NEW CENTURY FINANCIAL
SERVICES, INC.

Plaintiff

vs.

AHLAM OUGHLA

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
HUDSON Special Civil Part
Docket No. DC-004244-12

CIVIL ACTION

BRIEF IN SUPPORT OF PLAINTIFF'S
NOTICE OF MOTION FOR SUMMARY JUDGMENT

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DARYL J. KIPNIS

P&P FILE NO 048924

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED UNDER R. 4:46-2 BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AND THAT THE COMPETENT EVIDENCE PRESENTED, EVEN WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT, IS NOT SUFFICIENT TO PERMIT A RATIONAL FACTFINDER TO RESOLVE THE ALLEGED DISPUTED ISSUE IN FAVOR OF THE DEFENDANT.

Rule 4:46-2(c) requires a court to grant summary judgment upon a moving party's showing "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." In Brill v. Guardian Life Ins. Co., Inc., 142 N.J. 520 (1995), the New Jersey Supreme Court propounded the standard for granting summary judgment under Rule 4:46-2:

> Consistent with [the] national trend, we hold that under Rule 4:46-2, when deciding summary judgment motions trial courts are required to engage in the same type of evaluation, analysis or sifting of evidential materials as required by Rule 4:37-2(b) in light of the burden of persuasion that applies if the matter goes to trial . . . .
>
> Under this new standard, a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Id. at 539-540 (emphasis added). Also, when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540.
>
> In so ruling, the Court emphasized that summary judgment is designed to provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial. [Id. at 530 (Citation omitted).]

". . . [A] court should deny a summary judgment motion *only* where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged'. That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to *any* fact in dispute." Id. at 529 (underlining added). Neither fanciful arguments nor disputes as to irrelevant facts will make an issue such as will bar a summary decision. [Merchants Exp. Money Order Co. vs Sun National Bank, 374 N.J. Super 556, 563 (App. Div. 2005) (Citation omitted).] "The law is well settled that '[b]are conclusions in the pleadings without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.'" Brae Asset Fund, L.P. v. Philip A. Newman, 327 N.J. Super. 129, 134 (App.Div. 1999). "By the same token, bare conclusory assertions in an answering affidavit are insufficient to defeat a meritorious application for summary judgment." Id.

The Court observed that the summary judgment rule serves not only to protect litigants from the expense of litigating against groundless claims and frivolous defenses, but also "to reserve judicial manpower and facilities to cases which meritoriously command attention." Brill at 542 (quoting Robbins v. Jersey City, 23 N.J. 229, 240-41 (1957)). The Court warned that sending a case to trial, where a rational factfinder can reach but one conclusion is "worthless" and serves "no useful purpose." Brill at 541. The Court further stated that a "fear of reversal" should not discourage trial courts from granting summary judgment. Id.

In the present matter, there is no "genuine issue of material fact" in dispute. As set forth in the Statement of Facts, the competent evidence presented is not sufficient to permit a rational factfinder to resolve the case in Defendant's favor, even when viewed in the light most favorable to Defendant. A rational factfinder can only resolve the matters presented in favor of Plaintiff. Therefore, as there is no genuine issue of material fact in dispute, Plaintiff's Motion for Summary Judgment should be granted.

PLAINTIFF IS ENTITLED TO PREJUDGMENT INTEREST AS A MATTER OF LAW AND UNDER PRINCIPLES OF EQUITY

Under New Jersey case law, Plaintiff is entitled to prejudgment interest as a matter of law and under principles of equity.

> Interest proper arises whenever money is lent or forborne with an understanding, express or implied, that an equivalent shall be given for its use, and such case the rate of interest agreed upon, or if none such be agreed upon, the rate then existing by law, is in the absence of any new agreement, the rate to be paid under the return of the money.

Jersey City v. O'Callaghan, 41 N.J.L. 349, 353.

Interest has been allowed by the courts of our State either by way of damages for the detention of a fund, or by way of profit earned or advantage attained. Kamens v. Fortugno, 108 N.J. Super. 544, 548 (Ch. Div. 1970). "Interest is in contemplation of award damages for the illegal detention of a legitimate claim or indebtedness". [Id. at 552 (Citation omitted).] Our courts of law assessed interest, if the demand was liquidated, at the same "legal" rate on the assumption that the creditor could have earned such interest if his obligor had paid him what was due. Busik v. Levine, 63 N.J. 351, 356 (1973). "Interest is allowed where the damages are readily ascertainable" and the running of interest could have been stopped by tendering payment of the claim. Kamens at 549.

Prejudgment interest is not punitive but compensatory in that it is only to make the parties equal to the positions they would have been in had the money due been paid earlier. Willts v. Eighner, 168 N.J. Super, 197, 201 (Law Div. 1978).

> The basic consideration is that the defendant has had the use, and the plaintiff has not, of the amount in question; and the interest factor simply covers the value of the sum awarded for the pre-judgment period during which the defendant had the benefit of monies to which the plaintiff is found to have been earlier entitled.

Rova Farms, Inc. v. Investors Ins. Co. , 65 N.J. 474, 506 (1974).

Prejudgment interest has been regarded by the courts as compensatory to identify the plaintiff with a loss of what the monies due him would presumably have earned if payment had not been refused. Id. This consideration holds true even if the defendant in good faith contests the validity of the plaintiff's claim. Id.

R. 4:42-11(b) concerns prejudgment interest in tort actions, but the "policy, spirit, and intent" of the rule may apply to contract claims as well. The two public policy reasons for the rule are: "to compensate the plaintiff for the loss of income that would have been earned on the judgment had it been paid earlier" and "to encourage settlement." Wiese v. Dedhia, 354, N.J. Super. 256, 267 (App. Div. 2002), quoting Ruff v. Weintraub, 105 N.J. 237, 244-45 (1987). "The public interest in encouraging settlements is an adequate independent basis for the application of the prejudgment interest rule." Statham v. Bush, 253 N.J.Super. 607, 616 (App. Div. 1992) quoting Ruff, at 245. R. 4:42-11(b) permits the award of pre-judgment interest in all but exceptional cases. Statham, at 617.

Furthermore, prejudgment interest must also be allowed to Plaintiff based on principles of equity. See Bak-A-Lum Corp. v. Alcoa Building Prod., 69 N.J., 123, 131 (1976) and also see DialAmerica Marketing, Inc. v. Keyspan Energy Corp., 374, N.J. Super. 502, 509 (App. Div. 2005).

Based on the foregoing, Plaintiff is entitled to the amount of interest set forth in the Complaint.

CONCLUSION

For the aforementioned reasons, the plaintiff requests that its motion for summary judgment be granted.

Respectfully submitted,

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff

Dated: 05/14/12

By: _____
DARYL J. KIPNIS