

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 09-cv-02614-REB-KLM

WILLIAM I. DALZELL,
DEVON C. PURDY,
SAM PROPERTIES V, LLC, a Colorado limited liability company,
GREGORY HALLER,
PAMELA HALLER,
CINDY ROGERS, and
RONALD KOLLIGIAN,

Plaintiffs,

v.

TRAILHEAD LODGE AT WILDHORSE MEADOWS, LLC, a Colorado limited liability
company, and
RP STEAMBOAT SPRINGS, LLC a Delaware limited liability company,

Defendants.

**ORDER GRANTING MOTION FOR PRE -JUDGMENT INTEREST
AND ORDERING ENTRY OF AN AMENDED JUDGMENT**

Blackburn, J.

This matter is before me on the plaintiffs' (1) **Motion for Determination of Pre-judgment Interest Rate and Application for Calculation and Addition of Prejudgment Interest in Entry of Judgment** [#169]¹ filed February 15, 2013. No response to the motion was filed. I grant the motion and order the entry of an amended judgment.

On January 31, 2013, **Final Judgment** [#164] entered in favor of plaintiffs

¹ “[#169]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

William I Dalzell, Devon Purdy, SAM Properties V, LLC, Gregory Haller, Pamela Haller, Cindy Rogers, and Ronald Kolligian, and against defendant Trailhead Lodge at Wildhorse Meadows, LLC on the plaintiffs' claims under the Interstate Land Sales Full Disclosure Act (ILSA), 15 U.S.C. § 1701 - 1720. Under § 1709(c), the plaintiffs are entitled to pre-judgment interest at an unspecified rate. In the judgment [#164], a specific amount of damages was awarded to each plaintiff. In addition, pre-judgment interest at the rate of eight percent per annum was awarded to each plaintiff, except for plaintiffs SAM Properties V, LLC and Cindy Rogers. The failure to award pre-judgment interest to these two plaintiffs was inadvertent. The plaintiffs now seek an award of pre-judgment interest to plaintiffs SAM Properties V, LLC and Cindy Rogers. On the bases cited by the plaintiffs in their motion [#169], an award of pre-judgment interest to these plaintiffs is proper.

As properly calculated by the plaintiffs, SAM Properties V, LLC is entitled to pre-judgment interest on damages in the amount of \$226,000 from July 3, 2009, until the date of judgment, January 31, 2013. SAM Properties V, LLC is entitled to \$63,403.05 in pre-judgment interest. As properly calculated by the plaintiffs, Cindy Rogers is entitled to pre-judgment interest on damages in the amount of \$86,000 from April 3, 2009, until the date of judgment, January 31, 2013. Cindy Rogers is entitled to \$25,764.48 in pre-judgment interest.

In a separate order entered concurrently with this order, I awarded the plaintiffs attorney fees in the amount of \$161,097.50 under 15 U.S.C. § 1709(c) . Those fees are to be paid by defendant Trailhead Lodge at Wildhorse Meadows, LLC. Finally, I note that the clerk of the court taxed costs in favor of the plaintiffs and against Trailhead Lodge at Wildhorse Meadows, LLC in the amount of 41,084.37. **Bill of Costs** [#173]

filed February 28, 2013.

In their present motion, the plaintiffs request entry of a judgment awarding pre-judgment interest, as specified above. I read their motion as a motion to alter or amend the judgment under FED. R. CIV. P. 59(e). The primary bases for a motion under Rule 59(e) are:

(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.

Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (citations omitted). On the two points specified above, I find and conclude that the judgment in this case must be amended to prevent manifest injustice. The plaintiffs are entitled to a judgment which provides for all of the relief to which they are entitled in this case.

THEREFORE, IT IS ORDERED as follows:

1. That the plaintiffs' **Motion for Determination of Pre-judgment Interest Rate and Application for Calculation and Addition of Prejudgment Interest in Entry of Judgment** [#169] filed February 15, 2013, is **GRANTED**; and
2. That under FED. R. CIV. P. 59, an amended judgment **SHALL ENTER** which shall include all of the provisions of the original judgment [#164] with the deletion, amendment, and additions specified below:

A. Paragraph 18 of the original judgment [#164], which addresses costs taxed against Trailhead Lodge at Wildhorse Meadows, LLC, is amended and shall read: "That under FED. R. CIV. P. 58, **JUDGMENT IS ENTERED** in favor of plaintiffs William I Dalzell, Devon Purdy, Gregory Haller, Pamela Haller, Ronald Kolligian, SAM Properties V, LLC, and Cindy Rogers, and against defendant Trailhead Lodge at Wildhorse Meadows, LLC, in the amount of 1,084.37 dollars, reflecting costs awarded to the plaintiffs in the **Bill of Costs** [#173] filed February 28, 2013."

B. Paragraph 20 of the original judgment [#164], which addresses deadlines for filing motions for attorney fees and additional elements of damages, shall not be included in the amended judgment;

C. A new paragraph 20 shall be added to the amended judgment and shall read: "That under FED. R. CIV. P. 58, **JUDGMENT IS ENTERED** in favor of plaintiff SAM Properties V, LLC, and against defendant Trailhead Lodge at Wildhorse Meadows, LLC, for prejudgment interest in the amount of 63,403.05 dollars.";

D. A new paragraph 21 shall be added to the amended judgment and shall read: "That under FED. R. CIV. P. 58, **JUDGMENT IS ENTERED** in favor of plaintiff Cindy Rogers, and against defendant Trailhead Lodge at Wildhorse Meadows, LLC, for prejudgment interest in the amount of 25,764.48 dollars."; and

E. A new paragraph 22 shall be added to the amended judgment and shall read: "That under FED. R. CIV. P. 58, **JUDGMENT IS ENTERED** in favor of plaintiffs William I Dalzell, Devon Purdy, Gregory Haller, Pamela Haller, Ronald Kolligian, SAM Properties V, LLC, and Cindy Rogers, and against defendant Trailhead Lodge at Wildhorse Meadows, LLC, in the amount of 161,097.50 dollars reflecting the court's award of attorney fees under 15 U.S.C. § 1709(c).

Dated September 23, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge