STATE OF MICHIGAN

COURT OF APPEALS

CONSOER TOWNSEND ENVIRODYNE ENGINEERS INC, Plaintiff/Counter-Defendant Appellant,	UNPUBLISHED September 22, 2009
v	No. 283563 Kent Circuit Court
CITY OF GRAND RAPIDS, Defendant/Counter-Plaintiff Appellee.	LC No. 02-007186-CK

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Plaintiff Consoer Townsend Envirodyne Engineers (CTE) appeals as of right the trial court's order and opinion dismissing its claims against defendant and entering judgment for defendant in the amount of $1,002,399. We affirm.

I. Basic Facts and Procedural History

This appeal involves the breach of an engineering services agreement. In the early 1990s, the city of Grand Rapids sought to update its wastewater treatment plant. Its then current system, the "Zimpro heat treatment process," was nearing the end of its life cycle and would soon become more costly to maintain. The city solicited applications from professional engineering services and selected CTE for the project.

A. The Contract

Subsequently, in March of 1996, CTE and the city entered into an engineering services contract. The contract divided the work to be completed into three phrases: (1) a study phase; (2) a design phase; and, (3) a construction phase. Pursuant to the contract, CTE was only authorized to proceed with the study phase, which was to be completed on August 31, 1996. The contract did not include specific deadlines for other phases of the project, but provided the following:

> If the City elects to have the Engineer proceed with the Design Engineering Phase and/or the Construction Engineering/Inspection Phase services, the Engineer will similarly commence said services as the project schedule requires, will *proceed*

> *diligently* with such services and will complete the same within the time frames as outlined in the Engineer's proposal . . . *or as mutually agreed* to by the City Engineer and the Engineer.

The contract mandated that the city must authorize CTE to proceed with the project's other phases. CTE was to receive not more than $197,740 for phase I and, if authorized, $435,800 for phase II, and $478,860 for phase III. Further, the contract contained a termination clause, which stated:

> 10. Termination. The obligation to provide further services under this agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this agreement through no fault of the terminating party. Also, the City reserves the right to terminate this agreement upon the aforesaid seven days written notice in the event the city elects to delete the project, change the scope of the project, or seek another engineering firm to provide professional engineering services in connection with the project. However, the Engineer will be paid for the actual services satisfactorily rendered to date of termination, including the associated prorated share of the profit.

B. Phase I Implementation

CTE satisfactorily completed phase I of the project and it is not at issue in this appeal. However, on March 10, 1998, while CTE was still conducting a cost-benefit analysis as part of the phase I services, the existing Zimpro system failed. As a result of the system's failure, the city was no longer able to store sludge and all sludge had to be land-filled, rather than sold and applied to the land as fertilizer. Sometime later in March 1998, CTE completed its cost-benefit analysis report, which recommended that the city implement an anaerobic digestion system with cogeneration facilities and sludge storage facilities with contracting for disposal. In August 1998, CTE produced its final preliminary design report (PDR), which summarized all of the design components that had been discussed and identified all the components that were to be included in the updated project. CTE estimated the total cost of the project to be $18,961,900.

C. Phase II Implementation

Upon receiving and reviewing the final PDR, the city commission, in September 1998, approved CTE to begin phase II of the project consistent with CTE's recommendation in the PDR. Because the final report increased the scope of work, the city approved an increase in compensation from $435,800 to $925,900 for the phase II services.

On October 27, 1998, CTE and the city met for a phase II "kick-off" meeting. At this meeting, the parties agreed that phase II would be completed when CTE submitted completed and biddable drawings for all facilities included in the project. Drawings for the cogeneration facilities and rehabilitation of the existing digester were due in January 1999, while drawings for

the new digester were due in April of 1999. The first priority, however, was the completion of the sludge storage facility drawings by December 1, 1998, so that the tanks could be completed and ready for use by October 1999.[1] CTE indicated that the design schedule would permit the city to take advantage of the 1999 construction season in order to meet this end.

CTE was to carry-out phase II by submitting the design drawings at different stages of completion. However, by December 31, 1998, the city had received very little information regarding the sludge storage facility drawings. In late January of 1999, the city received the first set of design drawings for the sludge storage facility. However, those drawings, claimed to be 25 percent complete, were "sketchy" and not "really reviewable by the city." The next set of drawings, represented to be 50 to 60 percent complete, was delivered in March of 1999, and was only 20 to 30 percent complete. The final set of drawings was delivered in May of 1999, approximately half a year after the initial December 1998 deadline. Around the same time, CTE informed the city that the cost for the sludge storage tanks had doubled from $4.2 million, as estimated in the PDR, to $8.4 million.

It was soon discovered, however, that the final drawings for the storage tanks had deficiencies and were not biddable. Namely, the tank was too small and, thus, did not meet regulatory requirements, and also improperly overlapped onto an adjacent roadway and sat too near a river. Shortly thereafter, in June of 1998, CTE indicated that it was already $150,000 over the $925,900 budget for the phase II services and that it would need an additional $766,000 to complete the remaining components of phase II designated in the PDR, i.e., design drawings for the anaerobic digestion and cogeneration facilities. In the city's view, this increase in cost was unjustifiable because CTE's correspondence did not identify any additional out of scope work, but merely reflected what remained to be done as outlined in the PDR and agreed upon by the parties for the contract price of $925,900. The project was suspended until the fee issue could be resolved.

After failed attempts to move forward with CTE, the city, in June of 1999, hired another engineering firm to conduct a value engineering (VE) study to examine other available options during the summer of 1999. Ultimately, the city paid a total of $206,798 for this service. The results of this evaluation showed that the system CTE recommended was not a good cost-benefit for the city and another system was suggested. The city and CTE then engaged in a prolonged dialogue in an attempt to determine which option was the best for the city. In February 2000, CTE indicated in a letter to the city that the cost for the project would be $33 to $42 million. The city never terminated its contract with CTE, but received no more professional services from CTE after CTE's December 1, 2000 proposal. CTE never completed the additional phase II drawings as agreed on by the parties. In total, the city paid CTE $571,688 for the phase II services.

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[1] The city wanted those facilities completed first so that it could store sludge over the winter in order to sell the sludge for land application the following spring. As indicated, since the Zimpro system had failed, the city had been unable to store any sludge for land application and all sludge was being landfilled at the risk of losing those consumers who purchased the sludge.

D. Pre-Trial Procedures

On July 23, 2002, CTE filed an eight-count complaint against the city, alleging breach of contract (I), breach of implied contract (II), anticipatory breach (III), unjust enrichment (IV), quantum meruit (V), misrepresentation (VI), promissory estoppel (VII), and breach of an alleged settlement agreement (VIII). With respect to its contract claim, CTE claimed that the city owed it an outstanding amount of $522,674 for engineering services rendered. The city denied owing CTE any outstanding amount on the contract and it filed a counterclaim on January 7, 2003, seeking a refund of the amount it had paid CTE. The city alleged one count of breach of contract for CTE's failure to complete the design phase and two counts of negligence for plaintiff's failure to design a suitable plan.[2]

Subsequently, the city moved for partial summary disposition. As a result, all CTE's claims were dismissed except for its contract claim, which was dismissed to the extent that it sought payment of funds beyond that authorized by the city commission for phase II services. The remaining balance that plaintiff could potentially claim was $354,212.

A date was set for a bench trial and the parties submitted trial briefs. CTE argued that it provided the city with the engineering work requested, attributed the delay in the design phase to the city, and asserted that the city breached the contract by failing to pay the amount owed. CTE also contended that the city waived its contract claim because it failed to send CTE a written notice of termination as required by the contract. Lastly, CTE argued that all of the city's claims are barred by the two-year statute of limitations for malpractice actions. See MCL 600.5805(6).

The city countered that CTE's breach of contract claim is unavailing because CTE produced less than one-third of the project yet sought full compensation. The city further claimed that because the design engineering drawings that were submitted were "grossly deficient," would have exceeded the project's cost if implemented, and were submitted months late, CTE breached the contract and the city was owed a refund in the amount $571,688 in fees paid for the defective work plus consequential damages for the VE study. In addition, the city asserted that CTE committed malpractice as its performance and implementation of the project fell below the industry's standard of care.

E. Trial and Opinion

Sixteen months after a seven-day bench trial, the trial court ruled in favor of the city. The trial court agreed with CTE, that had the city pleaded only malpractice claims, its counterclaim would be barred by the statute of limitations for malpractice suits. However, the court

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[2] CTE moved to dismiss the city's counterclaim on the basis that all of the city's claims were malpractice claims and therefore are barred by the two-year statute of limitations. The trial court denied the motion "for the reasons set forth on the record." The lower court record does not include a copy of this transcript. Nonetheless, it appears from other documents in the record that the trial court denied the motion because a material question of fact remained regarding when CTE stopped rendering services to the city.

determined that the city had timely pleaded a contract claim, as opposed to a malpractice claim, because the city pleaded breaches of specific requirements embodied in the contract. Accordingly, plaintiff's contract claim was not barred by the six-year statute of limitations for contract actions. See MCL 600.5807. The court further concluded that CTE had materially breached the contract by failing to produce the design plans on time, producing plans that were "seriously flawed," and designing storage tanks that would cost the city twice the amount estimated. Accordingly, the trial court found that the city was not obligated to pay CTE's outstanding invoices and was entitled to a refund of the amount it paid CTE for phase II services, as well as consequential damages for the amount paid for the subsequent VE study. The trial court awarded the city common law interest on these amounts, to be accrued from the date the refunded moneys were initially paid and from the date that the city paid for the engineering study, as well as statutory interest running from the date of the complaint. A judgment was entered to this effect, awarding the city a total of $1,002,399.

II. Statute of Limitations

CTE first argues that the trial court erred by failing to recognize that the city's contract claim is more properly characterized as a malpractice claim and is thus time-barred by the two-year statute of limitations for malpractice actions. See MCL 600.5805(6); MCL 600.5807 (setting limitations period for contract actions at six years). According to CTE, the trial court erroneously allowed the city to circumvent the malpractice statute of limitations by embracing a "special contract" doctrine. We disagree. We review for clear error a trial court's findings of fact in a bench trial and its conclusions of law de novo. *City of Flint v Chrisdom Properties Ltd*, ___ Mich App ___; ___ NW2d ___ (2009). A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Moore v Secura, Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008). Further, whether a statute of limitations bars an action is a question of law that we review de novo. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003).

It is true, as CTE states, that a malpractice claim may not be recast as a contract claim in order to avoid the time-bar under the two-year statute of limitations for malpractice. When a contract requires no more than that which is required by the professional relationship, the action will sound in malpractice, not in contract, and the two-year limitations period for malpractice actions will apply. *Brownell v Garber*, 199 Mich App 519, 525-526; 503 NW2d 81 (1993) ("[T]he allegations that the 'contractual' duties allegedly breached by defendant are indistinguishable from the duty to render legal services in accordance with the applicable standard of care [and the two-year limitations period for malpractice actions controls.]").

This does not mean, however, that a contract claim can never be brought against an individual or entity that renders professional services to a client. In certain instances, a "special agreement" may arise under which the professional has guaranteed a particular result or has agreed to act above the basic standard of professional care required such that a contract action will attach. *Stewart v Rudner*, 349 Mich 459, 467-468; 84 NW2d 816 (1957); *Bessman v Weiss*, 11 Mich App 528, 531; 161 NW2d 599 (1968). The key to distinguishing between a malpractice action and a contract claim, and thus determining whether it is governed by a particular statute of limitations, is to look to the basis of the allegations and the type of interest that has allegedly been harmed. *Aldred v O'Hara-Bruce*, 184 Mich App 488, 490; 458 NW2d 671 (1990). If a reading of the claim as a whole indicates that the defendant failed to exercise the requisite skill,

the action is one in malpractice, but if the claim indicates that the professional failed to perform a special agreement, then the action is one in contract. *Id*.; *Brownell*, *supra* at 524. Thus, a claim regarding inadequate or faulty engineering services, in the absence of any breach of some special agreement, sounds in malpractice and must be governed by the malpractice statute of limitations, even if a claimant couches his complaint in breach of contract terms. See *Aldred*, *supra* at 490.

After our review of the city's counterclaim and the surrounding factual record, we conclude, as the trial court did, that the city's claim is one for breach of contract. The counterclaim indicates that CTE breached specific provisions of the contract by failing to complete the phase II drawings, by submitting the design drawings months past the agreed upon due date, and by designing a wastewater treatment system, the construction of which, greatly exceeded the city's planned budget for the project. The damages the city suffered as a result of these actions flowed from CTE's failure to complete these specific acts contemplated by the parties in their agreement. In addition, the record supports the conclusion that the city's claim is not a malpractice action disguised as a contract claim: CTE produced less than one-third of the phase II drawings agreed upon, failed to abide by the agreed upon design schedule, and CTE subsequently doubled, as supported by some evidence, the project's originally estimated costs.

In light of the foregoing, it is plain to us that the city's damages stemmed not from failure to provide adequate engineering services, but from failure to abide by the specific requirements created by the contractual agreement between the parties. See *Aldred*, *supra* at 490. Thus, we cannot agree with plaintiff's contention that the agreement between it and the city contained no more than an agreement to provide competent engineering services consistent with the professional duty of care. See *Brownell*, *supra* at 525-526. The trial court did not err in determining that the city's contract action was not duplicative of its malpractice claims. Further, because the city filed its counterclaim in January 2003, its claim was asserted within the six-year limitations period for contract actions. Accordingly, the trial court did not err by concluding that the city's contract claim was timely filed.

III. Breach of Contract

CTE next argues that the trial court erred by concluding that CTE breached the contract and by concluding that the city was entitled to recover for breach of contract. This Court reviews for clear error a trial court's findings of fact and its conclusions of law de novo. *City of Flint*, *supra*. Further, our review is de novo to the extent that we must interpret the meaning of the contract. *Auto Owners Ins Co v Ferwerda Enterprises, Inc*, 283 Mich App 243, 248; ___ NW2d ___ (2009).

A. Grounds for CTE's Breach

CTE first argues that the trial court erred by concluding that CTE breached the contract due to its failure to meet deadlines during phase II. According to CTE, it was not in breach because the contract did not contain a "time is of the essence clause," but merely implied a "reasonable time" for performance. We cannot agree. Generally, a party breaches a contract if it fails to perform a duty, promise, or obligation under the contract. See *Kiff Contractors, Inc v Beeman*, 10 Mich App 207, 209; 159 NW2d 144 (1968); *Schware v Derthick*, 332 Mich 357, 364; 51 NW2d 305 (1952). While the law does not compel exact and precise performance under a contract, it is necessary that there be substantial performance. *Antonoff v Basso*, 347 Mich 18,

28; 78 NW2d 604 (1956). Performance is not substantial if the deviation from what is required under the contract is "so dominant or pervasive as . . . to frustrate the purpose of the contract." *Id*. at 30.

Here, the contract required CTE to "proceed diligently" to complete phase I services by December 31, 1996. With respect to phase II, the contract in its original form did not include specific deadlines, but did provide the following in section 16:

> If the City elects to have the Engineer proceed with the Design Engineering Phase and/or the Construction Engineering/Inspection Phase services, the Engineer will similarly commence said services as the project schedule requires, will *proceed diligently* with such services and will complete the same within the time frames as outlined in the Engineer's proposal . . . *or as mutually agreed* to by the City Engineer and the Engineer.

Subsequently, at the October kick-off meeting the parties agreed to an aggressive schedule due to the Zimpro system's failure. It was made clear at that meeting that the city needed the sludge storage facility drawings completed by December 1998. This was necessary, as discussed at the meeting, so that those facilities could be built and operational by October 1999 in order for the city to gain an economic advantage. CTE agreed to this aggressive schedule and by operation of section 16, was contractually bound to abide by this schedule under the contract.

CTE failed to produce any of the drawings on time. The final sludge storage facility drawings were submitted approximately half a year late, in May of 1999. As a result, the facilities were not constructed in October 1999. CTE also failed to meet the deadlines for the anaerobic digestion and cogeneration facility design drawings contemplated under the project. Given these facts, it is plain that CTE committed a material breach when it failed to produce the design drawings on time. See *Holtzlander v Brownell*, 182 Mich App 716, 722; 453 NW2d 295 (1990). The city clearly did not receive the benefit that it expected to receive under the parties' agreement—an operational sludge facility in October 1999. *Id.* Rather, CTE's failure to produce the drawings on time frustrated the purpose of the contract. Thus, it cannot be said that CTE substantially performed its contractual duties, see *Antonoff, surpa*, but breached the contract. Accordingly, we conclude that the trial court did not err in concluding the same.

CTE contends, however, that it did not materially breach the agreement because the contract contains no explicit time is of the essence provision. This argument is unavailing. An express provision is not required to make time of the essence of the contract. *Grade v Loafman*, 314 Mich 364, 367; 22 NW2d 746 (1946). "The general rule is that time is not to be regarded as of the essence of a contract unless made so by express provision of the parties or by the nature of the contract itself or by circumstances under which it was executed." *MacRitchie v Plumb*, 70 Mich App 242, 246; 245 NW2d 582 (1976). Under the circumstances here, the parties agreed to a deliberately aggressive schedule and it was obvious that time was of the essence. The sludge storage facilities drawings had to be complete by December 1998 so that the city could take advantage of the 1999 construction season and the tanks could be built by October 1999. Proceeding otherwise, as both parties were aware, meant that the city would have to continue treating wastewater under the defunct Zimpro system and forgo storing sludge for later sale. Clearly, the city was concerned about time and CTE was aware of this when both parties agreed to the schedule.

CTE also argues that the trial court clearly erred by ignoring evidence on the record showing that the parties mutually agreed to later deadlines once CTE missed the initial deadline. However, the city's engineer heading the project, Mr. Krcmarik, testified that when CTE missed its deadlines, the city opted not to cease the project due to CTE's delays because doing so would further delay the project. According to Mr. Krcmarik, the city permitted CTE to push the deadlines back in hopes of moving the project forward, but the city's willingness to continue working with CTE was never meant to be an extension or approval of the deadlines. Apparently, despite later adjustments of the deadlines, the trial court chose to believe the city's witness that the parties had initially intended to complete the project on an aggressive schedule and never mutually agreed to an extended schedule. To the extent that the evidence conflicted regarding the parties' intent as to deadlines or why those deadlines were moved back, the matter is a credibility issue, and this Court must defer to the trial court's determination regarding witness credibility. *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007). It is not our duty to substitute our judgment on such matters. *Id*. Accordingly, the trial court did not commit clear error requiring reversal.

Having concluded that the trial court properly found that CTE materially breached the contract, it is not necessary for us to consider the remainder of CTE's arguments regarding the court's other bases for finding that CTE breached the contract.

B. Termination Clause

CTE next argues that it cannot be liable for breach of the contract because the city failed to provide the contractually agreed upon notice of breach. In CTE's view, section 10 of the contract obligated the city to give CTE written notice if the city chose not to proceed with the project or was going to claim breach of contract. It follows, according to CTE, that the city's failure to abide by section 10 requires reversal of the lower court's judgment. We are not of the same opinion.

Section 10 of the contract provides:

> 10. Termination. The obligation to provide further services under this agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this agreement through no fault of the terminating party. Also, the City reserves the right to terminate this agreement upon the aforesaid seven days written notice in the event the city elects to delete the project, change the scope of the project, or seek another engineering firm to provide professional engineering services in connection with the project. However, the Engineer will be paid for the actual services satisfactorily rendered to date of termination, including the associated prorated share of the profit.

The city admits that it never sent CTE any such notice of termination. Rather, the parties' relationship ended when the city did not accept CTE's December 1, 2000, proposal to redesign the treatment system.

In our view, the fact that CTE never provided any notice to terminate consistent with section 10 is immaterial. The gist of plaintiff's argument is that because the city breached by

failing to abide by section 10, the city is barred from recovering on its contract theories. However, it is the "rule in Michigan . . . that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform." *Able Demolition, Inc v City of Pontiac*, 275 Mich App 577, 585; 739 NW2d 696 (2007) (citations omitted). Here, CTE was the first party to substantially breach the contract: Delays in phase II occurred before the city failed to terminate the agreement without written notice. Given these facts, the city's supposed breach is irrelevant. CTE was the first party to substantially breach the agreement and, therefore, cannot maintain a cause of action for breach of contract against the city. Moreover, CTE has cited no supporting authority for the proposition that a party's subsequent breach somehow negates its claims against the initially breaching party or precludes judgment in its favor. Accordingly, CTE's argument that reversal is required because the city failed to comply with section 10 is unavailing.[3]

IV. Damages

Finally, CTE argues that the trial court erred by incorrectly calculating the amount of interest owed on the judgment. The trial court's decision to award common law interest based on the evidence presented is reviewed for an abuse of discretion. *Reigle v Reigle*, 189 Mich App 386, 393-394; 474 NW2d 297 (1991). Further, we review an award of prejudgment interest pursuant to MCL 600.6013 de novo. *Everett v Nickola*, 234 Mich App 632, 638; 599 NW2d 732 (1999).

A. Pre-filing Interest

CTE first contends that the trial court erred by computing the award of common law interest from the date the city made payments to CTE. Rather, in CTE's view, the interest should have been calculated from the date the city filed its counterclaim. We disagree.

Michigan law has long recognized the common law doctrine of an award of interest as an element of damages.[4] *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 499; 475 NW2d

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[3] While the trial court reached the right result, it erred in its reasoning. The trial court rejected CTE's argument regarding section 10 on the basis that that section did not require the city to provide CTE with written notice in the event that it elected to terminate the agreement for reasons other than "substantial failure." The trial court indicated that "[n]othing about any kind of notice was mentioned in . . . sentences [subsequent to the first sentence of section 10]." In other words, the trial court concluded that the city did not violate section 10 because that section did not require written notice of termination. This is clear legal error. The second sentence of section 10 makes a plain reference the city's ability to terminate the agreement for reasons other than substantial failure "upon the aforesaid seven days written notice . . . ." Although the trial court's reasoning was incorrect, the result was proper and we will not reverse on this basis. *2000 Baum Family Trust v Babel*, ___ Mich App ___, ___ ; ___ NW2d ___ (2009).

[4] Interest as an element of damages should not be confused with interest awarded on a judgment sanctioned by statute. "The [former] is awarded by the jury as part of the general verdict. The [latter] is computed on and added to the general verdict." *Vannoy v Warren*, 26 Mich App 283, 288; 182 NW2d 65 (1970).

704 (1991); *Banish v City of Hamtrmack*, 9 Mich App 381, 395; 157 NW2d 445 (1968). The doctrine recognizes that money has a "use value" and an award of interest as an element of damages compensates the winning party for the lost use of its funds. *Gordon Sel-Way, Inc, supra* at 499. "[T]he pivotal factor in awarding such interest is whether it is necessary to allow full compensation [to the prevailing party.]" *Id*.; *Banish*, *supra* at 399.

Here, the parties do not dispute whether interest is due as an element of damages. Rather, the core of the dispute is when the interest should begin to run. Generally, interest is allowed from the date of the injury or the date the damage occurs. See *Herman H Hettler Lumber Co v Olds*, 242 F 456 (CA 6 1917) (affirming award of common law interest measured from date money was owed on a contract); *Wilson v Doehler-Jarvis Div of Nat'l Lead Co*, 358 Mich 510, 519; 100 NW2d 226 (1960) (holding in a worker's compensation action that interest should be awarded from the date that the payor should have paid the employee); *Currie v Fiting*, 375 Mich 440, 454; 134 NW2d 611 (1965) (concluding in a wrongful death action, that interest should be determined, not on the date the claim was filed, but from the date of the decedent's death); see also *Vannoy v Warren*, 26 Mich App 283, 288-289; 182 NW2d 65 (1970) (same). In other words, in a contract action, interest as a matter of damages should begin to accrue when, as a result of one party's breach, the other party suffers damage. Michigan's model civil jury instructions are consistent with this interpretation. SJI2d 53.04 advises tribunals to instruct juries, as follows: "If you decide plaintiff has suffered damages, you should determine when those damages began, and add interest from then to [the date the complaint was filed] . . . ."[5] Thus, as the trier of fact in this matter, it was within the trial court's discretion to determine when the damages the city suffered began.

Here, the city paid CTE for phase II services that was submitted late, incomplete, and ultimately found to be defective. The city was deprived of the use of its money once it paid CTE those funds. After a review of this evidence, the trial court determined that, in order for the city to be made whole, interest should begin to run from the date the city paid CTE. We find no error with this conclusion. The trial court's decision awarding interest from the date of the initial payments was consistent with the goal of awarding interest as damages to fully compensate the prevailing party. Clearly, this decision was based on this legitimate rationale and supported by the evidence in the record. Even if we could have arrived at a different measurement of interest had we been sitting as the trier of fact, it is not our place to substitute our judgment for that of the trial court. See *People v Babcock*, 469 Mich 247, 268-271; 666 NW2d 231 (2003). Rather, because the trial court's decision was within the range of principled outcomes, we defer to its judgment. *Id*. Accordingly, we conclude that the trial court's decision to calculate interest beginning from the date the city lost use of its funds was not an abuse of discretion.

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[5] We note that this date is not necessarily the same date on which a party's claim accrues. A contract claim accrues at the time when the wrong upon which the claim is based is committed. See MCL 600.5827; see *Cushman v Avis*, 28 Mich App 370, 373; 184 NW2d 294 (1970) ("A claim accrues at the time the wrong upon which the claim is based was done, regardless of the time when damage results.").

B. Post-Trial Interest

CTE also argues that the judgment should not have included interest for the 16 months it took for the court to issue its opinion after the conclusion of trial. In CTE's view, this 16-month period was not its fault, and therefore interest should be disallowed. Again, we disagree. Under MCL 600.6013 the imposition of statutory interest is mandatory and must be assessed from the date the complaint was filed. *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 357; 554 NW2d 43 (1996). However, statutory prejudgment interest will not accrue where the delay is not the fault of, or caused by, the debtor. *Heyler v Dixon*, 160 Mich App 130, 152-153; 408 Nw2d 121 (1987). Typically, this rule applies only under certain exceptional circumstances, for example, where court files have been lost by court personnel, *Eley v Turner*, 193 Mich App 244, 246-247; 483 NW2d 421 (1992), where the proceedings have been stayed pending the outcome of relevant parallel proceedings, *Heyler*, *supra* at 153, or where the proceedings were stayed by statute due to the opposing party's insolvency, *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 494-495; 478 NW2d 914 (1991).

In the present matter, it cannot be said that the delay was caused by CTE. Rather, it appears that the 16-month delay was due to the trial court's delay in issuing its opinion. Nonetheless, we cannot conclude that the trial court erred by allowing the statutory interest, as the facts of this case do not present the type of unusual circumstances justifying the disallowance of such interest. To conclude otherwise would allow CTE to retain the funds interest free contrary to the purpose of MCL 600.6013, which is to compensate the prevailing party for the very same delay in receiving those damages. *Coughlin v Dean*, 174 Mich App 346, 352; 435 NW2d 792 (1989). The trial court did not err by refusing to deduct the post-trial interest from the judgment.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro