

[Cite as *Keller & Kehoe, L.L.P. v. Blaeuer*, 2017-Ohio-936.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104678

**KELLER & KEHOE, L.L.P. N.K.A. KEHOE &
ASSOCIATES, L.L.C.**

PLAINTIFF-APPELLANT

vs.

DENNIS C. BLAEUER

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED IN PART AND
REVERSED IN PART

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-853890

BEFORE: E.A. Gallagher, J., Keough, A.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 16, 2017

ATTORNEYS FOR APPELLANT

Robert D. Kehoe
Kevin P. Shannon
Kehoe & Associates, L.L.C.
900 Baker Building
1940 East Sixth Street
Cleveland, Ohio 44114

ATTORNEY FOR APPELLEE

Dennis C. Blaeuer, pro se
750 N. Atlantic Avenue
Apt. 407
Cocoa Beach, Florida 32931

EILEEN A. GALLAGHER, J.:

{¶1} Plaintiff-appellant Keller & Kehoe, L.L.P. n.k.a. Kehoe & Associates, L.L.C. appeals from default judgment granted in the Cuyahoga County Court of Common Pleas against defendant-appellee Dennis Blaeuer in the amount of \$527,096.06 for legal services performed under contract. For the following reasons, we affirm in part, and reverse in part.

Factual and Procedural Background

{¶2} The background facts of this fee collection case were fully set forth by this court in *Keller & Kehoe, L.L.P. v. Smart Media of Delaware, Inc.*, 8th Dist. Cuyahoga No. 103607, 2016-Ohio-5409 (“*Keller & Kehoe I*”). In 2014, appellant sued appellee and related parties for breach of contract seeking unpaid legal fees for which the parties were jointly and severally liable. Appellant obtained default judgment against all parties except for Blaeuer, who was dismissed from the case due to appellant’s failure to obtain service on him. The trial court awarded appellant judgment against the remaining parties in the amount of \$527,096.06 plus statutory interest from the date of judgment and court costs. Appellant appealed that judgment to this court in *Keller & Kehoe I*. We affirmed the amount of the award but reversed the trial court’s judgment as to statutory interest and remanded for the court to assess and award prejudgment interest. *Id.* at ¶ 41.

{¶3} In 2015, appellant refiled the present case against Blaeuer, obtained service and default judgment in the amount of \$527,096.06 plus statutory interest from the date of

judgment and court costs. Appellant appeals presenting substantially the same arguments pertaining to the amount of the judgment and prejudgment interest that were addressed in *Keller & Kehoe I.*

Law and Analysis

I. Prejudgment Interest

{¶4} Appellant’s first assignment of error asserts that the trial court erred in failing to award prejudgment interest. Consistent with our resolution of this issue in *Keller & Kehoe I.*, we agree and remand for proper calculation of prejudgment interest by the trial court. *Id.* at ¶ 36.

{¶5} Pursuant to *Waina v. Abdallah*, 8th Dist. Cuyahoga No. 86629, 2006-Ohio-2090, the award of prejudgment interest is not discretionary once liability for breach of contract has been established. R.C. 1343.03(A) provides that: “when money becomes due and payable upon any bond, bill, note, or other instrument of writing, * * * for the payment of money arising out of * * * 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 * * *.”

{¶6} This court has consistently recognized that in a breach of contract case between private parties where liability is established, “the trial court does not have discretion in awarding prejudgment interest.” *Fiorilli Constr., Inc. v. A. Bonamase Contracting Inc.*, 8th Dist. Cuyahoga No. 94719, 2011-Ohio-107, ¶ 57, citing *Waina, supra*; *Reminger & Reminger Co. L.P.A. v. Fred Siegel Co.*, 8th Dist. Cuyahoga No.

77712, 2001 Ohio App. LEXIS 760 (Mar. 1, 2001). Indeed, “where a party has been granted judgment on an underlying contract claim, that party is entitled to prejudgment interest as a matter of law.” *Id.*

{¶7} Appellant’s first assignment of error is sustained.

II. Legal Fees

{¶8} In appellant’s second assignment of error, they argue that the trial court erred in calculating the balance of the unpaid legal fees. Appellant argues that the trial court failed to retroactively apply a \$50 an hour increased rate to bills that “preceded the invoices submitted into evidence” that had been paid prior to appellee’s breach of contract. This court rejected that argument in *Keller & Kehoe I*, finding that the legal fees contract failed to provide for such a retroactive increase and construing the ambiguity against appellant.

{¶9} In addition to the analysis of *Keller & Kehoe I*, we further note that by appellant’s own admission it failed to submit billing invoices pertaining to the period at issue. Contrary to appellant’s arguments, there is no mystery to the trial court’s calculation of fees in this instance. The trial court considered the hours detailed in the billing invoices that appellant submitted into evidence and applied the appropriate hourly rate in finding the balance of unpaid legal fees and expenses to be \$527,096.06.

{¶10} Appellant’s second assignment of error is overruled.

{¶11} The judgment of the trial court is affirmed in part, reversed in part and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellees recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
SEAN C. GALLAGHER, J., CONCUR