

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**  
**FOURTH DISTRICT**  
*January Term 2005*

**ROBERT MICHNAL,**  
Appellant,

v.

**PALM COAST DEVELOPMENT, INC.,**  
Appellee.

No. 4D03-3600

[June 22, 2005]

SHAHOOD, J.

Palm Coast Development, Inc. (Palm Coast) prevailed against Robert Michnal (Michnal) in its action for breach of a construction contract and foreclosure of a lien. The trial court awarded Palm Coast damages and attorneys' fees, as well as pre-judgment interest. The court also awarded an additional \$30,378.82, which was recoverable only against Michnal. On appeal, this court affirmed the lien foreclosure, reversed the breach of contract claim, in part, for remittitur, and reversed the attorneys' fees award, in part. See Michnal v. Palm Coast Dev., Inc., 842 So. 2d 927 (Fla. 4th DCA 2003), rev. denied, 882 So. 2d 385 (Fla. 2004).

On remand, a successor trial judge entered the final judgment under review here. We agree with Michnal that it was error for the successor trial judge to enter judgment on remand without first verifying the rate used by the predecessor judge in calculating pre-judgment interest. At the hearing on remand, neither counsel could recall whether the predecessor judge had utilized the statutory (11%) or the contractual (12%) rate of interest in calculating pre-judgment interest. Palm Coast's counsel prepared a proposed final judgment utilizing the contractual rate, and the trial court adopted the judgment over Michnal's objections. Under the circumstances, the successor judge should have held a hearing to determine the correct rate instead of simply accepting the final judgment proposed by appellee. Thus, we reverse and remand for that purpose and for any re-calculation of the award that may result. Also on remand, the trial court shall strike the reference to an additional \$30,378.82 as such language is surplusage and does not affect the judgment. All other issues are affirmed.

REVERSED AND REMANDED in part; AFFIRMED in part.

STEVENSON and GROSS, JJ., concur.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William L. Roby, Judge; L.T. Case No. 98-30-CA.

Jack J. Aiello and Gregor J. Schwinghammer, Jr., of Gunster, Yoakley & Stewart, P.A., West Palm Beach, for appellant.

Thomas E. Warner and Michael K. Winston of Carlton Fields, P.A., West Palm Beach, and William R. Ponsoldt, Jr., of Wright, Ponsoldt & Lozeau, Stuart, for appellee.

***Not final until disposition of timely filed motion for rehearing.***