

**REL: August 4, 2023**

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# **ALABAMA COURT OF CIVIL APPEALS**

**SPECIAL TERM, 2023**

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**CL-2023-0144**

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**U.S. Auto Purchasing Center, LLC**

**v.**

**Tashay S. Hives**

**Appeal from Mobile Circuit Court  
(CV-22-901983)**

MOORE, Judge.

U.S. Auto Purchasing Center, LLC ("the creditor"), appeals from a default judgment entered by the Mobile Circuit Court ("the trial court") against Tashay S. Hives ("the debtor"), which did not include an award

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of any prejudgment interest. We reverse the judgment and remand the case with instructions to the trial court to amend the judgment.

### Background

On November 7, 2015, the debtor purchased a 2010 Chrysler Sebring automobile from Infinite Autos, LLC, for \$13,108.99. The debtor made a cash down payment of \$1,500 and executed a "simple interest retail installment contract" ("the contract"), pursuant to which she agreed to pay the balance of \$11,608.99 in 111 biweekly payments of \$175.32. The contract informed the debtor that she would be charged interest at a rate of 25.99% and that her total finance charges would amount to \$7,851.53. Infinite Autos assigned the contract to the creditor on the date of the purchase. The debtor eventually defaulted on the payment terms contained in the contract, and the creditor repossessed the automobile and sold it at auction on June 19, 2018, for \$1,600, leaving a deficiency on the amount owed pursuant to the contract. The debtor did not make any further payments to cure the deficiency.

On November 10, 2022, the creditor filed a complaint in the trial court, alleging that the debtor was in breach of the contract and seeking

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damages in the amount of \$7,840.29 for the principal amount due, \$10,724.49 in prejudgment interest, and \$2,403.05 in attorney's fees. The creditor served the debtor with the complaint, but she did not answer or otherwise appear in the case. On December 15, 2022, the creditor moved the trial court for the entry of a default judgment in the amount of \$21,175.64, which included \$10,932.30 in prejudgment interest that had allegedly accrued to that date. The creditor attached to the motion, among other things, an affidavit from one of its employees establishing the principal amount due under the contract and a worksheet indicating how the prejudgment-interest amount had been calculated.

On February 26, 2023, the trial court granted the motion in part and entered a default judgment against the debtor "in the amount of \$7,840.29, principal, and \$2,403.05 attorney's fees for a TOTAL JUDGMENT OF \$10,243.34 plus costs ...." (Capitalization in original.)

On March 2, 2023, the creditor filed a postjudgment motion requesting that the trial court amend the judgment to include an award of \$10,932.30 in prejudgment interest as had been requested in the motion for the entry of a default judgment. The trial court denied the

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postjudgment motion on the day that it was filed. On March 7, 2023, the creditor appealed the judgment to this court.

### Issue

The sole issue on appeal is whether the trial court erred in failing to include the requested prejudgment interest when it entered the default judgment in favor of the creditor. The creditor mentions postjudgment interest throughout its brief, but it did not raise any issue regarding postjudgment interest in the proceedings below, and we cannot consider an issue raised for the first time on appeal. Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992).

### Standard of Review

"[B]ecause the trial court's determination concerning the availability of prejudgment interest is a legal one, focusing on the application of law to the facts rather than the resolution of factual disputes, no presumption of correctness applies to that determination, and we review it de novo." Jernigan v. Happoldt, 978 So. 2d 764, 767 (Ala. Civ. App. 2007).

Analysis

Section 8-8-8, Ala. Code 1975, provides:

"All contracts, express or implied, for the payment of money, or other thing, or for the performance of any act or duty bear interest from the day such money, or thing, estimating it at its money value, should have been paid, or such act, estimating the compensation therefor in money, performed."

Pursuant to § 8-8-8, prejudgment interest runs from the date the debt matures until the date of the entry of the judgment. See State v. Marble City Plaza, Inc., 989 So. 2d 1059, 1060 n.4 (Ala. Civ. App. 2006), aff'd, Ex parte Marble City Plaza, Inc., 989 So. 2d 1065 (Ala. 2007). In a breach-of-contract case, a party who is owed money pursuant to the terms of a contract is generally entitled to prejudgment interest accruing from the date the money is owed in addition to the principal sum due. See Boyington v. Bryan, 174 So. 3d 347 (Ala. Civ. App. 2014).

Section 8-8-1, Ala. Code 1975, provides that, "except by written contract," the maximum rate of interest shall be 6% per annum. Notwithstanding § 8-8-1, § 8-8-5(a), Ala. Code 1975, allows a party to a loan or credit sale when the principal amount exceeds \$2,000 to agree in

writing "to pay such rate or rates of interest ... as [the party] may determine ...." In this case, the debtor agreed in the contract to pay interest at a rate of 25.99%, and, at that rate, the amount of the prejudgment interest that had accrued as of the date of the filing of the motion for the entry of the default judgment was \$10,932.30. The creditor requested in its postjudgment motion that the trial court amend its judgment to include that amount of prejudgment interest, but the trial court declined to do so.

The trial court did not explain the reason why it failed to award any prejudgment interest. The creditor complains about this omission, but it did not request a hearing on its postjudgment motion to explore the grounds for the denial. See Combs v. Combs, 4 So. 3d 1141, 1150 (Ala. Civ. App. 2008) ("[I]f a party fails to request a hearing on his or her postjudgment motion, failure to hold a hearing is not error."). The creditor theorizes that the trial court may have found the 25.99% interest rate usurious. Pursuant to § 8-8-12(b), Ala. Code 1975, "[t]he borrower of money at a usurious rate of interest shall not in any case be required to pay more than the principal sum borrowed ...." However, usury, meaning

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the charging of interest beyond that which is allowed by law, is not presumed and must be proven by the party seeking to avoid the payment of interest. Brockway v. United States Fin. Co., 289 Ala. 198, 202, 266 So. 2d 756, 759 (1972). The debtor did not present any evidence indicating that the 25.99% interest rate violated state law and, thus, that any interest owed at that rate would not be recoverable. Thus, we cannot discern the reason why the trial court determined that prejudgment interest should not be awarded. Regardless, we conclude that the record contains no valid ground for denying the claim for prejudgment interest at the rate set forth in the contract.

We therefore hold that the trial court committed reversible error in failing to award prejudgment interest in the default judgment. The creditor asserts on appeal that the case should be remanded for the trial court to recalculate the prejudgment interest due, which, on appeal, it claims is \$11,339.84; however, in its postjudgment motion, the creditor asked for the judgment to be amended to award it only \$10,932.30 in prejudgment interest. The creditor did not argue that prejudgment interest had continued to accrue and that the amount awarded should

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have been higher, as it now contends on appeal. We cannot consider that argument, which was never considered by the trial court. See Andrews, supra.

### Conclusion

For the foregoing reasons, we reverse the default judgment and remand the case to the trial court to amend its judgment to award the creditor \$10,932.30 in prejudgment interest, as requested in the creditor's postjudgment motion, and for such other proceedings as are consistent with this opinion.

**REVERSED AND REMANDED WITH INSTRUCTIONS.**

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.