

**8.00% interest
= 00.00 or
maybe 5.00%**



COUNSEL'S CORNER

In 2008 Aneita Weaver loaned her nephew John Jamar \$193,000 so that John could purchase a Harris County townhouse. The two parties prepared and signed a loan agreement, without the help of lawyers or title agents. That was their first (well maybe their second) mistake.

The funds were loaned at 8.00% interest for one year. Jamar was supposed to pay Weaver \$1,400 per month during the term of the loan, which by my math establishes an amortization of 31.5 years.

The loan agreement stated: "If the . . . property does not sell [by January 1, 2010, then] . . . Aneita J. Weaver has the right to assume the title to the property free and clear from John Jamar, for the balance of the loan."

Seriously. That's what it says.

Jamar neither sold the property by January 1, 2010, nor did he make his payments to Weaver. So Weaver sued, asking the trial court for specific performance under the loan agreement, unpaid interest at the stated rate of 8.00% and attorney's fees.

Weaver sued because Jamar did not sign a Deed of Trust, which would have otherwise allowed her to foreclose. Without a Deed of Trust Weaver's only choices were to ignore the default or assert a lawsuit and ask the Court to force Jamar to convey the property to her.

Weaver won the case. The trial court ordered Jamar to convey the Property to Weaver. However, Weaver did not receive 8.00% interest in the Judgment. Instead, the trial court awarded her only 5.00% interest on all post-judgment amounts.

So Weaver appealed.

The Appellate Court looked at the security clause and focused on Weaver's right to ". . . assume the title to the property . . . for the *balance* of the loan."

The Court decided that the everyday meaning of “*balance*” includes principal and interest. And that Weaver’s exercise of her right to get title to the townhouse extinguished the balance of the loan, including interest.

So, Weaver’s interest rate of 8.00% was reduced to 00%. However, once the Judgment was entered by the trial court, the full Judgment amount accrued interest at the statutorily-mandated rate of 5.00%. Which wasn’t quite as painful. But still.

All of this pain was caused by the preparation by the parties of their own loan agreement, written with terms and provisions they could understand. And we can appreciate that.

But the other side is that Weaver was inadequately protected. I shudder to think of her legal expenses to clean up this mess, when a properly worded Promissory Note and Deed of Trust would likely have avoided both courthouses entirely.

See *Weaver v. Jamar*; 14-11-00516-CV; Texas Court of Appeals 14th District; October 30, 2012.

Lessons learned:

1. Loan documents written by non-lawyers cause problems.
2. Loan docs with problems generate lawsuits.
3. Lawsuits keep lawyers employed.
4. It is probable that Weaver and Jamar could have avoided the Courthouse if they had proper loan docs.
5. Best wishes for a happy holiday season!

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