

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 08-cv-00273-PAB-KLM

INNOVATIER, INC.,

Plaintiff/Counterclaim Defendant,

v.

CARDXX, INC.,

Defendant/Counterclaimant,

v.

ROBERT SINGLETON,

Counterclaim Defendant.

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT RE COUNT IX**

This matter comes before the Court on the motion for summary judgment [Docket No. 156] of Plaintiff Innovatier, Inc. ("Innovatier") seeking the disbursement of funds held in escrow and the interest accrued thereon. On December 27, 2010, the Court granted the motion in part and ordered the escrow agent to return the \$500,000 escrow deposit to Innovatier due to non-performance of the release condition. Docket No. 240 at 11-13. The Court reserved ruling on the issue of the accrued interest and ordered the parties to file supplemental briefing. *Id.* at 13. Both sides have now filed supplemental briefs [Docket Nos. 247, 248].

Innovatier argues that, when an escrow contract is silent as to who is entitled to the interest on escrowed funds, the interest is payable to the owner of the funds. Docket No. 247 at 2 (citing *McCarthy Bldg. Cos. v. City of St. Louis*, 81 S.W.3d 139 (Mo. App. 2002)). In this case, Innovatier remains the owner of such funds in light of CardXX's non-performance of the escrow condition.

CardXX, Inc. does not argue that it is entitled to the accrued interest. Rather, CardXX contends the interest should be maintained in escrow until a final judgment is entered because a release of the interest to Innovatier at this time would (1) "impair the success of the parties' upcoming settlement discussions" and (2) prevent CardXX from receiving any monetary award in this case. Docket No. 248 at 2-3. CardXX's first argument is mooted by the parties' unsuccessful settlement conference of last week. Moreover, even if CardXX's assertions are true, they do not justify holding the escrow interest as a settlement fund or security for a potential judgment.

Therefore, it is

ORDERED that Plaintiff Innovatier, Inc.'s Motion for Summary Judgment on Count IX [Docket No. 156] is GRANTED. It is further

ORDERED that the escrow agent is authorized and directed to release the interest accrued on the \$500,000 escrow deposit to Innovatier, Inc.

DATED January 21, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge