

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DRS. MARCUS L. PITTMAN, III and
MICHAEL N. PITTMAN

CIVIL ACTION

VERSUS

NO. 07-3074

THE GREAT ATLANTIC & PACIFIC
TEA COMPANY, INC.

SECTION "N" (2)

ORDER AND REASONS

Presently before the Court are the parties' memoranda addressing Plaintiffs' entitlement to pre-judgment interest and/or attorney's fees (Rec. Doc. 88-89 and 95-96). Plaintiffs' memoranda indicate that, at this time, they are not asserting a claim for attorney's fees. Accordingly, this Order and Reasons will focus on Plaintiffs' request for pre-judgment interest.

Having reviewed the parties' materials, the Court finds that Plaintiffs are entitled to receive pre-judgment interest on the repair award of \$625,000 only for such time, if any, that they have not been awarded rent *and* the repairs have not been accomplished. The contrary would be true if Defendant had *not* remained in possession following the expiration date of the lease, or if Plaintiffs had lawfully evicted Defendant from the premises, and Defendant then had failed to timely and adequately satisfy its legal repair obligations. Neither of these alternative scenarios, however, occurred here. Accordingly, Plaintiffs are entitled to recover rent, as well as pre-judgment interest on rent that has not been paid, for the period of time that Defendant has remained in possession of

the leased premises following the expiration date of the lease.¹

The Court also finds it appropriate to clarify the specific amount of rent that Plaintiffs are entitled to actually recover from Defendant. Specifically, Plaintiffs are *not* owed more than one rent payment for each month. In other words, Plaintiffs are not entitled to actually receive a “double recovery” – three months of “lost rent” (Verdict Items 3 and 4) *and* “holdover rent” (Verdict Items 6 and 7) for those same three months. Rather, the payable rent award is limited to the 21 months for which the jury found Plaintiffs are entitled to “holdover rent” (Verdict Items 6 and 7).²

IT IS ORDERED that the parties shall submit a proposed judgment consistent with this Order and Reasons within seven (7) business days from the date that it is entered into the record by the Clerk of Court.

New Orleans, Louisiana, this 6th day of November 2008.



KURT D. ENGELHARDT
United States District Judge

¹ Pre-judgment interest will continue to accrue through and until a final judgment is entered in this matter.

² The award of three months of “lost rent” would actually be paid only if Plaintiffs were not entitled to receive “holdover rent” for those same three months.