

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0741

Order Filed 5/27/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

UNITED FUEL COMPANY,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DEWEY STATE BANK,)	No. 06LM202
Defendant-Appellant.)	
)	Honorable
)	Holly F. Clemons,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Appleton and Pope concurred in the judgment.

ORDER

Held: The trial court did not err in its calculation of prejudgment interest.

On October 30, 2007, plaintiff, United Fuel Company, brought action against defendant, Dewey State Bank, to recover monies held by defendant in escrow. On July 1, 2009, the trial court found in favor of plaintiff and against defendant in the amount of \$10,000 "plus costs plus prejudgment interest." On June 8, 2010, the court determined that prejudgment interest should begin on January 22, 1996, and entered judgment in the amount of \$6,720.

Defendant appeals, arguing only that prejudgment interest should begin on March 1, 2005. We affirm.

On October 6, 1995, Bateman Enterprises, Inc. (Bate-

man), entered into an agreement to sell a service station (the Mansfield property) to Heiser Oil and Gas Company (Heiser). Section seventeen of the agreement was titled "Environmental Matters" and stated:

"Seller has provided Purchaser with certain contamination assessment reports dated September 24, 1992 and July 20, 1992 from Professional Service Industries, Inc. and certain tank testing reports attached hereto as Exhibit 'A'. Based upon the tank testing reports, the parties agree that the tanks are not leaking at the date of execution of this agreement. Based upon the environmental assessments, there appears to have been prior release of petroleum-containing products into the soil, which may require certain remediation action under the rules promulgated by the Illinois Environmental Protection Agency or such other environmental protection organizations.

Seller has secured a favorable reimbursement eligibility and deductibility application notice, attached hereto as Exhibit 'B', indicating that costs associated with

any environmental responses are reimbursable in excess of Ten Thousand Dollars (\$10,000). Seller believes he has paid more than the required \$10,000 deductible.

The parties agree that \$10,000 of the purchase price provided herein shall be placed in an interest-bearing escrow account with an escrow agent mutually acceptable to the parties. Upon an ultimate determination by the Illinois Environmental Protection Agency or other State agency ultimately authorized to approve corrective action costs as to how much of the corrective action costs already expended by Seller may be applied towards the deductible, an amount equal to the unpaid deductible, as ultimately determined by the appropriate State agency making deductibility and cost approvals shall be paid to Purchaser and the balance (inclusive of accrued interest) shall be paid to Seller. Purchaser agrees to take the property in "as is" condition and shall, pursuant to this paragraph, be entitled to an assignment of the reimbursement eligibility of the Seller for the

site and shall be entitled to payment from the escrow referred to herein of any unpaid deductible."

The record shows that on October 6, 1995, Bateman and Heiser opened a new business checking account with defendant as escrow agent and an initial deposit of \$10,000. A bank form identifies both Bateman and Heiser as account owners and a signature card requires two signatures for withdrawal.

On January 22, 1996, Heiser entered into an asset-purchase agreement selling the service-station property to plaintiff. In a separate document dated January 7, 1997, Heiser assigned to plaintiff "all entitlements for reimbursement and all rights and privileges associated with the Illinois Underground Storage Tank Fund" specific to the service-station property.

On March 10, 1997, Bateman executed a limited agency agreement authorizing plaintiff "to deal with the Illinois Environmental Protection Agency in every manner regarding the registration, assessment, and clean up" of the Mansfield property.

On December 20, 1999, Bateman withdrew the entirety of the funds held in the escrow account.

In a letter to plaintiff dated February 28, 2005, the Illinois Environmental Protection Agency (IEPA) detailed "final action" with regard to an application for payment from the

Underground Storage Tank Fund (the Fund) dated October 27, 2004, and covering the period from August 2, 1992, to October 27, 2004. The agency noted that "[t]he deductible amount for this claim is \$10,000, which was previously deducted from the billing submittal received by the Agency on August 4, 2004 for \$12,259.28." The IEPA denied payment of costs detailed in invoices dated August 2, 1992, and September 20, 1992, because the "deduction for costs for corrective action or indemnification *** were incurred prior to the owner or operator providing notification of the release to the Illinois Emergency Management Agency."

At a bench trial on April 16, 2009, Shelley Warner Craft testified that she is an accountant and officer for plaintiff. She worked with defendant to purchase the Mansfield property for approximately six months. Plaintiff assumed the Heiser loan through defendant and borrowed additional monies from defendant for improvements to the property. Plaintiff was aware of "an unresolved incident number" issued by the IEPA but was willing to purchase the property because of the escrow account. In approximately 2004, plaintiff received a letter from the IEPA stating that the property did not require further remediation. Craft contacted the Bank requesting the escrow monies and was advised the monies were paid to Bateman on December 20, 1999.

The trial court took the matter under advisement. On July 1, 2009, the trial court found in favor of plaintiff and

against defendant in the amount of \$10,000, "plus costs plus prejudgment interest."

On October 5, 2009, plaintiff filed a motion to clarify the date of commencement of prejudgment interest. Plaintiff requested the trial court clarify that prejudgment interest "commences on January 22, 1996, the date of the escrow assignment from Heiser to United Fuel Co. as part of the transaction financed by the Dewey State Bank." Following a hearing on the motion, the trial court agreed with plaintiff that prejudgment interest should begin on January 22, 1996, "the date that the escrow account was assigned from Heiser to plaintiff." The court entered judgment in favor of plaintiff and against defendant in the amount of \$6,720.

This appeal followed.

Defendant argues only that prejudgment interest should begin on March 1, 2005. Specifically, defendant argues that the escrow funds were "held and reserved" pending a determination by the IEPA "referencing reimbursement for remediation matters" and "said determination was not issued from the IEPA until February 28, 2005."

Prejudgment interest may be awarded in two instances. In actions at law, prejudgment interest is recoverable only under the Interest Act (815 ILCS 205/0.01 through 11 (West 2008)) or if the parties' agreement provides for it. *Tri-G, Inc. v. Burke*,

Bosselman & Weaver, 222 Ill. 2d 218, 257, 856 N.E.2d 389, 412 (2006). However, for causes of action sounding in equity, "'the allowance of interest lies within the sound discretion of the judge and is allowed where warranted by equitable considerations.'" *Tri-G*, 222 Ill. 2d at 257, 856 N.E.2d at 412 (quoting *City of Springfield v. Allphin*, 82 Ill. 2d 571, 579, 413 N.E.2d 394, 398 (1980)). As in other equitable cases, "[t]he rationale underlying an equitable award of prejudgment interest in a case involving a breach of fiduciary duty is to make the injured party complete by forcing the fiduciary to account for profits and interest he gained by the use of the injured party's money." *In re Estate of Wernick*, 127 Ill. 2d 61, 87, 535 N.E.2d 876, 888 (1989). The trial court's determination that equitable considerations support an award of prejudgment interest will not be disturbed unless it is an abuse of discretion. *Wernick*, 127 Ill. 2d at 87, 535 N.E.2d at 888.

Here, the trial court found that "an equitable remedy is necessary to make the plaintiff whole, which means that the start of prejudgment interest should be on January 22nd, 1996." The court further identified January 22, 1996, as "the date that the escrow account was assigned from Heiser to United Fuel." An assignment is the transfer of some identifiable property, claim, or right from the assignor to the assignee. *YPI 180 N. LaSalle Owner, LLC v. 180 N. LaSalle II, LLC*, 403 Ill. App. 3d 1, 5, 933

N.E.2d 860, 864 (2010). The assignment operates to transfer to the assignee all of the assignor's right, title, or interest in the thing assigned, such that the assignee stands in the shoes of the assignor. *Community Bank of Greater Peoria v. Carter*, 283 Ill. App. 3d 505, 508, 669 N.E.2d 1317, 1319 (1996). Under Illinois law, no particular words are required to create a valid assignment so long as the intent to transfer is evident. *Community Bank*, 283 Ill. App. 3d at 508, 669 N.E.2d at 1319.

Applying these principles to the case at hand, Bateman intended to transfer to Heiser, and subsequently, Heiser intended to transfer to plaintiff all of their rights to the Mansfield property, including the rights to the escrow account in effect to secure payment of a \$10,000 deductible. Thus, the trial court did not abuse its discretion finding that prejudgment interest began on January 22, 1996, "the date that the escrow account was assigned from Heiser to United Fuel."

Defendant argues only that prejudgment interest should begin on March 1, 2005, a date following issuance of a letter to plaintiff from the IEPA detailing "final action" with regard to an application for payment from the Fund dated October 27, 2004, and covering the period from August 2, 1992, to October 27, 2004. We note the letter references only "LUST Incident No. 971596" and not LUST Incident No. 921886 as referenced in the "Assignment of Reimbursement Entitlements from Illinois Underground Storage Tank

Fund" from Heiser to plaintiff, and the limited agency agreement from Bateman to plaintiff.

Further, defendant argues "[n]o evidence as to any certainty as to Plaintiff's rights to the funds was presented." We note that defendant did not appeal the trial court's judgment but argues only that prejudgment interest should begin on March 1, 2005.

The evidence in this case supports an award of prejudgment interest to compensate plaintiff for defendant's breach of fiduciary duty. Defendant owed a fiduciary duty to plaintiff and breached this duty on December 20, 1999, when defendant permitted Bateman to withdraw the entirety of the funds held in the escrow account without the required signatures.

Plaintiff was deprived of the use of the funds for a substantial period of time. As a result, plaintiff is entitled to an award of prejudgment interest so that plaintiff might be made whole.

For the reasons stated, we affirm the trial court's judgment.

Affirmed.