

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT M. STUTZ, CAROLINE M. STUTZ,
and UNION ASSOCIATES,

UNPUBLISHED
July 29, 2010

Plaintiffs/Counter-Defendants-
Appellants,

v

BP AMERICA, INC., f/k/a AMOCO OIL
COMPANY, INC.,

No. 290960
Wayne Circuit Court
LC No. 05-502318-CK

Defendant/Counter-Plaintiff-
Appellee,

and

AMERICAN APPRAISAL ASSOCIATES,
BRENT A. BROWN, KENNETH W. KAPECKI,
and DAVID L. PERRY,

Defendants.

Before: K. F. KELLY, P.J., and WILDER and GLEICHER, JJ.

PER CURIAM.

Plaintiffs/counter-defendants (“plaintiffs”) appeal as of right the trial court’s order mandating that defendant/counter-plaintiff (“defendant”) “pay plaintiffs interest of \$90,000” We reverse and remand.

I. BASIC FACTS

This matter involves a dispute over an award of interest ordered after the resolution of a contract dispute. The underlying dispute concerned the sale of a commercial property. Although both parties substantially performed under the contract, which was a lease with an option to purchase, they could not agree on a purchase price. Thus, the parties did not close on the

contract on January 26, 2005, as required by their agreement. Thereafter, this litigation ensued and the original trial court¹ ordered the parties to close at a purchase price of \$1.81 million, a midpoint price between the values assigned to the property by the parties' appraisers. The parties closed on, or around, May 28, 2008.

Plaintiffs then moved for interest on the purchase amount for the nearly three and a half years that it took the parties to close on the property, during which time defendant retained possession of both the property and the purchase money. Specifically, plaintiffs requested that interest be calculated at a rate of 12 percent and defendant requested that no interest be assessed. The original trial court, in consideration that both parties' caused the delay, ordered defendant to pay plaintiffs "a blended rate of [five percent] interest." The trial court did not specify whether this award of interest was to be compound or simple. Defendant offered to tender to plaintiffs a one-time payment of \$90,500. Plaintiffs disputed that this was the correct amount, but defendant refused to pay any additional sums.

Plaintiffs moved to compel payment of interest and sought clarification of the original trial court's award. In the interim, the case was reassigned to a successor judge (hereinafter the "trial court"). After hearing oral argument at the motion hearing, the trial court made contradictory statements in regard to its ruling. It indicated that it would award plaintiffs interest "over the term of the year" and "three and a half years under a simple." The court further stated:

We have one point eight million, five percent interest compounded annually is three hundred thirty five thousand one hundred and eighty two. That's my math. Five percent simple on interest would return ninety thousand dollars.

* * *

The court is going to grant interest of the total amount of ninety thousand.

* * *

[W]hat I'm doing is awarding interest on the full judgment at five percent.

Before an order could be entered, plaintiffs filed objections. During the hearing, the trial court made more conflicting statements:

The Court is satisfied, simple does not compound annually, because[d] [sic] upon the original judgment number. So the Court is satisfied that the objections are not proper. . . .

But the Court is satisfied that it a 5 percent [sic] simple interest from January, 2005 through today. That's my time [sic] order.

¹ The original trial judge, Judge Cynthia D. Stephens, was appointed to this Court and her circuit court docket was reassigned.

So there is only going to be final number of \$90,000.

* * *

At no point is there anything about annually, about simple, about compound [in the prior order]. The number \$90,000 to me means for the whole term. I'm going to use it again, a simple rate, one time shot. I'm not going to compound it annually. And I'm not going to add \$90,000 for each year. It's a compound – one time shot. Somewhere between 0 percent and 12 percent. \$90,000 one time. We're done.

Thereafter, the trial court entered an order stating, “[Defendant] shall pay plaintiffs interest of \$90,000” This appeal followed.

II. ANALYSIS

Plaintiffs argue that the trial court erred by disregarding the definition of “interest.” We review a trial court’s interest award for an abuse of discretion. *Durant v Michigan*, 456 Mich 175, 214 n 45; 566 NW2d 272 (1997); *Giannetti v Cornillie (On Remand)*, 209 Mich App 96, 102; 530 NW2d 121 (1995).

We agree with plaintiffs that the trial court’s various pronouncements reflect that it misapprehended the legal meaning of “interest” and the difference between compound interest, simple interest, and a flat rate.² “Interest is compensation allowed by law or fixed by the respective parties *for the use or forbearance* of money, ‘a charge for the loan or forbearance of money,’ or a sum paid *for the use* of money, or *for the delay* in payment of money.” *Town & Country Dodge, Inc v Dep’t of Treasury*, 420 Mich 226, 242; 362 NW2d 618 (1985) (citations omitted). Thus, by definition, interest must take into account the time period of forbearance or delay, and consistently with this definition, our laws have taken this time period into account when calculating interest. See MCL 600.6013(8) (calculating interest at “6-month intervals from the date of filing the complaint”); MCL 438.7 (allowing interest to accrue on verdicts in contract actions from the date due under the contract up until the judgment is entered or until the judgment is satisfied); MI Civ JI 53.04 (instructing juries to add interest on damages from date damages occurred to date complaint is filed). The amount of compensation due in interest is determined by applying an interest rate to the principal amount owed. Black’s Law Dictionary (8th ed) defines “interest rate” as “a percentage of the principal payable for a one-year period.”

Although the calculation of interest necessarily compensates for the time period of the forbearance of money at the applicable interest rate, the ultimate amount charged in interest

² Plaintiffs also argue on appeal that the trial court erred by misinterpreting and failing to effectuate the original trial court’s order. On this point we disagree. A successor judge has the authority to enter whatever orders his predecessor could have entered. MCR 2.613(B). Thus, any clarification of the original court’s order will be valid as long as the award is within the principled range of outcomes.

differs depending on whether the interest is simple or compound. This Court has previously explained the difference between simple and compound interest:

Compound interest means interest on interest, in that accrued interest is added periodically to the principal, and interest is computed upon the new principal thus formed. *Ruloff v Hazen*, 124 Mich 570, 572-573; 83 NW 370 (1900); 45 Am Jur 2d, Interest & Usury, § 76, p 69. The difference between simple and compound interest is that simple interest does not merge with the principal and thus does not become part of the base on which future interest is calculated. *Gage v Ford Motor Co*, 423 Mich 250, 259; 377 NW2d 709 (1985); *Stewart v Isbell*, 155 Mich App 65, 79; 399 NW2d 440 (1986). [*Niggeling v Dep't of Transportation*, 195 Mich App 163, 166; 488 NW2d 791 (1992).]

See also *Nation v WDE Electric Co*, 454 Mich 489, 492 n 2; 563 NW2d 233 (1997) (explaining calculation of compound interest). Stated differently, the compound method adjusts the principal before charging the applicable interest rate by adding the accrued interest to the principal; simple interest is charged on the principal alone. Conversely, a “rate” is a one-time charge. See Black’s Law Dictionary (8th ed) (defining “rate” as, “An amount paid or charged for a good or service.”).

We cannot glean from the record what type of “interest” the trial court ordered here, or if it merely applied a one-time flat rate. The trial court’s written order states that defendant shall “pay plaintiffs *interest* of \$90,000” (emphasis added). But during oral argument, the trial court made numerous unclear statements. First, it indicated that it would award plaintiffs “5 percent simple interest from January 2005 through today,” and then it stated, “The number \$90,000 to me means for the whole term . . . a simple rate, one time shot.” Whether the trial court meant to award interest or a one-time flat rate is wholly ambiguous given its statements. Even the written order itself is problematic, as \$90,000 is not even five percent of the judgment and, by definition, could not constitute an award of five percent interest since it presumably does not take into account the three and a half year period that defendant retained plaintiffs’ money. Given the confusing nature of the proceedings below and the lack of clarity in the record, it is necessary that we remand this matter to the trial court for clarification of the court’s interest award. On remand, the trial court must explain whether it is awarding plaintiffs a one-time flat rate monetary award or whether it is awarding plaintiffs interest. In the event that the trial court awards plaintiffs’ interest on the judgment, rather than a one-time monetary award, it must explain whether it is awarding simple or compound interest and, in calculating interest, it must take into account the time period in which defendant retained plaintiffs’ money.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher