



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: January 6, 2005
Decided: January 11, 2005

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Re: *All Pro Maids, Inc. v. Susan Layton, et al.*
Civil Action No. 058-N

Dear Counsel:

This matter is before the Court on a dispute as to the appropriate form of a final judgment. The Court issued a Memorandum Opinion on the merits on August 10, 2004, and a Letter Opinion on an award of attorneys' fees on December 22, 2004. On December 27, 2004, Plaintiff APM submitted a proposed form of final judgment that included an award of interest at the legal rate from November 12, 2003, the date they filed this action, "until the judgment is satisfied." By letter dated January 5, 2005, Defendants objected to the proposed form of judgment to the extent it sought interest on the ground that neither of the Court's opinions had indicated any award of interest. APM

replied by letter dated January 6, 2005, arguing that under Delaware law a party is entitled to prejudgment interest as a matter of right from the date the payment was due. This is the Court's ruling on that dispute.

Delaware courts have held in a number of different contexts that prejudgment interest is awarded as a matter of right.¹ The general rule is that interest starts on the date the payment should have been made.² As the Delaware Supreme Court held in *Collins v. Throckmorton*,³ however, a claimant's right to prejudgment interest is not "self-executing." "[I]n order to get such interest in his judgment, the plaintiff had to request it, at least by way of a general allegation of damages in an amount sufficient to cover his actual losses plus interest."⁴ More recently, the Superior Court denied prejudgment interest in a case where the plaintiff had not requested it specifically or in a general allegation of damages in an amount sufficient to cover the amount of loss plus interest in

¹ See, e.g., *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992) (action for advancement of cost of defense under an indemnification agreement); *Metropolitan Mutual Fire Ins. Co. v. Carmen Holding Co.*, 220 A.2d 778, 781-82 (Del. 1966) (action for payment under fire insurance policy); *Collins v. Throckmorton*, 425 A.2d 146, 152 (Del. 1980) (suit on a guaranty agreement, but plaintiff's right of recovery stemmed from equitable principles governing contribution); *Jarrell v. Delchester Oil Co.*, 1993 WL 189495, at *1 (Del. Super. May 20, 1993) (negligence action for damages resulting from a fire).

² See *Metropolitan Mutual Fire Ins. Co.*, 220 A.2d at 782.

³ 425 A.2d at 152.

⁴ *Id.*

any of the prayers for relief, the pretrial order or the trial.⁵ In that case, the plaintiff had filed a certificate of value in compliance with the Superior Court's rules relating to mandatory pretrial arbitration, stating that the complaint sought damages in excess of \$100,000, exclusive of costs and interest. The certificate served to avoid arbitration, but did not put the defendants on notice that the plaintiff was seeking prejudgment interest, as required by *Collins*.

In this case, APM never requested an award of prejudgment interest before its December 27, 2004 letter proposing a form of final judgment. The prayers for relief in the Complaint sought a temporary restraining order, preliminary injunction and permanent injunction, and asked the Court to grant the following additional relief:

(d) Award plaintiff damages in an amount to be determined for the injuries resulting from Defendants' breach of contract, tortious interference with contracts or prospective contracts, violation of the Uniform Deceptive Trade Practices Act and the Trade Secrets Act; and

(e) Award plaintiff costs and expenses incurred in this action, including reasonable attorney fees as contemplated in the Employment Agreement;

(f) Award plaintiff such other and further relief as the Court deems proper.

There is no suggestion of a claim for prejudgment interest. Likewise, there was no reference to such interest in the pretrial order or during the trial.

⁵ See *Christiana Marine Serv. Corp. v. Texaco Fuel & Marine Mktg. Inc.*, 2004 WL 42611, at *6-7 (Del. Super. Jan. 8, 2004).

Furthermore, Plaintiff APM failed to present evidence of its damages in a way that would either provide fair notice to Defendants that it intended to seek prejudgment interest or enable the Court to conclude whether and to what extent, if any, interest from the date of the filing of the Complaint, as plaintiff now seeks, would be appropriate. Plaintiff's damages expert presented his opinions as to lost profits on a year to year basis only, *i.e.*, from May 2003 to May 2004, May 2004 to May 2005, and so on for a period of five years. He also presented his data in the aggregate for all eleven of the claimed lost clients, rather than on a client by client basis. In addition, in accepting aspects of Plaintiff's damages theory, the Court made an award of damages that involved, in part, an estimate of future lost profits. These factors complicate the task of determining the date or dates when payment would be due for purposes of computing the amount of any prejudgment interest. Permitting Plaintiff to raise such issues for the first time at this late date on an undeveloped record would be unfairly prejudicial to Defendants.

Because APM failed to affirmatively request prejudgment interest before the Court ruled on the merits of this action and because the evidence APM presented at trial is not sufficient to enable Defendants or the Court properly to evaluate a claim for such interest, the Court rejects that portion of APM's proposed form of final judgment that purports to award prejudgment interest. APM's proposed form of judgment also seeks post-judgment interest at the legal rate until such time as the judgment is satisfied. APM has a right to interest on the judgment from the date it is entered at the legal rate of interest

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under 6 *Del. C.* § 2301(a), and Defendants have not presented any persuasive reason for the Court to refrain from awarding such interest in the circumstances of this case. Accordingly, although technically it may be unnecessary, the Court will provide explicitly for post-judgment interest in the final judgment in the hope of avoiding further dispute. A final judgment consistent with this letter opinion will be entered forthwith.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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