

## REAL ESTATE

# Lenders Have an Interest in the Post-Judgment Rate

BY ALAN NOCHUMSON

*Special to the Legal*

In Pennsylvania, once a mortgage foreclosure claim is reduced to judgment, the legal interest rate of 6 percent per annum applies unless the loan documents evidence a clear intent to continue the contractual interest rate post-judgment.

In a recent decision, the Philadelphia Court of Common Pleas in *Wood v. Peduto* discussed whether loan documents allowed co-executors of plaintiffs' estate to collect interest post-judgment at the contractual rate rather than the legal rate of 6 percent per annum against a terre-tenant party who had a default judgment entered against him after the original judgment was revived.

In the late 1980s, Alfred and Mildred Navarro entered into a loan agreement as lenders with John Peduto as borrower. The loan accrued at an interest rate of 13 percent per annum. The mortgage securing the loan indebtedness did not contain an interest rate in the event of default. For a time, Peduto made payments on the loan, but when a balloon payment came due, he refused to make that payment.

The Navaros thereafter instituted a suit against Peduto by filing a complaint in the Philadelphia Court of Common Pleas. The court subsequently entered a default judgment against Peduto after he failed to timely answer the complaint. The default judgment



**ALAN NOCHUMSON**

*is a senior associate in the commercial litigation department of Funk & Bolton. He can be reached at 215-568-4104 or anochumson@fblaw.com.*

subsequently was revived in 1996.

Years after the judgment was revived, Peduto was appointed administrator of his father's estate. Peduto, acting as the estate's administrator, subsequently sold a property of the estate to Robert Narda.

In 2001, William and Wayne Woods, co-executors of the Navarro estate, joined the suit as plaintiffs. The Woods sought to revive the suit against Peduto individually and named Narda as a terre-tenant party alleging that the property he purchased was personally owned by Peduto and that the property was thus subject to the judgment lien. Since Peduto and Narda failed to timely answer the writ of revival, the court entered a default judgment against both of them.

After Narda's appeal of the default judgment was denied, he filed a motion to determine the amount needed to satisfy the judgment. The trial court then found the judgment against Narda to be the amount of original judgment against Peduto plus interest accruing at the legal rate of six percent per annum

from the date of judgment. The Woods then appealed that ruling, claiming that they were entitled to interest on the original judgment at a rate of 13 percent per annum, equaling the rate on the underlying mortgage note, not the legal rate of 6 percent per annum.

Judge Allan Tereshko then issued a written opinion explaining why the court awarded interest to the Woods at the lawful rate of interest, not the contractual rate.

The trial court first attacked the fundamental underpinnings of the default judgment entered against Narda. The court questioned Narda's status as a terre-tenant party. The court explained that Narda was not a terre-tenant, but instead a bona fide purchaser who took the property in an arms-length transaction without notice of the personal judgment against Peduto.

The court stressed that Narda was not involved in the original dispute over Peduto's default of the balloon payment due on the loan. The court thus believed that Narda should not be held to an interest rate on a mortgage note where he was not even a party to the loan transaction.

The court next examined whether the personal judgment against Peduto could even

attach to the property sold by the estate. The court reiterated that Peduto, as administrator of his father's estate, conveyed title free and clear of all liabilities. The court was thus unconvinced that Peduto's personal obligations should attach to the property. As a result, the court found that Narda "obtained title to the property unencumbered, without any liens attached to the property, and cannot be considered a terre-tenant in this matter."

From this passage of the opinion, the court obviously did not believe that Narda should be liable to the Woods. Since the court was powerless to strike the judgment, it did the next best thing: limited the amount of interest due post-judgment.

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The stronger reason for limiting the interest rate post-judgment is contained within the later portion of the opinion. The court pointed out that "[u]nder the heading 'Interest' of the note, it specifically provide[d] that [t]he borrower shall pay interest on the unpaid principal at the yearly rate of 13 percent. The borrower shall pay interest from the date of this note until the entire principal has been paid." The court noted that "[n]owhere in the note is there any mention of another percentage rate applicable in the

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event of default on the mortgage. The only penalty for [Peduto]'s failure to make a payment is an acceleration clause."

The court then cited to the Supreme Court of Pennsylvania's holding in *Miller v. Reading*: "[i]t is the law of Pennsylvania that a debtor who defaults in the payment of the principal of an obligation when due and payable becomes liable for interest from the date of such default at the legal rate of interest of 6 percent per annum until payment is made, irrespective of the rate prescribed in the obligation itself for the period prior to maturity." In *Miller*, the Supreme Court went on to emphasize that "the agreement of the parties here, in respect to the interest, extended no further than to the period fixed for the payment of debt or principal; after that it was left to mere operation of law, which allows 6 percent."

Over the years, the results have been mixed for lenders who seek the contractual rate post-judgment. Unlike *Woods*, the Philadelphia Court of Common Pleas in *Tierney v. Seidmen*, concluded that the contracting parties agreed to apply an interest rate in excess of the legal rate post-judgment. In *Tierney*, the loan documents provided that "[i]nterest was 'to be computed at a 14.6 percent add-on rate per year to, from and after the date of any foreclosure sale until actual payment is made to payee of the full amount due payee.'"

The court in *Tierney* found that the legal rate does not apply "after judgment when the loan agreement provides for a higher rate of interest until full payment is made."

In *Tierney*, the court stated, "[a] party who complies with his contractual obligation to pay interest on a loan at a rate higher than the lawful rate will be bound by that rate until the debt is discharged. A party against whom a default judgment is entered in such circumstances should not benefit through such action by being required to pay only the lawful rate of 6 percent after judgment. A defaulting party should not be permitted to avoid the higher contracted for interest rate while one who honors his obligations remains subject to it."

In contrast to the state court's holding in *Tierney*, the United States District Court for the Eastern District of Pennsylvania in *Alten v. T.A.E.I. Inc.* found that a provision providing for accrual of interest at the contractual rate "until paid in full" did not represent a clear intention by the parties to continue that rate following the entry of judgment. In *Alten*, the judgment debtor was thus only required to pay interest post-judgment at the legal rate.

In *Sicari v. Barua*, the Somerset Court of Common Pleas confronted a situation where litigants to a foreclosure action entered into a stipulated judgment whereby the defendants agreed to pay interest of 16.5 percent per annum from the date of the agreement up to the time of the sale of the mortgaged property. In *Sicari*, the trial court found that the legal rate of interest "is a gap-filler to be used when parties either have not contracted for a specific rate of interest, or when parties have agreed to interest 'at the legal rate.'" The trial court upheld the stipulated rate of interest because it "was reached through the bargaining process."

These cases illustrate that clauses allowing post-judgment interest at a rate in excess of

the legal rate should be carefully worded. From a practical point of view, these clauses should be contained in a separate paragraph of the loan documents. Moreover, I would suggest that these type of clauses be entitled

as "post-judgment rate of interest" or like. By making the intent of the parties perfectly clear, the lender should not be foreclosed from collecting interest in excess of the legal rate. •

## AREA MORTGAGE RATES

Lender	Fixed Rates		Adjustable Rates	Jumbo Rates*	Commercial
	30 yr.	15 yr.	1 yr.	30 yr. fixed	Yes/No**
Home Finance of America 800-358-5626	5.38/0	5.00/0	3.00/0	5.75/0	No
Absolute Mortgage Co. 888-904-6637	5.38/0	4.88/0	3.38/0	5.63/0.13	No
AA E Mortgage 877-793-1400	5.38/0	4.88/0	N/A	5.75/0	No
Stepping Stone Lending 800-638-2659	5.50/0	5.00/0	N/A	5.75/0	No
Price Financial Services 800-401-9091	5.38/0	4.88/0	N/A	5.75/0	No
Amtrust Funding 800-774-0779	5.38/0	5.00/0	3.00/0	5.75/0	No
Turnstone Mortgage 800-757-7514	5.50/0	5.13/0	3.88/0	5.88/0	No
Lighthouse Mortgage 800-784-1331	5.50/0	5.13/0	N/A	5.75/0	No
Wilmington Mortgage 610-558-3099	5.50/0	5.13/0	N/A	5.88/0	No
East Coast Financial 800-353-9440	5.63/0	5.25/0	N/A	N/Q	No
Century Mortgage Corp. 800-224-7006	5.00/3	4.50/3	3.38/2	5.75/1.5	No
American Family Mtg. 610-358-5324	4.75/3	4.50/3	3.50/3	5.13/3	No

\* A "Jumbo" or non-conforming mortgage is a loan amount in excess of \$360,000.

\*\* Indicates if a lender offers mortgage loans for commercial properties. Call to discuss rates and terms.

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