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IN THE SUPREME COURT OF FLORIDA

CASE NO. 77358

FIRST DCA CASE NO. 90-03387

KENNETH R. MCGURN, as Trustee
of the SIMONTON RANCH TRUST,

Petitioner,

vs.

STEPHEN A. SCOTT,

Respondent.

RESPONDENT'S REPLY BRIEF

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SUMMARY OF THE ARGUMENT

A Judgement is not final until all elements of damages have been determined. Since this Court has held prejudgment interest is an element of damages, an Order which reserves ruling on a claim for prejudgment interest cannot be final. Any other result will lead to an unnecessary multiplicity of appeals. Cases which deal with awards of costs and attorneys' fees are not applicable because such costs have been held not to be damages but expenses associated with the progress of the litigation. Therefore, the Judgement of the court below which reserved jurisdiction to award prejudgment interest was not a final Judgement, and the First District Court of Appeal correctly dismissed Petitioner's appeal.

ARGUMENT

I. PETITIONER FAILS TO RECOGNIZE THE DIFFERENCE BETWEEN COSTS AND DAMAGES.

A. Introduction

Petitioner suggests this Court should hold a judgment may be final, "leaving no judicial labor to be done but the execution of the judgment,"¹ when one of the elements of damages, prejudgment interest, has not been determined. If either party desires to challenge the award or amount of that element of damages, Petitioner suggests, "the appealing party would simply file a subsequent appeal...."² (emphasis added) Petitioner's argument completely ignores the purpose of the finality requirement which is to avoid multiple appeals.

B. Prejudgment Interest is an Element of Damages

This Court clearly has held, "that prejudgment interest is merely another element of pecuniary damages." Argonaut Insurance Company vs. May Plumbing Company, 474 So.2d 212, 214 (Fla. 1985). In that case this Court addressed thoroughly the issue of prejudgment interest. The Court considered prior Florida cases, decisions from other states, and the theoretical basis for an award

¹ Gore vs. Hanson, 59 So.2d 538 (Fla. 1952).

² Petitioner's Brief on the Merits Page 9.

of prejudgment interest. After thorough consideration and discussion of the subject this Court held prejudgment interest, in Florida, should be considered a "loss occasioned by the wrongful deprivation by the defendant of the Plaintiff's property for which the Plaintiff should be made whole." Id. at 215. There can not be a clearer definition of the nature of damages which a Plaintiff, in general, and Respondent in particular, seeks to recover.

C. Costs and Attorneys' Fees Are Not Considered Damages And Are Treated Differently Than Interest.

Petitioner's equating interest with costs and attorney's fees is misplaced. Costs, including attorney's fees are different than damages. Costs are not part of the Plaintiff's damages. "Costs arise out of the litigation itself and are not a claim or part of a claim which forms the basis of this suit." Chipolo Nurseries, Inc. vs. Division of Administration, 335 So.2d 617 (1st DCA 1976). Costs have been specifically held not to be part of the damages claimed but allowances recoverable by the successful party as an incident to the main adjudication. Golub vs. Golub, 336 So.2d 693 (2d DCA 1976). Damages, including interest, on the other hand are not "incident to" the main adjudication but are part of the main adjudication.

D. Petitioner Invites Multiple Appeals.

Most importantly, as a practical matter, the procedure suggested by Petitioner will, inevitably, result in multiple appeals rather than consolidation of all issues related to a case

in a single appeal. Yet Petitioner does not even attempt to justify this bifurcated appeal process by any countervailing advantages.

There is absolutely no reason for this Court to subject the appellate courts of this state to such multiple appeals. Petitioner's suggestion that the "appealing party would simply file a subsequent appeal...."³ simply ignores the practical reality of the case load of the appellate courts of the state. Petitioner suggests no reason to add to that burden.

That Petitioner challenges Respondent's entitlement to prejudgment interest graphically exemplifies the effect the ruling sought by Petitioners would have on the case load of the appellate courts. Had the First District Court of Appeals not dismissed Petitioner's appeal it would have ruled on Petitioner's original appeal only to be faced with a subsequent appeal challenging the lower court's award of prejudgment interest. Such multiplicity of appeals is contrary to established law, common sense, and the orderly management of the courts.

³ Petitioner's Brief on the Merits, page 9.

II. PLAINTIFF IS ENTITLED TO PREJUDGMENT INTEREST FROM THE DATE OF THE TRIAL UNTIL THE DATE OF ENTRY OF THE JUDGEMENT.

Respondent is entitled to prejudgment interest from the date the trial was held until the date of entry of the Judgment, approximately 8 months later. However, this issue is not properly before the Court at this time.

A Plaintiff is entitled to receive prejudgment interest on liquidated damages. Damages are liquidated if the verdict establishes the amount of damages due at a date certain. Argonaut Insurance Company vs. May Plumbing Company, supra.

In this case a non-jury trial was held on January 30 and 31, 1990. The Court took the matter under advisement, and a Judgment for Plaintiff was entered in the amount of \$92,341.99 on August 27, 1990. Thus, since the evidence established \$92,341.99 was due, at the latest, at the time of trial on January 30 and 31, 1990, Petitioner is entitled to interest from that date until the date of entry of the Judgment in August, 1990. Indeed, both in the trial court and on brief⁴ Petitioner concedes Plaintiff was entitled to post trial interest.

This situation does not arise in a trial in which the jury is tasked with an immediate verdict. Unfortunately, given the case load of the trial courts, delays of several months between conclusion of a trial and entry of the Judgment are not unusual. Plaintiff continues to suffers loss of his property during this time and is entitled to recoup that loss.

⁴ Petitioner's Brief on the Merits, page 13, Footnote 5.


However, Respondent suggests it is inappropriate for this Court to address his entitlement to interest absent a proper ruling from the trial court which has been properly appealed to, and ruled on by, the District Court of Appeal.

CONCLUSION

In conclusion, Respondent asks this Court to rule an appeal is not appropriate until the trial court determine Plaintiff's entitlement to and the amount of all elements of damages. Any other ruling will result only in a multiplicity of piecemeal appeals. Therefore, the ruling of the First District Court of Appeal should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Dana G. Bradford, II and Lee S. Haramis, Esq., Baumer, Bradford, Walters & Liles, P.A. Suite 2000, 225 Water Street, One Enterprise Center, P.O. Box 4788, Jacksonville, FL 32201 this 23 day of June, 1991.



OF COUNSEL