

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

P.O. Box 746  
COURTHOUSE  
GEORGETOWN, DE 19947

November 18, 2004

Dean A. Campbell, Esquire  
100 North Bedford Street  
Post Office Box 359  
Georgetown, DE 19947

Richard E. Berl, Jr., Esquire  
Smith O'Donnell Procino and Berl, LLP  
406 South Bedford Street  
Post Office Box 588  
Georgetown, DE 19947

RE: Allen v. The Pictsweet Company f/k/a/ United Foods, Inc and Smith O'Donnell  
Procino and Berl, LLP.  
C.A. No. 03C-07-026 ESB

Dear Counsel:

This is my decision on the Motion to Alter or Amend Judgment filed by plaintiffs Howard W. and Marjorie M. Allen ("Plaintiffs") of my Order dated September 20, 2004, that granted Plaintiffs' Motion for Summary Judgment against defendant The Pictsweet Company ("Defendant"). The Plaintiffs' Motion is granted in part and denied in part.

1. In the Order dated September 20, 2004, I found that the Defendant breached the contract between the parties not only by failing to pay the second \$25,000.00 deposit, as required by the contract, but also by not attempting in good faith to satisfy the contingencies in the contract.

2. The Plaintiffs pursued a breach of contract claim pursuant to a liquidated damages provision in the contract.

3. The Plaintiffs' Motion for Summary Judgment was granted with damages set at \$25,000.00, plus accrued interest.

4. The \$25,000.00, plus accrued interest, represented the liquidated damages as established by the contract.

5. The Plaintiffs have now filed a Motion to Alter or Amend Judgment pursuant to Superior Court Civil Rule 59(d), Rule 60(a), and Rule 60(b).

6. The Plaintiffs seek pre-judgment and post-judgment interest as well as the costs associated with pursuing this action.

7. The initial deposit of \$25,000.00 was being held in an interest bearing account, as agreed to by the parties. Plaintiffs' Motion for Summary Judgment sought an order that declared the initial deposit of \$25,000.00 be released to them, together with all accrued interest. This is the relief that I awarded to Plaintiffs and it was consistent with the Plaintiffs' chosen theory of damages and requested relief. Therefore, the Plaintiffs' Motion for pre-judgment interest is denied because it is inconsistent with the Plaintiffs' own theory of damages.

8. Plaintiffs' Motion also seeks the "costs" paid by the Plaintiffs to prosecute this matter and post-judgment interest.

9. The Amended Complaint made reference to and sought costs related to this matter and post-judgment interest.

10. Superior Court Civil Rule 60(a) allows the Court to correct "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission."

These oversights or omissions “may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.”<sup>1</sup>

11. I inadvertently omitted awarding costs and post-judgment interest to the Plaintiffs in my Order dated September 20, 2004. Plaintiffs shall be awarded their costs for prosecuting this matter and post-judgment interest at the applicable legal rate.

### **CONCLUSION**

The Plaintiffs’ Motion to Alter or Amend the Judgment is granted in part and denied in part for the reasons set forth herein.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

ESB:tl

cc: Prothonotary’s Office

---

<sup>1</sup> Superior Court Civil Rule 60(a).