

MAVOURNEEN M. TORNESELLO et al.

v.

DEBRA A. TISDALE et al.

Argued September 14, 2010
Decided December 21, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,
GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Both parties appeal from a judgment of the Superior Court (Kennebec County, *Mills, J.*) issued after a bench trial, awarding Mavourneen M. and Michael Tornesello \$221,578.00 due from Debra A. Tisdale individually and as the representative of her husband's estate on a loan from the Tornesellos, and awarding Tisdale \$103,376.99, plus \$23,000 in attorney fees, due from Michael Tornesello on a loan from the Tisdales.

Contrary to Tisdale's assertions: (1) the court did not clearly err or abuse its discretion in holding that she was estopped from asserting a statute of limitations defense with regard to the loan from the Tornesellos, *see Dep't of Health & Human Servs. v. Pelletier*, 2009 ME 11, ¶ 15, 964 A.2d 630, 635 (noting standard of review); *Tarason v. Town of S. Berwick*, 2005 ME 30, ¶ 15, 868 A.2d 230, 234 (listing elements of equitable estoppel); *Nuccio v. Nuccio*, 673 A.2d 1331, 1334-35 (Me. 1996) (discussing application of equitable estoppel to bar a statute of limitations defense); (2) the court did not err in holding that the note was an installment note, *see Barron v. Boynton*, 137 Me. 69, 71-72, 15 A.2d 191, 192-93 (1940); and (3) the court did not err or abuse its discretion by allowing Tornesello to offset the attorney fees awarded under the second note, *see Cheung v. Wu*, 2007 ME 22, ¶ 24, 919 A.2d 619, 624-25.

Contrary to the Tornesellos' contentions, the court also did not err in (1) holding that the Tornesellos could not collect damages for future installment payments not yet due on the loan to the Tisdals on the basis of anticipatory repudiation, because no "definite, unequivocal, and absolute" repudiation of future obligations was shown, *see Wholesale Sand & Gravel, Inc. v. Decker*, 630 A.2d 710, 711 (Me. 1993); and (2) applying the twenty-year statute of limitations, 14 M.R.S. § 751 (2009), to the loan from the Tisdals based on its finding that the note was negotiable, because the phrase "on order" contained in the note satisfies the statutory requirement that a negotiable instrument be payable "to order." 11 M.R.S. § 3-104 (1992), *repealed by* P.L 1993, ch. 293, § A-1 (effective Oct. 13, 1993); *see also Tornesello v. Tisdale*, 2008 ME 84, ¶ 10, 948 A.2d 1244, 1249 (stating that a note must be negotiable to constitute a promissory note eligible for the twenty-year limitations period).

The entry is:

Judgment affirmed.

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