

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Case No. 2012-CP-39-01554

Julie Freeman,

Plaintiffs,

v.

J.L.H. Investments, LP, a/k/a Hendrick
Honda of Easley,

Defendants.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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SC Court of Appeals

**ORDER DENYING PLAINTIFF'S MOTION
FOR PREJUDGMENT INTEREST**

This matter comes before the Court on the motion of Julie Freeman ("Plaintiff") for prejudgment interest. A hearing was held on December 4, 2013. Plaintiff appeared through her attorney, Brady R. Thomas, Esq., and Hendrick Honda of Easley ("Defendant") appeared through its attorney, James Y. Becker, Esq. For the reasons set forth below, Plaintiff's motion is denied.

S.C. Code Ann. § 34-31-20(A) provides for prejudgment interest only in cases "wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." (emphasis added). As interpreted by South Carolina courts, prejudgment interest may only be recovered when a payment is (1) demandable; and (2) liquidated. *Future Group v. Nationsbank*, 324 S.C. 89, 101, 478 S.E.2d 45, 51 (1996). Neither of these requirements is met here.

First, Plaintiff's claim for damages was not demandable before the entry of the jury verdict, so she is not entitled to prejudgment interest. *See id.* at 101, 478 S.E.2d at 51 (holding that to recover prejudgment interest, a claim must be demandable either by agreement of the

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parties or by the operation of law at some time “before entry of judgment”) (emphasis added); *BB&T of S.C. v. Kidwell*, 350 S.C. 382, 391, 565 S.E.2d 316, 320 (Ct. App. 2002) (finding that prejudgment interest was appropriate where an amount was due and payable as of a certain date); *T.W. Morton Builders v. Von Buedingen*, 316 S.C. 388, 399, 450 S.E.2d 87, 93 (Ct. App. 1994) (finding that plaintiff, to be entitled to prejudgment interest, “had the burden of establishing a stated account and the parties’ agreement, express or implied, that the account is a true statement due at a specific point”).

Here, there is no agreement between the parties establishing a demandable amount, and Plaintiff had no right by operation of law to demand damage prior to the entry of judgment. The Dealers Act does not entitle a plaintiff to monetary recover *unless and until* a judge or jury determines liability. See S.C. Code Ann. § 56-15-110 (1) (“any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefore in the court of common pleas and shall recover double the actual damages by him sustained”) (emphasis added); see also *Tilley v. Pacesetter*, 355 S.C. 361, 375-76, 585 S.E.2d 292, 299 (2003) (holding, pursuant to a statute providing for penalties if a creditor violates the statute, that the consumer “had no right to demand [the creditor] pay penalties until [the creditor’s] liability was established”).

Plaintiff’s argument that the damages she sued to recover were demandable relies heavily on cases involving claims for conversion. (See Pl. Mot. at 1-2 (citing *Robbins v. First Fed. Sav. Bank*, 294 S.C. 219, 224-225, 363 S.E.2d 418, 421-22 (Ct. App. 1987).) But an award of prejudgment interest in a conversion case has nothing to do with the prejudgment interest statute, § 34-31-20(A), and instead, the measure of recovery for the damages under a conversion claim *includes* prejudgment interest. See *Tilley*, 355 S.C. at 375-76, 585 S.E.2d at 299 (“As a

general rule, the measure of damages for the conversion of personal property is the value of the property with interest thereon, and the jury may give the highest value up to the time of trial.”); *McShane v. Howard Bank*, 73 Md. 135, 20 A. 775 (1890) (“Where money has been converted, the measure of damages is its amount with legal interest from the date of conversion.”). Here, Plaintiff has not asserted a claim for conversion, and the cases awarding prejudgment interest as a component of damages on a conversion claim do not apply.

Plaintiff’s claim for damages also fails to satisfy the second prerequisite for an award of prejudgment interest under § 34-31-20(A): The damages were not ascertainable. Plaintiff’s claim is simply a statutory claim for unliquidated damages, which differs significantly from a claim for liquidated damages. Liquidated damages involve a “sum certain or [are] capable of being reduced to certainty based on a mathematical calculation previously agreed upon by the parties.” *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006). In contrast, as Plaintiff herself has acknowledged, unliquidated damages are damages “depending on no fixed standard, referred to the wise discretion of a jury, and can never be made certain except by accord or verdict.” (See Pl. Mot. at 2 (citing *Beckmann Concrete Contractors, Inc. v. United Fire and Casualty Co.*, 360 S.C. 127, 131, 600 S.E.2d 76, 78 (Ct. App. 2004).)

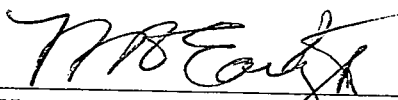
Here, the Court left the amount of damages to the discretion of the jury, and much like the court in *Tilley*, the amount of damages was not a sum certain. In her reply, Plaintiff argues that “[t]he Court in *Tilley* had discretion to award a penalty in an amount determined by the Court,” and “[t]he penalty amount in *Tilley* was not a sum certain because the amount of the penalty could vary.” (Pl. Reply at 3.) This argument is not persuasive because the situation in *Tilley* is indistinguishable from this case. Like the Court in *Tilley*, the jury here had the discretion to award damages in an amount of anything between \$0 and \$249 or \$299. The Court

specifically charged the jury that it could award damages within a "wide range . . . anywhere from zero to two hundred ninety-nine dollars." (Trial Trans., Charge at 15:11-24.)

The Court is likewise not persuaded by Plaintiff's contention that if the jury had awarded less than the full amount of the aggregate closing fees charged by Defendant, then the difference between the full amount of fees collected and the verdict would be a "right of discount or offset" claimed by Defendant. (Pltff. Mot. at 4.) Defendant has never argued that it was entitled to a discount or right of setoff, and the Court did not charge the jury regarding discount or setoff. Instead, the measure of damages on Plaintiff's claim was described by the Court as follows: "if the Defendant's closing fees exceeded the amount necessary to reimburse him for his actual closing costs, then actual damages [are] *a portion* of that fee which exceeded actual closing costs." (See Trial Trans., Charge at 15:11-24; Trial Trans., Mot. Hrg., 62:14-15 (the jury "[could] find all of it was not part of the closing, [or] some of it") (emphasis added).) The discretion left to the jury in determining its award shows that the damages were not a sum certain and were not demandable prior to trial. Therefore, there is no basis for an award of prejudgment interest.

Based on the foregoing, Plaintiff's Motion for Prejudgment Interest is DENIED.

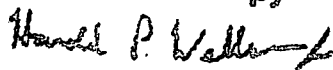
AND IT IS SO ORDERED.


The Hon. Doyet A. Early, III

March 13, 2014

Bamberg, South Carolina
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Clerk of Court

Pickens County, SC

Dated 4/17/2014

