

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

NORTH AMERICAN SAVINOS
BANK, F.S.B.,

Plaintiff,

vs.

PATRICK NELSON AND
BRIAN NELSON,

Defendants.

Civil Action No.: 3:21-cv-00184-GHD-RP

BRIAN NELSON,

Cross-Complainant,

vs.

PATRICK NELSON,

Cross-Defendant.

FINAL JUDGMENT AS TO CROSS-CLAIM

This cause is before the Court on the Complaint filed on August 18, 2021, by Plaintiff North American Savings Bank, F.S.B. ("NASB") against Defendants Patrick Nelson and Brian Nelson for breach of guaranty and declaratory relief [Doc. 1] as well as the Cross-Claim filed by Brian Nelson against Patrick Nelson for contractual indemnity and declaratory relief. [13].

On September 27, 2022, the Court entered a Memorandum Opinion and Order, granting NASB's Motion for Partial Summary Judgment against Defendants and also granting Brian Nelson's Motion for Partial Summary Judgment on his cross-claim against Patrick Nelson (the

"Summary Judgment Order"). [89, 90]. In the Order, the Court ruled that NASB is entitled to a judgment as a matter of law against Defendants on its claim for breach of guaranty. The Court also ruled that Brian Nelson is entitled to contractual indemnity for the amounts he expended in connection with this litigation for attorney's fees and costs ("litigation costs") as well as the amount of any final judgment that is entered against Defendants with respect to NASB's claims. [89 at p. 9].

In Brian Nelson's original Motion for Summary Judgment, he presented evidence that his litigation costs were at least \$89,687 through July 25, 2022. [75]. As of today's date, Patrick has not contested this amount.

On January 31, 2023, Brian Nelson filed a Supplemental Motion for Summary Judgment along with additional evidentiary support demonstrating that his litigation costs totaled \$142,673 through February 2, 2023. [99 at p. 7]. Patrick has not contested this amount. In his Supplemental Motion, Brian Nelson also moved the Court for Summary Judgment on his claim for pre-judgment interest under the Defendants' Hold Harmless and Indemnity Agreement. [77-1]. The Agreement, which is governed by California law, states that any amounts owing by one party to the other shall accrue interest from the date of the indebtedness at the statutory rate of interest prescribed under California law. *Id.* Under California Civil Code §3289(a), the statutory rate of pre-judgment interest is ten (10)% per annum unless otherwise stipulated by the parties to a contract. [99 at p.8]. According to his calculation, Brian Nelson is owed pre-judgment interest on his litigation costs through February 2, 2023, in the amount of \$9,729. *Id.* at p. 7. Patrick Nelson has not filed a response contesting the amount of Brian Nelson's litigation costs or his pre-judgment interest calculation through February 2, 2023.

The Court presided over a hearing on damages on April 17, 2023. Consistent with the Court's Summary Judgment Order and additional findings made in connection with the damages hearing and contained in the Court's Opinion Determining Damages issued on this date, the Court hereby enters Final Judgment on Brian Nelson's Cross-Claim, as follows:

1. Brian Nelson is entitled to a declaratory judgment on his cross-claim against Patrick Nelson that the Indemnity and Hold Harmless Agreement executed by Defendants is valid and binding.
2. Brian Nelson is entitled to contractual indemnity under the Indemnity and Hold Harmless Agreement from Patrick Nelson for all litigation costs incurred by him in connection with this matter.
3. Brian Nelson is hereby awarded a judgment against Patrick Nelson in the amount of \$5, 669, 518. 86, which is the full amount of the Court's Final Judgment entered this date against Defendants with respect to NASB's claims, in addition to any amounts awarded to NASB for pre-judgment interest, costs, expenses, attorneys' fees and post-judgment interest.
4. Brian Nelson is additionally hereby awarded a judgment against Patrick Nelson in the amount of \$142,673 for litigation costs through February 2, 2023, plus (a) any litigation costs incurred by Brian Nelson from and after February 2, 2023; (b) plus pre-judgment interest in the amount of \$9,729 through February 2, 2023; (c) plus pre-judgment interest at a rate 10% per annum on any additional litigation costs incurred by Brian Nelson from and after February 2, 2023, through today's date, and (d) post-judgment interest at the applicable federal rate from today's date until said amounts are paid in full.
5. Judgment is accordingly hereby awarded to Brian Nelson against Patrick Nelson in the total amount of \$5,821,920.86, plus any amounts awarded to NASB for pre-judgment interest, costs, expenses, attorneys' fees and post-judgment interest, plus any litigation costs incurred by Brian Nelson in this matter from and after February 2, 2023, plus pre-judgment interest at a rate 10% per annum on any additional litigation costs incurred by Brian Nelson from and after

February 2, 2023, through today's date, plus post-judgment interest at the applicable federal rate from today's date until said amounts are paid in full. For all of which execution may issue as provided at law.

SO ORDERED AND ADJUDGED, this the 31st day of May, 2023.

A handwritten signature in black ink, appearing to read "Sen. H. Davison". The signature is written in a cursive style with a large initial "S".

SENIOR UNITED STATES DISTRICT JUDGE