

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2017-CA-00836-COA**

**KEESLER FEDERAL CREDIT UNION**

**APPELLANT**

**v.**

**BILLY W. SAUCIER**

**APPELLEE**

DATE OF JUDGMENT: 04/25/2017  
TRIAL JUDGE: HON. LISA P. DODSON  
COURT FROM WHICH APPEALED: STONE COUNTY CIRCUIT COURT  
ATTORNEY FOR APPELLANT: NICHOLAS VAN WISER  
ATTORNEY FOR APPELLEE: NO APPEARANCE  
NATURE OF THE CASE: CIVIL - CONTRACT  
DISPOSITION: AFFIRMED IN PART; REVERSED AND  
REMANDED IN PART: 05/29/2018  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE IRVING, P.J., FAIR AND WESTBROOKS, JJ.**

**FAIR, J., FOR THE COURT:**

¶1. Keesler Federal Credit Union appeals from a default judgment obtained against Billy Saucier stemming from two promissory notes. Keesler Federal contends that the circuit court should have required Saucier to pay its attorney's fees for collecting on the second contract. That point is well taken. We remand for the circuit court to reconsider the attorney's fees award in light of our decision. Otherwise, we affirm.

**DISCUSSION**

¶2. Keesler Federal sued on two promissory notes from Saucier. The first had been secured by a vehicle; the second was a personal loan. The deficiency following the sale of

the vehicle was approximately \$5,200, and the second loan had an outstanding principal balance of about \$3,275. On the first loan, Keesler Federal requested and received attorney's fees at the maximum rate allowed under the contract, 15% of the outstanding principal, but the circuit court denied Keesler Federal's demand for attorney's fees on the second loan. Accumulated interest, late fees, and court costs were requested and awarded, also, though no post-judgment interest was added to those awards.

### **1. Attorney's Fees on the Second Contract**

¶3. The circuit court's judgment stated that attorney's fees were not awarded on the second contract because "there is [no] contract provision . . . concerning attorney's fees." On appeal, Keesler Federal points to a provision on the second page of the contract, which appears by itself near the center of the page and is set off by white space and horizontal lines that run the full width of the page. It states:

#### **Collection Costs:**

You agree to pay all costs of collecting the amount you owe under this Agreement, including court costs and reasonable attorney's fees.

¶4. Contract construction is reviewed de novo. *See, e.g., Epperson v. SOUTHBANK*, 93 So. 3d 10, 16 (¶16) (Miss. 2012). We conclude that the contract unambiguously provides for reasonable attorney's fees and that the circuit court erred in finding otherwise. On this point, we reverse the judgment and remand for the circuit court to reconsider the demand for attorney's fees in light of our decision.

### **2. Interest on Attorney's Fees, Costs, Accumulated Interest, and Late Fees**

¶5. Finally, Keesler Federal contends that the circuit court was required to award post-judgment interest at the contract rate on the awards of attorney’s fees, court costs, accumulated interest, and late fees. It points to Mississippi Code Annotated section 75-17-7 (Rev. 2016), which provides in relevant part that “[a]ll judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered.”

¶6. We agree that all of these awards are “founded on contract” and that the statute makes the award of interest mandatory, but Keesler Federal fails to adequately brief the portion of its argument as to how the interest rate of the contract should be determined. The contracts at issue here specified a rate of interest—but on the principal only. Attorney’s fees, costs, late fees, and the like were required to be paid by Saucier, but they had no interest rate specified. Thus it appears to us there is an open question as to what constitutes the “rate of the contract” as used in the statute. We are not inclined to decide what seems to be an issue of first impression when it has not been thoroughly argued; Keesler Federal just assumes that the rate of interest on the principal must govern the entire judgment. The trial court obviously disagreed, though the judge did not explain her reasons either.

¶7. The trial judge, however, enjoys the presumption of correctness. *See Birkhead v. State*, 57 So. 3d 1223, 1231 (¶28) (Miss. 2011). As the appellant, Keesler Federal is required “to demonstrate some reversible error to [the appellate court].” *Id.*; *see* M.R.A.P. 28(a)(6). Keesler Federal has not met that burden, and so we affirm the trial court on this point.

¶8. **AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

**IRVING, P.J., GREENLEE, WESTBROOKS AND TINDELL, JJ., CONCUR. WILSON, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY LEE, C.J., GRIFFIS, P.J., BARNES AND CARLTON, JJ.**

**WILSON, J., CONCURRING IN PART AND DISSENTING IN PART:**

¶9. I concur in Part 1 of the majority opinion but dissent as to Part 2. “All judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered.” Miss. Code Ann. § 75-17-7 (Rev. 2016). In this case, Keesler Federal is entitled to attorney’s fees under the “contract[s] evidencing the debt[s] on which the judgment . . . was rendered.” *Id.* Therefore, attorney’s fees clearly are part of the judgment “founded on” those contracts. *Id.* The statute provides that the *entire* “judgment[] . . . shall bear interest,” *id.*—not just the part that represents the debt sued on. There is no basis in the statute’s language for denying post-judgment interest on part of the judgment. The statute also clearly specifies the interest rate for the judgment: “the same rate as the contract evidencing the debt.” *Id.*

¶10. The majority seems to agree “that the statute makes the award of interest mandatory,” even on the part of the judgment that is attorney’s fees. *Ante* at (¶6). Nonetheless, the majority says that Keesler Federal is not entitled to any interest on that part of the judgment because “Keesler Federal just assumes that the rate of interest on principal must govern the entire judgment.” *Id.* The majority says that Keesler Federal has not “thoroughly argued” this “issue of first impression.” *Id.*

¶11. I am less bothered by Keesler Federal’s assumption. Like Keesler Federal, I assume that the interest rate on the principal applies to the entire judgment. That is what I understand the statute to say: the “judgment[] . . . shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered.” Miss. Code Ann. § 75-17-7. The contractual interest rate is clear, and I would not expect such contracts to provide for different post-judgment interest rates for attorney’s fees, court costs, or late fees.

¶12. Nor do I fault Keesler Federal for not “thoroughly” arguing the issue. As the majority says, this appears to be an issue of first impression, so there are no on-point cases to cite. In addition, Saucier did not file a brief, so there were no counter-arguments for Keesler Federal to address. The Court can resolve this rather straightforward issue of statutory interpretation without additional argument. *See* The Federalist No. 78 (Hamilton) (“The interpretation of the laws is the proper and peculiar province of the courts. . . . It therefore belongs to them to ascertain . . . the meaning of any particular act proceeding from the legislative body.”); *Bureau of Alcohol, Tobacco & Firearms v. Fed. Labor Relations Auth.*, 464 U.S. 89, 98 n.8 (1983) (“deciding what a statute means” is a “quintessential judicial function”).

¶13. Raising this issue without resolving it will simply invite litigation. We should just go ahead and interpret the statute. I would hold that the entire judgment bears interest at the contractual rate. Therefore, I respectfully dissent as to Part 2 of the majority opinion.

**LEE, C.J., GRIFFIS, P.J., BARNES AND CARLTON, JJ., JOIN THIS OPINION.**