

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

G. MURRAY DERRINGTON)	
PCF MANAGEMENT,)	
)	
Plaintiff,)	
)	No. 97J-07-108 MMJ
v.)	
)	
LINDA A. WEDIN and CURTIS A.)	
WEDIN,)	
)	
Defendants.)	

Submitted: January 21, 2010

Decided: February 23, 2010

On Defendant's Motion to Reconsider Execution of Judgment and Plaintiff's
Motion for Execution of Judgment

ORDER

Michael P. Morton, Esquire, Wilmington, Delaware, Attorney for Plaintiff

Linda A. Wedin and Curtis A. Wedin, Defendants, *Pro Se*

JOHNSTON, J.

On August 20, 1996, a judgment was entered in favor of plaintiff G. Murray Derrington PCF Management, and against defendants Linda A. Wedin and Curtis A. Wedin. The judgment was transferred to Superior Court on July 14, 1997. At that time, the judgment became a lien on defendants' real property for 10 years.

On June 6, 2009, plaintiff filed a Motion for Execution on Judgment. The Motion is a *scire facias* sur judgment authorizing a writ of execution. A Superior Court Commissioner presided over a hearing on the motion. The Commissioner issued an Order allowing renewal of the judgment. This Court vacated the Commissioner's Order to permit reconsideration of the renewal of judgment.

Defendants filed a Motion to Reconsider Execution on Judgment. Defendants argue that pursuant to 10 *Del. C.* §§ 4711 and 5073, judgments cannot be executed upon more than five years from the time an installment falls due.

Section 4711 provides that no judgment entered in Superior Court shall continue as a lien longer than 10 years, unless the lien is renewed by agreement or by writ of *scire facias* before the expiration of 10 years. Section 5073 provides that a judgment can be executed upon at any time within 5 years, without the necessity of bringing a *scire facias* action.

Although the lien expired because it was not renewed within the 10-year period, the underlying judgment did not expire.¹ The judgment may be enforced through a writ of *scire facias*, even though 10 years have passed.

The burden is upon defendants to show cause why the judgment should not be enforced. The Court held an evidentiary hearing on January 12, 2010. Defendant Linda A. Wedin testified that the debt underlying the judgment had been paid. She stated that she recalled making periodic payments by money order. However, she had no documentation and could not recall the dates, amounts or number of payments. Another witness confirmed that defendants normally used money orders to pay obligations.

Plaintiff representative G. Murray Derrington testified that plaintiff had obtained 13 different judgments against defendants. Eleven of the 13 judgments have been satisfied. The remaining 2 are the subject of this action. One of the 2 remaining judgments was reduced by plaintiff when plaintiff reviewed its records. Plaintiff maintained detailed payment records but had no record of additional payments on the 2 judgments.

The Court finds that defendants have failed to show cause why the judgment should not be subject to execution. However, it appears to the Court that defendants had reason to believe that the 2 judgments had been

¹ *Gamles Corp. v. Gibson*, 939 A.2d 1269, 1272 (Del. 2007).

satisfied. Defendants had been informed that there were no liens or judgments preventing their obtaining a mortgage in 2004. Defendants were unaware of any actions taken to execute the judgment until this action was filed on July 9, 2009.

Post-judgment interest is awarded as a matter of right, not as a matter of judicial discretion.² Generally, interest will accumulate from the date payment is due to adequately compensate a plaintiff for losses incurred due to the inability to use the money awarded.³ Interest is the measure of compensation.⁴ Delaware public policy encourages courts to provide full compensation to a prevailing plaintiff.⁵

In *E.M. Fleischmann Lumber Corp. v. Resources Corp. Intern.*, the United States District Court for the District of Delaware, while discussing pre-judgment interest, stated that the “allowance of interest as a measure of compensation must be made as a matter of fairness and to accomplish justice.”⁶ Where the plaintiff causes a large part of a delay upon which interest might be computed, the District Court found that “considerations of fairness and justice might require the elimination of such period.”⁷ The Delaware Supreme Court, citing *E.M. Fleishcman Lumber Corp.*, also

² *Moskowitz v. Mayor and Council of Wilmington*, 391 A.2d 209, 210 (Del. 1978).

³ *Universal City Studios, Inc. v. Francis I. DuPont & Co.*, 334 A.2d 216, 222 (Del. 1979).

⁴ *Id.*

⁵ *Moskowitz*, 391 A.2d at 210.

⁶ 114 F. Supp. 843, 845 (D. Del. 1953).

⁷ *Id.*

found that the general rule may be “affected by other considerations, such as long delay on the part of a plaintiff prosecuting his action”⁸ Discussing compensation due to a dissenting shareholder, the Court found that while pre-judgment interest “is often awarded at rates that a ‘prudent investor’ could expect to receive,” post-judgment interest “merely ensures that the dissenting shareholder remains whole during any post judgment litigation.”⁹ Similarly, the Court of Chancery has held that the “goals of post-judgment interest are to ensure the petitioner remains whole during post-judgment litigation and prevent improper judicial machinations, either through frivolous appeal or willful delay of payment.”¹⁰

In the instant case, plaintiff was awarded a judgment in 1996 and received a lien on the defendants’ real property for 10 years beginning in 1997. Plaintiff did not file the Motion for Execution on Judgment until 2009. Having heard the testimony of the witness as presented during the hearing in the rule to show cause, the Court finds that defendants carried their burden of proving that they reasonably believed that all judgments had been resolved.

⁸ *Metropolitan Mut. Fire Ins. Co. v. Carmen Holding Co.*, 220 A.2d 778, 781-82 (Del. 1966).

⁹ *Id.*

¹⁰ *Cede & Co. v. Technicolor, Inc.*, 2003 WL 23700218, at *46 (Del. Ch. 2003) (reversed on other grounds).

It would be unfair and unjust, under the specific and peculiar facts of this case, to permit plaintiff to be awarded interest between August 20, 1998 (2 years following entry of the judgment) and June 6, 2009 (the date plaintiff filed a Motion for Execution of Judgment).

THEREFORE, defendants' Motion to Reconsider is hereby **DENIED IN PART**. Plaintiff's Motion for Execution of Judgment is hereby **GRANTED**. The Court hereby authorizes a writ of execution of the August 20, 1996 judgment, plus interest, except that the interest awarded shall not include any interest accrued between August 20, 1998 and June 6, 2009.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston