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JUN 27 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Kent Blackburn and Alison R. Minnich,)
)
 Plaintiffs,)
)
 vs.)
)
 TKT and Associates, Inc., Martha Carver,)
 and Raymond T. Windham,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

CASE NO: 2005-CP-21-1116

**FINAL ORDER
 AS TO PLAINTIFFS' MOTIONS
 FOR COSTS AND
 POST-JUDGMENT INTEREST**

THIS MATTER came before the Court upon Plaintiffs' motions for costs and post-judgment interest. After carefully reviewing the submissions of both parties and the relevant law along with the history of this case, the Court finds that Plaintiffs are entitled to costs and post-judgment interest as explained below.

The procedural history of this case is complex, but, in short, this matter was originally tried by this Court on October 4, 2006. The trial resulted in an order dated October 18, 2016, directing a corporate valuation be completed followed by a buy-out of the Plaintiffs' interest. An appraisal was issued November 27, 2006, and Defendants tendered payment by letter dated November 30, 2006. Plaintiffs did not accept the tender of payment and filed an objection to the appraisal. On December 6, 2006, Defendants filed a motion to enforce the judgment. The Honorable Michael Nettles heard that motion on February 7, 2007, and ordered enforcement of the buy-out as appraised. Defendants again attempted to tender payment on February 15, 2007, from defense counsel's trust fund, which was refused by Plaintiffs. Plaintiffs appealed and the case made its way through the court system for nearly a decade. On February 7, 2017, this Court entered a final order in favor of Plaintiffs, resolving all issues except the questions of post-judgment interest and costs.

As to the issue of post judgment interest, Plaintiffs assert that they are entitled to interest from the original date of judgment, February 7, 2007, at the rate of 12.25% pursuant to Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000)—a sum of \$139,222.30. Defendants argue that interest should run instead from the Court's most recent company valuation dated February 10, 2017, because of their good-faith efforts to tender payment on the original amount nearly a decade ago. The Court agrees with Defendants.

Post-judgment interest on judgments is generally allowed as a matter of course by statute and serves several purposes. "The purpose of post-judgment interest . . . is to penalize non-payment of a judgment by a judgment debtor." Chambers v. Pingree, 334 S.C. 349, 354, 513 S.E.2d 369, 354 (Ct. App. 1999) (internal citations omitted). "The running of post-judgment interest further encourages judgment debtors to pay judgments promptly." Casey v. Casey, 311 S.C. 243, 245, 428 S.E.2d 714, 716 (1993).

In Calhoun, the Supreme Court of South Carolina adopted a rule to avoid disputes arising out of delays in obtaining an order on post-verdict motions or an opinion from the appellate court.

Trial Handbook for South Carolina Lawyers, Judgment Interest, § 36:17 (Sept. 2016).

[I]t appears that the simplest way to resolve [the issue of calculating post-judgment interest] is by adopting a rule that when a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.

Calhoun at 104, 529 S.E. 2d at 19. However, there is a way to avoid the accrual of interest. SCRCP

67 provides, in part:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing.

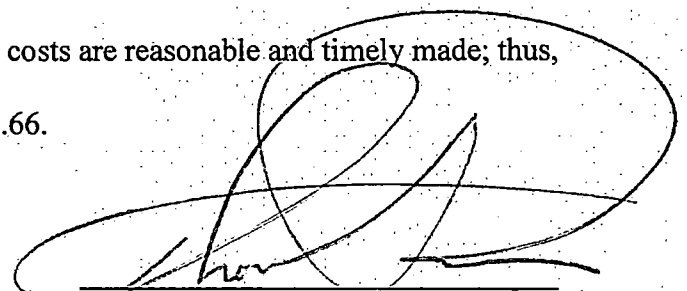
Such a deposit stops the accrual of interest on the judgment. See Russo v. Sutton, 317 S.C. 441, 454 S.E.2d 895 (1995). The rationale is that "such a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available." Id.

Here, Defendants may not have strictly complied with rule regarding a deposit into the Court, but it is abundantly clear that they made not one, but two good-faith efforts to comply with the Court's original order by immediately presenting Plaintiffs with payment from defense counsel's trust account. As stated above, rules regarding post-judgment interest exist to prevent debtors from delaying payment of an award or shirking responsibility; here, Defendants have done neither of these things and should not be punished by the results of a very lengthy appeals process. I find that although Defendants may not have followed SCRCP 67 to its technical conclusion, they did follow the spirit of the rule and should not be penalized for violating a technicality.

Therefore, I find that Plaintiffs are entitled to post-judgment interest on the amount most recently entered by this Court on February 10, 2017, at the current legal rate of interest, 7.75%. The per diem interest for Defendants Blackburn and Minnich is \$8.63 and \$2.88, respectively. Thus, the interest from February 10, 2017, through the date of this order is \$889.89 for Defendant Blackburn and \$296.64 for Defendant Minnich. Interest shall accrue at the above-stated rate until paid.

Additionally, I find that Plaintiffs' requests for costs are reasonable and timely made; thus, Plaintiffs are entitled to costs in the amount of \$4,403.66.

AND IT IS SO ORDERED.



The Honorable Thomas A. Russo
Twelfth Judicial Circuit

May 25, 2017
Florence, S.C.