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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

WILLIAM J. CAMPBELL et al.,

Plaintiffs and Appellants,

v.

FIDELITY NATIONAL TITLE  
INSURANCE COMPANY,

Defendant and Respondent.

A127060

(San Francisco County  
Super. Ct. No. CPF-09-509613)

Plaintiffs and appellants William J. Campbell et al. (collectively Campbell) appeal the judgment entered upon confirmation of an arbitration award in their favor against defendant and respondent Fidelity National Title Insurance Company (Fidelity).<sup>1</sup> Campbell contends the trial court erred by failing to include in the judgment (1) post award, prejudgment interest and (2) postjudgment interest.

Having carefully considered the issues presented, we conclude the trial court did not correctly specify those elements of the judgment subject to postjudgment interest. Accordingly, we remand the matter with instructions that the trial court modify the judgment consistent with this opinion.

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<sup>1</sup> Fidelity filed an appeal of the judgment confirming the arbitration award but requested dismissal of the appeal while it was pending in this court. On May 7, 2010, we granted the request for dismissal and ordered that partial remittitur issue forthwith with respect to Fidelity, leaving Campbell's cross-appeal to proceed.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In August 2002, Campbell purchased real property located at 2121-2123 Leavenworth Street in San Francisco. Before the purchase, Fidelity provided Campbell with a preliminary report containing a legal description of the property. Fidelity's legal description showed that the property measured 137.5 feet in length. In fact, the property measured 112 feet in length. Campbell did not discover the erroneous legal description until after close of escrow, whereupon he tendered a claim to Fidelity under the title insurance policy that he was damaged by the erroneous property description. On May 6, 2003, Fidelity denied the claim. Subsequently, Fidelity reversed its position and accepted tender of the claim in May 2005.

The dispute over the legal description provided by Fidelity remained unresolved in March 2009, when the parties entered arbitration to determine "the amount due from [Fidelity] (a title insurer) to [Campbell] (real estate developers) for an erroneous description of the size of a parcel of real property." After receiving evidence and before issuing a decision, the arbitrator received closing briefs from the parties. The closing briefs addressed several specific issues identified by the arbitrator, including whether Campbell was entitled to an award of interest. In his closing brief, Campbell asserted he was entitled to prejudgment interest from May 5, 2003 (date of tender) "to the present" on two grounds: (1) for breach of contract damages pursuant to Civil Code section 3287<sup>2</sup>; (2) for bad-faith tort damages pursuant to section 3288.

The arbitrator issued a Final Award in August 2009. In the Final Award, the arbitrator found that Campbell was entitled to recover from Fidelity: "1. \$1,450,000, representing [Campbell's] actual loss measured by the highest and best use of the property 'before' and 'after' the title defect, less \$75,000 already paid by [Fidelity], or a total of \$1,375,000; 2. Interest on the above amount at the rate of 10% per annum until paid, commencing on May 6, 2003." In addition, the arbitrator ruled that Fidelity should

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<sup>2</sup> Further statutory references are to the Civil Code unless otherwise noted.

bear the fees and costs of arbitration, and ordered Fidelity to reimburse Campbell in the further amount of \$30,200 for arbitration fees previously incurred.

Thereafter, Campbell petitioned the trial court to confirm the Final Award, and Fidelity cross-petitioned to vacate the award. On September 23, 2009, the trial court filed an order granting Campbell's petition to confirm the final arbitration award. Campbell submitted a proposed judgment seeking: "(1) The sum of \$2,266,364.38 as set forth in Petitioner's Petition to Confirm the Final Arbitration Award;<sup>[3]</sup> [¶] (2) Pre-judgment interest pursuant to California Civil Code §§ 3287(a) . . . at 10% per annum on the \$2,266,364.38 amount (a per diem rate of \$602.92), from August 8, 2009, the date of the Final Arbitration Award, until the date of this Judgment; [¶] (3) Petitioners' costs . . . according to proof; [¶] (4) Post-judgment interest pursuant to California Code of Civil Procedure § 685.020(a) at the rate of 10% per annum on the sum total of subsections (1) through (3) above from the date judgment is entered herein until this judgment is satisfied in full."

Fidelity filed objections to the Proposed Judgment submitted by Campbell and submitted an alternative Proposed Judgment. In its objections, Fidelity argued that the Final Arbitration Award "contemplates a straight 10% per annum [interest] calculation based on \$1,375,000 'until paid', and not a recalibration of certain interest as prejudgment interest" as asserted by Campbell in his proposed judgment. The trial court adopted the alternative proposed judgment submitted by Fidelity and filed judgment on November 5, 2009. The judgment awards Campbell: "(1) The sums awarded in the Final Arbitration Award as follows: (a) The sum of \$1,375,000, together with interest thereon at 10% per annum from May 6, 2003, until paid; (b) The sum of \$30,200, representing the portion of [arbitration] fees incurred by [Campbell]. (2) [Campbell's] costs, pursuant to California Code of Civil Procedure section 1293.2, according to proof. (3) Post-

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<sup>3</sup> Campbell's petition reflects the sum of \$2,266,364.38, determined as follows: "(1) The \$1,375,000 sum referenced in the Final Award; (2) Interest on that sum at the rate of 10% per annum from May 6, 2003, until the date of the Final Award, August 8, 2009, in the amount of \$861,164.38; (3) The \$30,200 sum referenced in the Final Award as representing that portion of fees and expenses [Fidelity] owed [Campbell]."

judgment interest pursuant to California Code of Civil Procedure section 685.020(a) at the rate of 10% per annum on the sum total of subsections (1)(b) and (2) above from the date judgment is entered herein until this judgment is satisfied in full.”

Fidelity filed notice of appeal on November 16, 2009. Campbell filed notice of cross-appeal on November 24, 2009.<sup>4</sup>

## DISCUSSION

### A. Prejudgment Interest

Campbell contends that the trial court erred by denying his request for prejudgment interest between the date of the Final Award and the date of judgment “on the *full amount* of the Final Arbitration Award.”<sup>5</sup> We find no basis to disturb the judgment on this point.

Campbell’s assertion of error regarding the trial court’s entry of prejudgment interest is premised upon his view that California case law unambiguously supports his interpretation of the method for calculating prejudgment interest. According to Campbell, the trial court was required to: (1) calculate pre-award prejudgment interest on

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<sup>4</sup> As noted above, on May 7, 2010, we granted Fidelity’s request to dismiss its appeal. Fidelity informs us that on May 14, 2010, it paid Campbell a total amount of \$2,374,550.50 in purported satisfaction of the judgment, being the total of (1) the principal monetary award (PMA) of \$1,375,000; (2) interest at 10% on the PMA from May 6, 2003 through May 6, 2010 totaling \$962,500; (3) reimbursement for arbitration costs totaling \$32,200; (4) stipulated costs totaling \$2,152.69; (5) postjudgment interest at 10% through May 6, 2010 on items (3) and (4) totaling \$1,613.20; (6) eight days interest on the PMA at \$376.71 per day, and eight days postjudgment interest on items (3) & (4) of \$8.86 per day, from May 6, 2010 to the date of payment on May 14, 2010, totaling \$3,084.61.

<sup>5</sup> The arbitration award itself is not in dispute. That Campbell is entitled to prejudgment and postjudgment interest on the arbitration award is not in dispute. Nor is it disputed that the issue of prejudgment interest was properly before the arbitrator and that he had the power to decide the issue. In fact, as mentioned above, both parties briefed the issue of prejudgment interest in their closing briefs in arbitration and Campbell requested prejudgment interest either on the basis of liquidated contract damages under section 3287 or bad-faith tort damages under 3288, and the arbitrator awarded prejudgment interest at the legal rate of 10% per annum (but did not specify whether the award was made pursuant to section 3287 or 3288).

the sum of \$1,375,000 (the principal sum of the Award), and (2) combine the sum of the pre-award interest and the principal sum of \$1,375,000 to calculate the amount of post award prejudgment interest. Campbell argues that in the arbitration context, pre-award and post award prejudgment interest, calculated in the above manner, must be added together to reflect the “full amount” of prejudgment interest to which he is entitled.<sup>6</sup>

We need not reach the merits of Campbell’s legal argument because the language of the arbitrator’s award disposes of the issue before us. First, we note that Campbell’s claim regarding the proper method of computation of pre and post award prejudgment interest contradicts the plain language of the Final Award itself. Simply put, the Final Award does not reflect an award of pre-award and post award prejudgment interest. Rather, it unambiguously awards prejudgment interest on the sum of \$1,375,000 “at 10% per annum until paid, commencing on May 6, 2003.”<sup>7</sup> Campbell’s attempt to create an ambiguity regarding the arbitrator’s award of prejudgment interest where none exists is simply unpersuasive. As importantly, under settled California law, when the parties agree to submit an issue to arbitration, the arbitrator’s decision is generally not reviewable for errors of law, even “where an error of law appears on the face of the award. . . .” (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28 (*Moncharsh*).) Thus, even if the arbitrator erred as a matter of law by failing to award prejudgment interest in the manner outlined by Campbell, the trial court was not free to revise the award to correct such error, and we are similarly constrained.<sup>8</sup> (*Ibid.*)

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<sup>6</sup> In other words, under Campbell’s methodology, prejudgment interest is compounded by calculating it in two stages; (1) calculate the amount of *pre-award* interest accrued on the PMA (\$1,375,000) at 10% per annum from May 6, 2003 until the date of the Final Award on August 8, 2009; (2) then add the accrued *pre-award* interest to the PMA for purposes of calculating *post award*, prejudgment interest at 10% per annum from the date of the Final Award to the date of entry of judgment.

<sup>7</sup> Because Fidelity did not pay the Final Award prior to entry of judgment, prejudgment interest on the amount of \$1,375,000 continued to accumulate until the date of entry of judgment.

<sup>8</sup> At oral argument, Campbell argued that *Pierotti v. Torian* (2000) 81 Cal.App.4th 17 (*Pierotti*) is controlling. In *Pierotti*, we held that plaintiff was entitled to post award,

Under the unambiguous language of the arbitration award, Campbell is entitled to prejudgment interest on the amount of the loss (\$1,375,000) at 10% interest per annum from the date of tender (May 6, 2003) until entry of judgment on November 5, 2009. Accordingly, for the reasons set forth, we reject Campbell's claim that the trial court erred in confirming the arbitrator's award of prejudgment interest.

## **B. Postjudgment Interest**

Campbell contends that he is entitled to postjudgment interest on the entire amount of the final arbitration award using the manner of calculating prejudgment interest we rejected in the preceding discussion. This contention necessarily fails because we have already concluded that the language of the arbitration award did not allow for an award of prejudgment interest in the manner asserted by Campbell. Nevertheless, as explained below, we agree that Campbell is entitled to postjudgment interest on the entire judgment.

In this regard, we note that unlike prejudgment interest awarded under sections 3287 and 3288, postjudgment interest is not awarded at the discretion of the finder of fact, whether an arbitrator, a court (interest on contract damages awarded at discretion of the court, § 3287), or a jury (interest on bad faith tort damages awarded at discretion of the jury, § 3288). Rather, postjudgment interest accrues by operation of law. (See 7 Witkin, California Procedure (5th ed. 2008) Judgment, section 326, page 932 [“[T]he judgment bears interest at the legal rate from its date of entry by force of law, regardless of whether it contains a declaration to that effect.”]; see also *Big Bear Properties, Inc. v. Gherman* (1979) 95 Cal.App.3d 908, 913 (*Big Bear*) [under Article XV of the California Constitution, “all money judgments, by operation of law, bear interest at the legal rate from date of entry”].)

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prejudgment interest on a sum made certain, pursuant to section 3287, subdivision (a), for the period between the arbitration award and the time the court entered judgment confirming the award. (*Id.* at p. 26-28.) However, in *Pierotti*, we did not deal with the issue presented here — whether this court may address the issue of prejudgment interest when that issue has been resolved by the arbitrator in the award itself, even if the arbitrator's resolution of the issue is legally erroneous.

By operation of law, “interest commences to accrue on a money judgment on the date of entry of judgment” (Code Civ. Proc. § 685.020, subd. (a)), and “accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied” (Code Civ. Proc. § 685.010, subd. (a)). Furthermore, prejudgment interest awarded under sections 3287 and 3288 merges in the judgment as an element of damages and is part of the principal amount of a money judgment for purposes of postjudgment interest under Code of Civil Procedure sections 685.010 and 685.020. (*Big Bear, supra*, 95 Cal.App.3d at pp. 913-914 & fn.4 [stating in pertinent part that although “compound interest generally is not allowable on a judgment, it is established that a judgment bears interest on the whole amount from its date even though the amount is in part made up of interest”]; *Westbrook v. Fairchild* (1992) 7 Cal.App.4th 889, 895 [“interest on interest is allowed when prejudgment interest is incorporated in a judgment which then bears interest”]; see also Rule 3.1802 of the California Rules of Court (“rule 3.1802”) [“The clerk must include in the judgment any interest awarded by the court and the interest accrued since the entry of the verdict.”] and *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 532-533 [construing rule 3.1802 as “directing the clerk to calculate the continuation of any *prejudgment* interest that may have been awarded from the date of the verdict through the date of the judgment”].)

Here, the trial court failed to award postjudgment interest in the manner proscribed by California law. The trial court should have awarded postjudgment interest pursuant to California Code of Civil Procedure section 685.020, subdivision (a) at the rate of 10% per annum on the total of the following three items: (1) the amount of \$1,375,000, together with interest thereon at 10% per annum from May 6, 2003, until the date of entry of judgment; (2) the amount of \$30,200, representing the portion of arbitration fees incurred by Campbell; and, (3) Campbell’s costs, pursuant to California Code of Civil Procedure section 1293.2, according to proof.

Fidelity cites to the language of the arbitrator’s award that interest accrues at the rate of 10% per annum from May 6, 2003, “until paid” and, based thereon, suggests that any judicial modification of the judgment for purposes of postjudgment interest would

violate the rules of limited judicial review of arbitration awards set forth in *Monscharsh, supra*. We disagree. As noted above, the issue of postjudgment interest was not before the arbitrator — only the issue of prejudgment interest was submitted to the arbitrator, and the Final Award included *prejudgment* interest under either section 3287 or 3288. Moreover, as we also noted above, postjudgment interest is not within the power of the arbitrator to decide: Rather, a plaintiff has a statutory right to postjudgment interest, which accrues on an unsatisfied money judgment by operation of law. (Code Civ. Proc., § 685.010, subd. (a).) Accordingly, the judgment may be judicially modified for purposes of postjudgment interest without violating the rule of *Monscharsh, supra*. (See *Monscharsh, supra*, 3 Cal.4th at p. 13 [noting that an arbitration award can be modified in certain limited grounds, including where “ ‘[t]he arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted’ ”] [quoting section 1286.6].)

In sum, the judgment must be modified to calculate postjudgment interest on the total amount of the judgment. However, in light of the fact that Fidelity has advised us it submitted a substantial payment in satisfaction of the judgment in May 2010, and any other factual issues which may impact calculation of postjudgment interest, we shall remand in the first instance for the trial court to recalculate postjudgment interest and modify the judgment accordingly.

#### **DISPOSITION**

The matter is remanded to the trial court for entry of an amended judgment in conformance with this decision. The parties shall bear their own costs on appeal.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Siggins, J.

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