STATE OF MICHIGAN

COURT OF APPEALS

ANDREW KALMAN,

Plaintiff-Appellee/
Cross-Appellant,

v

ROBERT E. BUTCHER,

Defendant-Appellant/
Cross-Appellee.

UNPUBLISHED
October 29, 1996

No. 176359
LC No. 93-307805-CZ

Before: Taylor, P.J., and Markey and N. O. Holowka,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court judgment, following a jury verdict in favor of plaintiff in the amount of $139,559, on plaintiff's claim to enforce a guarantee. Plaintiff cross-appeals from the order denying his motion for mediation sanctions. We affirm the judgment entered on the verdict, but reverse the order denying sanctions.

In April of 1987, defendant agreed to guarantee a $50,000 note given to plaintiff by his brother's company. Plaintiff brought suit in 1991, alleging breach of the guarantee agreement.

Defendant argues that the note and the guarantee are void. Defendant cites no authority to support his claim that the waiver provision is against public policy. Hence, this issue is waived for review. See *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994). Further, the note is clearly not usurious because it contained a provision specifically limiting the post-default interest to the maximum allowed by law.

Defendant claims that, because the judgment only provides for interest on unpaid principal without interest on the accrued interest, this constitutes a finding that he is not liable on the note. We disagree. The case of *People v Garcia*, 448 Mich 442; 531 NW2d 683 (1995), does not mandate such a conclusion and defendant cites no other authority to support this view.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Further, there is no indication that the trial court prejudged the usury issue. Although the court did indicate in its opinion that this situation did not amount to loan-sharking, no other conclusion could be made considering the terms of the note. We find no error in this regard.

We also conclude that issues concerning the maximum rate of interest and compounding were purely legal questions and, accordingly, the court properly decided those questions. See *Apter v Joffo*, 32 Mich App 411, 417; 189 NW2d 7 (1971).

Defendant next contends that the court erred because the judgment fails to comport with the express terms of the note in regard to the interest to be assessed. We reject this argument and conclude that the judgment appropriately reflected defendant's liability under the note.

Defendant further contends that the trial court erred in several evidentiary rulings. Having thoroughly reviewed the record, we conclude that none of defendant's claims have merit. The trial court did not abuse its discretion in any of its evidentiary rulings. *Poirier v Grand Blanc Twp (After Remand)*, 192 Mich App 539, 546; 481 NW2d 762 (1992).

Defendant also argues that the trial court erred in refusing to give his requested instructions to the jury. We disagree. The trial court has discretion to give additional instructions not covered by the standard jury instructions so long as they are applicable, accurately state the law, are concise, understandable, conversational, unslanted and nonargumentative. *Mull v Equitable Life Assurance Society*, 196 Mich App 411, 423; 493 NW2d 447 (1992), aff'd 444 Mich 508 (1994). Here, the trial court did not abuse its discretion in concluding that the requested instructions were argumentative and in therefore refusing to give them.

On cross-appeal, plaintiff contends that the trial court erred in refusing to award mediation sanctions under MCR 2.403. We agree, because plaintiff was entitled to mediation sanctions. *Dean v Tucker*, 205 Mich App 547, 551-552; 517 NW2d 835 (1994); *Michigan Basic Property Ins Ass'n v Hackert Furniture*, 194 Mich App 230, 234-235; 486 NW2d 68 (1992). Plaintiff asserts that the award of contractual attorney fees forecloses the award of fees pursuant to MCR 2.403. This is incorrect inasmuch as the agreement was undertaken with a presumed knowledge that a similar award might be available under the mediation rule. Further, the award of fees, pursuant to a contractual provision and the award of mediation sanctions pursuant to the court rule, serve a different purpose. See *Howard v Canteen Corp*, 192 Mich App 427, 440-441; 481 NW2d 718 (1992). The purpose of the contractual provision is to encourage prompt payment while the court rule's purpose is to place the burden of litigation costs on the party who insists on going to trial but does not improve its position. The trial court should have awarded plaintiff mediation sanctions under MCR 2.403.

Affirmed in part, reversed in part, and remanded for the imposition of mediation sanctions. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ Jane E. Markey
/s/ Nick O. Holowka