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Summary of United Insurance Company of America vs. Chapman, 120 Nev. Adv. Rep. 83

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***United Insurance Company of America vs. Chapman*, 120 Nev. Adv. Rep. 83, 100 P.3d 664 (Nov. 19, 2004)¹**

CIVIL PROCEDURE – COSTS & ATTORNEY FEES

Summary

The Nevada Supreme Court ruled that the prejudgment interest awarded to Chapman should have been calculated pursuant to the specific interest statute, rather than the general interest statute, because the special interest statute was in effect when the judgment was entered. The district court had erred by awarding the attorney fees to Chapman, because United's claim was brought on reasonable ground. The award of post-judgment interest awarded to Chapman was also reversed.

Disposition/Outcome

The judgment of the district court, in relation to the calculation of prejudgment interest, the award of attorney fees, and post-judgment interest awarded was reversed and remanded for further proceedings consistent with the opinion.

Factual and Procedural History

In 1987, Unicoa Corporation shareholders Myron Chapman, Audrey Schlossberg, and Chapman Industries (referred to collectively as Chapman) dissented when Unicoa merged into the United Insurance Company of America (United). In 1987, Chapman filed suit, seeking an appraisal and payment for their shares.

In 1995, before a final judgment was entered, the Nevada Legislature enacted NRS 92A.340,² providing a specific interest rate to be applied in a dissenting shareholder action. In 1996, the district court entered judgment for Chapman regarding the stock's valuation, awarded attorney fees to United based on a rejected offer of judgment, and denied Chapman prejudgment interest. The parties appealed. The Nevada Supreme Court affirmed the stock valuation, but vacated the district court order awarding attorney fees because the offer of judgment was invalid.

On remand, the district court entered a final judgment for Chapman, which calculated prejudgment interest pursuant to a general interest statute, NRS 99.040.³ The

¹ Summarized by Ryan Hall.

² NEV. REV. STAT. 92A.340, providing the interest rate to be applied in dissenting shareholder actions, states:

Interest payable pursuant to NEV. REV. STAT. 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the average rate currently paid by the entity on its principal bank loans or, if it has no bank loans, at a rate that is fair and equitable under all of the circumstances.

³ NEV. REV. STAT. 99.040(1) states:

When there is no express contract in writing fixing a different rate of interest, interest must be

final judgment stated that the entire judgment shall bear post-judgment interest. Also, the district court awarded attorney fees to Chapman based on NRS 18.010(2)(b),⁴ finding that United's claim to calculate prejudgment interest pursuant to NRS 92A.340 was brought without reasonable ground. United then appealed.

Discussion

I. Calculation of the Prejudgment Interest

The Nevada Supreme Court concluded that special interest statute, NRS 92A.340, applies and that the district court had erred in calculating the prejudgment interest pursuant to the general interest statute, NRS 99.040. United argued that the district court should have calculated prejudgment interest pursuant to the specific interest statute rather than the general interest statute. Before the specific interest statute was enacted,⁵ prejudgment interest in a dissenting shareholder action was calculated under the general interest statute.⁶

United asked the Nevada Supreme Court to follow its 1984 decision in *Bing Construction v. Vasey-Scott Engineering*⁷ and conclude that specific interest statute applies. The court agreed that *Bing* is controlling. In *Bing*, a cause of action accrued prior to a statutory amendment that increased the applicable interest rate. The court concluded that the statutory rate in effect when the judgment was entered was the appropriate interest rate to apply.⁸

Applying the general rule from *Bing*, the Nevada Supreme Court concluded that the rate in effect when the 1996 final judgment was entered was the appropriate rate to use in calculating prejudgment interest, because the specific interest statute was enacted before the final judgment was entered.

II. Attorney Fees

The Nevada Supreme Court ruled that the district court abused its discretion in awarding attorney fees pursuant to NRS 18.010(2)(b). NRS 18.010(2)(b) provides that a district court may award attorney fees to a prevailing party when the court finds that a

allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the commissioner of financial institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due.

⁴ NEV. REV. STAT. 18.010(2)(b) (allows a district court to award attorney fees).

⁵ When the Legislature enacted NRS 92A.340 in 1995, it repealed an earlier statute, NRS 78.477 (adopted 1991), which provided a specific interest rate to be applied in a dissenting shareholder action. When the Chapman dissenting shareholder action was commenced in 1987, neither NRS 92A.340 nor its nearly identical predecessor, NRS 78.477 existed.

⁶ See *Southdown, Inc. v. McGinnis*, 89 Nev. 184, 194, 510 P.2d 636, 642 (1973).

⁷ 100 Nev. 72, 674 P.2d 1107 (1984).

⁸ See *id.* at 74 n.1, 674 P.2d at 1108 n.1; *Wilson v. Pacific Maxon, Inc.*, 102 Nev. 52, 55, 714 P.2d 1001, 1003 (1986) (concluding that the statutory rate in effect upon entry of judgment was the appropriate rate to apply, which is consistent with case law interpreting NRS 99.040 to include prejudgment and post-judgment interest).

claim was brought without reasonable ground.⁹ A district court's award of attorney fees will not be overturned on appeal unless there is a manifest abuse of discretion.¹⁰

Based on the Nevada Supreme Court's conclusion that the specific interest statute applies, United's claim that prejudgment interest should be calculated pursuant to the specific interest statute, was clearly brought with reasonable grounds. Therefore, the district court had manifestly abused its discretion in awarding attorney fees to the Chapman pursuant to NRS 18.010(2)(b).¹¹

III. The Post-judgment Interest

The Nevada Supreme Court ruled that the district court erred in allowing the entire judgment, including prejudgment interest, to bear post-judgment interest. The court had previously permitted an entire judgment, including prejudgment interest, to bear post-judgment interest.¹²

However, the specific interest statute specifies that interest "must be computed from the effective date of the action until the date of payment." The specific interest statute provides for a single rate of interest from the effective date of the action to the date of payment, regardless of when the judgment is entered. Thus, the Nevada Supreme Court's general holdings regarding post-judgment interest do not apply in light of the specific provisions of the specific interest statute. Accordingly, the Nevada Supreme Court concluded that the district court erred in allowing the entire judgment to bear post-judgment interest.

Conclusion

The Nevada Supreme Court held that the district court erred in calculating prejudgment interest pursuant to the general interest statute, because the rate in effect when the final judgment was entered, was set forth in the specific interest statute. Also, the district court had abused its discretion in awarding fees, because United's claim was brought with reasonable grounds. Finally, the district court erred in allowing the entire judgment to bear post-judgment interest, because the specific interest statute specifies that the interest must be computed from the date of action to the date of payment.

⁹ See *Duff v. Foster*, 110 Nev. 1306, 1308-09, 885 P.2d 589, 591-92 (1994) (concluding that the proper inquiry under NRS 18.010(2)(b) is whether the claim was brought without reasonable grounds), overruled on other grounds by *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998).

¹⁰ *Nelson v. Peckham Plaza Partnerships*, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994).

¹¹ See *Key Bank v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990) (determining that, where the law was not free from doubt and a complaint presented complex legal questions concerning statutory interpretation and legislative intent, the district court abused its discretion in awarding attorney fees on the basis of NRS 18.010(2)(b)); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993) (noting that an award made in clear disregard of guiding legal principles may constitute an abuse of discretion).

¹² *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 325, 890 P.2d 785, 790 (1995) (concluding that the weight of authority in other jurisdictions favors the allowance of post-judgment interest on prejudgment interest).