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State Drywall, Inc. v. Rhodes Design & Dev., 122 Nev. Adv. Op. 11
(Feb. 9, 2006)¹

CONTRACT LAW- PREJUDGMENT INTEREST

Summary

State Drywall Inc. (“State Drywall”) appealed the district court’s order awarding Rhodes Design & Development (“Rhodes”) its attorney fees and costs in a breach of contract action pursuant to the cost-shifting provisions of NRCP 68(g) and NRS 17.115(5). State Drywall successfully argued that the district court should have awarded prejudgment interest on the two payments that Rhodes made before trial but after litigation had commenced, and added that prejudgment interest to the judgment awarded in making the comparison to the offer of judgment under NRCP 68(g) and NRS 17.115(5).

Disposition/Outcome

Reversed and remanded with instructions. The Nevada Supreme Court reversed the district court’s order awarding attorney fees and costs in the breach of contract action, and remanded with instructions. The Nevada Supreme Court concluded that State Drywall was entitled to prejudgment interest paid under a contract during a pending collection suit, as that payment was not included in the principal amount of the judgment. Further, for the purposes of determining cost-shifting under NRCP 68(g) and NRS 17.115(5), the Court held that pre-offer judgment interest should be computed on payments made during the pendency of the suit, and added to the actual judgment when compared to the offer of judgment, despite the offer’s silence on the inclusion of interest.

Factual and Procedural History

This case arose out of a breach of contract dispute between State Drywall and Rhodes. Rhodes was a general contractor that contracted with State Drywall to perform insulation, drywall and painting work on several houses. Rhodes did not pay State Drywall for part of the work, and the last invoice became due on January 21, 1999. State Drywall sued Rhodes in April 1999 on a breach of contract claim, seeking the balance due.

While litigation was pending, Rhodes paid State Drywall two payments on the contract. Rhodes paid \$26,500 in December, 1999 and \$81,250.02 in October, 2002. After payment was made, but before trial, Rhodes made an offer of judgment under NRCP 68 and NRS 17.115 for \$180,000, inclusive of costs, which State Drywall rejected.

At trial, the district court found that Rhodes had breached its contract with State Drywall and awarded State Drywall \$106,502.01.² The amount of the award did not include Rhodes’

¹ By Eunice Kasiske

² The district court came to this figure by relying on a special master’s report that determined the balance due.

payments to State Drywall while litigation was pending. The court also awarded State Drywall \$42,244.02 in prejudgment interest, calculated from the January 21, 1999 date to the offer of judgment in June, 2003. However, the district court did not award prejudgment interest on the two payments Rhodes made to State Drywall during the litigation, finding that because those payments were not part of the judgment, they could not earn pre-judgment interest.³

Because Rhodes had made an offer of judgment, the court conducted a cost-shifting analysis under NRCP 68 and NRS 17.115, comparing the offer of judgment to the actual judgment plus pre-offer judgment interest. The court then awarded Rhodes its costs and attorney's fees, finding that State Drywall did not obtain a more favorable judgment than Rhodes' offer of \$180,000, inclusive of costs. State Drywall appealed.

Discussion

On appeal, State Drywall contended that the district court should have awarded prejudgment interest on the two payments Rhodes made before trial, and that the district court should have added that prejudgment interest to the judgment when the court made the comparison of the judgment awarded to the offer of judgment under NRCP 68(g) and NRS 17.115(5).

First, the Nevada Supreme Court determined the proper statute to calculate prejudgment interest. State Drywall contended that the general prejudgment interest provision for contractual matters, NRS 99.040(1), was controlling because it was a contract dispute with an amount owed on a particular date. However, Rhodes argued that NRS 17.130(2), the general statute for calculating interest, was controlling because NRS 99.040(2)(b) stated that NRS 99.040(1) did not apply to money owed by a contractor to his subcontractor pursuant to NRS 624.630. Rhodes' contention was that it was a general contractor, and State Drywall was a subcontractor.

The district court had calculated interest under NRS 99.040(1), as the court had concluded as a matter of law that prejudgment interest should have been calculated from January 21, 1999, the date payment became due. The Nevada Supreme Court noted that it reviewed the district court's statutory interpretations de novo. After review, the Nevada Supreme Court determined that the district court properly concluded that NRS 99.040(1) governed the prejudgment interest.

The Court stated that NRS 99.040(2)(b) only limited the application of that statute when a contractor failed to pay its subcontractor because the contractor did not receive the necessary funds from the owner. In the present case, Rhodes' failure to pay State Drywall was not due to an owner's failure to provide necessary funds. The Court stated that because this case involved a contractual amount for which an ascertainable due date existed, NRS 99.040 controlled.

The Court next turned to the issue of whether State Drywall should have been awarded prejudgment interest on the two payments Rhodes made to State Drywall after litigation had

³ State Drywall had calculated prejudgment interest of \$2,222.03 on the first payment, and \$28,841.90 on the second payment, totaling \$31,063.93.

commenced, but before trial. The Court noted that the plain language of NRS 99.040(1) stated that interest must be allowed upon all money from the time it becomes due, and that the statute in no way limited prejudgment interest only to amounts contained in the final judgment. Rather, according to the statute, prejudgment interest should have been calculated for all money owed under the contract from the January 21, 1999 due date until the date it was paid or an offer of judgment was made.

The Court cited *First Interstate Bank v. Green*, where it had concluded that prejudgment interest should have been added to the money paid before trial where the defendant deliberately deprived the plaintiff of the money owed for a period of time.⁴ The Court noted that adding prejudgment interest was important, both in addressing an adequate compensation rationale, as well as serving a public policy goal.⁵ The Court could not condone a tactic which would allow a defendant in a collection case to delay payment until just before trial, and avoid paying interest because such action would circumvent the mandates of prejudgment interest statutes.

In a matter of first impression for the Nevada Supreme Court, the Court held that pre-offer prejudgment interest must be added to the judgment when comparing it to the offer of judgment, unless the offeror clearly intended to exclude prejudgment interest from its offer. Further, the amount of pre-offer prejudgment interest would include any interest calculated on pre-offer contractual payments made by the offeror during the pendency of the litigation.

Because the district court did not include the prejudgment interest on the two contractual pre-offer payments, the Nevada Supreme Court concluded that the district court's order should be reversed and remanded for a new comparison between the offer of judgment and the actual judgment.

Conclusion

The Nevada Supreme Court reversed the portion of the district court's judgment awarding pre-judgment interest, and the order awarding attorney's fees and costs to Rhodes. The Court remanded the case to the district court with instructions. The court held that, to determine whether to make an award of costs and attorney's fees, the district court had to first calculate pre-judgment interest under NRS 99.040(1) on the two payments made before trial but after litigation had commenced, add that total to the prejudgment interest previously calculated, and then add this total to the total judgment awarded. After this figure was calculated, the district court could determine whether State Drywall obtained a more favorable judgment than Rhodes' offer of judgment.

⁴ 101 Nev. 113, 115, 694 P.2d 496, 497-98 (1985).

⁵ The adequate compensation rationale is that the defendant deprived the plaintiff of money to which the plaintiff was entitled, and the defendant should compensate the plaintiff for the time it was deprived of its funds. The public policy rationale is that, if interest was not recoverable on amounts owed to the plaintiff and paid by defendant after litigation but before trial, and the defendant was worried about losing, the defendant could simply pay some or all of the money before trial, and avoid paying interest. This result would be fundamentally unfair.