

BRUCE THOMPSON, : IN THE COURT OF COMMON PLEAS OF  
 : LYCOMING COUNTY, PENNSYLVANIA  
 Plaintiff :  
 : NON-JURY TRIAL  
 vs. : NO. 99-01,102  
 :  
 MARK HUFFSMITH, : CIVIL ACTION – LAW  
 :  
 Defendant : POST-TRIAL MOTIONS

**DATE: September 21, 2000**

**OPINION AND ORDER**

Before the Court for determination are the Post-Trial Motions of both Plaintiff and Defendant.<sup>1</sup> A non-jury trial was held June 5-7, 2000 and a written Adjudication and Order entering a verdict for Plaintiff in the amount of \$16,994.54 plus costs dated June 30, 2000, was filed that date.

Plaintiff's claim was based upon a series of oral contracts made with the Defendant in which Defendant was to remove trees and brush and otherwise grade and improve Plaintiff's lands. Defendant was to be compensated by his retaining the commercially useable trees removed in the process. The dispute centered mostly on whether Defendant had performed the contract fully by removing stumps from an area referred to as Section 1, or also as the "large field" and whether Defendant had been adequately paid through his removal of a significant amount of timber from Plaintiff's woodland, referred to as Section 4. Also at issue was whether Defendant had properly restored the roads on Plaintiff's property after the timber harvesting was completed.

---

<sup>1</sup> Defendant's Motion for Post-Trial Relief was filed June 7, 2000 and Plaintiff's Motion was filed July 14, 2000. No briefs were filed by either party in relation to Defendant's Motion. Both parties have filed briefs in relation to Plaintiff's Motion, Plaintiff's brief having been filed on August 4, 2000 and Defendant's reply brief on August 9, 2000. Argument was held August 21, 2000.

Plaintiff's Motion for Post-Trial relief asserts this Court erred because the verdict did not include interest at the legal rate of 6% as pre-judgment interest, specifically from "... the date that Plaintiff arranged and paid for substitute performance of the oral contract of the parties." Plaintiff's Motion for Post-Trial Relief filed July 14, 2000 at No. 1. Defendant's Motion raises eleven different points of error, which essentially request this Court to reverse the verdict and findings entered in favor of Plaintiff. For the reasons stated in our initial adjudication this Court declines to reverse itself but will address the issues of significance raised by defense counsel at argument.

**Plaintiff's Motion Requesting Award of Pre-Judgment Interest.**

A review of the case authority cited by counsel in their briefs as well as this Court's independent review of applicable law establishes that the Plaintiffs in this case are entitled to an award of pre-judgment interest. Plaintiff's failure to demand such interest in the Complaint does not deprive Plaintiff to recovery of the same. See *Fernandez v. Levin*, 548 A.2d 1191 (Pa. 1988). Interest in contract cases such as this is awardable at the rate of 6% simple interest, regardless that the damages were not liquidated, that is, had to be determined at trial. *Spang and Co. v. U.S.X. Corporation*, 599 A.2d (Pa.Super. 1991). The time that interest begins to accrue is at the time payment is withheld after it becomes the duty of the debtor to make payment. See *Fernandez, supra*. This Court finds that the time of withholding payment by the Defendant in this case arises as of the time that Plaintiff was required to make payment to those individuals who performed the services Defendant failed to perform in accordance with the contract.

It has been determined by this Court that as a result of Defendant's breach Plaintiff owed and paid Jim Steele a total of \$12,132. This amount was comprised of the following:

\$ 742 for road repairs on November 19 and 20, 1997,  
see, Plaintiff's Exhibit 10-1;  
\$ 360 for shale & road repair on October 14 & 21,  
1997,  
see Plaintiff's Exhibit 10-6;  
\$11,030 for work May 21, 1998 through June 11, 1998,  
see Plaintiff's Exhibit 10-3.  
\$12,132

Although the testimony was clear that Mr. Steele had been paid for this work it is not clear from the testimony as to the dates payment was actually made. A review of the evidence at trial supports the finding that \$360 was paid to Steele by Plaintiff on November 4, 1997 for the work of October 14 and 21, 1997. See Plaintiff's Exhibit 10-6. The evidence of Plaintiff did not establish specific dates concerning payment of the other two bills of Mr. Steele. Plaintiff's Exhibits 10-1 and 10-3. Concerning the work of November 19 and 20, 1997 Mr. Steele's invoice is dated December 15, 1997, Plaintiff's Exhibit 10-1. It is not marked paid; presumably it was paid sometime after that date. It must also be noted that as would relate to this invoice the \$220 item from November 20, 1997 relating to limestone anti-skid was withdrawn as a claim by Plaintiff based upon Mr. Steele's testimony that it had nothing to do with the road damage.<sup>2</sup> The bulk of Mr. Steele's work was done between May 21, 1998 and June 11, 1998 at a cost to Plaintiff of \$11,030. See Plaintiff's Exhibit 10-3. That invoice appears to have been rendered on an unspecified date but includes work through June 11, 1998. The overall testimony from Mr. Steele and Mr. Thompson would establish that the bill no doubt was delivered on or about that date.

---

<sup>2</sup> Defendant's Motion for Post-Trial Relief did not specifically address this sum of \$220 but generally questioned the

It does appear from the testimony concerning dealings between the Plaintiff and Mr. Steele that all of his bills were timely paid. For instance, Plaintiff's Exhibit 10-6 shows it was paid within two weeks of the work being done. It was clear from Mr. Steele's testimony that there was no delay in payment to him by Mr. Thompson. The Court believes that based upon the dealings between Mr. Steele and Plaintiff as expressed in their testimony and the Plaintiff's Exhibits 10-1 through 10-10, a reasonable finding is that Plaintiff paid Mr. Steele's bills within thirty days of the last work date on each bill.

The Court finds the only error in the calculation of total damages due to Plaintiff is the \$220 error made by including the stone delivered on November 20, 1997. Accordingly, the correct amount that Plaintiff paid to Mr. Steele must be reduced to \$11,912.

However, this Court is not satisfied that the total amount of the judgment is entitled to pre-judgment interest. Of the items making up the judgment this Court awarded Plaintiff is the sum of \$3,680, an expense based upon work done by his own employees and use of his own equipment to cure Defendant's default in failing to remove the stumps from the large field in question. Plaintiff testified that the bill was composed of wages he paid to three of his employees which with benefits was \$15 per hour. As noted from Plaintiff's Exhibit 10-4 as well as Plaintiff's testimony Defendant billed 82 hours of skid-steer work at \$35 per hour. This \$35 would involve \$15 per hour for labor and \$20 per hour for equipment. Plaintiff did not have any out-of-pocket payment for the use of the equipment. Hence, it would not be appropriate to award him interest pre-judgment on the amount of his claim that he actually did not pay out-of-pocket. The amount of equipment usage claim for 82 hours at \$20 per hour is \$1,640. Accordingly,

---

payment of \$1,182.54 as damages for stone and the failure to set off \$750 for unrelated work done by Mr. Steele.

pre-judgment interest in the verdict will be payable only on the amount of \$15,134.54. (\$16,994.54 - \$220 - \$1,640)

Defendant's objection that he should not pay pre-judgment interest because Plaintiff did not produce evidence there was a demand for a specific amount of money between June 11, 1998 and the date the Complaint was filed July 15, 1998, is also without merit. Defendant knew he left the Plaintiff's roads in a rutted condition in the fall of 1997. He also knew of Plaintiff's needs to have the roads restored. Defendant acknowledged in his testimony that Plaintiff made frequent complaints to him of all types and that he was anxious to remove his workers and equipment off Plaintiff's property. It is also clear from the testimony at trial that Plaintiff gave Defendant an ample opportunity to do the work before he contracted others to do the same. This specifically occurred in telephone calls made by Plaintiff to Defendant on April 19, 1998 and May 21, 1998. Therefore, Plaintiff demanded Defendant perform his contract obligation before Mr. Steele was hired to do Defendant's work of completing the stump removal. Defendant ignored these demands. Defendant was also advised, at least in one of these demands, that if Defendant did not timely complete the work, another contractor would be hired to complete it. Defendant cannot now object to paying interest on the amount paid for that work on the basis that he lacked knowledge that he was exposed to this liability. Defendant had the duty to see to timely completion of the contract or timely payment of those who completed it in his place. This Court also believes Defendant knew or reasonably should have known that the work he failed to do had been completed by Mr. Steele, within a month after it had been completed.

All of the circumstances in this case are such that Plaintiff is entitled to this payment of pre-judgment interest. If Defendant had performed the contract, Plaintiff would not have had to pay any money out-of-pocket inasmuch as Defendant was being paid through Defendant harvesting trees from Plaintiff's lands as compensation for Defendant's services. Defendant did receive the contract compensation in full of those trees. Because of Defendant's breach Plaintiff was required to expend money. It is only fair and equitable that Plaintiff receive interest on the money which Defendant's wrongful conduct caused Plaintiff to expend.

Plaintiff's motion has requested this interest from June 11, 1998, the date work was last completed, as discussed above. The Court cannot be certain Plaintiff made payment on that date, but is convinced Plaintiff had made payment to Mr. Steele within thirty days of that date. This Court also believes that allowing Defendant to have thirty days after the work had been completed in which to meet his obligation of making Plaintiff whole without suffering the penalty of paying interest is also reasonable.

Accordingly, the Court will utilize the date of July 11, 1998 as the date from which pre-judgment interest is to be calculated.

**Defendant's Post-Trial Contentions.**

The Court will address the specific points raised in Defendant's Motion for Post-Trial Relief *seriatim*.

1. The point objects to the Court awarding Plaintiff damages for work done by James Steele and as noted above essentially requests that the Court reverse its verdict. This the Court will not do. To the extent that the Defendant objects that Mr. Steele used different equipment than Defendant would have used, that is

Defendant's loss. Defendant could have avoided this expense had he performed the contract appropriately. He cannot now complain that it was completed by another, particularly where the evidence entirely supports that the manner in which the contract was completed was done reasonably and further that the type of work done by Mr. Steele was similar to the manner in which Defendant had hired and paid Mr. Steele to do part of the work under his initial contract with Plaintiff. Relief requested in paragraph No. 1 of the Motion will be refused.

2. This point is also rejected. Defendant misconstrues the testimony. This point suggests that Plaintiff was going to expend the \$3,680 for his own men's work regardless of the work done by Mr. Steele. This is not the Court's interpretation of the credible testimony. Plaintiff did testify that he anticipated he would need to do work after the Defendant completed the stump-removal work, but the work to be done by Plaintiff was to make the field appropriate for tree planting and other uses of the field after the Defendant would have completed "rough grading" the field.

3. Defendant objects to the Court awarding any amount to Plaintiff for stone used in road repair since Plaintiff regularly purchased stone in this business. If anything, this operated to Defendant's benefit as it would make it appear that Plaintiff was able to obtain a good price for the stone he did purchase. There was no contest that the amounts paid by Plaintiff for stone were unreasonable. In fact, the actual work done to repair the roads was not really contested as being unreasonable or unnecessary through any significant testimony proffered by Defendant, except to maintain the roads were always passable. Defendant's obligation, however, was to restore the roads after his timber harvesting was complete. He did not. As noted above, this Court finds the stone purchases reasonable and necessary in order to complete

Defendant's obligation to restore the roads after he had removed trees from Plaintiff's land, with the exception of the \$220 that is to be deducted from the verdict.

4. Defendant objects under this point to the Court's failure to deduct from the verdict the cost of stump removal work done by the Defendant in the field known as Section No. 2. Defendant asserts that the value of this work is \$15,000. As noted at trial, Defendant made an agreement to do the work in Section No. 2, including removal and clearing thereof, for the value of the trees in that Section. Defendant made that bargain. He was bound by it. He cannot now assert it. Furthermore, this Court's recollection of testimony and occurrences at trial is that the Defendant actually withdrew his claim in this regard.

5.&6. Points 5 and 6 assert the Court erred in failing to dismiss Plaintiff's claim because his wife was not joined as an indispensable party to the action. This Court, by its Order of April 7, 2000, and Opinion filed in support of that order the same date, rejected the Motion to Dismiss for this failure to join Mrs. Thompson. No new citations of authority or reason have been advanced to this Court on the Motion for Post-Trial Relief. This Court reaffirms its decision entered on April 7, 2000 in this regard and rejects these points of error.

7. Point 7 questions this Court's conclusion that Defendant wrongfully breached the contract in removal of timber from Section 4. This Court's relies on its Adjudication and Order of June 30, 2000, to the contrary. Defendant acquired no right to harvest trees in Section 4 unless he had completed the stump removal in Section 1.

8.&9. Points 8 and 9 relate to the Court erring in admitting evidence relating to the value of timber in Section 1. The admission of this testimony did not affect the Court's eventual decision, as the amount of



damages awarded to Plaintiff is not based upon the value of the timber harvested by Defendant. These points will also be refused. (*See also*, discussion of point 11, *infra*.)

10. This point raises as an error that the Court failed to deduct from the verdict \$750 paid for removal of stumps by Plaintiff to James Steele in Section No. 2, which was not included in Defendant's contract with Plaintiff. The actual amount for this work is shown on Plaintiff's Exhibit 10-2 and was \$250, not \$750. As noted above, this Court did not include any amount for the work of Mr. Steele in anything but the large field and repair of roads. Since this amount was not included as an item of damage awarded to Plaintiff it cannot be set off or deducted from the verdict. This point will be refused.

11. This point again substantially questions the entire decision of the Court entered on June 30<sup>th</sup>. This point suggests that, using the values of the timber removed by the Defendant for his own benefit compared to the reasonable value of work he expended in doing the work he agreed to do for Plaintiff, Plaintiff received the benefit of the bargain of \$10,000 to \$34,000. If so, Plaintiff was a good businessman. This Court could not find the testimony of either party concerning the value of the timber that was removed by Defendant convincingly credible or useful to the Court. Instead, this Court found the parties had made a bargain to exchange trees for work of excavating and grading, areas where they both had some expertise or experience. The Court also found that Defendant did harvest the timber that he wanted to take from the Plaintiff's property. The Court found Defendant failed to perform the work for Plaintiff, which Defendant had agreed to do in exchange for that timber. Hence, the Court awarded Plaintiff damages for Defendant's breach of contract in the amount that Plaintiff was required to expend in order to cure the Defendant's breach. This point will also be rejected.

Accordingly, the following Order:

O R D E R

Based on the foregoing Opinion this Court hereby GRANTS the parties' Motions for Pre-Trial Relief in part and rejects the Motions in part. This Court's prior verdict of June 30, 2000 is hereby amended to provided as follows: Verdict is entered in favor of Plaintiff and against Defendant in the amount of \$16,774.54 plus costs plus pre-judgment interest at the rate of 6% simple interest on the amount of \$15,134.54 from the date of July 11, 1998 until entry of judgment. Plaintiff shall also be entitled to post-judgment interest as provided by law.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator  
Rhonda L. Davis, Esquire  
Joseph R. Musto, Esquire  
Judges  
Nancy M. Snyder, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)