

CLIENT ALERT MEMORANDUM

“Notations on invoices and account statements setting forth an interest rate”

The news media sometimes gives significant coverage to Ohio Supreme Court decisions in the consumer area and occasionally gives significant coverage to cases that impact businesses. However, a decision of the Ohio Supreme Court in two consolidated cases which impacts both consumers and businesses in what we feel is a very substantial way was given almost no mention by the news media.

Minister Farmers Cooperative Exchange Company, Inc. v. Meyer and *Minister Farmers Cooperative Exchange Company, Inc. v. Dues*, consolidated in an opinion to be cited as *Minister Farmers Coop. Exchange Co., Inc. v. Meyer*, 117 Ohio St. 3d 459, 2008 – Ohio – 1259, dealt with the appropriate rate of interest when there is not a separate written contract between the parties and the seller/provider of the goods simply notes on its invoices and/or account statements the interest rate to be charged. O.R.C. § 1343.03(A) states that the interest rate on a book account, or open account, is the statutory rate set forth in O.R.C. § 5703.47 (currently 8%), “unless a written contract provides a different rate of interest.”

Minister Farmers Coop sells agricultural supplies on both consumer accounts and commercial accounts, but does not get an account agreement, credit agreement or other written agreement at the time a new account is established. The Court’s opinion stated that Minister Farmers Coop’s invoices after January 1998 (when it sent a letter to its customers advising them that it was increasing its finance charge from 1.5% to 2% per month) set forth something similar to “Net due last day of the month. 2% finance charge after 30 days.” It was stated that a similar notice/notation to that on its invoices appeared on account statements that Minister Farmers Coop sent. It was indicated that Minister Farmers Coop’s invoices and account statements did not provide for, nor contain, a customer signature.

The Court held that an invoice or account statement unilaterally stating an interest rate or interest terms does not meet the requirement of O.R.C. § 1343.03(A) for written contracts, setting forth that an invoice is not a contract and that an invoice is a mere detailed statement of the nature, quantity and the cost or price of goods or services.

O.R.C. § 5703.47 provides that the Ohio Tax Commissioner, on October 15 of each year, determines the statutory interest rate for the following calendar year based upon the federal short-term rate plus 3%. For calendar year 2008 the statutory interest rate is 8%. The statutory

judgment rate is applicable to both pre-judgment and post-judgment interest unless there is a written contract that sets forth a different interest rate.

The requirement of O.R.C. § 1343.03(A) of a "written contract" can be satisfied by a number of different kinds of documents, such as a promissory note signed by the maker, a proposal or "estimate" signed as accepted by the customer or a credit agreement signed by the credit applicant/prospective customer. There can also be circumstances where we feel that in the future courts will hold that O.R.C. § 1343.03(A)'s requirement of a written contract can be met without there being a writing actually signed by the customer when initially there is a writing which the prospective customer/customer clearly agrees to, even though not signing a writing, as a condition to establishing an account or ordering goods or services; for example, ordering through the Internet from a website which requires clicking on "I Agree" before an order is processed.

Recognizing the tremendous impact of its decision on business and business dealings, the Ohio Supreme Court's opinion stated "We do not intend for this decision to create shock waves throughout the many sectors of Ohio's economy that rely on book accounts to do business, nor do we wish to encourage a propagation of pleadings regarding past practices," and then went on to set forth:

This decision establishes the proper method for implementing interest rates exceeding the statutory maximum on a book account pursuant to R.C. 1343.03(A) in these two cases and for transactions occurring after the date of this decision. [March 25, 2008]

Thus, interest in excess of the statutory interest rate (for 2008, 8%) can be charged with only a notation of a higher interest rate on invoices and statements of account for transactions which occurred prior to March 26, 2008, but for transactions which occur on or after March 26, 2008, to charge an interest rate higher than the statutory interest rate there must be some form of writing which constitutes a "written contract."

This Client Alert Memorandum does not constitute legal advice to be relied upon by the reader, but, rather, provides only general legal information to alert the reader to a potential legal issue. Please contact us for review and legal advice as to whether any particular document meets O.R.C. § 1343.03(A)'s requirement for a "written contract" in order to support an interest rate in excess of the statutory interest rate.

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