Cite as 2010 Ark. App. 223

# ARKANSAS COURT OF APPEALS

DIVISIONS II & III
**No.** CA09-271

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| | **Opinion Delivered** March 3, 2010 |
| TRI-EAGLE ENTERPRISES, DEWALT ACCEPTANCE, INC., RANDALL BLYTHE, and GRETA BLYTHE<br>APPELLANTS | APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT<br>[NO. CV2006-269] |
| V. | HONORABLE J. MICHAEL FITZHUGH, JUDGE |
| REGIONS BANK<br>APPELLEE | SUPPLEMENTAL OPINION ON DENIAL OF REHEARING |

**M. MICHAEL KINARD, Judge**

The appellee, Regions Bank, filed its petition for rehearing following our reversal of the circuit court on the issue of whether the court erred in determining the floor-plan interest rate in this case was unambiguous. Regions had argued in its appellee's brief that the interest rate was clearly fixed because the lending agreement had no "benchmark" by which to calculate a variable rate. We held the clause to be ambiguous. This point was thoroughly discussed in our opinion, which held that the interest-rate clause was so ambiguous that the fact-finder should utilize proffered expert testimony and other evidence, including Regions's own argument regarding the lack of a benchmark, to determine whether the instrument was intended to have a fixed or variable interest rate and how the interest rate should be calculated.

In its unresponded-to petition for rehearing, Regions reiterates its argument that the lack of a benchmark renders the interest rate unambiguously fixed. In this regard, Regions simply re-argues a point already considered by this court, and rehearing is not warranted. Regions also asks this court to make it clear to the trial court that appellants' expert witnesses should not be permitted to select a benchmark for purposes of calculating a variable interest rate. Regions then asks this court to either select a benchmark ourselves or instruct the trial court to do so.

Regions misses the salient point, which this court believed clear—that the interest-rate clause in the instrument is ambiguous and must be interpreted by the fact-finder; thus, neither this court nor the trial court can, as a matter of law, declare whether the interest rate is fixed or variable or whether a particular benchmark, if any, should be chosen. That is the job of the fact-finder. In doing that job, the fact-finder can consider Regions's claim that the interest-rate clause must necessarily be fixed because it contains no benchmark. In fact we made a point of saying in the opinion that Regions's argument on this point illustrates precisely the type of useful evidence that a fact-finder could use in interpreting the interest-rate clause. We write this supplemental opinion to make it clear that the interest rate intended by the parties' contract and whether the amount of interest paid by Tri-Eagle was excessive are questions for the fact-finder.

The petition for rehearing is denied.

VAUGHT, C.J., and ROBBINS, GRUBER, GLOVER, and HENRY, JJ., agree.