IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHAPLAKE HOLDINGS LTD.,	)	
PORTMAN LAMBORGHINI, LTD.,	)	CIVIL ACTION NUMBER
and **DAVID T. LAKEMAN**	)	
	)	94C-04-164-JOH
Plaintiffs	)	
v.	)	
	)	
CHRYSLER CORPORATION	)	
	)	
Defendant	)	

Submitted: July 25, 2003
Decided: October 30, 2003

MEMORANDUM OPINION

Upon Motion of Plaintiffs' for Pre-judgment Interest - ***GRANTED***

Laurence V. Cronin, Esquire, of Smith Katzenstein & Furlow, LLP, Wilmington, Delaware, and Michael J. Connolly, Esquire, and Kelley A. Jordan-Price, Esquire, of Hinckley, Allen & Snyder, LLP, Boston, Massachusetts, attorneys for plaintiffs

John A. Parkins, Jr., Esquire, of Richards, Layton & Finger, P.A., Wilmington, Delaware, and Robert D. Cultice, Esquire, and Michael R. Heyison, Esquire, of Hale and Dorr, LLP, Boston, Massachusetts, attorneys for defendant

HERLIHY, Judge

While affirming all this Court's post-trial rulings, the Supreme Court reversed and remanded the matter to determine pre-judgment and post-judgment interest amounts. Initially, this Court denied the motion for pre-judgment interest submitted by Chaplake Holdings, Ltd. ("Chaplake") and Portman Lamborghini, Ltd. ("Portman" collectively "Plaintiffs"), holding that it had not been "specifically requested" by the Plaintiffs and therefore was waived.[1] However, on appeal the Supreme Court reversed this Court's ruling holding that the pretrial stipulation served to amend the pleadings to include Plaintiffs' request for pre-judgment interest.[2] This Court concludes that Plaintiffs' pre-judgment interest on their promissory estoppel claims began to accrue on March 30, 1992, as it is an identifiable date of loss.

Facts

Chaplake, a United Kingdom company, was formed in 1984 by David Jolliffe ("Jolliffe") and David Lakeman ("Lakeman") as equal shareholders. Chaplake is the parent company of Vehiclise, Ltd. ("Vehiclise") and Portman, both of which are also incorporated under the laws of the United Kingdom. In 1990, Lamborghini London, Ltd. ("Lamborghini London"), which was also owned by Chaplake, transferred all of its assets and liabilities to Portman.

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[1] *Chaplake Holdings v. Chrysler Corp.*, Del. Super., C.A. No. 94C-04-164, Herlihy, J. (Jan. 10, 2002) at 96-97.

[2] *Id.* at 1038.

In 1984, Vehiclise and Automobili Feruccio Lamborghini, S.p.A. ("Lamborghini") entered into an exclusive concession contract by which Vehiclise would be the exclusive automobile dealer of Lamborghini's ultra-high end sports cars to buyers in the United Kingdom, Ireland and the Channel Islands. Portman was appointed by Vehiclise to be its London automobile dealer with exclusive rights to the concession agreement. Portman was the largest Lamborghini dealer in the world with a sales volume of approximately thirty new Lamborghinis each year between 1984 and 1987. During that time period, Lamborghini only produced 250 cars per year.

In 1987, Chrysler International, a subsidiary of Chrysler Corp. (collectively, "Chrysler"), purchased all outstanding shares of Lamborghini's stock. Thereafter, Chrysler created a plan to expand production from 250 new cars per year to roughly 5,000 new cars within five years ("Expansion Plan"). This plan included the increase in production of the Diablo model from 250 per year to 500 per year. This plan also included the production of a new model called the P140 with a production level of 2,500 cars per year.

Chrysler had absolute control over the Expansion Plan. This control is evidenced by the fact that Chrysler defined the duties of Lamborghini's president, and it placed two of its top executives on Lamborghini's Board of Directors.

In 1987, the President of Lamborghini, Emile Novaro ("Novaro"), discussed the Expansion Plan with Jolliffe. At that time, Portman was only selling thirty new cars per year and Novaro was concerned that Portman would not be able to handle the 300 cars that were

allocated to Portman under the Expansion Plan once it was implemented. Novaro assured Jolliffe that Portman's exclusive concession agreement with Lamborghini would be honored as long as Portman expanded its dealership and storage capacity to handle the influx of the additional 270 cars per year. Chrysler executives reiterated Novaro's promise to Jolliffe that Portman would retain its exclusive right to sell Lamborghinis in the United Kingdom market as long as it expanded.

Jolliffe and Lakeman met with bankers from Credit Suisse and the accounting firm of Buzzacott & Co. to create and develop a feasibility and business plan to accommodate Portman's expansion ("Portman Plan"). The Plan called for tripling Portman's staff, the construction of new showrooms around the country, the purchase of computer equipment and software, and the acquisition of real property for a new headquarters. These capital acquisitions and improvements would allow Portman to increase its volume of new cars and maintain its exclusive right to sell Lamborghinis in the United Kingdom.

In 1987, Credit Suisse agreed to extend Portman an increase in its overdraft facility in order to pay for the Portman Plan. As part of the agreement, Lakeman was required to provide a cash guaranty in the amount of £448,568.62 to secure the increased overdraft facility. Credit Suisse further requested that Portman hire Howard Mitchinson ("Mitchinson") as an accountant. Mitchinson met with representatives of Lamborghini who confirmed the progress and details of the Expansion Plan.

In 1990, Chrysler representatives visited Portman and confirmed that the Portman Plan

was consistent with the Expansion Plan. At this point, Portman had acquired the necessary financing for its Plan from Credit Suisse, hired additional staff, acquired additional facilities and purchased a large tract of land on which to build a new distribution center. Portman developed architectural and land use plans for the new facility. Also, internal documents from Chrysler revealed its commitment to honoring Portman's exclusivity agreement by stating that the introduction of the P140 model would lead to the creation of new dealerships in every European country except the United Kingdom and Ireland.

However, unknown to Plaintiffs, by 1990 Chrysler's commitment to the Expansion Plan began to wane. The economic recession in the early 1990's in the United States caused Chrysler to lose confidence in the development and production of the Lamborghini P140 model and the manufacturing of the P140 stalled. In the end, Chrysler spent approximately one-third of what it expected to spend in the development and production of the P140.

By August of 1991, Portman had borrowed and spent £569,321.45 on the Portman Plan. Also in 1991, Jolliffe sold sixty percent of his ownership interest in Chaplake to Sheik Mohammed Fahkry for £500,000, and reinvested £462,686.47 of the proceeds into Chaplake. Chaplake then loaned the money to Portman.

The delays in production of the P140 due to Chrysler's lost confidence caused the rapid decline of Portman's profitability and success. Between June 1990 and June 1991, Lamborghini sent no right-hand drive Diablos, nor any P140s to Portman.[3] Beginning in

[3] Right-hand drive cars have the steering wheel on the right hand side of the driver's compartment.

February 1992, Portman's customers demanded refunds of their deposits from Portman due to the lengthy delays in delivery of their vehicles. However, Portman could not refund the deposits because of their lack of income due to the production delay at Lamborghini. Portman, therefore, requested refunds of their customers' deposits from Lamborghini. However, Lamborghini refused to refund these deposits that Portman had paid to them because Chrysler had used that money to pay for its Expansion Plan.

As a result of its loss of income due to refunding their customers' deposits and lack of cars to sell, Portman was unable to service its debt to Credit Suisse. On March 30, 1992, Credit Suisse called in Portman's loan.[4] As of this date, the amount owed on the debt was £2,105,183.62. Additionally, Credit Suisse invoked Lakeman's guarantee of £448,568.62. By the time that Lamborghini shipped the right-hand drive Diablos, Portman was in an irretrievable State and it entered receivership in April of 1992.

In April 1994, Chaplake, Portman and Lakeman filed a lawsuit against Chrysler in this Court seeking recovery for damages incurred by each of them for alleged breach of implied contract and fraud. In a 1999 ruling, this Court denied Chrysler's motion for summary judgment and allowed the Plaintiffs to add a claim of negligent misrepresentation.[5] Also in a 1999 ruling, this Court allowed the Plaintiffs to add a claim of promissory estoppel.[6]

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[4] Plaintiffs' Exhibit No. 171.

[5] *Chaplake Holdings, Ltd. v. Chrysler Corp.*, Del. Super., C.A. No. 94C-04-164, Herlihy, J. (Jan. 13, 1999).

[6] *Chaplake Holdings, Ltd. v. Chrysler Corp.*, Del. Super., C.A. No. 94C-04-164, Herlihy, J. (June 16, 1999).

On June 22, 2001, the jury found, through a special verdict, that Chrysler was liable under the doctrine of promissory estoppel. But, the jury found that Chrysler was not liable for fraud, negligent misrepresentation or breach of implied contract. The jury awarded Portman £569,321.45 for costs it sustained in implementing the Portman Plan. The jury also awarded Chaplake £462,686.47 for the amount that it had invested in Portman to fund the expansion. [7]

Following the verdict, both parties filed a flurry of motions. Among Plaintiffs' motions was one seeking pre-judgment interest. This Court denied all the parties' motions, including Plaintiffs' motion seeking pre-judgment interest.[8]

In denying that motion, this Court relied upon *Collins v. Throckmorton*[9] which bars an award of such interest unless it is specifically pled. None of Plaintiffs' complaints, original or amended, pled it. When presenting this post-trial motion, they sought, through additional briefing, to argue that their certificate of value that their claim was worth over $100,000 was the equivalent of such a pleading.

Plaintiffs appealed this Court's post-trial ruling, including the denial of their claim for pre-judgment interest. Chrysler also appealed this Court's denial of its post-trial motions. In arguing for reversal of this Court's ruling on pre-judgment interest, Plaintiffs, on appeal, raised an argument not raised before this Court. On appeal they referred to the May 2001

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[7] 10 *Del. C.* § 5207 requires that a judgment on a foreign money claim is payable in that money.

[8] *Chaplake Holdings, Ltd. v. Chrysler Corp.*, Del. Super., C.A. No. 94C-04-164, Herlihy, J. (January 10, 2002) at p. 98.

[9] 425 A.2d 146 (Del. 1980).

pretrial stipulation. In that stipulation, they listed as an issue of fact to be resolved the question of how much pre-judgment interest they were owed. This argument persuaded the Supreme Court that their pleading had been amended and that, therefore, Plaintiffs had pled pre-judgment interest.[10]

The Supreme Court affirmed all of this Court's post-trial rulings except Plaintiffs' pre-judgment interest claim. The Supreme Court remanded the case to this Court to determine the pre-judgment and post-judgment interest amounts.[11]

Discussion

Under Delaware law, pre-judgment and post-judgment interest on a debt is awarded as a matter of right and not of judicial discretion.[12] Courts award pre-judgment and post-judgment interest to the prevailing injured party for the "detention of damages."[13] Delaware courts look to the "date of Plaintiff's loss" to determine the date when pre-judgment interest begins to accrue.[14] Delaware courts also compute pre-judgment interest from the date of

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[10] *Chrysler Corp.,* 822 A.2d at 1037-38.

[11] *Chrysler Corp.,* 822 A.2d 1034.

[12] *Moskowitz v. Mayor and Council of Wilmington*, 391 A.2d 209, 210 (Del. 1978).

[13] *Rollins Environmental Services, Inc. v. WSMW Industries*, 426 A.2d 1363, 1366 (Del. Super. Ct. 1980) (citing *E.M. Fleischman Lumber Corp. v. Resources Corp. International*, 114 F. Supp. 843, 844 (D. Del. 1953)).

[14] *See Metropolitan Fire & Insurance Company v. Carmen Holding Company*, 220 A.2d 778, 782 (Del. 1966); *Hercules, Inc. v. AIU Insurance Company*, 784 A.2d 481, 508 (Del. 2001); *Smith v. Thomas*, Del. Super., C.A. No. 01A-06-004, Ridgely, President J. (Dec. 10, 2001).

defendant's breach of contract/promise.[15] If the court is unable to determine the date of Plaintiff's loss, the court will resort to the date that the original complaint was filed.[16]

Based on the facts of this case, the "date of the Plaintiff's loss" is March 30, 1992. This is the date that Credit Suisse called in Portman's debt.[17] The Supreme Court described Plaintiffs' situation around that date:

> As a result of the delays, Portman's customers became impatient and demanded refunds on their deposits. Because of its loss of income, however, Portman was unable to repay the deposits. Lamborghini was also unwilling to refund the deposits that Portman had paid to the manufacturer because Chrysler used that money to pay for the Expansion Plan. Additionally, Portman was unable to service its debt to Credit Suisse, which the bank eventually called in March of 1992. At that time, the amount owed totaled £2,105,183.62.[18]

Also, beginning in February 1992, Portman's customers demanded refunds of their deposits from Portman due to Lamborghini's excessive delay in shipping new cars to the dealership. Portman could not refund the deposits for two reasons: (1) Portman's lack of income due to the production delay; and (2) Lamborghini's refusal to refund the deposits that Portman had paid to them because Chrysler had used that money to pay for the Expansion Plan. Therefore, the totality of the evidence and circumstances of this case impels the

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[15] *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992); *see also U.S. for use of Endicott Ent., Inc. v. Star Brite Construction Co., Inc.*, 848 F. Supp. 1161, 1169 (1994) ("Under Delaware law, a party is entitled to pre-judgment interest when the amount of damage is calculable, and such interest has been awarded in breach of contract cases.").

[16] *F.E. Myers Company v. Pipe Maintenance Services, Inc.*, 599 F. Supp. 697, 705 (D. Del. 1984).

[17] Plaintiffs' Exhibit No. 171.

[18] *Chrysler Corp.,* 822 A.2d at 1030.

conclusion that March 30, 1992 is the date at which pre-judgment interest began to accrue as a result of all the reasons the jury found Chrysler liable for promissory estoppel.

Plaintiffs, however, argue that pre-judgment interest should run from the various dates that they incurred their expenditures in reliance upon Chrysler's promises, starting in 1989.[19] Plaintiff's attempt, therefore, to define "date of loss" as "date of expenditure." However, no Delaware courts have defined "date of loss" as such. To the contrary, this Court has specifically ruled out awarding pre-judgment interest based on serial events:

> Interest is generally viewed as one continuing liability which merely accumulates with the passage of time. 47 *C.J.S.* Interest §§ 63-5, p. 72. If it is to be viewed as a series of increments running from successive intervals of time, it should be described with reference to commencement and terminal dates. The use of the language "time from which interest is due" appears to refer to the commencement of the running of interest and appears to treat interest as a continuing liability from its time of commencement and not as a series of increments. I do not find that the statute contemplates that interest be segmented. Accordingly, the rate of interest is calculated according to the Federal Reserve discount rate as of the date of commencement of interest liability and it remains fixed at that rate.[20]

Chrysler argues that the award of pre-judgment interest should commence on the date Plaintiffs amended their original complaint to add their claims for promissory estoppel. Because, it contends, that the Plaintiffs have not established the date on which Chrysler's promise was broken, that amendment was accomplished on July 16, 1999. However, the

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[19] Portman states that the jury awarded it the exact amount of their out-of-pocket expenses spent in reliance upon Chrysler's promises over the three-year period, starting December 6, 1989 to October 9, 1991. Chaplake states that the jury awarded it the exact amount if its out-of-pocket losses incurred on April 29, 1991 and on August 5, 1991.

[20] *Rollins*, 426 A.2d at 1367-68.

"date of Plaintiffs' loss" is the proper date from which pre-judgment interest accrues and based on the totality of the evidence, that date is March 30, 1992.

Chrysler raises several alternative contentions about when the pre-judgment interest clock should run or how it should be calculated. First, it argues that Plaintiffs caused various delays after initially filing their action in 1994. Among them, they refer to various discovery problems it had with Plaintiffs and other events.[21] Plaintiffs, however, were not the sole cause of delay. Chrysler, for instance, filed a motion to dismiss on the grounds of *forum non conveniens*. That motion was denied.[22] It later filed a motion for summary judgment which this Court denied.[23]

In short, the Court sees no basis to invoke any "rule of delay" to start the pre-judgment interest clock other than on March 30, 1992.

Chrysler also argues that the pre-judgment interest should not start until this Court ruled on all the post-trial motions. The Court's decision was rendered January 10, 2002. Chrysler cites no authority for this and it runs contrary to established law.

In that same regard, Chrysler says the rate of pre-judgment interest should change either as of the date of the verdict or as of this Court's post-trial decision. In making that

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[21] The Court notes that Chrysler asks this Court to address an issue of costs, page 10 of its brief in opposition to plaintiffs current motion, but says no more. In any event, the Court sees no reason to take any action.

[22] *Chaplake Holdings, Ltd. v. Chrysler Corp.,* Del. Super. C.A. No. 94C-04-164, Herlihy, J. (January 31, 1996).

[23] *Chaplake Holdings, Ltd. v. Chrysler Corp.,* Del. Super. C.A. No. 94C-04-164, Herlihy, J. (January 13, 1999).

argument Chrysler relies upon several Delaware District Court opinions.[24] But these opinions rely upon a specific federal statute which explicitly provides for pre-judgment interest, and which states that post-judgment interest starts or is recalculated to start when the judgement is entered.[25] Delaware's statute, does not divide the dates for the calculation of interest as the federal statute does. As this Court said in *Rollins*:

> This language indicates that a calculation would be made based upon the Federal Reserve discount rate on a certain date and the interest rate produced by that calculation would be the interest rate applicable to the claim until paid. The statute refers only to the "time from which interest is due" and makes no reference to subsequent variations in the Federal Reserve discount rate. This is consistent with an objective of these amendments to establish a continuing interest rate applicable thereafter to a particular claim without regard to whether the claim is formalized by entry of judgement.[26]

Under Delaware law, the interest rate for pre-judgment and post-judgment interest claims is governed by 6 *Del. C*. § 2301(a). This section states, in relevant part, "[w]here 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 …."[27]

Conclusion

Based on the foregoing, Chaplake is awarded pre-judgment interest on the sum of £462,686.47 computed in accordance with 6 *Del. C*. § 2301(a) from March 30, 1992 until the

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[24] *See, e.g., F.E. Meyers,* 599 F. Supp 697.
[25] 28 U.S.C. § 1961 (1982).
[26] *Rollins,* 426 A.2d at 1367.
[27] 6 *Del. C.* § 2301(a).

claim is paid. Portman is awarded pre-judgment interest on the sum of £569,321.45 computed in accordance with 6 *Del. C.* § 2301(a) from March 30, 1992 until the claim is paid.

Counsel for plaintiffs shall submit an order to carry out this decision.

IT IS SO ORDERED.

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J.