

08-6458.111-RSK

May 11, 2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CIT COMMUNICATIONS FINANCE CORP.,)	
)	
Plaintiff,)	
)	
v.)	No. 08 C 6458
)	
WES-TECH AUTOMATION SOLUTIONS,)	
LLC, RICHARD GILCHRIST, RALLY)	
CAPITAL SERVICES, LLC, and)	
HOWARD B. SAMUELS)	
)	
Defendants.)	

MEMORANDUM OPINION

Before the court is the plaintiff's motion for prejudgment interest. We grant the plaintiff's motion for the reasons explained below.

DISCUSSION¹

After a bench trial, Judge Coar entered judgment in favor of plaintiff CIT Communications Finance Corp. ("CIT"), and against defendant Wes-Tech Automation Solutions, LLC ("Wes-Tech"), on CIT's claims for conversion and implied contract/*quantum meruit*. (Judgment Order, DKT #82.) On its *quantum meruit* claim, Judge Coar awarded CIT \$11,142.87 – the rental value of CIT's telephone equipment during the six months that Wes-Tech used it without

^{1/} We will assume that the reader is familiar with Judge Coar's memorandum and opinion, dated August 17, 2010.

- 2 -

paying CIT – “plus interest.” (Id.; see also Mem. Op. and Order, DKT # 81, at 23.)² As a preliminary matter, Wes-Tech points out that Judge Coar did not specify whether he intended to award prejudgment or post-judgment interest. (Def.’s Resp. to Mot. for Interest on Award ¶ 4.) We conclude that he awarded both. Judge Coar provided in his order that interest would be calculated on the “restitution award,” not the total amount of the judgment. Post-judgment interest, which the plaintiff is entitled to recover whether or not the district court specifically provides for it, would apply to the full judgment amount. See Bell, Boyd & Lloyd v. Tapy, 896 F.2d 1101, 1104 (7th Cir. 1990).

CIT requests prejudgment interest of \$3,953.00, which it calculates using the prime rate, compounded monthly. Wes-Tech argues that CIT is not entitled to any prejudgment interest, or if it is, we should apply the Illinois Interest Act’s rate (5%) and impose simple rather than compound interest (\$3,051.32, by Wes-Tech’s calculation). Wes-Tech argues that the Illinois Interest Act does not authorize prejudgment interest on *quantum meruit* awards. But as CIT points out, Illinois courts distinguish between legal and equitable claims when awarding prejudgment interest. In “actions at law” prejudgment interest is recoverable “only under the Interest Act or if the parties’ agreement provides for it.”

^{2/} Judge Coar concluded that CIT had not proven with reasonable certainty its damages from Wes-Tech’s conversion of the equipment, and awarded nominal damages of \$1 on that claim. (Mem. Op. and Order at 18-20, 24.)

- 3 -

Prignano v. Prignano, 934 N.E.2d 89, 108 (Ill. App. Ct. 2010).

When the plaintiff's claim is equitable, "the allowance of interest lies within the sound discretion of the judge and is allowed where warranted by equitable considerations.'" Id. (quoting Tri-G, Inc. v. Burke, Bosselman & Weaver, 856 N.E.2d 218, 257 (Ill. 2006)). *Quantum meruit* is an "equitable theory . . . founded on the implied promise of a recipient of services to pay for such valuable services, as otherwise the recipient would be unjustly enriched." Carlton at the Lake, Inc. v. Barber, 928 N.E.2d 1266, 1272 (Ill. App. Ct. 2010). Therefore, prejudgment interest was recoverable and Judge Coar acted well within his discretion to award it in this case. See Santamarina v. Sears, Roebuck & Co., 466 F.3d 570, 572 (7th Cir. 2006) (under the law of the case doctrine, we may overturn the decision of another district judge in the same case only "if there is a compelling reason, such as a change in, or clarification of, law that makes clear that the earlier ruling was erroneous.").

As for the appropriate rate, the Illinois Supreme Court has held that the prime interest rate, rather than the statutory rate, better approximates the plaintiff's loss. See In re Estate of Wernick, 535 N.E.2d 876, 888 (Ill. 1989) ("Over the past century, however, the statutory rate for prejudgment interest has not been changed to reflect the escalating interest rates in the market. As a result, the statutory rate does not provide an accurate measure

- 4 -

of compensation for money wrongfully withheld."); see also In the Matter of Oil Spill by Amoco Cadiz Off Coast of France on March 16, 1978, 954 F.2d 1279, 1331 (7th Cir. 1992) ("Prejudgment interest at the market rate puts both parties in the position they would have occupied had compensation been paid promptly."). Compound interest is the "norm" in federal litigation. American Nat. Fire Ins. Co. v. Yellow Freight Sys., Inc., 325 F.3d 924, 938 (7th Cir. 2003). But this is a diversity case, and the claim at issue was decided as a matter of Illinois law. On the other hand, Wes-Tech relies exclusively on the Interest Act to support its argument for simple interest, (see Def.'s Resp. to Mot. for Interest on Award ¶ 9), whereas Judge Coar exercised his equitable authority to award prejudgment interest. See Prignano, 934 N.E.2d at 108. Our Court of Appeals' observation that compound interest "more fully compensate[s]" the plaintiff, see American Nat. Fire Ins., 325 F.3d at 938, holds true for federal and state law claims alike. We conclude that compounding interest at the prime rate is appropriate. Because Wes-Tech has not disputed CIT's calculation, we will assume that CIT has accurately calculated the prejudgment interest amount.

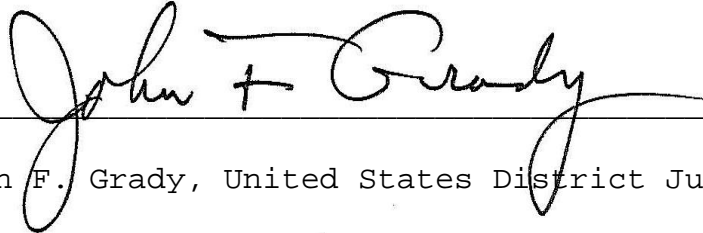
CONCLUSION

CIT's motion for prejudgment interest (95) is granted. Wes-Tech is ordered to pay CIT prejudgment interest in the amount of \$3,953.00.

- 5 -

DATE: May 11, 2011

ENTER:

A handwritten signature in cursive script, reading "John F. Grady", is written over a horizontal line. The signature is fluid and stylized, with a large initial 'J' and a long, sweeping underline.

John F. Grady, United States District Judge