

the court refused to enforce a Wisconsin order providing for permanent alimony based on the language of 23 Pa.C.S.A. §501(c) which provides stringent guidelines for the use of permanent alimony in Pennsylvania. There are no similar statutes or guidelines stating or implying that alimony cannot be awarded as a lump sum payment.

ORDER OF COURT

October 22, 1985, plaintiff's petition to register, adopt, and enforce a foreign decree for alimony is granted.

MELLOTT V. MELLOTT, C.P. Fulton County Branch, No. 235 of 1984-C

Filing Complaint - Finance Charge - Legal Rate of Interest

1. Where a rule to file Complaint within 20 days is issued and the Complaint is filed after the 20-day period, the defendants waived the defect by neglecting to file a Praecipe for non-pros.
2. A seller may not unilaterally impose a finance charge in excess of the legal rate, from the date payment is due.
3. A successful plaintiff is entitled to prejudgment interest as a matter of right; however, if the parties fail to contract regarding the interest rate, the legal rate attaches.
4. The legal rate of interest in Pennsylvania is fixed at 6% by statute.

Stanley J. Kerlin, Esquire, Counsel for Plaintiff

Gary D. Wilt, Esquire, Counsel for Defendants

OPINION AND ORDER

KELLER, J., October 23, 1985:

The complaint was filed in the District Magistrate Court on October 22, 1984, and after hearing, judgment for plaintiff was entered on November 20, 1984. A praecipe to enter a rule to file



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LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS OF THE 39th JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA — ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: August 7, 1986.

BITTINGER: First and final account, statement of proposed distribution and notice to the creditors of Mary Bittinger and Charles W. Bittinger, Co-executors of the Estate of Charles W. Bittinger, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

KING: First and final account, statement of proposed distribution and notice to the creditors of Thomas Blickenstaff, Russel Blickenstaff and Millard A. Ullman, Executors of the Estate of Leah C. King, late of Waynesboro, Franklin County, Pennsylvania, deceased.

SCHAFF: First and final account, statement of proposed distribution and notice to the creditors of Georgie P. Schaff, Executrix of the Estate of William D. Schaff, late of Greene Township, Franklin County, Pennsylvania, deceased.

SZYPULSKI: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Chambersburg, Pennsylvania, Executor of the Estate of Helen F. Tananis Szypulski, late of Greene Township, Franklin County, Pennsylvania, deceased.

LEGAL NOTICES, cont.

WALKER: First and final account, statement of proposed distribution and notice to the creditors of Donald Walker, Executor of the Estate of Ruth E. Walker, a/k/a Ruth C. Walker, a/k/a Ruth Walker, late of Fannettsburg, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk of Orphans' Court
Franklin County, Pennsylvania
7-11, 7-18, 7-25, 8-1

complaint and appeal was filed on December 18, 1984. The rule to file a complaint within twenty (20) days was issued by the prothonotary and was served on the plaintiff on December 18, 1984. The complaint was filed on January 18, 1985, and served on defendant's counsel on January 22, 1985. The defendant filed preliminary objections on February 4, 1985. Oral arguments were heard on August 20, 1985. The objections are ripe for disposition.

DISCUSSION

In their first preliminary objection the defendants move the Court to strike the complaint because plaintiff failed to file it within the twenty (20) days prescribed by Pa. R.C.P. 1037(a). Rule 1037(a) states "If a complaint is not filed within twenty days after service of the rule, the prothonotary, upon praecipe of the defendant, shall enter a judgment of non-pros." The entry of judgment is not automatic upon the running of the twenty-day period. The filing of a praecipe by defendant is a condition precedent to an entry of non-pros under this rule. *Homemakers Loan & Discount v. Rowe*, 4 D&C 3d 167 (Lawrence Co., 1977), *Zook v. Watterson*, 31 D&C 3d 77 (Somerset Co., 1982). In the case at bar, the rule to file a complaint within twenty days was issued by the prothonotary and served on plaintiff on December 18, 1984. The defendants failed to file their praecipe for non-pros before the complaint was filed on January 18, 1985. Even though the complaint was filed after the twenty-day period, the defendants waived the defect by neglecting to file a praecipe for non-pros. The complaint will not be stricken.

Defendants' second preliminary objection presents the question of whether a seller may unilaterally impose a finance charge from the date payment was due in excess of the legal rate of six percent. Traditionally, Pennsylvania has followed the Restatement (Second) of Contracts §354 on this issue. *Penneys v. Pennsylvania R.R.*, 408 Pa. 276, 183 A.2d 544 (1962), *Daset Mining v. Industrial Fuels*, 473 A.2d 584, 326 Pa. Super. 14 (1984). Section 354 provides as follows:

354. Interest as Damages

(1) If the breach consists of a failure to pay a definite sum in money or to render a performance with fixed or ascertainable monetary value, interest is recoverable from the time for performance on the amount due less all deductions to which the party in breach is entitled.

Comment:

a. Scope. This Section deals with an injured party's right to interest as damages in compensation for the deprivation of a promised performance. Had the performance been rendered when it was due, the injured party would have been able to make use of it. Interest is a standardized form of compensation to the injured party for the loss of that use, in the absence of agreement to the contrary. It is payable without compounding at the rate, commonly called the "legal rate" fixed by statute for this purpose.

Case law holds that a successful plaintiff is entitled to prejudgment interest as a matter of right. It is payable from the time the debt became due and payable. *Gold & Co. v. Northeast Theatre Corp.*, 281 Pa. Super. 69, 421 A.2d 1151 (1980); *Robert Wooler Co. v. Fidelity Bank*, 330 Pa. Super. 523, 479 A.2d 1027 (1984). If the parties fail to contract regarding the interest rate on an overdue principal sum, the legal rate attaches. Restatement (Second) of Contracts §354; *Daset Mining v. Industrial Fuel*, supra. The legal rate of interest in Pennsylvania is fixed at six percent (6%) by statute. 41 P.S. §202 provides as follows:

§202 Legal rate of interest

Reference in any law or document enacted or executed heretofore or hereafter to 'legal rate of interest' and reference in any document to an obligation to pay a sum of money 'with interest' without specification of the applicable rate shall be construed (sic) to refer to the rate of interest of six percent per annum.

In the case at bar, on June 24, 1981, defendants ordered five hundred pounds of manzate. On or about that day the manzate was delivered and an invoice in the amount of \$1,125 was sent to the defendants. The terms of the sale were net due in thirty days. On May 10, 1982, plaintiff began sending monthly statements stating that a 2% per month service charge applied to the past due amount commencing thirty days after the settlement date at an annual rate of twenty-four (24%) percent per annum. The defendants have failed to pay the principal sum and the interest. From the allegations of the complaint and in the briefs, it appears that the parties had no agreement concerning interest payments. This action for breach of contract falls within the scope of Restatement (Second) of Contracts §354. Therefore, in the absence of evidence of an agreement between the parties regarding the interest rate to

be charged on any amount owing thirty days after the settlement date, plaintiff's claim for interest charges is governed by 41 P.S. 202 which provides for a legal rate of interest at six percent (6%) per annum. The defendants' motion to strike paragraphs 8 and 9 of the complaint will be granted.

At oral argument, plaintiff essentially conceded that preliminary objection number 3, motion for more specific pleading, should be granted. He will amend his complaint by the attachment of the invoice.

In their fourth and last objection, defendants boldly assert that they are "entitled to know" when and how demands by plaintiff for payment were made. When a contract for payment is fully performed, the obligation to pay for that performance arises on date of completion, absent contractual terms to the contrary. *Commonwealth General State Authority v. Laffredo*, 16 Pa. Cmwlth. 237, 328 A.2d 886 (1974). In the case at bar, plaintiff and defendants agreed that payment was due in thirty days. At that time the obligation to pay arose. When and how demands for payment were made is not a material element of the case which must be pleaded. Without the benefit of authoritative citations supporting defendants' objection, we cannot fathom either the significance or materiality of whether plaintiff's demands were written or oral. Defendants' fourth preliminary objection, motion for more specific pleading will be denied.

ORDER OF COURT

NOW, this 23rd day of October, 1985, the defendants' preliminary objection No. 2 in the nature of a motion to strike, and No. 3 in the nature of a motion for more specific pleading are sustained; preliminary objections No. 1 and 4 are denied.

The plaintiff is granted leave to file an amended complaint within twenty (20) days of date hereof.

Exceptions are granted plaintiff and defendant.