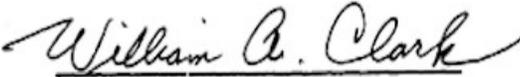


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



William A. Clark
United States Bankruptcy Judge

Dated: April 13, 2006

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: *
Case No. 04-36359
Panel Town of Dayton, Inc., *
Debtor. * Chapter 7
(Converted from Chapter 11)
* Judge William A. Clark
*
Panel Town of Dayton, Inc., *
Plaintiff, * Adv. Pro. No. 04-3311
*
v. *
Edward M. Corrigan, et al., *
Defendants. *

**ORDER GRANTING PLAINTIFF'S MOTION
FOR PREJUDGMENT INTERST**

Dated at Dayton, Ohio this 13th day of April, 2006.

This matter is before the court on Plaintiff/Debtor Panel Town of Dayton, Inc.'s ("Panel Town") Motion for Prejudgment Interest requesting prejudgment interest on the state law based damages assessed against Defendant Edward M. Corrigan ("Corrigan") in this court's Memorandum Decision and Order Granting Judgment to the Plaintiff, Panel Town of Dayton, Inc. ("Panel Town"), and Cross-Claimant, Del Norte Refinance, LLC ("Del Norte"), entered on February 10, 2006. ("Memorandum Decision") (Doc. 101). In the Memorandum Decision, the court found that Defendant Corrigan improperly converted Panel Town's property under Ohio law.

Panel Town filed this motion on February 20, 2006, shortly after the entry of the Memorandum Decision. (Doc. 107). Panel Town supplemented its motion on March 9, 2006, (Doc. 120), and Corrigan filed a Memorandum in Opposition to Plaintiff's Motion for Prejudgment Interest on the same day. (Doc. 121). On March 14, 2006, Del Norte filed a Memorandum in Support of Plaintiff's Motion for Prejudgment Interest. (Doc. 124). The court heard oral arguments on the issue on March 16, 2006.

In addition to the Plaintiff's motion for prejudgment interest being addressed in this order, the court also notes that Defendant Corrigan filed a Motion to Reconsider the Memorandum Decision entered on February 10, 2006. (Doc. 110). That motion along with the issues of set off raised by the parties at oral argument has been addressed in an Order (1) Granting Defendant Corrigan's Motion for Reconsideration; (2) Granting Amended Judgment to the Plaintiff, Panel Town of Dayton, Inc. and Cross-Claimant, Del Norte Refinance, LLC; And (3) Setting Amount of Set Off Allowed to Defendant (the "Reconsideration Order") which was filed simultaneously herewith. This order and the Reconsideration Order are final, appealable orders of this court.

I. Introduction

In the present motion, Panel Town seeks prejudgment interest on the damages awarded in the Memorandum Decision. Defendant, however, argues that Plaintiff is not entitled to prejudgment interest under Ohio law. Thus, the first question presented is whether Plaintiff is entitled to prejudgment interest. A secondary issue also arises as to whether the appropriate rate of interest is determined under Ohio state or federal bankruptcy law.

Based on the following analysis, the court finds that Plaintiff is entitled to prejudgment interest and that the rate of interest is dictated by Ohio state law.

II. Panel Town's Entitlement to Prejudgment Interest

The court must determine first whether Plaintiff is entitled to prejudgment interest on the damages award which was based in the conversion claim. Historically, Ohio common law has prevented a court from granting prejudgment interest in tort cases. However, the tort of conversion provides a well-established exception to the general rule. *Moore v. Univ. of Cincinnati Hosp.*, 586 N.E.2d 213, 215 (Ohio App. 10th Dist. 1990). In addition, the Ohio Code allows for prejudgment interest in tort cases when a party fails to make a good faith effort to settle a case. Ohio Rev. Code § 1343.03(C) (2003). It is important to note that Ohio courts have found that the right to any common law prejudgment interest is in addition to the right prescribed in Ohio Revised Code § 1343.03(C). *See Moore*, 586 N.E.2d at 215; *Wozniak v. Wozniak*, 629 N.E. 2d 500, 507 (Ohio App. 9th Dist. 1993).

The purpose of an award of prejudgment interest in a conversion action is compensatory in nature and it is within the discretion of the trier of fact to include an element of interest in the damages awarded. *DeSantis v. Smedley*, 517 N.E.2d 1038, 1042 (Ohio App. 8th Dist. 1986). Prejudgment interest is generally awarded from the time of conversion. *Lyle v. Durham*, 473

N.E. 2d 1216, 1219 (Ohio App. 1st Dist. 1984) (citing *Morris v. Pearl St. Auction Co.*, 22 N.E.2d 740 (Ohio 1924); *Booth v. Cincinnati Finance Co.*, 145 N.E. 543 (Ohio 1939)).

In the instant case, the court finds that prejudgment interest is necessary to compensate the Plaintiff for its loss stemming from the conversion. In addition, the court finds that Defendant failed to cooperate with Plaintiff during the course of the litigation. Defendant failed to provide discovery information in a timely manner, including information regarding the sale of certain inventory and the sale of real property. As a result, the court finds that an award of prejudgment interest is appropriate.

With regard to the conversion of the Panel Town inventory and equipment and machinery, prejudgment interest should accrue from the date of conversion on November 28, 2003.

On the judgment for damages based on lost profits, however, prejudgment interest is due from November 28, 2004. As Corrigan's counsel noted at the March 16, 2006 hearing, the loss of profits did not occur precisely on November 28, 2003. The loss of profit damages occurred over the course of the year after the conversion on November 23, 2003. Therefore, prejudgment interest should begin running one year after the conversion on the same date in 2004.

The court finds that an award of prejudgment interest is appropriate in this case and that interest should be calculated from the date of conversion for the inventory, office equipment and machinery and from a date one year later for the loss of profits damages.

III. The Appropriate Interest Rate

After determining that an award of prejudgment interest is appropriate, the court must now determine whether state or federal law provides the appropriate interest rate. An award of prejudgment interest is controlled by state substantive law when a bankruptcy court provides the

venue for a state law cause of action. *In re Tucker Freightlines, Inc.*, 133 B.R. 76, 89 (Bankr. W.D. Mich. 1991); *American Andoco, Inc., v. Reynolds Metal Co.*, 743 F.2d 417 (6th Cir. 1984) (stating, “[i]n diversity cases, federal courts follow state law on the question of prejudgment interest.”). Thus, Ohio law governs the rate of interest applicable to the instant case.

At the time the Defendant committed the conversion in 2003, Ohio Revised Code § 1343(A) provided that the applicable interest rate was 10% per annum. On June 2, 2004, the statute was amended and the applicable interest rate is now governed by Ohio Revised Code § 5703.47. When the legal rate of interest changes after the commission of the act, interest is determined by the appropriate rate for each time frame between the commission of the act and the judgment. *Jem Real Estate v. Heyden, Heyden & Hindinger*, 838 N.E.2d 891, 893 (Ohio Common Pleas Ct. Cuyahoga Cty. 2005) (citing 25 Corpus Juris Secundum (2002) 544, Damages, Section 155). In addition simple interest is the appropriate method to calculate the amount of interest actually accruing. *Berdyck v. Shinde*, 713 N.E.2d 1098, 1110 (Ohio App. 6th Dist. 1998).

Based on the above and in conjunction with the court’s Reconsideration Order, prejudgment interest should be calculated utilizing a simple interest approach based on the following interest rates: (1) Between November 28, 2003 and June 2, 2004 the interest rate should be 10%; (2) Between June 3, 2004 and December 31, 2004, the interest rate should be 4%; (3) For the entire year of 2005, the interest rate should be 5%; and (4) For the entire year of 2006, the interest rate should be 6%.

The court has calculated the appropriate interest based on the damages awarded in the Reconsideration Order filed simultaneously herewith. Prejudgment interest will be calculated as follows for the conversion of the Panel Town inventory, office supplies and machinery:

Inventory, Office Supplies, and Machinery Valued at:	\$60,686.46
Interest Between November 28, 2003 and December 31, 2003 at 10% (33 days @ \$16.63 per day)	\$548.79
Interest Between January 1, 2004 and June 2, 2004 at 10% (153 days @ \$16.63 per day)	\$2,544.39
Interest Between June 3, 2004 and December 31, 2004 at 4% (211 days @ \$6.65 per day)	\$1,403.15
Interest Between January 1, 2005 and December 31, 2005 at 5% (365 days @ \$_____ per day)	\$3,034.32
Interest Between January 1, 2006 and April 7, 2006 at 6% (97 days @ \$9.98 per day)	\$968.06
Total Interest Owed on the Inventory, Office Supplies, and Machinery	\$8,498.71

Prejudgment interest will be calculated as follows for the loss of profits suffered by Panel Town from one year after November 28, 2003:

Loss of Profits Valued at:	\$21,434.58
Interest Between November 28, 2004 and December 31, 2004 at 4% (33 days @ \$2.35 per day)	\$77.55
Interest Between January 1, 2005 and December 31, 2005 at 5% (365 days @ \$2.94 per day)	\$1,071.73
Interest Between January 1, 2006 and April 7, 2006 at 6% (97 days @ \$3.52 per day)	\$341.44
Total Interest Owed on the Lost Profits	\$1,490.72

The total amount of interest owed on the damages for the conversion of the inventory, office supplies, and machinery and for the loss of profits to April 7, 2006 is \$9,989.43.

It is so ordered.

cc: Panel Town of Dayton, Inc., 6107 Brandt Pike, Huber Heights, Ohio 45452
 Alfred Wm. Schneble, III, 11 W. Monument Ave., Suite 402, Dayton, Ohio 45402
 Bryan K. Stewart, 249 S. Garber Drive, Tipp City, Ohio 45371
 Walter Reynolds, One South Main Street, Suite 1600, Dayton, Ohio 45402-2028
 United States Trustee

###