STATE OF MICHIGAN

COURT OF APPEALS

SUMMIT POLYMERS, INC., Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED March 5, 2013
v	No. 303277 Wayne Circuit Court
ATEK THERMOFORMING, INC., Defendant/Counter-Plaintiff-Appellee.	LC No. 05-503433-CK

Before: SHAPIRO, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff Summit Polymers, Inc. ("Summit") appeals by leave granted three orders entered by the trial court after this Court's prior affirmance of a judgment in favor of defendant Atek Thermoforming, Inc. ("Atek") on its counterclaim against Summit. Summit contends that the trial court erroneously concluded that Summit owed prejudgment interest on a significant portion of the verdict, and it further seeks to recover excess monies paid to Atek. We reverse in part and remand.

This action has been before this Court previously. See *Summit Polymers, Inc v Atek Thermoforming, Inc*, unpublished opinion per curiam of the Court of Appeals, issued March 23, 2010 (Docket No. 289596). On February 7, 2008, a jury, by special verdict, awarded Atek total damages of $8,000,908.24, as summarized by this Court in the prior appeal as follows:

> At the conclusion of a 12-day trial, the jury found that Summit terminated the parties' contract without cause, that Summit owed Atek $1,248,158.92, for parts supplied by Atek but not yet paid for by Summit, that Summit was not entitled to recover any claimed debits against Atek's accounts for materials and substrates provided to Atek, and that Summit was liable to Atek for an additional $6,752,749.32 in lost profits, lost work-in-progress, unpaid inventory, material purchased and trucking charges. [*Summit Polymers, Inc*, unpub op at 2.]

Afterward, the parties disputed the amount of allowable interest under MCL 600.6013. At a hearing on February 29, 2008, the trial court determined that the jury could not have included interest on the portion of the verdict for the $1,248,158.92, ("the $1.2M") that Summit owed to Atek for products Atek supplied, because as to that issue "the jury was simply asked to

determine which of the two competing figures" proposed by the parties was correct.[1] Conversely, the jury was instructed to calculate interest on the remaining damages ("the $6.7M") but not to specify the amount of recovery attributable to interest.[2] The trial court "presume[d] that they followed the jury instructions" and calculated interest on all of the damages other than the $1.2M award for products Atek supplied, so "there may be a double recovery with respect to all other elements of damages." The trial court further noted that interest should be calculated based on the date Atek filed its counterclaim.

The trial court's April 4, 2008 judgment ultimately awarded Atek interest of $202,540.06, through the date of the verdict. The total judgment amount, including interest, taxable costs of $410, and the verdict amount of $8,000,908.24, was $8,203,448.30. The judgment specified that "[j]udgment interest shall continue at the statutory rate from the date of the Verdict until the Judgment is fully satisfied."

Prior to commencing the prior appeal, Summit moved for judgment notwithstanding the verdict (JNOV) or a new trial. In an opinion and order dated December 11, 2008, the trial court partially granted that motion, vacating the award of prejudgment interest on the $1.2M verdict based on the conclusion, contrary to its April 4, 2008 conclusion, the jury had been instructed to add interest to *all* damages awards, including the $1.2M, so "[a]dding interest after the verdict would constitute a double recovery on the 'products received' damage award." The trial court also stayed execution of the judgment pending the disposition of the appeal. Summit posted a bond on appeal. The prior appeal was filed on December 30, 2008. Atek did not file a cross-appeal from the trial court's prejudgment interest rulings.

In the instant appeal, neither party seeks to challenge the correctness or propriety of the April 4, 2008 judgment. Nor could they: under the doctrine of res judicata, the party bringing the initial appeal is required to bring "all issues which were then present and could have and should have been raised." *VanderWall v Midkiff*, 186 Mich App 191, 201; 463 NW2d 219 (1990). Other parties are required to file a cross-appeal to raise separate issues. *Id*. Whether the April 4, 2008 order of the trial court was legally or factually correct is not now before this Court. The parties only dispute the interpretation or meaning of that judgment.

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[1] The seventh question of the special verdict form read: "Atek Thermoforming, Inc. claims it is owed $1,248,158.92, for products received by Summit Polymers, Inc. Summit admits to owing at least $1,206,714.40. What amount do you find that Atek Thermoforming, Inc. is entitled to? The trial court later instructed the jury that it had directed a verdict in favor of Atek for the latter amount and that "[y]ou decide whether or not Atek is owed any monies in addition to that on its other claims."

[2] The jury instruction provided in part that "[i]f you decide that either party has suffered damages on their respective claims, you should determine when those damages began and add interest at a rate of twelve (12%) percent per year, or at a rate per year that you decide is appropriate." In addition, the special verdict form emphasized in bold type that "[t]he jury is permitted to add interest to any award of damages on this Verdict Form."

After this Court affirmed the trial court's judgment, Summit moved for an order permitting it to make a payment to the court clerk in full satisfaction of the judgment, including the taxable costs of $410, and to release the appeal bond that it had filed for purposes of the stay. That same month, Atek filed a "partial satisfaction of judgment" indicating that it had received $8,781.503.54, from Summit's bonding company. The bonding company also filed notice that it had made an additional payment to the court clerk pursuant to an earlier court order. However, Atek sought prejudgment interest under MCL 600.6013 on the $6.7M verdict.

In a written opinion issued on February 15, 2011, the trial court granted Atek's request. It determined that statutory interest on the $6.7M should commence on February 7, 2005, the date Summit filed its complaint against Atek; while statutory interest on the $1.2M portion of the verdict would run from February 7, 2008, the date of the jury's verdict, "because the Jury calculated interest thereon." After providing further instructions with respect to how statutory interest should be computed, the trial court determined:

> The Court will not do the actual mathematical calculations, but will approve/allow a full satisfaction of judgment to be entered when the calculations are made according to the foregoing formula, giving credit to SPI [Summit] for the $8,781,503.54.

Also on February 15, 2011, the trial court entered another order denying Summit's motion for an order permitting payment in full satisfaction of the judgment. On February 24, 2011, the trial court entered two ex parte orders granting Atek's request to obtain satisfaction of the judgment balance owed by Summit through the release of court escrow funds, an additional payment from Summit's bonding company, and a seizure of Summit's property. The total judgment balance approved by the trial court as part of these orders was $1,322,460.96, as of February 23, 2011. The trial court denied Summit's later motion for reconsideration of the February 24, 2011 orders.

In the instant appeal, Summit challenges the February 15, 2011, and February 24, 2011 orders. In particular, Summit argues that the trial court erred in determining that Atek was entitled to statutory interest for the period between the date Summit filed its complaint and the date of the verdict. Summit asserts that the court's decision is inconsistent with its February 29, 2008 bench ruling and April 4, 2008 judgment. We agree. Summit also argues that the trial court miscalculated the interest included in the February 24, 2011 orders. We again agree.

A court speaks through its judgments and decrees, not through its oral statements or written opinions. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977). A judgment is the final determination of the parties' rights and obligations in the case. *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 220 n 4; 625 NW2d 93 (2000). When a court renders a judgment, it is entering an order based on previously decided issues of fact or by rendering a decision on the case as a matter of law. *Anzaldua v Band*, 457 Mich 530, 536-537; 578 NW2d 306 (1998). The interpretation of a trial court's order involves a question of law, which we review de novo. *Silverstein v Pro-Golf of America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008).

We conclude that the April 4, 2008 judgment did not allow for statutory interest on the $6,752,749.32 portion of the judgment for the period preceding the date of the verdict, as the trial

court initially recognized in its February 29, 2008 bench ruling that became the basis for the order. We find the trial court's use of the word "may" in its bench ruling, as distinguished from its use of the word "would" in its December 11, 2008 order, to be of no significance when viewed in context: in both instances, the trial court clearly and unambiguously found that the jury had already calculated interest on the recoveries under discussion. The April 4, 2008 judgment does not explain how it arrived at the amount of $202,540.06, for interest to date, but again, when examined in context, this amount is clearly the effectuation of the trial court's February 29, 2008 decision that it would allow interest under MCL 600.6013 only on the $1.2M portion of the jury's verdict for the period preceding the entry of the verdict, as the trial court's December 11, 2008 opinion indicates. Finally, the fact that the judgment states that "[j]udgment interest shall continue at the statutory rate from the date of the Verdict until the Judgment is fully satisfied" does not necessarily mean that interest had previously been compounding; it could also mean that interest would compound continuously in the future, and as such is at best an ambiguous statement.

As noted, the legal or factual correctness of the April 4, 2008 judgment is not reviewable at this time, pursuant to the doctrine of res judicata. Nevertheless, trial courts may generally revisit their previous decisions, at least so long as an appellate court has not mandated a particular result in the meantime. See *Hill v City of Warren*, 276 Mich App 299, 306-309; 740 NW2d 706 (2007). This Court's prior decision did not mandate any particular result as to Atek's entitlement to prejudgment interest. Consequently, the trial court *could* have determined, on remand, that its April 4, 2008 judgment had been incorrect and reversed it. Indeed, the trial court's December 11, 2008 opinion did, in part, do precisely that. However, the trial court's January 15, 2011 opinion and order did not *revisit* the prior order or judgment, but rather seems to have disregarded them. The trial court, like the parties, appears to have relied on the prior opinion and judgment. We therefore conclude that the April 4, 2008 judgment, as modified by the December 11, 2008 order, was still in effect and binding. To the extent the trial court's subsequent orders contradict the April 4, 2008 judgment, as modified by the December 11, 2008 order, they were necessarily erroneous.

Because the April 4, 2008 judgment, examined in the context of the jury's verdict and judicial ruling upon which it was based, does not entitle Atek to statutory interest under MCL 600.6013 on the $6,752,749.32 portion of the judgment for the period preceding the date of the verdict, we conclude that the trial court erred by determining in its February 15, 2011 opinion that Atek was entitled to this prejudgment statutory interest. To the extent the trial court so held, the trial court's orders are reversed.

Summit also argues that the trial court miscalculated the balance Summit owed to Atek on the judgment as of February 23, 2011, for purposes of entering the two February 24, 2011 ex parte orders requested by Atek. We agree. The trial court's findings of fact are reviewed for clear error. MCR 2.613(C). To the extent that this issue involves the construction of a statute, our review is de novo. *Chelsea Investment Group, LLC v City of Chelsea*, 288 Mich App 239, 258; 792 NW2d 781 (2010).

The February 24, 2011 orders themselves are moot, because the record indicates that Atek actually collected the amounts ordered by the trial court. A voluntary satisfaction of a judgment may render the case moot and thereby bar an appeal. *Horowitz v Rott*, 235 Mich 369;

209 NW 131 (1926). However, the judgment here was satisfied involuntarily, which does not render an appeal moot. *Kusmierz v Schmitt*, 268 Mich App 731, 740 n 3; 708 NW2d 151 (2005), rev'd in part on other grounds 477 Mich 934 (2006). Therefore, although the orders might be moot, the issue is not. Summit properly requests a remand for the trial court to order restitution and interest pursuant to MCL 600.1475. Pursuant to MCR 7.216(A)(7), this Court may grant relief as a case may require. We therefore consider Summit's request for restitution.

First, it appears that the taxable costs of $410 were included twice in the calculations offered by Atek and apparently relied on by the trial court. Atek attached to its January 24, 2011 ex parte motion a "mathematical computation" of the amount Summit owed, including interest. That computation commenced with an initial balance of $6,753,569.32, which is precisely $820.00 more than the $6.7M portion of the verdict. We cannot conceive of any possible explanation for the discrepancy other than the erroneous double-inclusion of the $410.00 of taxable costs imposed by the April 4, 2008 judgment.

Additionally, Atek's calculations do not comport with either MCL 600.6013 or the trial court's February 15, 2011 determination regarding how interest should be computed. MCL 600.6013 provides for interest on a money judgment to be calculated from the date the complaint is filed, but for "complaints filed on or after October 1, 1986, interest is not allowed on future damages from the date of filing the complaint to the date of entry of the judgment." See MCL 600.6013(1); *Chelsea Investment Group, LLC*, 288 Mich App at 257-258. In relevant part, MCL 600.6013(8) provides that:

> interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of filing the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, according to this section. Interest under this subsection is calculated on the entire amount of the money judgment, including attorney fees and other costs. The amount of interest attributable to that part of the money judgment from which attorney fees are paid is retained by the plaintiff, and not paid to the plaintiff's attorney.

In *Chelsea Investment Group, LLC*, 288 Mich App at 258, this Court addressed whether "MCL 600.6013(8) requires interest to be calculated at six-month intervals from the day the complaint is filed or whether it requires interest to be calculated every six months on January 1 and July 1 from the date the complaint is filed." This Court held that, pursuant to the plain language of the statute:

> MCL 600.6013(8) simply requires that interest on a judgment be recalculated every six months from the date of the filing of the complaint using the interest rates announced on July 1 or January 1, whichever is "immediately preceding" the complaint's six-month calculation date. For example, interest for a complaint filed in August 2008 would be calculated in February 2009 using the January 1, 2009, rate, and would be calculated again in August 2009, using the July 1, 2009, rate. [*Id.* at 259.]

The significant difference between this case and *Chelsea Investment Group* is that the interest here is on a counterclaim rather than the plaintiff's complaint. The trial court, however, used the date of the complaint to calculate interest, rather than the later date on which the counterclaim was filed.

The April 4, 2008 judgment does not allow for pre-verdict interest on the $6.7M portion of the judgment, and the December 11, 2008 order does not allow for pre-verdict interest on the $1.2M portion of the judgment. Consequently, Atek is not entitled to any pre-verdict interest. However, the proper six-month date under MCL 600.6013(8) remains the same for the purpose of calculating interest, irrespective of whether any pre-verdict interest is actually permitted by the judgment. "Prejudgment interest accrues from the date that the complaint is filed against the party whom prejudgment interest is being taxed." *Amerisure Ins Co v Graff Chevrolet, Inc*, 469 Mich 1003; 674 NW2d 379 (2004). Therefore, we conclude that the trial court should have utilized the date of the counterclaim for the purposes of calculating interest on the counterclaim judgment.[3]

The interest rate on January 1 or July 1, whichever immediately precedes the six-month calculation date, is to be used to compute interest. *Chelsea Investment Group, LLC*, 288 Mich App at 259. Because Atek's overall approach was to use the interest rate on January 1 or July 1 that immediately preceded a six-month calculation period, rather than the interest rate on January 1 or July 1 that immediately preceded the calculation date, the trial court erred in adopting Atek's proffered calculation.

Atek argues that this approach results in a "phantom rate" for a six-month calculation period that is shortened by payment of the balance owed to satisfy the judgment. Irrespective of whether that may be accurate, if statutory language is plain and unambiguous, it is applied as written. *Chelsea Investment Group*, 288 Mich App at 258. This Court has found the relevant criterion to be the interest rate on January 1 or July 1 that immediately precedes the calculation date, *id.* at 259, so it is apparent that the Legislature intended to apply that rate to a calculation period that is cut short by satisfaction of the judgment.

In sum, the trial court erred in allowing statutory interest on the $6,752,749.32 portion of the judgment for the period preceding the date of the jury's verdict. The trial court also erred in adopting Atek's proffered calculation of the balance owed by Summit for purposes of the February 24, 2011 ex parte orders. The trial court further erred in determining the appropriate biannual dates for calculating interest. Accordingly, we reverse the February 24, 2011 ex parte orders to the extent that the trial court incorrectly determined the amount necessary for Summit to satisfy the judgment, and remand for a redetermination of the appropriate amount consistent with this opinion. To the extent that Summit overpaid the balance needed to satisfy the

[3] Although Summit failed to raise this specific issue on appeal, we have chosen to address it because it affects how post-verdict interest is to be determined in this case. This Court may address any issue that, in this Court's opinion, justice requires be considered and resolved. *LME v ARS*, 261 Mich App 273, 287; 680 NW2d 902 (2004).

judgment, the trial court shall award restitution, with interest, to Summit pursuant to MCL 600.1475.

Reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause