FILED
SEP 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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ROY AVIS, ROBERT K. JAY, DENMAN PHILLIPS, WILLIAM F. McINTEE, WALTER F. CROSKEY, NORMAN V. FAUCHER and WAYNE CLASSEN ENGINEERING & SURVEYING, INC.,

Plaintiffs-Appellants,

vs.

LEON LAUVER AND RUTH LAUVER, JACK BECK AND KATHLEEN M. BECK, DONALD FRANCIS AND OPAL FRANCIS, STEVEN THORMAN and DOBBS DEVELOPMENT CORPORATION, an Iowa corporation,

Defendants-Appellees.

Filed September 27, 1983

3-134
2-68537

Appeal from Black Hawk District Court - Dennis D. Damsgaard, Judge.

Plaintiffs appeal from a declaratory judgment for defendants in this action to determine the interest due after defendants' default on a promissory note. AFFIRMED.

Hugh M. Field of Beecher, Beecher, Holmes & Rathert, Waterloo, for plaintiffs-appellants.

Sidney A. Thomas of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

HAYDEN, J.

Plaintiffs appeal from a declaratory judgment for defendants determining the amount of interest due after defendants' default on a note. We affirm.

On April 18, 1978, defendants executed a promissory note in the amount of $120,000 at nine percent interest payable in installments. The note contained the following provision applicable in case of default: "Principal and interest not paid when due shall draw interest at the highest legal contract rate applicable to a natural person, or if the Borrower is a corporation, then at the rate of nine percent (9%) per annum payable as aforesaid." When defendants tendered a late payment, a dispute arose as to the amount of interest due. Plaintiffs filed a petition for declaratory judgment asserting that the interest is computed as provided in Iowa Code section 535.2 (3)(a)(1981). Our review of this action at law is on assigned error. Iowa R. App. P. 4.

At the time this note was executed, the applicable law as found in the 1977 Code of Iowa provided that interest should be five percent unless the parties agreed in writing to a higher rate not to exceed nine percent. When the parties agreed to the "highest legal contract rate" the existing law was incorporated into the agreement. The interest rate after default was clearly set at nine percent, the maximum allowed by law at that time. Plaintiffs argue, however that the parties intended to create a fluctuating rate of interest corresponding to the legal rate at the time of default. This is not stated in the note and will not be read into it by this court.

Furthermore, the 1978 amendment to section 535.2 on which plaintiffs rely expressly provides that the new maximum interest rate is only applicable to agreements entered into on or after April 13, 1979. The note in question was entered into almost a year before that date. The legislature clearly did not intend to retroactively change the interest rate which had been agreed to by these parties. Evidently foreseeing, however, that disputes would arise in certain cases, the legislature added section 535.2 (4)(a) which provides:

> Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

The present case falls within this provision. This note was executed prior to August 3, 1978. It stated one interest rate applicable if there was no default and provided for an adjustment of the rate in case of default. Therefore, the maximum interest rate which defendants can be charged under this note is nine percent.

AFFIRMED.