

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RED HOUSE CAPITAL LLC,

Plaintiff,

v.

NIRVANA POOL & SPA LLC, ANTHONY:
PRIZZI, and THOMAS CHERENACK,

Defendants.

Civil Action No.
09-cv-5618 (NLH) (KMW)

**MEMORANDUM OPINION AND
ORDER**

HILLMAN, District Judge

THIS MATTER having been raised by the motion filed by Plaintiff, Red House Capital, LLC, on or around June 17, 2010, seeking default judgment against Defendants, Nirvana Pool & Spa LLC ("Nirvana Pool"), Anthony Prizzi, and Thomas Cherenack; and

The Court having granted Plaintiff's motion for default judgment against Defendants in the Order dated March 4, 2011; and

The Court, in that Order, instructing Plaintiff to submit whatever documentation or evidence it may have to demonstrate the amount of the award to which it is entitled; and

Plaintiff having provided documentation to the Court, including a certification of Oliver Rothauser, principal of Plaintiff, Red House Capital, and copies of bank records memorializing payments made between the parties, the parties' promissory note and contractual agreements, and correspondence from Plaintiff to Defendants; and

The Court accepting Plaintiff's representations, which were

not opposed by Defendants with respect to this motion, and finding that Plaintiff is entitled to receive \$474,272.06. This sum was calculated by adding the following values: 1) the outstanding principal at the time of entry of default (\$277,480); 2) the total prejudgment default interest owed (\$177,587.20); 3) the total prejudgment contract interest owed (\$9,204.86); 4) attorney's fees (\$10,000);¹ and

1. To calculate the remaining principal due to Plaintiffs, the following set of calculations was used. From the initial monthly balance of the loan, two percent (2%) interest is calculated based on the stipulated monthly rate in the Master Security Agreement. (See Master Security Agreement [Doc. No. 42-3], 5.) This monthly amount of interest is then subtracted from the total monthly payment to determine how much principal was paid off in that particular month. The resultant amount of principal paid off each month is then subtracted from that period's starting balance to arrive at the principal balance remaining at the beginning of the subsequent period. This set of calculations is iterated over the course of the contract period to determine the remaining principal balance due to Plaintiff.

For example, in the period of November 2008 to December 2008, the starting balance of the loan was \$250,000. Two percent (2%) of this starting balance, representing the accrued interest for that period, is \$5,000. The actual monthly payment made by Defendants for that period was \$25,833. Therefore, for this period of time, after subtracting \$5,000 in interest from Defendants' total payment, Defendants paid \$20,833 toward the principal balance of the loan. (That is $\$25,833 - \$5,000 =$ **\$20,833**.) This value, \$20,833 - the total amount of principal paid toward the balance of the loan, was then subtracted from the \$250,000 initial principal balance in order to derive the **remaining principal balance** for the following period (December 2008 to January 2009), such that the remaining principal on the loan at the beginning of the second period was \$229,167. (That is $\$250,000 - \$20,833 =$ **\$229,167**.)

To continue the example, two percent (2%) interest is calculated from the remaining principal balance, \$229,167, to arrive at the value of **\$4,583**. Again, that \$4,583 value represents that proportion of Defendants' monthly payment which constitutes interest. Because the monthly payment for this time period was \$25,833, \$4,583 is subtracted from the total monthly

payment to again arrive at the total amount paid toward the principal balance of the loan for that period, which was \$21,250. (That is $\$25,833 - \$4,583 = \mathbf{\$21,250.}$) This value, \$21,250 - the total amount of principal paid toward the balance of the loan was then subtracted from the remaining balance for that period, \$229,167, to arrive at the new remaining balance for the next period (January 2009 to February 2009), such that the remaining principal on the loan at the beginning of the next period was \$207,917. (That is $\$229,167 - \$21,250 = \mathbf{\$207,917.}$)

This same series of calculations, accounting for the varying value of the monthly payments as well as non-payments, in addition to the subsequent disbursements by Red House Capital and the change to the terms as per the May 2009 promissory note agreement, are factored into the Court's overall calculations.

According to these calculations, the principal amount remaining at the time of entry of default was **\$277,480**. The prejudgment interest at the contract default rate of twenty-four percent (24%) per annum is calculated starting with the period in which Defendant defaulted, May-June 2009. Therefore, from May-June 2009 to May-June 2010, the default interest accrued totaled \$66,595.20. (That is $\$277,480 \times .24 = \mathbf{\$66,595.20.}$) To this value of default interest is added the accrued interest for the subsequent year, May-June 2010 to May-June 2011. The accrued interest for this time period is calculated in the same manner. (That is $\$277,480 \times .24 = \mathbf{\$66,595.20.}$) Finally, the default interest from the period of May-June 2011 to January-February 2012 (the date of judgment) is calculated. This value is derived by multiplying the principal amount remaining at the time of entry of default, \$277,480, by the contract default rate, twenty four percent (24%), by the eight-month time period consisting of May-June 2011 to January-February 2012. (That is $\$277,480 \times .24 \times (8/12) = \mathbf{\$44,396.80}$) These three values are added to arrive at the total prejudgment default interest owed, **\$177,587.20**. (That is $\$66,595.20 + \$66,595.20 + \$44,396.80 = \mathbf{\$177,587.20.}$)

Plaintiffs also ask for prejudgment interest at the contract rate of two percent (2%) per month from the pre-default period of October 31, 2008 to June 2009 (representing eight months) in the amount of \$43,280. Plaintiffs have obtained this amount by calculating two percent (2%) of the remaining principal balance at the beginning of the default period, \$270,051 (a value inconsistent with the Court's calculation of \$277,480, above), then multiplying by the eight-month time period from October, 2008 to June, 2009. This calculation is: $\$270,501 \times .02 \times 8 = \mathbf{\$43,280.}$

When a contract provides for a rate at which to calculate prejudgment interest, that rate is used. See, e.g., Ramada Worldwide Inc. v. Shriji Krupa, LLC, No. 07-2726, 2009 WL

1490577, *5 n.6 (D.N.J. May 27, 2009) ("The [prejudgment] interest is calculated based on a contractual rate..."); Knauss v. Dwek, No. 01-3662, 2006 WL 1098031, *5 (D.N.J. Mar. 31, 2006) (finding that language in the mortgage and promissory note evidenced the parties' intent to apply the contracted for rate of interest to any judgment).

However, when the matter of prejudgment interest is not addressed in the contract, or the applicable rate does not appear in the contract, "[t]he matter of prejudgment interest in contract cases is left to the sound discretion of the trial court." Unihealth v. U.S. Healthcare, Inc., 14 F. Supp. 2d 623, 642 (D.N.J. 1998) (citing AGS Computers, Inc. v. Bear, Stearns & Co., 244 N.J. Super. 1, 4 (App. Div. 1990)). "The primary consideration in awarding prejudgment interest is that the defendant has had the use, and the plaintiff has not of the amount in question; and the interest factor simply covers the value of the sum awarded for the prejudgment period during which the defendant had the benefit of monies to which the plaintiff is found to have been earlier entitled." Musto v. Vidas, 333 N.J. Super. 52, 74 (App. Div. 2000).

The Promissory Note and the Master Security Agreement ("the Loan Documents") provide for two interest rates. In case of default, a twenty-four percent (24%) per annum interest rate is applied to the outstanding balance of the loan as of the default date ("the default rate"). Otherwise, the contract provides for a two percent (2%) monthly interest rate on the principal ("the contract rate").

During the pre-default time period, Defendant made the full monthly payment three times (December 2008, January 2009, February 2009), overpaid once (April 2009), underpaid once (May 2009), and failed to pay once (March 2009). Taking into account the primary consideration of prejudgment interest - to compensate the party who was entitled to, but did not receive the monies in question during the relevant time period - Plaintiff should be compensated through prejudgment interest during the pre-default period for only those two months where Plaintiff did not receive adequate payment: March 2009 and May 2009. See Unihealth, 14 F. Supp. 2d at 642. As the Plaintiff received the money he was due during the other pre-default pay periods, the justification for awarding prejudgment interest for that time period is lacking except for those two months.

This consideration substantially alters the calculations regarding pre-default prejudgment interest. The correct calculation should be: the outstanding principal balance at the time of non or under-payment, multiplied by the contract rate of two percent (2%). The principal balance during the non-payment period (March 2009) was \$186,243, while the principal balance

The Court further finding that Plaintiff is also entitled to an award of post-judgment interest. The post-judgment interest award will be calculated as of the date of this final judgment.² "The rate of post-judgment interest is a matter of federal law and will be calculated in accordance with 28 U.S.C. § 1961." Jeereddi A. Prasad, M.D., Inc., Retirement Plan Trust Profit Sharing Plan v. Investor Assocs., Inc., 82 F. Supp. 2d 365, 371 n.11 (D.N.J. 2000). "Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the

during the underpayment period (May 2009) was \$274,000. As such, the proper calculation for pre-default prejudgment interest should be: $(\$186,243 \times .02) + (\$274,000 \times .02) = \mathbf{\$9,204.86}$.

Plaintiff's suggestion that he is entitled to two percent (2%) of the principal balance at the time of default for all of the eight months prior to default is incorrect, as he already received that full 2% interest payment during all pre-default periods except for March 2009 and May 2009. Awarding Plaintiff 2% interest for the other pre-default periods would be illogical, as he already received the 2% in those other months, and would run counter to the purpose of awarding prejudgment interest, which is to compensate for money which was due but not received. Plaintiff also asks for \$10,000 in attorney's fees, as per the Agreement. This amount is not in dispute.

Adding the above values together, the total judgment should be: $\$277,480 + \$177,587.20 + \$9,204.86 + \$10,000 = \mathbf{\$474,272.06}$.

2. See Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827, 835 (1990) (holding that post-judgment interest under 28 U.S.C. § 1961 is to be calculated from the date of the entry of judgment and not the date of a jury verdict); Eaves v. County of Cape May, 239 F.3d 527, 536 (3d Cir. 2001) (ruling that post-judgment interest under 28 U.S.C. § 1961 should be calculated from the date that the court fixes the value of the award, and not the date at which the court first determined that the plaintiff was entitled to a monetary award).

calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a). The Federal Reserve website indicates that this figure, for the week ending January 20, 2012, was .11 percent (.11%). (See Board of Governors of the Federal Reserve System, Selected Interest Rates (Weekly) - H.15, <http://www.federalreserve.gov/releases/h15/current> (January 24, 2012)). Post-judgment interest is "computed daily to the date of payment" and "shall be compounded annually." 28 U.S.C. § 1961(b).

Accordingly,

IT IS on this 25th day of January, 2012, hereby **ORDERED** that Plaintiff shall be **AWARDED** a default judgment in the amount of \$474,272.06 against Defendants; and it is further

ORDERED that, along with filing on the electronic docket, a copy of this Order shall be sent to Defendants' addresses, as listed by the Motion for Default Judgment [Doc. No. 33], by first-class standard mail.

At Camden, New Jersey

/s/ Noel L. Hillman
HON. NOEL L. HILLMAN, U.S.D.J.