IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CAPITAL ONE BANK,

Appellant,

v.

MARTHA COX,

Appellee.

APPELLATE DIVISION (CIVIL)
Case No.: 502006AP000090XXXXMB
L.T.: 502006SC11362XXXXMB
Division: 'AY'

Opinion filed: AUG 0 2 2007

Appeal from the County Court in and for Palm Beach County, Florida,
Judge Peter M. Evans

For Appellant: Robert J. Orovitz, 7765 S.W. 87th Avenue Suite 101, Miami, FL 33173

For Appellee: Martha Cox, 716 N. D Street, Lake Worth, FL 33460

AFFIRMED

Appellant, Capital One Bank, seeks review of the trial court's Final Judgment Execution Withheld entered against Appellee, Martha Cox. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A).

Appellant issued a credit card to Cox in accordance with a Capital One credit card agreement. On January 24, 2006, Cox defaulted on payments to Appellant. On September 8, 2006, Appellant sued. On October 12, 2006, the parties entered into a stipulated settlement agreement for timely payments. The essential terms of the stipulated settlement agreement include a principal sum of $1,434.29, *post-judgment* ***interest rate of*** *25.900%*, court costs of $175, and attorney's fees in 'the amount of $400.

The Appellee then failed to make timely payments and the Appellant sought to enforce the parties' stipulated settlement agreement. On November 22, 2006, the trial court entered the Final Judgment Execution Withheld. The trial court determined the parties' stipulated settlement agreement for the payment of 25.900% post-judgment interest violated Florida's usury laws. The court applied the penalty provisions for forfeiture of § 687.04, and awarded only the principal sum of $1,434.29. Additionally, the trial court forwarded a copy of the judgment to the State Attorney's office and The Florida Bar for further review concerning the criminally usurious contract.

On appeal, Appellant argues, for the first time, that it is a Virginia state-chartered,. federally insured bank, and, therefore, under Federal law, the usury laws of Florida are preempted and do not apply to the stipulated settlement agreement. . Further, Appellant argues federal preemption would "export" the usury laws of Virginia to govern the stipulated settlement agreement. Appellee was not present at trial and has not filed a response in this appeal.

Neither the Appellant's pleadings, nor its own authored stipulated settlement agreement alleged it is a Virginia-state chartered, federally insured lending institution. The parties' stipulated settlement agreement is silent as to any choice of law provision. At trial Appellant did not allege any facts concerning its claimed status as a Virginia bank nor raise any issue concerning Federal or Virginia law. Nor did Appellant request the trial court to take judicial notice of Virginia law. Only upon appeal did Appellant argue Federal preemption, the exportation of Virginia law, or suggest that Appellant is a Virginia-state chartered, federally insured lending institution. No proof of that conclusion was offered at trial. An appellate court cannot determine facts and issues that were not pled, noticed, or framed at the trial level. Hart v. Hart, 458 So. 2d 815, 816 (Fla. 4th DCA 1984). Further, an appellate court's review is limited in

scope by facts, issues, and errors preserved at the trial level. 3 Fla. Jur. 2d *Appellate Review* §§ 96, 272 (2004). An appellate court cannot reverse a trial court on an issue raised solely on appeal. Id. Accordingly, it is inappropriate for this Court to enforce a Virginia statute which is repugnant to Florida law or to now determine a federal preemption of Florida law when those issues were not raised at trial.

In the instant case, Appellant knowingly charged a post-judgment interest rate of 25.900%. Under Florida law, a loan with an interest rate of 25.000% or greater is criminally usurious. § 687.071(2), Fla. Stat. (2006). Florida usury statutes were enacted to prevent lenders from charging excessive rates. See Jersey Palm-Gross, Inc. v. Paper, 658 So. 2d 531 (Fla. 1995). The increased criminal provisions were enacted to provide an additional restraint against lenders knowingly charging excessive rates on Florida residents. Id.

The Florida legislature has expressed a clear intent to protect its residents against interest rates greater than 25% by not only forcing the lender to forfeit all interest accrued, but also charging the lender with a misdemeanor of the second degree. Florida follows the ***lex loci contractus*** rule, which affords parties the rights and liabilities of the jurisdiction in which the contract was created. State Farm Mutual Automobile Insurance Company v. Roach, 945 So. 2d 1160, 1161 (Fla. 2006). The stipulated settlement agreement here was drafted in Florida by the Appellant and was to be paid in Florida by a Florida resident and enforced in Florida.

For the foregoing reasons, we conclude that the trial court did not err when it determined the stipulation violated Florida usury laws.

KELLEY, STERN and McCARTHY, JJ., concur.