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Want Compound Interest? Then Ask For It

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The Supreme Court of Ohio recently had an opportunity to answer a question that has been around for some time. If one of your customers defaults on one of your contracts, and you have written into your contract that you are entitled to interest, can you claim compound interest, or are you limited to simple interest? The difference can be significant, and as it turns out claimable, provided the parties have written their Agreement to account for it.

In an action on an account, the Plaintiff must set forth an actual copy of the recorded account. The records must show the name of the party charged and must include a summarization by means of a running account or developing balance, or an arrangement of beginning balance and items which permits the calculation of the amount claimed to be due.

By statute, written instruments can contain stipulations for the payment of interest at the rate specified in the Agreement. The Court in *Capital One Bank (USA) v. Heidebrink* (2009), held:

For entitlement to a rate different than the statutory rate of interest to be charged, R.C. 1343.03(A) sets forth two prerequisites; (1) there must be a written contract between the parties and (2) the contract must provide a rate of interest with respect to the money that becomes due and payable. For there to be a written contract for purposes of R.C. 1343.03(A); there must be a writing to which both parties have assented. Only a written contract providing a rate of interest to be charged differing from the statutory rate permits the charging of interest as a rate greater than that provided by statute.”

The Ohio Supreme Court in *Minster Farmer’s Coop, Exchange Co., Inc. v. Meyer* (2008), 117 Ohio St. 3d 459 explained that R.C. 1343.03(A) requires a separate written contract and “not simply an additional term added to an invoice and met without resistance by another party, to establish an interest rate greater than that set forth in R.C. 5703.47.” A

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majority of appellate courts in Ohio have held that an invoice or monthly statement do not constitute a “separate written contract.”

However, the statute also makes no reference as to whether the interest that would accrue would be simple or compound. Simple interest is calculated only on principle and not on the accumulated interest. On the other hand, compound interest is calculated both on the principle and the previously accumulated interest. In *Mayer v Medancic*, 124 Ohio St. 3d 101, 2009-Ohio-6190, the Supreme Court held that because the underlying statute did not specify whether simple or compound interest would control, and absent an Agreement by the parties, compound interest is not available upon default of a written instrument. Conversely, had the parties agreed that the Notes would be subject to compound interest, then that would have been permitted.

As a practical matter, given the increased costs that businesses incur in pursuing delinquent accounts, it makes no sense in these times not to review your Agreements to make sure that they account for and allow compound interest.

To ensure that your Agreements and Notes are working for you, please contact one of the attorneys at Pickrel, Schaeffer & Ebeling Co., LPA.

Disclaimer: This general information is not intended as legal opinion or advice, nor a complete discussion of the topic, and refers to Ohio law - your state's provisions may differ. As each situation is different, you should seek independent legal advice from an attorney for specific information.

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