

Court of Claims of Ohio
The Ohio Judicial Center
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Columbus, OH 43215
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PERTORIA, INC.

Plaintiff/Counter Defendant

v.

BOWLING GREEN STATE UNIVERSITY
Defendant/Counter Plaintiff

Case No. 2010-03967

Judge Dale A. Crawford

JUDGMENT ENTRY

{¶1} On November 5, 2013, the court issued a decision rendering judgment in favor of plaintiff/counter defendant (plaintiff) in the amount of \$459,963. On November 21, 2013, plaintiff filed a motion for prejudgment interest pursuant to R.C. 1343.03(A) and 2743.18. Defendant/counter plaintiff (defendant) subsequently filed a notice of appeal. On December 9, 2013, defendant filed response to plaintiff's motion for prejudgment interest.

{¶2} R.C. 2743.18(A)(1) provides that "[p]rejudgment interest shall be allowed with respect to a civil action on which a judgment or determination is rendered against the state for the same period of time and at the same rate as allowed between private parties to a suit."

{¶3} Because R.C. 2743.18(A) contains the word "shall," the decision to allow prejudgment interest is not discretionary. *Fouty v. Ohio Dept. of Youth Services*, 167 Ohio App.3d 508, 2006-Ohio-2957 (10th Dist.), citing *Royal Elec. Constr. Corp. v. Ohio State Univ.*, 73 Ohio St.3d 110 (1995). "[I]n computing the amount of interest owed, the court is required to look to R.C. 1343.03(A) to determine *when* interest commences to run, *i.e.*, when the claim becomes 'due and payable,' and to determine *what* legal rate of interest should be applied." *Id.* at 535.

{¶4} R.C. 1343.03(A) provides in pertinent part as follows: "[W]hen money

becomes due and payable upon any * * * instrument of writing * * * the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract.” The Supreme Court of Ohio has stated that “[t]he award of prejudgment interest is compensation to the plaintiff for the period of time between accrual of the claim and judgment * * *.” *Royal*, at 117. The contract does not provide a rate of interest; therefore, the interest rate as determined pursuant to R.C. 5703.47 applies.

{¶5} In a previous decision on the issue of liability, the court determined that defendant breached the parties’ contract on July 1, 2009. However, the full amount of damages became due and payable on May 12, 2012 at the expiration of the lease. One-fourth of plaintiff’s damages became due and payable in 2009; one-half in 2010; three-fourths in 2011; and the full amount in 2012. Accordingly, plaintiff’s motion for prejudgment interest is GRANTED, and plaintiff is entitled to prejudgment interest as follows:

- a. 183 days (7/1/2009 to 12/31/2009) @ 5% of \$114,990.75 (1/4 of \$459,963)=\$2,882.65
- b. 365 days (1/1/2010 to 12/31/2010) @ 4% of \$229,981.50 (1/2 of \$459,963)=\$9,199.26
- c. 365 days (1/1/2011 to 12/31/2011) @ 4% of \$344,972.25 (3/4 of \$459,963)=\$13,798.89
- d. 365 days (1/1/2012 to 12/31/2012) @ 3% of \$459,963 =\$13,798.89
- e. 308 days (1/1/2013 to 11/05/2013) @ 3% of \$459,963 =\$11,643.99
- f. Total Prejudgment Interest =\$51,323.68

{¶6} Accordingly, the court’s November 5, 2013 judgment entry is modified such

that prejudgment interest in the amount of \$51,323.68 is added to the damage award of \$459,963, yielding total damages in the amount of \$511,311.68, which includes the \$25 filing fee.

DALE A. CRAWFORD
Judge

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