

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BAFUNDO & ASSOCIATES,)
Plaintiff Below/Appellee,)
v.)
SAVANNAH COLLINS,)
Defendant Below/Appellant)

C. A. No: 2008-03-363

William W. Erhart, Esquire
800 King St.
Suite 303
Wilmington, DE 19801
Attorney for Plaintiff Below/Appellee

Kester I.H. Crosse, Esquire
Williams and Crosse
1214 King St.
Wilmington, DE 19801
*Attorney for Defendant
Below/Appellant*

**ORDER AND OPINION ON DEFENDANT BELOW/APPELLANT'S
MOTION TO DETERMINE INTEREST**

Following trial and entry of judgment in this Court, the parties now dispute how the pre-judgment and post-judgment interest is to be properly calculated. This is the Court's ruling on Defendant Below/Appellant Savannah Collins' ("Collins") Motion to Determine Interest.

Facts and Procedural History

This is a civil debt action in which Plaintiff Below/Appellee Bafundo & Associates ("Bafundo") alleges that it performed re-siding work on the residence of Savannah Collins ("Collins"). Bafundo avers that on January 4, 2007 it submitted an

invoice totaling \$4,421.00 to Collins, which Collins has refused to pay. The complaint on appeal seeks damages in that amount, plus interest from January 4, 2007, plus costs and fees.

On September 29, 2008, following a trial, this Court issued an oral bench ruling in favor of Bafundo and against Collins in the amount of \$4,421.00, with pre-judgment interest at the legal rate from February 4, 2007 and post-judgment interest at the legal rate, plus court costs.

On December 5, 2008, following receipt of the Collins' bond in the amount of \$4,200.00 posted on appeal, counsel for Bafundo sent a letter counsel for Collins requesting the remaining court costs and accrued interest from February 3, 2007 to the date of the letter, totaling \$1,164.19. Collins has refused to pay this additional amount.

On February 11, 2009 Collins filed a motion requesting that the court correct or declare the interest due in this matter. Collins contends that because the trial in this Court was a trial de novo, she is only required to pay interest from September 29, 2008, the date of the judgment in this Court. In the alternative, Collins argues that if the judgment relates back, the date of the relation back should be the date of the decision of the Justice of the Peace Court, February 27, 2008, rather than February 4, 2007. In response, Bafundo asserts that the pre-judgment interest began accruing on February 4, 2007, at the legal rate of 11.25%.

Order and Opinion

It is well settled under Delaware law that

[i]nterest is awarded in Delaware as a matter of right and not of judicial discretion. As a general rule, interest accumulates from the date payment was due the plaintiff, because full compensation requires an allowance for

the detention of the compensation awarded and interest is used as a basis for measuring that allowance.¹ It should follow, therefore, that the plaintiff is entitled to recover interest from [the defendant] for a period preceding the entry of judgment.²

Counsel for Collins has cited no authority supporting the contention that the interest should begin accumulating on any date other than the date on which payment was originally due to Bafundo, beyond the bare assertion that the trial in this Court was a trial *de novo*.

The invoice at issue, introduced into evidence as Plaintiff's Exhibit No. 6, was dated January 4, 2007, and did not include a due date for the payment. In the September 29, 2008 bench ruling this Court awarded pre-judgment interest beginning on February 4, 2007 (30 days after the invoice date), which the Court deemed a reasonable time for Collins to have satisfied the debt. Therefore, the plaintiff is entitled as a matter of right to pre-judgment interest beginning on February 4, 2007, the invoice due date imposed by this Court. The Court has no information on which to find otherwise.

The issue remains regarding precisely what interest rate should be applied for the pre-judgment and post-judgment periods. 6 Del. C. §2301(a) provides that “[w]here there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate.”³ The Federal Reserve Discount Rate in effect on February 4, 2007 was 6.25%, which makes the legal rate 11.25%.⁴ That rate applies to the pre-judgment interest, calculated from the date of the breach

¹ Citing *Metropolitan Mut. Fire Ins. Co. v. Carmen Holding Co.*, Del.Supr., 220 A.2d 778 (1966) and *Levien v. Sinclair Oil Corporation*, Del.Ch., 314 A.2d 216 (1973)

² *Moskowitz v. Mayor and Council of Wilmington*, 391 A.3d 209, 210 (Del. 1978); See also *Ripsom v. Beaver Blacktop, Inc.*, 1988 WL 32071, *21 (Del. Super.); *Knapp v. Shepherd*, 741 A.2d 1026 (Del. Super. 1999)

³ See also *American General Corp. v. Continental Airlines Corp.*, 622 A.2d 1 at 14 (Del. Ch .1992)

⁴ <http://www.federalreserve.gov/releases/h15/>

(February 4, 2007) to the date of this Court's judgment (September 29, 2008), which totals \$417.52. This is determined by multiplying 307 days by the per diem (per day) interest of \$1.36. The per diem interest is determined by multiplying the judgment amount (\$4,421.00) by the annual interest rate (11.25%) and then dividing by the number of days in a year (365).

That same per diem interest (\$1.36/day) also applies to the post-judgment interest, calculated from the date of this Court's judgment (September 29, 2008) until the date on which judgment is satisfied, at the rate of \$1.36/day (see above).

In summary, the pre-judgment interest totals \$417.52 and post judgment interest accrues at the rate of \$1.36 per day, from September 29, 2008, until paid. Should any partial payments be made that pay the total interest due at the time of payment, plus an amount which would reduce the principle amount of the judgment, (\$4,421.00), a new per diem interest amount must be calculated using the formula stated above.

SO ORDERED

Judge

