[Cite as *Dunkin's Diamonds, Inc. v. Chavis*, 2016-Ohio-1243.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Dunkin's Diamonds, Inc.,	:	
Plaintiff-Appellee/ [Cross-Appellant],	:	
	:	No. 15AP-753
v.		(C.P.C. No. 12CV-10776)
	:	
Carney Chavis,		(REGULAR CALENDAR)
	:	
Defendant-Appellant/ [Cross-Appellee].	:	

D E C I S I O N

Rendered on March 24, 2016

On brief: *MacMurray Peterson Shuster, LLP*, and *Lisa A. Messner*, for appellee. **Argued:** *Lisa A. Messner*

On brief: *Brian K. Duncan; The Law Offices of Bryan D. Thomas, LLC,* and *Bryan D. Thomas*, for appellant. **Argued:** *Brian K. Duncan*

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Defendant-appellant, Carney Chavis ("Chavis" or "appellant"), appeals from the judgment of the Franklin County Court of Common Pleas adopting the magistrate's amended trial decision. For the reasons that follow, we affirm the decision of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Stuart Dunkin ("Dunkin") is the president of plaintiff-appellee, Dunkin's Diamonds, Inc. ("DDI"). DDI had a business relationship with several entities in which Chavis had an ownership interest. The first business, Dunkin-Chavis Management, LLC, operated a retail jewelry store at Tuttle Mall, which eventually moved to a Sawmill Road location in Franklin County, Ohio. (Magistrate's Amended Decision, 3-4.)

{¶ 3} Chavis also put together another jewelry store with DDI in Port Charlotte, FL. (Magistrate's Amended Decision, 3-4.) Dunkin's Management of Port Charlotte, LLC ("DMPC") owned and operated the Port Charlotte store. The members of DMPC were DDI, Chavis (who had a 12.5 percent ownership interest), and another individual, Karl Vice. (Magistrate's Amended Decision, 3-4, 15-16.)

{¶ 4} On August 12, 2002, the members of DMPC executed a promissory note ("the 2002 note"), whereby DMPC (as borrower), promised to pay DDI (as lender), the principal sum of up to 1.5 million dollars, together with interest. Each member of DMPC signed the promissory note on behalf of the company. In addition, DDI signed the note and Chavis and Vice also signed the note a second time "individually." (Magistrate's Amended Decision, 4.)

{¶ 5} The promissory note was executed to enable DDI to lend the operating capital for the Port Charlotte store. Dunkin testified that the 2002 note was for his protection, and so that he and Chavis were "both on the hook" because Dunkin had (via DDI) put a great deal of money into the establishment of the Port Charlotte store. The intent was that Dunkin and Chavis were going to split the profits of the store as well as any losses. As of January 31, 2012, the balance of negative equity associated with the Port Charlotte location was $1,532,426.60. (Plaintiff's exhibit No. 1.) Ultimately, the store failed and Dunkin lost his investment. Dunkin intended to allocate the negative equity associated with that store in proportion to the percentages of ownership in the DMPC, and intended for repayments to be made over time. On cross-examination, Dunkin testified that Chavis owed $175,000 on the 2002 note. (Magistrate's Amended Decision, 4-5, 7-8.)

{¶ 6} Chavis specifically acknowledged his personal liability regarding the debt associated with the 2002 note in numerous emails with DDI accountant Leah Tallman. In early August 2004, Chavis acknowledged by emails the debt associated with the 2002 note as reflecting negative equity in the operation of the Port Charlotte store and that "1--Karl and I are signed for $1.5mm; therefore, we are transferring out $100k in excess inventory that is not right for us to have. This way, we are in line. We feel this is only fair to Dunkin's." (Plaintiff's exhibit No. 2.) Chavis also wrote to Tallman that "Karl and I have also had discussions prior to this happening about restoring the negative equity account

at [Port Charlotte], * * *. We had both agreed to make up the negative equity." (Plaintiff's exhibit No. 2; Magistrate's Amended Decision, 13.)

{¶ 7} Again, in April 2010, Tallman engaged in email communications with Chavis, under the subject matter of "mgmt fees" and "Chavis PC guaranteed debt," related to his desire to remove himself as a member of DMPC and what it would take to make DDI "whole" under the 2002 note. In one of these emails, Chavis wrote that "[a]s long as we are clearing up [Port Charlotte]. I guess we have to address the contract w/[Port Charlotte] for Chavis's consulting and the $$$ that the last contract at Tuttle demanded to be held out from my income to pay my share of the [Port Charlotte] debt. * * * I want to be fair to [Dunkin] and also to myself so we are settled on [Port Charlotte] for good." (Plaintiff's exhibit No. 7.) Tallman, on cross-examination, testified that the $1.5 million plus in negative equity owed by DMPC to DDI was the debt reflected in the 2002 note, which was personally guaranteed by Chavis. (Magistrate's Amended Decision, 13, 15-16.)

{¶ 8} In 2012, DDI and Chavis sought to terminate their business relationship. As part of that termination, they entered into a dissolution agreement or termination agreement on August 14, 2012 ("2012 agreement"). The agreement provides that "Dunkin's will purchase $100,000 of the current Sawmill inventory and will pay [Chavis] $50,000 now and $50,000 on December 15, 2012." (Magistrate's Amended Decision, 5.) DDI paid Chavis the initial $50,000. DDI also executed a promissory note in favor of Chavis on August 14, 2012, for the payment of the remaining $50,000 ("2012 promissory note"). (Magistrate's Amended Decision, 5.)

{¶ 9} Julie Pyne, Vice President of DDI, was the representative for DDI who worked with Chavis, in late August 2012, to divide the inventory and equipment of the Sawmill store, pursuant to the 2012 agreement. Pyne confirmed that all of the inventory—the jewelry, diamonds and merchandise—at the Sawmill location was divided between Chavis and DDI, and that the process of evenly dividing the inventory "went perfectly." (Magistrate's Amended Decision, 10.)

{¶ 10} Pyne testified that difficulties arose between DDI and Chavis with regard to the split of equipment and fixtures in the Sawmill store. According to Pyne, there was confusion as to which showcases were to be divided and, as a result, the parties reached an "impasse." (Magistrate's Amended Decision, 11.) According to Pyne, when the impasse

occurred, Chavis left the Sawmill store and came back with an electric saw and indicated that he planned to saw the bar in half. The police were called and the parties calmed down, but no further efforts to divide the equipment were made. (Magistrate's Amended Decision, 11.)

{¶ 11} Dunkin was not present for the division of inventory, equipment, and fixtures at the Sawmill store. However, based on what he learned after the fact, Dunkin made the decision to cease negotiations with Chavis regarding the division of equipment and fixtures. (Magistrate's Amended Decision, 7.)

{¶ 12} In addition, Dunkin decided not to make the second $50,000 payment, as required by the 2012 note, because of the disputes between the parties regarding the division of the equipment in the Sawmill store, and the amount owed by Chavis under the 2002 note. When asked on cross-examination if he ever intended to pay Chavis the $50,000 that DDI owed him under the 2012 note, Dunkin testified that: "I intended to pay it if...I thought we were going to work out the $175,000, but then he got crazy and with a chainsaw and the craziness, and I just said I am trying to do this in a diplomatic way, a nice way, and now he is scaring everybody and I didn't think his heart was in to paying the 175, so I just stopped everything. But the 175, I wasn't nagging to be paid right immediately. So I said, well, we will work that out over time. I tried to . . . he was talking about taking over the store and doing the business himself." (Magistrate's Amended Decision, 8.)

{¶ 13} On May 7, 2013, DDI filed an amended complaint primarily asserting claims for breach of the note of 2002. On June 7, 2013, Chavis filed an answer and counterclaim for breach of the 2012 agreement and note.

{¶ 14} The case was tried before a magistrate on July 29, 2014. The parties filed objections to the magistrate's decision. The trial judge overruled the objections and adopted the magistrate's decision. Specifically, the trial judge held, in relevant part, that:

> Judgment is hereby GRANTED in favor of plaintiff DUNKIN'S DIAMONDS, INC. and plaintiff is entitled to recover compensatory damages, including prejudgment interest, against defendant CARNEY CHAVIS in the total amount of One Hundred and Seventy-Five Thousand Dollars ($175,000.00) for defendant's breach of contract. * * *
> Judgment is hereby GRANTED in favor of defendant CARNEY CHAVIS and against plaintiff DUNKIN'S

> DIAMONDS, INC. in part on defendant's first counterclaim for breach of contract and defendant is entitled to recover compensatory damages in the total amount of One Hundred Thousand Dollars ($100,000.00), as well as recover one-half of the showcases that were and all other equipment that was in the Sawmill store at issue.
>
> Judgment is hereby GRANTED in favor of plaintiff DUNKIN'S DIAMONDS, INC. in part on its claim for declaratory judgment. Plaintiff is entitled to withhold payment of the $100,000.00 due defendant under the August 14, 2012 Dissolution Agreement and August 14, 201[2] Promissory Note as a setoff against the $175,000.00 defendant owes plaintiff under the August 1[2], 2002 Promissory Note.

(Emphasis sic.) (Decision, 10-11.) In addition, the trial court held that the "Magistrates finding that [Chavis] is not entitled to prejudgment interest is correct. Defendants objection to the lack of award of prejudgment interest to Defendant is OVERRULED." (Emphasis sic.) (Decision, 9.)

II. ASSIGNMENT OF ERROR

{¶ 15} Appellant assigns the following errors:

> [I.] The Trial Court erred in granting Judgment in the amount of $175,000.00 to Plaintiff with respect to Plaintiff's claim for Breach of Written Contract/Promissory Note, as Plaintiff failed to present any evidence in support of the amount of damages, and as such, the Judgment is against the manifest weight of evidence presented at Trial.
>
> [II.] The Trial Court erred in granting an award of prejudgment interest in favor of Dunkin's Diamonds in the absence of any factual determinations regarding the date when interest commenced to run, nor what interest rate applied.
>
> [III.] The Trial Court erred in denying prejudgment interest in favor of Chavis.

III. STANDARD OF REVIEW

{¶ 16} When reviewing a trial court's adoption of a magistrate's decision, the standard of review is an abuse of discretion. *DeFrank-Jenne v. Pruitt*, 11th Dist. No. 2008-L-156, 2009-Ohio-1438, ¶ 8. Indeed, this court has previously held that "[t]he civil

rules vest trial courts with broad discretion concerning magisterial procedures." *Yoder v. Hurst*, 10th Dist. No. 07AP-121, 2007-Ohio-4861, ¶ 3, citing Civ.R. 53(D)(4)(b). Therefore, when presented with issues regarding magisterial procedures, we will not reverse a trial court's decision absent an abuse of discretion. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

IV. BREACH OF CONTRACT–NOT AGAINST MANIFEST WEIGHT

{¶ 17} In *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, the Supreme Court of Ohio held that the standard of review for manifest weight of the evidence for criminal cases, as stated in *State v. Thompkins*, 78 Ohio St.3d 380 (1997), is also applicable in civil cases. *Eastley* at ¶ 17-19. A reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine "whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *see also Eastley* at ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist.2001).

{¶ 18} In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact. " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * * If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' " *Eastley* at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 19} In Chavis' first assignment of error he argues that "The Trial Court erred in granting Judgment in the amount of $175,000.00" to DDI "with respect to its claim for Breach" of the 2002 note as DDI "failed to present any evidence in support of the amount of damages, and as such, the Judgment is against the manifest weight."

{¶ 20} Chavis argues that the trial court, by adopting the magistrate's decision, erroneously relied on the testimony of Dunkin to establish that DDI fulfilled its obligations with respect to the 2002 note. Chavis further argues that Dunkin's testimony lacked credibility.

{¶ 21} However, the magistrate found that:

> While the Magistrate admits that the evidence at trial with regard to defendant's breach of the August 1[2], 2002 Promissory Note and plaintiff's resulting damages was limited to brief testimony by Stuart Dunkin as President of Dunkin's Diamonds, the Magistrate finds and concludes that this uncontested testimony was credible and competent, and was sufficient for plaintiff to prove by a preponderance of the evidence that defendant breached the August 1[2], 2002 Promissory Note, and plaintiff is entitled to an award of **$175,000 in compensatory damages, which $175,000 includes any prejudgment interest claimed by plaintiff,** against the defendant for breach of the contract. Mr. Dunkin testified several times that defendant owed Dunkin's Diamonds, Inc. $175,000 on the promissory note due to the operations of the Port Charlotte store and the money/capital that was lost * * * This credible evidence that defendant breached the contract and owed plaintiff $175,000, which was not contested in any way, was sufficient to establish plaintiff's claim and damages.

(Emphasis sic.) (Magistrate's Amended Decision, 23-24.)

{¶ 22} The trial court reviewed this matter and stated that "the Magistrate, as the fact-finder, found Mr. Dunkin's testimony to be 'credible and competent' " and "[a]s this is a matter upon review by the Court, the Court must accept each finding of fact made by the Magistrate as the fact-finder, provided those findings are supported by some competent and credible evidence." (Decision, 5.) The trial court concluded that:

> Mr. Dunkin's testimony that Plaintiff is owed by Defendant $175,000 upon the note was credible and competent, the Court agrees such testimony was sufficient to overcome the standard of preponderance of the evidence. Mr. Dunkin testified numerously and consistently that Defendant owed Dunkin's Diamonds, Inc. $175,000 on the 2002 Promissory Note, which resulted from the money/capital that was lost during the operation of the Port Charlotte store. No other evidence was presented in contradiction to this credible and competent testimony. Accordingly, the standard of proof was

> met by Plaintiff regarding the amount of damages sustained by Plaintiff on the 2002 Promissory Note.

(Decision, 7.)

{¶ 23} Our review indicates that on August 12, 2002, Chavis signed a promissory note in favor of DDI as a member of DMPC, and individually. The promissory note was for the amount of up to $1.5 million and was for the purposes of lending operating capital for the party's business venture, i.e., the retail jewelry store in Port Charlotte, FL. Chavis specifically acknowledged his personal responsibility for a portion of the debt associated with the 2002 note in many emails. Dunkin intended to allocate the negative equity associated with that store in proportion to the percentages of ownership in the DMPC and intended for repayments to be made over time. While DDI's evidence was relatively slight, Chavis did not put on evidence to contradict DDI's testimony.

{¶ 24} After a thorough review, we find that the trial court did not lose its way, nor create a manifest miscarriage of justice. We find that the evidence in the record supports the trial court's judgment in favor of DDI in the amount of $175, 000, and that such judgment is not against the manifest weight of the evidence. Therefore, we overrule Chavis' first assignment of error.

V. PREJUDGMENT INTEREST–NO ABUSE OF DISCRETION

{¶ 25} Since assignments of error two and three involve prejudgment interest, we will address them together. In Chavis' second assignment of error he argues that "[t]he Trial Court erred in granting an award of prejudgment interest in favor of Dunkin's Diamonds in the absence of any factual determinations regarding the date when interest commenced to run, or what interest rate applied." In his third assignment of error he argues that "[t]he Trial Court erred in denying prejudgment interest in favor of Chavis."

{¶ 26} A trial court's authority to award prejudgment interest on a breach of contract claim is governed by R.C. 1343.03(A), which provides in relevant part:

> [W]hen money becomes due and payable upon any * * * note, or other instrument of writing, * * * and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code * * *.

{¶ 27} " '[O]nce a plaintiff receives judgment on a contract claim, the trial court has no discretion but to award prejudgment interest under R.C. 1343.03(A)." *Zeck v. Sokol*, 9th Dist. No. 07CA0030-M, 2008-Ohio-727, ¶ 44, quoting *Zunshine v. Cott*, 10th Dist. No. 06AP-868, 2007-Ohio-1475, ¶ 25. "The only issue for resolution by a trial court with respect to prejudgment interest under R.C. 1343.03(A), is how much interest is due." *Zunshine* at ¶ 26. "Thus, the trial court's discretion with respect to an award of prejudgment interest on a contract claim extends only to the factual determinations of when interest commences to run and what interest rate applied." *Id.* at ¶ 27.

{¶ 28} However, instead of applying R.C. 1343.03(A) to this case, both the magistrate and the trial court used the "good faith" analysis, as provided for in R.C. 1343.03(C), in determining whether or not to award prejudgment interest. It is clear that the magistrate found that DDI "was willing to work with Mr. Chavis towards some kind of repayment schedule so that Mr. Chavis could continue in the jewelry business" and that Chavis "did not establish bad faith" on behalf of DDI. (Magistrate's Amended Decision, 23-24, 40.) The trial court found that "[f]rom the Magistrate's analysis, it is clear that the actions taken by Defendant that led to the breakdown of settlement discussions are sufficient evidence that Defendant did not fully cooperate or respond in good faith to an offer from Plaintiff." (Decision, 8.)

{¶ 29} Chavis states that the "authority to award prejudgment interest on a breach of contract claim is governed by R.C. 1343.03(A)" and that "[i]t appears from the trial transcript that the Magistrate required the parties to show bad faith in order to be entitled to prejudgment interest." (Appellant's Brief, 15, 18.) DDI "agrees with [Chavis] to the extent [DDI] cites to caselaw in its brief indicating that an award of prejudgment interest on a note due and payable is based on the factual determinations about when the interest commences to run, and the applicable interest rate." (Appellee's Brief, 11.)

{¶ 30} R.C. 1343.03(C), provides in pertinent part:

> If, upon motion of any party to a civil action that is based on *tortious* conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money *failed to make a good faith effort* to settle the case and that the party to whom the money is to be paid *did not fail to make*

> *a good faith effort* to settle the case, interest on the judgment, decree, or order shall be computed as follows * * *[.]

(Emphasis added.)

{¶ 31} On its face, R.C. 1343.03(C) is only applicable to civil actions based on tortious conduct. The "good faith" analysis undertaken by the magistrate and trial court is inapplicable to the instant case, i.e., breach of contract claims. "The right to recover interest is governed by R.C. 1343.03, and this court has held that section (A) is the interest provision related to contract claims." *Textiles, Inc. v. Design Wise, Inc.*, 12th Dist. No. CA2009-08-015, 2010-Ohio-1524, ¶ 49, citing to *Hance v. Allstate Ins. Co.*, 12th Dist. No. CA2008-10-094, 2009-Ohio-2809, ¶ 7. However, this finding does not end our analysis.

{¶ 32} As we stated in *Shupe v. Media Distribs., LLC*, 10th Dist. No. 11AP-336, 2012-Ohio-325, ¶ 19:

> In order to secure a reversal of a judgment, a party " 'must not only show some error but must also show that that error was prejudicial to him [or her].' " *Niskanen v. Giant Eagle, Inc.*, 122 Ohio St.3d 486, 2009 Ohio 3626, ¶26, 912 N.E.2d 595 (quoting *Smith v. Flesher* (1967), 12 Ohio St.2d 107, 110, 233 N.E.2d 137). Error is harmless if a court determines that "if [the] error[ ] had not occurred, the jury or other trier of the facts would probably have made the same decision." *Hallworth v. Republic Steel Corp.* (1950), 153 Ohio St. 349, 91 N.E.2d 690, paragraph three of the syllabus. See also *Theobald v. Univ. of Cincinnati*, 160 Ohio App.3d 342, 2005 Ohio 1510, ¶17, 827 N.E.2d 365 (HN3 "When avoidance of the error would not have changed the outcome of the proceedings, then the error neither materially prejudices the complaining party nor affects a substantial right of the complaining party.").

{¶ 33} In regards to Chavis' second assignment of error, the magistrate held that: "plaintiff is entitled to an award of **$175,000 in compensatory damages, which $175,000 includes any prejudgment interest claimed by plaintiff.**" (Emphasis sic.) (Magistrate's Amended Decision, 23.) In addition, the Magistrate found "plaintiff Dunkin Diamonds, Inc. may recover on its breach of contract claim against defendant Carney Chavis in the amount of $175,000.00, which damage amount includes any prejudgment interest and *is the only amount of damages supported by the limited, but uncontested, record at trial.*" (Emphasis added.) (Magistrate's Amended Decision, 40.)

DDI introduced no evidence at trial as to when the $175,000 became due and payable, and what interest rate should apply.

{¶ 34} Given this clear language by the magistrate, which was adopted by the court, there was no separate monetary award for prejudgment interest. In effect, the magistrate awarded $175,000 in compensatory damages, and zero dollars in prejudgment interest. DDI did not appeal this decision. Therefore, any error in this regard by the trial court was not prejudicial to Chavis, and was therefore, harmless error.

{¶ 35} In regard to Chavis' third assignment of error, R.C. 1343.03(A) requires that money must become "due and payable" before "the creditor is entitled to interest." In the present case, the court granted judgment "in favor of defendant CARNEY CHAVIS and against plaintiff DUNKIN'S DIAMONDS, INC. in part on defendant's first counterclaim for breach of contract and defendant is entitled to recover compensatory damages in the total amount of" $100,000. (Decision, 11.)

{¶ 36} However, the court also granted judgment "in favor of plaintiff DUNKIN'S DIAMONDS, INC. in part on its claim for declaratory judgment. Plaintiff is entitled to withhold payment of the $100,000.00 due defendant under the August 14, 2012 Dissolution Agreement and August 14, 201[2] Promissory Note as a setoff against the $175,000.00 defendant owes plaintiff under the August 1[2], 2002 Promissory Note." (Decision, 11.) As a result, DDI is entitled to withhold the $100,000 and, therefore, it is not "due and payable" under R.C. 1343.03(A) and not subject to interest.

{¶ 37} As noted above, "[t]he term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore.* In light of our reasoning above, we cannot find that the trial court abused its discretion. Chavis' assignments of error two and three are overruled.

V. DISPOSITION

{¶ 38} Having overruled Chavis' three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and BROWN, JJ., concur.

_____