

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

Wakeman Eagles Aerie No. 4354, Inc.

Court of Appeals No. H-13-017

Appellant

Trial Court No. 13CVF00164

v.

Richard Seitz and Melissa Morrow

DECISION AND JUDGMENT

Appellees

Decided: March 7, 2014

* * * * *

West M. Ruggles, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Wakeman Eagles Aerie No. 4354, Inc., appeals from the July 2, 2013 judgment of the Norwalk Municipal Court granting default judgment to appellant finding that Richard Seitz and Melissa Morrow owed appellant \$6,858.93, with interest from the date of judgment arising out of a rental contract dated December 1, 2011.

Because the court did not award appellant prejudgment interest, appellant appealed the judgment and asserts the following assignments of error:

First Assignment of Error

The Trial Court erred as a matter of law by determining that interest begins to run solely from the date of judgment rather than the date the debt is due and payable.

Second Assignment of Error

The Trial Court abused its discretion by failing to make a factual determination of the date the debt was due and payable, other than to say that interest begins from the date of judgment.

{¶ 2} Appellant argues in its first assignment of error the court erred as a matter of law when it did not award appellant prejudgment interest because R.C. 1343.03(A) requires that interest begins to run from the date the debt was due and payable unless otherwise provided in the contractual agreement. We agree. *Tejeda v. Toledo Surgeons, Inc.*, 186 Ohio App.3d 465, 2009-Ohio-3495, 928 N.E.2d 1138, ¶ 49 (6th Dist.), and *Norfolk Southern Ry. Co. v. Toledo Edison Co.*, 6th Dist. Lucas No. L-06-1268, 2008-Ohio-1572, ¶ 78, 80. Because the trial court did not award appellant prejudgment interest, appellant's first assignment of error is well-taken.

{¶ 3} In its second assignment of error, appellant argues that the trial court abused its discretion by failing to make a factual finding of the date the debt was due and payable.

{¶ 4} While the award of prejudgment interest is required by law, the trial court must determine when the debt became due and payable and calculate the amount of interest due. *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St.3d 339, 342, 695 N.E.2d 1140 (1998). While these determinations are factual in nature, *Dwyer Elec., Inc. v. Confederated Builders, Inc.*, 3d Dist. Crawford No. 3-98-18, 1998 WL 767442, *4 (Oct. 29, 1998), they are within the trial court's discretion. *Persello v. Allstate Ins. Co.*, 7th Dist. Mahoning No. 10 MA 18, 2011-Ohio-3230, ¶ 19; *Burke v. Auto-Owners Ins. Co.*, 5th Dist. Stark No. 2008-CA-00258, 2009-Ohio-429, ¶ 12; *Hance v. Allstate Ins. Co.*, 12th Dist. Clermont No. CA2008-10-094, 2009-Ohio-2809, ¶ 19; *Norfolk S. RR. Co. v. Toledo Edison Co.*, 6th Dist. No. L-06-1268, 2008-Ohio-1572, ¶ 80; *Martin v. Cincinnati Ins. Co.*, 3d Dist. Logan No. 8-98-31, 1999 WL 378401, *4 (May 14, 1999); and *Dwyer Elec.*

{¶ 5} Appellant argues the trial court ignored the evidence in the record that the debt was due and payable in 2011 and arbitrarily awarded interest from the date of judgment. By failing to determine the fact of when the debt was due and payable, the trial court never exercised its discretion. Therefore, we find the court abused its discretionary power. Appellant's second assignment of error is well-taken.

{¶ 6} Having found that the trial court did commit error prejudicial to appellant, the judgment of the Norwalk Municipal Court is reversed. This case is remanded to the lower court for recalculation of the award of prejudgment interest based upon the date the

debt became due and payable. Appellees are ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
