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IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
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CLERK, SUPREME COURT

AUBREY D. WHITEHURST, JR. and MARY E. WHITEHURST,

Petitioners,

vs. CASE NO.: 88,949

CHARLES E. CAMP and GLENDA L. CAMP,

Respondents.

_____/

On appeal from the First District Court of Appeal
Case No. 95-3266

BRIEF OF *AMICUS CURIAE* ROGER'S CUSHIONS, INC.

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STATEMENT OF THE CASE AND FACTS

On or about February 15, 1993, Roger's Cushions, Inc. entered into a guaranteed financing agreement to facilitate Engineered Plastics, Inc./PVC Chair Company of Atlanta's periodic purchase of goods from Roger's Cushions, Inc. Terrance Baroody personally guaranteed that agreement on behalf of Engineered Plastics, Inc. and/or PVC Chair Company of Atlanta. Paragraph 1 of the agreement specifically provides:

> 1. I (we), the undersigned, agree to pay [Roger's Cushions, Inc.] for goods according to [Roger's Cushions, Inc.'s] terms, which are: **NET CASH** on the 10th of the month after date of sale. If not paid by the 10th of the following month, the account is past due and the [sic] I (we), undersigned, ***agxee to pay interest on the unpaid balance in the amount of 1.5% per month or the highest rate allowable by law, whichever is lower, until the account is paid in full.*** [Emphasis added.]

When Engineered Plastics, Inc. and/or PVC Chair Company of Atlanta failed and refused to pay Roger's Cushions, Inc. the sum of **$24,347.41** for goods purchased, Roger's Cushions, Inc. filed suit against Terrance Baroody on his personal guarantee of the unpaid debt. Terrance Baroody filed no answer or responsive pleading setting forth a defense and, thus, Roger's Cushions, Inc. moved for entry of final judgment on the pleadings. Shortly before the hearing on that motion, Roger's Cushions, Inc. filed a Motion to Set Post-Judgment Interest in Final Judgment at Contract Rate. The trial court entered final judgment for Roger's Cushions, Inc. on

November 6, 1995 but, denied the motion to set interest on the judgment at the parties' agreed, contract rate and set the rate of post-judgment interest at eight percent (8%). Thereafter, Roger's Cushions, Inc. timely appealed to the Fifth District Court of Appeal.

While Roger's Cushions, Inc.'s appeal was pending in the Fifth District, the First District Court of Appeal rendered its decision in this case. On September 27, 1996, the Fifth District issued its decision affirming the trial court's order in Roger's Cushions, Inc.'s case. Agreeing with the First District, the Fifth District cited a portion of the court's opinion in this case in Roger's Cushions, Inc.'s opinion, to-wit:

> Although Section 55.03(1) allows the parties to contractually set the rate of post-judgment interest, a contractual provision, as here, which sets only the rate of interest for the debt does not also govern the rate of post-judgment interest. To ***contractually*** set ***the interest rate applicable to a judgment or decree arising*** **from** ***a contract, the parties must expressly provide that the specified rate gaverns post-judgment interest.*** [Emphasis added.]

In this case, as well as Roger's Cushions, Inc.'s case, the contracts at issue specifically provided a rate of interest that the parties expected to..apply even after judgment. Roger's Cushions, Inc. timely filed a motion seeking rehearing and certification of the Fifth District's apparent conflict with Gevertz v. **Gevertz,** 608 So.2d 129 (Fla. 3rd DCA 1992). That motion is still pending as of the date of filing this *amicus* brief.

SUMMARY OF ARGUMENT

The issue confronting the Court in this case is the interpretation and/or construction that must be given to Section 55.03, Florida Statues, as amended. In 1994, the Florida legislature amended Section 55.03, Florida Statutes, to revise the rate of interest on judgments and to provide a procedure for the Comptroller of the State of Florida to set the rate of judgment interest on an annual basis. The legislature, however, also included the following express language in the amended Section 55.03(1): "[n]othing contained herein shall affect a rate of interest established by written contract or obligation." Both petitioners herein and Roger's Cushions, Inc. have asserted that such language required the courts in their cases to set the post-judgment interest rate in the final judgment at the parties' agreed, contract rate of interest.

ARGUMENT

THE PLAIN LANGUAGE OF SECTION 55.03(1), FLORIDA STATUTES (1994), MANDATES THAT POST-JUDGMENT INTEREST AT THE PARTIES' AGREED, CONTRACT RATE SHOULD BE AWARDED LN ACTIONS ON CONTRACTS.

Prior to the amendment of Section 55.03(1), Florida Statutes, by the legislature in 1994, Florida courts generally recognized that Section 55.03 contemplated that an agreed, contract rate of interest would be applied in setting a post-judgment interest rate

so long as the agreed, **contract rate did** not exceed the statutory maximum rate. Far example, in Haddock v. Marlin, 458 So.2d 848 (Fla. 5th **DCA** 1984), the Fifth District **addressed** the issues raised in an **appeal** from a judgment in a mortgage foreclosure involving the interest awarded in the judgment.

The trial judge awarded 25% interest to the mortgagees to begin from the **date** of default. The appellants complained that they should be required to pay that high rate only after the note was accelerated. The applicable note provision provided:

> If default be made in the payment of any of the sums or interest mentioned herein or in said mortgage, or in the performance of **any** of the agreements contained herein or in said mortgage, then the entire principal sum and accrued interest shall at the option of the holder hereof become at once due and collectible without notice, time being of the essence; and ***said principal sum and accrued interest shall both bear interest from such time until paid at the highest rate allowable under the laws of the state of Florida.*** Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. **[Emphasis added.]** ***Id. at*** 848.

In finding that an award of pre-judgment interest at the rate of 25% running from the date the note was **accelerated** was appropriate, the Fifth District recognized that:

> [i]t is rather apparent that until the option to accelerate is **exercised** then the debt **does** not bear interest at the highest rate allowable under the law. Bratcher v. Wronkowski, 417 So.2d **1132** (Fla. 5th DCA 1982), ***petition den.,*** 424 So.2d 760 (Fla. 1982); Morton v. Ansin, 129 So.2d 177 (Fla. **3d DCA** 1961). Incidentally, the debt was greater than $500,000 so the highest lawful rate according to **statute** was 25%. 687.03(1), Fla.Stat. (1981).
>
> The trial judge also **awarded** interest at the 25% rate after judgment. This is error because the applicable statute provides:

> A judgment or decree entered on or after October 1, 1981, shall bear interest at the rate of 12% a year unless the judgment or decree is rendered on a written contract or obligation providing for interest at a lesser rate, in which case the judgment or decree bears interest at the rate specified in such written contract or obligation.

55.03(1), Fla.Stat. (1983). The note here provides for 10% interest until acceleration after default and then 25% thereafter, *so* 12% is the maximum rate allowed by statute, after judgment. Id. *at* 849.

Prior to amendment, Section 55.03, read in *pari materia* with Sectian 687.01, was also generally interpreted to supply and limit both pre- and post-judgment interest rates if there was no agreement between the parties as to the applicable interest rate. For example, in Nielsen-Miller Construction, Co. v. Pantlin/ Prescott, 602 So.2d 1366 (Fla. 4th DCA 1992), the jury awarded the payee of a promissory note $85,497 in unpaid principal. The note was apparently given in settlement of a dispute as to money due a contractor by an owner in a construction project. The farm of the note was non-standard; it was prepared an the letterhead of the payee. It provided simply that $91,847.25 was due on a specific date and contained no provision for interest. The payee moved for pre-judgment interest from the date the jury determined that the default occurred. The trial court denied both pre- and post-judgment interest and the payee appealed.

Citing Argonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212 (Fla.1985), the Fourth District Court held that the payee was entitled to pre-judgment interest running from the date of default to the date of judgment. Applying the Fifth District's rationale

in Roberts v. CFW Construction Company Inc., 586 So.2d 1309 (Fla. 5th DCA 1991), the Fourth District interpreted the promissory note at issue to be non-interest bearing only through the due date because the parties manifested no intent to waive post-default interest. The Fourth District reversed the trial court's denial of interest, specifically noting that:

> . . . [t]he plain language of section 55.03(1) requires that the note "provide" for interest at a lesser rate. Moreover, the statute says that the judgment bears interest at the rate specified in the note. Here, because there is no provision for interest at all, there is obviously no rate "specified" in the note. Under these circumstances, we conclude that section 687.01, Florida Statutes (1991), applies the statutory rate of 12 percent to interest accruing after the default. It follows that there is no reduced rate of interest set forth in the instrument to justify a postjudgment rate of interest less than 12 percent.
>
> *Id. at* 1369.

As amended by the legislature in 1994, Section 55.03, Florida Statutes, now provides:

> (1) On December 1 of each year beginning December 1, 1994, the Comptroller. . . shall set the rate of interest that shall be payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate. . . . The initial interest rate established by the Comptroller shall take effect on January 1, 1995, and the interest rate established by the Comptroller in subsequent years shall take effect on January 1 of each following year. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Comptroller for time periods after January 1, 1995, for which interest is due. ***Nothing contained herein shall affect a rate of interest established by written contract or obligation.*** [Emphasis added.]

It is clear, given the plain, unambiguous language employed, that in amending Section 55.03, Florida Statutes, the legislature intended to remove the statutory cap on judgment interest rates in cases arising out of a written contract or obligation by and between the parties where there is an express agreement as to the rate of interest.

The trial court in Roger's Cushions, Inc.'s case, however, denied the motion to set the post-judgment interest rate at the parties' agreed, contract rate of 1.5% per month, or 18% per annum, commenting:

> . . . It's my view that insofar as pre-judgment interest is concerned where the contract calls for 18 percent and there's a default in payment, you would be entitled to 18 percent on the total amount of the default in payments from the date of the default through the entry of judgment.
>
> However, it's further my view that the statute does not allow for 18 percent post-judgment interest. There's some ambiguity in [Section 55.03(1)] and I think we need to get that resolved. . . .
>
> * * * *
>
> This is an issue about post-judgment interest that's been plaguing the circuit courts, probably the county courts, too, for a long time now since they amended the statute.
>
> It's an issue that's of great interest around the State and we simply need to get it resolved, and it can't get resolved until we get a decision from the Appeals Court.

Roger's Cushions, Inc. timely appealed to the Fifth District Court of Appeal. While Roger's Cushions, Inc.'s appeal was pending in the Fifth District, the First District Court of Appeal rendered its decision in this case. Subsequently, on September 27, 1996,

the Fifth District issued its decision in Roger's Cushions, Inc.'s case affirming the trial court's order. Agreeing with the First District, the Fifth District cited a portion of the court's opinion in this case, to-wit:

> Although Section 55.03(1) allows the parties to contractually set the rate of post-judgment interest, a contractual provision, as here, which sets only the rate of interest for the debt does not also govern the rate of post-judgment interest. To contractually set the interest rate applicable to a judgment or decree arising from a contract, the parties must expressly provide that the specified rate governs post-judgment interest.

Roger's Cushions, Inc. timely filed a motion seeking rehearing and certification of the Fifth District's apparent conflict with Gevertz v. Gevertz, 608 So.2d 129 (Fla. 3rd DCA 1992). That motion is still pending as of the date of filing this *amicus* brief. Roger's Cushions, Inc. respectfully asserts that the First and Fifth Districts have erred by ignoring the plain meaning of the language employed by the legislature in amending Section 55.03 to remove the statutory cap on post-judgment interest rates where there is an express agreement between the parties specifying the applicable interest rate, as is true in both this case and in Roger's Cushions, Inc.'s case.

This Court itself has repeatedly explained that when the language of a statute is unambiguous and conveys a clear and ordinary meaning, there is no need to resort to other rules of statutory construction; the plain language of the statute must be given effect, unless the words are defined in the statute or by the clearly expressed intent of the Legislature. *See, e.g.:* Polakoff

Bail Bonds v. Orange County, 634 So. 2d 1083, 1084 (Fla. 1994); Martin County v. Edenfield, 609 So. 2d 27 (Fla. 1992); Green v. State, 604 So. 2d 471 (Fla. 1992); Gretz v. Florida Unemployment Appeals Comm'n, 572 So.2d 1384 (Fla. 1991); Streeter v. Sullivan, 509 So. 2d 268, 271 (Fla. 1987); Southeastern Fisheries Ass'n v. Department of Natural Resources, 453 So. 2d 1351 (Fla. 1984); Holly v. Auld, 450 So.2d 217 (Fla. 1984). Thus, the plain meaning of statutory language is the first consideration of statutory construction and statutes should be construed to give each word effect. Acosta v. Richter, 671 So. 2d 149, 153 (Fla. 1996). It is error for a court to rely on extrinsic aids to statutory construction when the language of a statute or ordinance is plain and unambiguous. Smith v. Crawford, 645 So. 2d 513 (Fla. 1st DCA 1994). If necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary. Green; Gardner v. Johnson, 451 So. 2d 477 (Fla. 1984).

In its decision in this case, the First District essentially ignored those fundamental principles of statutory interpretation. Althoughthe First District recognized that Section 55.03 is itself in derogation of common law and must be strictly construed, the court resorted to the common law theory of merger to reinvent the express language of the amended Section 55.03(1). Thus straining the plain meaning of the legislative directive that "*nothing contained [in Section 55.03] shall* affect *a rate of interest established by written contract or obligation*," the First District erroneously held that:

> [a]lthough subsection 55.03(1) authorizes the parties to establish the post-judgment interest rate by contract, significantly *the* ***statute does not provide that the applicable contract interest rate also governs the post-judgment rate*** for ***judgments based on the contract.*** Thus, because a judgment is an obligation separate from the underlying contractual debt, to contractually set the rate of post-judgment interest the parties must expressly provide that the agreed interest rate also applies to any judgment or decree entered on the underlying debt. Since the terms of the instant agreement for deed set the rate of interest only for the indebtedness that is the subject of the cause of action, and not for any judgment resulting from the cause of action, the 8 percent statutory rate applies. [Emphasis added.]

That the legislature intended to remove Section 55.03's cap on post-judgment interest rates where applicable contract provisions **specify** the rate of interest to be paid until a debt **is** satisfied - whether through the obligor's faithful performance of the contract or the obligee's obtaining and executing on a judgment after the obligor's default - is plainly evident in the language adopted, to-**wit:** "***[n]othing contained herein shall affect a rate of interest established by written contract or obligation.***" Even the preamble to the enacting legislation, Chapter 94-239, states that it **is:**

> **An** act relating to judgments; . . . amending 55.03, F.S.; revising the rate of interest on certain judgments and decrees; providing a procedure for setting the rate of interest on an annual basis by the Comptroller . . . ; amending **687.01,** F.S.; ***revising*** *the* ***rate of interest in the absence of a contract provision specifying the rate of interest*** . . . . [Emphasis added.]

It should also be noted that, before it was amended, Section **687.01,** Florida Statutes (1993), provided:

> In all cases where interest shall accrue without a special contract for the rate thereof, the rate ***shall be 12 percent per annum, but parties may contract for a lesser or greater rate by contract in writing.***

As amended by Chapter 94-239, Section **687.01,** Florida Statutes (1994 supp.), now provides:

> **In** all cases where interest shall accrue without a special contract for the rate thereof, the rate ***is the rate provided for in Section 55.03.***

The legislative changes to both Sections 55.03 and **687.01,** considered together, as they must be, demonstrate that the legislature obviously intended to remove the statutory cap on post-judgment interest previously set forth in Section 55.03 by essentially incorporating the contract-exclusion language that was deleted from Section 687.01. There is no other reasonable interpretation of the unambiguous provision that "***nothing contained [in Section 55.031 shall affect a rate of interest established by written contract or obligation.***"

The only ambiguity in Section 55.03, as amended, arises where there is no agreed, contract interest rate, to-wit: the language **of** the statute does not make it clear if judgment interest rates become fixed, at the rate set by the Comptroller on the date **of** entry of the judgment **or,** if they fluctuate from year to year as the Comptroller adjusts the interest rate. For instance, if a judgment is entered on December **31, 1996** in the absence of an agreed contract rate of interest, will the judgment accrue interest indefinitely at the rate ***of*** 10% per cent per annum (the **1996**

interest rate established by the Comptroller) or, will it accrue interest after January 1, 1997 at the rate of interest established by the Comptroller for 1997? If the judgment remains uncollected, will the applicable interest rate change again on each subsequent January lst? *See, e.g.:* Faved v. Altshuler, 21 FLW D1648 (Fla. 4th DCA July 17, 1996). Neither the First nor the Fifth District addressed that ambiguity in the language of Section 55.03(1), as amended.

The First and Fifth District's construction and application of Section 55.03(1), as amended, is, given the specific contract language at issue in each of these cases, also contrary to the recognized limits on the courts' role in interpreting contracts. Florida law unequivocally provides that the parties' clear expression of the meaning of contract terms may not be modified by a court's later interpretation. See, *e.g.:* Walgreen Company V. Habitat Development Corporation, *655* So.2d 164 (Fla. 3d DCA 1995); Federal Home Loan Mortgage Corporation v. Molko, 602 So.2d 983 (Fla. 3rd DCA 1992); BMW of North America, Inc. v. Krathen, 471 So.2d 585, 587 (Fla. 4th DCA 1985). The language of the contract itself is the best evidence of the parties' intent, and its plain meaning controls. See, *e.g.:* Misala, Inc. v. Eagles, 662 So.2d 1389 (Fla. 4th DCA 1995).

When a contract is clear and unambiguous, *as* are both contracts discussed herein, the court is not at liberty to give the contract "any meaning beyond that expressed." Bay Management, Inc. V. Beau Monde, Inc., *366* So. 2d 788, 791 (Fla. 2d DCA 1978); *see*

also: Dune I, Inc. v. Palms N. Owners Ass'n, 605 So. 2d 903 (Fla. 1st DCA 1992); City of Winter Haven v. Ridge Air, Inc., 458 So. 2d 434 (Fla. 2d DCA 1984). In the absence of ambiguity, the parties' intent must be discerned from the four corners of the document. See, *e.g.*: Fecteau v. Southeast **Bank, N.A.**, 585 ***So,*** 2d 1005, 1007 (Fla. 4th DCA 1991); Richter v. Richter, *666* So.2d 559 (Fla. 4th DCA 1996). Further, when the language is clear and **unambiguous**, it must be construed to mean just what the language in the contract implies and nothing more; the court may not give contract terms any meaning beyond that expressed. Camichos v. Diana Stores Corp., 157 **Fla. 349, 25** So. 2d 864, 870 **(1946);** ***see also:*** **Federal Home Loan** Mortgage Corp. v. Molko, *supra;* BMW of N. Am., Inc. v. Krathen, ***supra.***

Courts should not put strain and unnatural construction on the terms of a contract in order to create uncertainty or ambiguity. ***See,*** *e.g.*: Weldon v. All American Life Insurance Company, *605* So. 2d 911 (Fla. 2d **DCA** 1992); Jefferson Insurance Company of New York v. Sea World of Florida, Inc., 586 So. 2d 95 (Fla. 5th DCA 1991). Contracts must be read in light of the skill and experience of ordinary people, and given their everyday meaning as understood by the "man on the street". Lindheimer v. St. Paul Fire and Marine Insurance Company, 643 So. 2d ***636*** **(Fla. 3d** DCA 1994), ***rev. denied,*** 651 So. 2d 1194 (Fla. 1995).

In this case, the debtors expressly agreed to pay ". . . ***interest . . . on the whole sum remaining from time to time unpaid*** . . . ." In Roger's Cushions, Inc.'s case, the debtors expressly

". . . ***agree[d] to pay interest on the unpaid balance. . . until the account is paid in full.***" Thus, in both cases discussed herein, the parties expressly and unambiguously contracted for an interest rate that they expected to apply until the underlying debt was paid in full, even if the debtors defaulted. In their strained construction of Section 55.03(1), as amended, the courts in these two cases have essentially rewritten the parties' contracts to relieve the debtors of their contractual obligation to pay an agreed rate of interest on the unpaid balance as a result of their own defaults. Such a result was clearly not contemplated by either of the contracts discussed herein. The courts have, thus, effectively and improperly impaired the parties' respective contract rights and obligations. *See, e.g.:* Xanadu of Cocoa Beach, Inc. v. Lenz, 504 So.2d 518 (Fla. 5th DCA 1987).

CONCLUSION

The parties' intent to set the interest rates that would be paid by the debtors until the amounts they owed were paid in full, even if the debtors defaulted, is evident on the face of each of the contracts discussed herein. As demonstrated by the similarities in the contract language involved in this and Roger's Cushions, Inc.'s case, the issues that must be resolved by this Court's interpretation of Section 55.03(1), as amended, are not unique. The rights of every litigant involved in a currently-pending action on a contract may be effected. The courts involved

in this and Roger's Cushions, Inc.'s case have ignored the clear and unambiguous language of Section 55.03(1), Florida Statutes (1994 supp.), as well as the clear and unambiguous language of the contracts at issue in each case, in favor of a strained construction of the statute. The legislative intent to give effect to the parties' agreed, contract terms in setting interest on judgments is, however, obvious on the face of the Section 55.03(1), as amended, and, thus, should be given its clearly intended effect by this Court's interpretation.

WHEREFORE, as *amicus curiae*, Roger's Cushions, Inc. respectfully requests that this Honorable Court reverse the decision of the First District in this case and interpret the plain and unambiguous language of Section 55.03(1), as amended, in accordance with the principles of law applicable to both statutory and contract interpretation,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished on this 11 day of October, 1996 by U.S. Mail, postage prepaid to Terrance A. Baraody, 4180 Coastal Highway, St. Augustine, FL 32095; Bill A. Corbin, Esquire, 305 Fannin Avenue, Blountstown, Florida 32424-2218; and, Glenda and Charles Camp, P.O. Box 310, Vernon, FL 32462.

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