

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:08cv460

FILED
ASHEVILLE, N.C.
SEP 23 2010
U.S. DISTRICT COURT
W. DIST. OF N.C.

FIDELITY AND GUARANTY)
INSURANCE COMPANY,)
)
 Plaintiff,)
)
Vs.)
)
CONSTRUCTION ADVANTAGE,)
INC.; JAMES H. OGLE; and DONNA)
J. McDANIEL,)
 Defendants.)
_____)

JUDGMENT

THIS MATTER having come before the court on plaintiff's Motion for Summary Judgment Against Defendants Construction Advantage, Inc., and James H. Ogle, and the court having determined that plaintiff is entitled to the Judgment it seeks for the reasons provided in the court's February 25, 2010, Order, and the district court having instructed therein that the Clerk of this Court enter a Judgment in the amount of "\$178,343.91 plus such prejudgment interest as the clerk will compute in accordance with the law," and

IT FURTHER APPEARING to the court that current case law requires the application of the state judgment rate to prejudgment interest in federal diversity cases, United States v. Dollar Rent A Car Systems, Inc., 712 F.2d 938, 941 (4th

Cir.1983) (federal courts who use their discretion to award prejudgment interest in diversity cases should apply the interest rate of the forum state), that the North Carolina judgment rate is eight percent *per anum*, N.C.Gen.Stat. § 24-1, and that while plaintiff alleged that it made “repeated demands to be reimbursed by defendants” Compl., at ¶ 19, it did not therein allege on what date it first made demand, making prejudgment interest run from the date the action was filed, September 9, 2008, to the date judgment is herein entered, September 23, 2010, and that plaintiff is, therefore, entitled to prejudgment interest in the total amount of \$29,082.27,

JUDGMENT

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that **JUDGMENT** be and hereby is **ENTERED** in favor of Fidelity and Guaranty Insurance Company and against defendant Construction Advantage, Inc., as follows:

CONSTRUCTION ADVANTAGE, INC., shall pay to **FIDELITY AND GUARANTY INSURANCE COMPANY** the principal amount of \$178,343.91 plus prejudgment interest thereupon accruing in the amount of \$29,082.27, for a total award against such defendant in the amount of **\$207,426.18**, which shall run with interest at the federal judgment rate from date of judgment until satisfied,

and

IT IS FURTHER ORDERED that this action is otherwise **DISMISSED**

inasmuch as it has been shown to the satisfaction of the court, upon representation of counsel, that the claims against the remaining defendants were discharged in bankruptcy.

This the 23rd day of September, 2010.

A handwritten signature in black ink, appearing to read "Frank D. Johns". The signature is written in a cursive style with a large initial "F".

**FRANK JOHNS
CLERK OF COURT
WESTERN DISTRICT OF NORTH CAROLINA**