

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

RONALD W. PAYNE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 03C-05-130-PLA
)	
THE HOME DEPOT, INC.,)	
a Georgia corporation,)	
)	
Defendant.)	

ON PLAINTIFF'S MOTION FOR
PRE-JUDGMENT AND POST-JUDGMENT INTEREST
DENIED IN PART and GRANTED IN PART

Submitted: April 3, 2009
Decided: April 7, 2009

This 7th day of April, 2009, upon consideration of Plaintiff Ronald W. Payne's ("Payne") Motion for Pre-Judgment and Post-Judgment Interest, it appears to the Court that:

1. On January 16, 2009, a jury awarded \$2.9 million to Payne for personal injuries arising from an incident in which a stack of eighteen doors fell on him at a store owned by Defendant The Home Depot, Inc. ("Home Depot"). By opinion dated March 12, 2009, this Court denied Home Depot's Motion for New Trial or Remittitur and granted Payne's request for costs.

2. Payne now moves for pre-judgment and post-judgment interest on his damages award. According to Payne, he submitted a

written settlement demand for \$2 million to Home Depot on January 15, 2007. Payne's January 2007 letter states that the \$2 million demand amount was submitted "subject to interest pursuant to 6 *Del. C.* § 2301."¹ Home Depot rejected Payne's settlement demand.

3. In response to Payne's motion, Home Depot offers a second letter from Payne, dated May 1, 2007, in which he makes a settlement demand in the amount of \$4 million.² Home Depot contends that this second letter must be considered the "operative" demand, and that Payne cannot satisfy the requirements of § 2301(d) because this operative demand was for an amount greater than the jury's verdict.

4. The Delaware Code allows for pre-judgment interest in certain tort actions for bodily injuries. Specifically, 6 *Del. C.* § 2301(d) provides as follows:

[I]nterest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days in an amount less than the amount of damages upon which the judgment was entered.³

¹ Docket 165, Ex. A.

² Docket 166, Ex. B.

³ The relevant interest rate is established in § 2301(a) as follows: "Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due."

Although pre-judgment interest under § 2301(d) is awarded as a matter of right, that right is not self-executing.⁴ In order to obtain pre-judgment interest on a judgment the plaintiff must request it.⁵ Thus, pre-judgment interest will be awarded only “if a plaintiff requests such an award in its pleadings or raises the issue at trial.”⁶

5. Here, Payne cannot recover pre-judgment interest. Payne has requested pre-judgment interest for the first time in the instant post-trial motion. The Court has not found, nor has Payne identified, any previous request for interest in his Complaint or the pre-trial stipulation, and the issue was not raised at trial.⁷

6. Payne’s January 2007 settlement demand letter, which states that the plaintiff’s \$2 million demand should be understood to include “interest pursuant to 6 *Del. C.* § 2301,” does not constitute a request for pre-judgment interest under § 2301(d). The most natural reading of the settlement demand letter is that it refers to § 2301(a),

⁴ See, e.g., *Collins v. Throckmorton*, 425 A.2d 146, 152 (Del. 1980)

⁵ *Collins*, 425 A.2d at 152.

⁶ *Chrysler Corp. v. Chaplake Holdings, Ltd.*, 822 A.2d 1024, 1037 (Del. 2003).

⁷ Payne relies in part on this Court’s recent ruling in *Novkovic v. Paxson*, 2009 WL 659075 (Del. Super. Mar. 16, 2009), for the proposition that he is entitled to pre-judgment interest. The Court observes that *Novkovic* -- like many other decisions regarding pre-judgment interest -- does not address the requirement that the plaintiff must request pre-judgment interest for the simple reason that it was uncontested that a proper request had been made prior to the post-trial motion for interest.

which establishes the legal rate of interest in Delaware.⁸ Moreover, even if the settlement demand letter clearly and affirmatively sought pre-judgment interest, such a letter is not tantamount to a request contained in the pleadings or raised at trial.⁹ Because Payne's failure to request pre-judgment interest prior to the instant motion is fatal to his claim, the Court will not consider Home Depot's argument that Payne's second settlement demand for an amount in excess of the jury's verdict precludes an award of pre-judgment interest.

7. Payne also moves for post-judgment interest. Under Delaware law, a prevailing plaintiff is entitled to post-judgment interest as a matter of right.¹⁰ Post-judgment interest accrues from the date that "judgment is entered as final and determinative of a party's rights."¹¹ Interest is calculated at the legal rate set pursuant to § 2301(a).

8. Here, Payne is entitled to post-judgment interest running from January 16, 2009, the date the jury rendered its verdict. The Court takes judicial notice that the Federal Reserve discount rate at that time was 0.5%, and accordingly the legal rate of interest will be 5.5%.

⁸ In relevant part, 6 *Del. C.* § 2301(a) states: "Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due."

⁹ *Cf. Chrysler Corp.*, 822 A.2d at 1037-38 (holding that demand for pre-judgment interest contained within a pretrial stipulation executed by defendant served to amend the pleadings, because it became an order of the Court under court rules).

¹⁰ *See, e.g., Wilm. Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000).

¹¹ *Id.*

9. For the foregoing reasons, Payne is not entitled to pre-judgment interest on his damages award, but will receive post-judgment interest as a matter of right. Post-judgment interest is to run from January 16, 2009. Payne's Motion for Pre-Judgment and Post-Judgment Interest is hereby **DENIED IN PART and GRANTED IN PART.**

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: James P. Hall, Esq.
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Kenneth M. Dubrow, Esq.