

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-002542-MR

VITTITOW CABINET SHOP, INC.

APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE THOMAS L. WALLER, JUDGE  
ACTION NO. 03-CI-01113

TONY GASS

APPELLEE

OPINION  
AFFIRMING IN PART  
REVERSING IN PART AND REMANDING

\*\* \*\* \* \* \*

BEFORE: BUCKINGHAM, JOHNSON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Vittitow Cabinet Shop, Inc. (Vittitow) brings this appeal from a November 8, 2004, summary judgment of the Bullitt Circuit Court granting it judgment for account indebtedness in the amount of \$6,381.00. The judgment did not award prejudgment interest as sought by Vittitow. We affirm in part, reverse in part, and remand.

The underlying facts of this case are rather straightforward. In August 2002, Vittitow agreed to construct

and install cabinets in a new-home construction for Tony Gass. The original amount of the invoice was \$13,881.00. Vittitow performed its obligations pursuant to the parties' agreement and Gass paid Vittitow \$7,500.00 in November 2002.

On November 14, 2003, Vittitow initiated the instant action by filing a complaint in the circuit court. Therein, Vittitow alleged that Gass had not paid the remaining balance on the account (\$6,381.00). The complaint specifically prayed for prejudgment and postjudgment interest. The court subsequently granted Vittitow's motion for summary judgment and entered judgment against Gass in the amount of \$6,381.00. The judgment provided for postjudgment interest at the rate of 12% per annum. This appeal follows.

Vittitow contends that prejudgment interest follows as a matter of course when damages are liquidated. It is undisputed that damages were liquidated in this case. Thus, the narrow issue presented for our determination is whether Vittitow was entitled to prejudgment interest on the judgment against Gass.

It is well-established that determining "whether or not to award prejudgment interest is based upon the foundation of equity and justice." Church and Mullins Corp. v. Bethlehem Minerals Co., 887 S.W.2d 321, 325 (Ky. 1992). The determination

shall be made by the trial court and shall not be disturbed on appeal absent an abuse of discretion. Id.

Under the particular facts of this case, we believe fairness dictates an award of prejudgment interest. See Reliable Mech., Inc. v. Naylor Indus. Servs., Inc., 125 S.W.3d 856 (Ky.App. 2003). Gass deprived Vittitow of the money it was owed for over two years. Gass offered no viable defense for non-payment. Under these circumstances, we believe the circuit court abused its discretion by not awarding prejudgment interest. Accordingly, we remand this action to the circuit court for calculation and award of prejudgment interest on the November 8, 2004, judgment.

For the foregoing reasons, the November 8, 2004, summary judgment of the Bullitt Circuit Court is affirmed in part and reversed in part and this case is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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