DOCKET NO. HHD-CV-18-6091905-S	:	SUPERIOR COURT
ANDREY V. KAZAKOV	:	J.D. OF HARTFORD
V.	:	AT HARTFORD
OLEG PASHCHENKO, ET AL.	:	MAY 13, 2024

MEMORANDUM OF DECISION RE MOTION FOR POSTJUDGMENT INTEREST

Before the court is the plaintiff's, Andrey Kazakov, motion for postjudgment interest. # 276. The following facts and procedural history are relevant to this decision. Following a trial to the court, the court, on October 13, 2023, rendered judgment in favor of the plaintiff in the amount of $430,411.62. # 271. In its decision, the court granted judgment on counts one, two and five of the plaintiff's complaint against the defendant Oleg Paschenko, asserting, respectively, claims of breach of a fiduciary duty, breach of Russian contract law with respect to a power of attorney and fraudulent misrepresentation.[1] In its decision, the court granted the plaintiff's request in his prayer for relief for prejudgment and/or postjudgment interest pursuant to General Statutes § 37-3a but reserved a decision until a hearing thereon. On November 2, 2023, the defendants moved for reconsideration and reargument of the judgment as to counts one, two, four and five. # 273. On March 4, 2024, this court denied the motion as to these counts.[2] # 273.86.

On March 25, 2024, the plaintiff filed a motion for determination of postjudgment interest. The defendants filed an objection to the motion on the grounds that the court is without power to do so because an award of postjudgment interest is a substantive modification of the

[1] Additionally, the court entered judgment against both Oleg and Vera Paschenko on the fourth count of the plaintiff's complaint seeking a judgment of a fraudulent transfer of the marital property. Judgement also entered in favor of Paschenko on count three which alleged a claim for fraudulent misrepresentation.

[2] The court did grant the defendants' motion for reconsideration of its granting of a constructive trust on the grounds that it had not been explicitly requested. # 273.86.

#278.00

judgment which cannot be done outside of four months from the date the judgment is entered. See *Cliff's Auto Body, Inc. v. Grenier*, 179 Conn. App. 820, 847, 181 A.3d 138 (2018); see also General Statutes § 52-212a.[3]

In *Cliff's Auto Body, Inc. v. Grenier*, our Appellate Court considered whether a judgement for the amount of a debt was final where interest was awarded without having identified the rate of interest or the amount due. In that case, on December 30, 2008, the trial court entered judgment for the plaintiff for the specific amount of the underlying debt and awarded interest but didn't set the rate at which interest would accrue. On January 2, 2009, the plaintiff placed a judgment lien on the defendant's property in the amount of the underlying debt. The defendant appealed the judgment against her. On April 13, 2010, the plaintiff filed a motion for clarification asking the court to set the amount of prejudgment interest. On April 15, 2010, the court dismissed the appeal for "lack of a final judgment because there ha[d] been no final determination regarding the amount of damages . . . ." (Internal quotation marks omitted.) Id. 823, n.5. This was so because "there was an unresolved claim for discretionary prejudgment interest." Id., 823. On April 26, 2010, the trial court ordered prejudgment and postjudgment interest at the rate of 10 percent per year. Id. Thereafter, in 2015, the plaintiff commenced an action to foreclose the judgment lien it had placed on the property on January 2, 2009. The trial court "denied the defendant's motion to dismiss predicated on the grounds that there was no valid judgment lien, that the court lacked subject matter jurisdiction and that the lien placed in

[3] General Statutes § 52-212a provides in relevant part that "a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which the notice of judgment or decree was sent. . . ."

evidence did not specify the rate of interest." Id., 825. A judgment of foreclosure by sale was rendered.

On appeal, the Appellate Court agreed with the defendant that the judgment lien submitted at the foreclosure hearing was invalid and held that the trial court erred in issuing a judgment of foreclosure by sale. This was so because after the Appellate Court's determination that the December 30, 2008 judgment was not a final judgment, because the rate of interest had not been set, "[t]he plaintiff failed to open timely the . . . judgment to obtain an award that set the rate of prejudgment interest." *Cliff's Auto Body, Inc. v. Grenier*, supra, 179 Conn. App. 830.[4] Accordingly, the court concluded that "the judgment lien submitted in evidence in the present foreclosure action was invalid as a matter of law and could not serve as a basis for the judgment rendered by the court. The judgment lien was predicated on a judgment that did not state the rate of interest and, therefore, did not specify with certainty the amount for which it was rendered, nor was the amount ascertainable from the record or by mere mathematical computation." Id. Moreover, "assigning the rate of interest on the . . . judgment constituted a substantive change in the judgment. . . . [A]dding an award of post judgment interest to a damages award is a substantive modification of the judgment." Id., 827. Such a modification must be done no more than four months after the judgment was rendered. Id., 826-27.

The Appellate Court's decision in *Cliff's Auto Body, Inc.* is consonant in part with the Supreme Court's decision in *Balf Co. v. Spera Construction Co.*, 222 Conn. 211, 213, 608 A.2d 682 (1992). In *Balf Co.*, the court considered the issue of whether there is a final judgment when the granting of summary judgment establishes liability for the principal amount claimed by the plaintiff but reserves a ruling on a claim for prejudgment interest. The court distinguished its

[4] Query, did the December 30, 2008, judgment for the underlying debt become final after the expiration of four months from the date of its entry?

decision in *Balf Co.* from its decision in *Paranteau v. DeVita*, 208 Conn. 515, 523, 544 A.2d 634 (1988) which held that "a judgment on the merits is final for purposes of appeal even though the recoverability or amount of attorney's fees for the litigation remains to be determined" on the grounds that unlike attorney's fees, which are an element of costs and not part of a merits judgment, prejudgment interest "is part of the plaintiff's claim to be made whole." *Balf Co. v. Spera Construction Co.*, supra, 222 Conn. 215. Accordingly, a judgment in favor of the plaintiff for the damages claimed is not a final judgment where, as in the present case, prejudgment or postjudgment interest has yet to be determined. Id.

In the present case, the defendants argue that because the court rendered judgment in the plaintiff's action on October 13, 2023, the plaintiff should have filed a motion for determination of prejudgment and postjudgment interest within four months per General Statutes § 37-3a. Because the plaintiff's motion for postjudgment interest was filed on March 25, 2024, more than four months following the court's entry of judgment, the defendants argue that the plaintiff is forestalled from filing a motion to open judgment to accommodate a request for postjudgment interest. The plaintiff has filed no reply to the defendant's objection.

It is true that the plaintiff has not filed a motion to reopen and under the authority of *Cliff's Auto Body, Inc.*, such a motion must be filed in order for this court to consider the motion. The court observes, however, that the plaintiff is not precluded from filing a motion for postjudgment interest. This is so because the defendants filed a motion for reconsideration/reargument on November 2, 2023. Our Supreme Court has recognized "that the filing of a motion for reconsideration should be treated as suspending the finality of judgment when the effect of a ruling on the motion can affect the substantive rights of the parties. . . . Such a result is consistent with the rule that the filing of a motion that seeks an alteration, rather than a

clarification, of the judgment suspends the appeal period. See Practice Book § 63-1 (c)[5] . . . ." (Citations omitted; footnotes altered; internal quotation marks omitted.) *Weinstein v. Weinstein*, 275 Conn. 671, 698-99, 882 A.2d 53 (2005). The motion for reconsideration/reargument did in fact seek the "alteration of the judgment." Thus, the judgment in the present case became final on March 4, 2024, when the court issued its order regarding the motion for reconsideration/reargument. If the plaintiff files a motion to reopen the judgment, the court will entertain it. Until then, however, the court must deny the plaintiff's motion for postjudgment interest.

THE COURT

/s/ #435707
Cesar A. Noble
Judge, Superior Court

[5] Practice Book § 63-1 (c) (1) provides in relevant part that "[i]f a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion . . . . Motions that, if granted, would render a judgment . . . ineffective include . . . reargument of the judgment . . . or any alteration of the terms of the judgment."