words of clear import.” *Talbott v. State ex rel. Houston*, 5 Ohio App. 262, 269 (2d Dist. 1916). Section 1321.57(A) of the Ohio Revised Code specifically allows a registrant under the Mortgage Loan Act to enter into “precomputed” and “interest-bearing” loans and to receive interest in excess of the rate specified under Section 1343.01(A) if the loans meet the requirements of the act.

{¶25} The majority has ignored the plain language of Sections 1321.51 and 1321.57 of the Ohio Revised Code. I, therefore, dissent.

APPEARANCES:

DREW H. CAMPBELL and ANTHONY M. SHARETT, Attorneys at Law, for Appellant.

RODNEY SCOTT, pro se, Appellee.

KATHERINE B. HOLLINGSWORTH and JULIE K. ROBIE, Attorneys at Law, for The Legal Aid Society of Cleveland, The Legal Aid Society of Columbus, Community Legal Aid Services, Inc., Southeastern Ohio Legal Services, The Legal Aid Society of Southwest Ohio, LLC, Advocates for Basic Legal Equality, Inc., Legal Aid of Western Ohio, Inc., The Ohio Poverty Law Center, The Coalition on Homelessness and Housing in Ohio, The Center for Responsible Lending, and The National Consumer Law Center, Amici Curiae

DARRELL L. DREHER and ELIZABETH L. ANSTAETT, Attorneys at Law, for Richard F. Keck, Amicus Curiae