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Expert Analysis

Quantum Meruit Claims: Is Interest Mandatory or Discretionary?

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Pursuant to CPLR 5004, the prevailing party in a civil action is entitled to interest at the munificent rate of 9 percent per annum. And, CPLR 5001(b) provides that interest at that rate runs "from the earliest ascertainable date the cause of action existed." Where the claim falls within the parameters of CPLR 5001, interest at 9 percent is mandatory and there is no discretion to withhold an award of interest at the statutory 9 percent rate.[1] For example, in a breach of contract action a litigant with a $1 million claim who successfully recovers judgment five years after the date of the breach, would be entitled to interest amounting to $450,000 since interest would run from the date of the breach. After entry, CPLR 5003 provides for 9 percent interest on every judgment, regardless of the nature of the underlying claim. In a federal court action, the CPLR provisions as to pre-judgment interest are applicable only in diversity cases; post-judgment interest in the federal system, even in diversity cases, is at the more modest federal rate tied to the Treasury Yield.[2]

In today's economy it is difficult to conceive of an investment with a better rate of return than a long-running litigation in which pre-judgment interest is awarded. However, a litigant is not entitled to interest in every civil action. CPLR 5001(a) provides that "[i]nterest shall be recovered upon a sum awarded because of a breach of performance of a contract or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property…." The statute goes on to specifically except "an action of an equitable nature." In equitable actions, whether to award interest, from what date, and at what rate are all discretionary.

Quantum meruit claims are based on a hybrid of law and equity. There is no express contract between the parties, but one is implied because of the course of dealings between them. The cases are in conflict as to whether interest is mandatory or discretionary and the Court of Appeals has yet to weigh in on the issue. In this era, where cases may be pending for years, substantial dollars are at stake.

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Split Among the Courts

Not only is there no consistent jurisprudence resolving this issue to be found in either the state or federal courts, but different panels within the same department have reached different conclusions. Thus, in *Ogletree, Deakins, Nash, Smoak & Stewart P.C. v. Albany Steel Inc.*,[3] the plaintiff law firm sued to recover fees, alleging breach of contract, quantum meruit, and account stated. The causes of action based on contract and account stated were dismissed, but a recovery was obtained on the quantum meruit claim. On the issue of interest, the Third Department stated:

> Turning to the issue of interest, we reject defendant's categorization that plaintiff's claim is "equitable" and, therefore, any award of interest was discretionary (see, CPLR 5001[a]). Plaintiff's quantum meruit action is essentially an action at law, inasmuch as it seeks money damages in the nature of a breach of contract, "notwithstanding that the rationale underlying such causes of action is fairness and equitable principles in a general rather than legal, sense" (*Hudson View II Assocs. v. Gooden*, 222 A.D.2d 163, 168, 644 N.Y.S.2d 512). Thus, Supreme Court correctly determined that it was required to award interest (see, CPLR 5001[a]).

Notwithstanding, seven years later in *Precision Foundations v. Ives*,[4] the plaintiff obtained a recovery in quantum meruit for certain work performed on the defendant's premises. On the issue of interest, without mentioning its prior decision in *Ogletree, Deakins*, the Third Department stated:

> Turning to the Supreme Court's award of preverdict interest to plaintiff, we note that such awards are discretionary for a quantum meruit claim (see CPLR 5001[a]).

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> Here, as already indicated, plaintiff waited almost four years after having rendered its services to bring this litigation. Under the particular circumstances herein, we do not find a sufficient basis for a discretionary award of preverdict interest on plaintiff's quantum meruit claim and, accordingly, reverse that award.

No explanation is offered as to why or how the "required" award in the first instance became "discretionary" in the second.

First Department cases also are at odds. In *Ash & Miller v. Freedman*,[5] the court held that "an award of interest would be mandated in an action by an attorney to recover under a retainer agreement or in quantum meruit for the reasonable value of legal services rendered." However, in *Hugh O'Kane Elec. Co., LLC v. Master North America Inc.*,[6] in affirming an award of interest, the court stated: "This is an action for breach of contract and not, as defendant asserts, an action sounding in quantum meruit." This clearly implies that interest on a quantum meruit claim should not be awarded as a matter of right. And in *Leroy Callender, P.C. v. Fieldman*,[7] the court awarded prejudgment interest on a quantum meruit claim from the date payment was demanded, noting that "we find that plaintiff has established its entitlement" thereto, again suggesting a discretionary, not mandatory, approach.

Second Department precedent holds that interest is mandatory.[8] And the Fourth Department reaches the opposite result.[9]

The federal courts in New York are also divided on the issue. In *Chernis v. Swarzman*[10] and *Sequa Corp. v. Gelmin*,[11] the courts reached the conclusion that an award of interest on a quantum meruit claim was discretionary. Precisely the opposite result is found in *Stillman v. Inservice America Inc.*,[12] and *Aniero Concrete Co. Inv. v. New York Housing Constr. Auth.*[13]

These are but a sampling of the relevant cases, and many others can be found on both sides of the issue.

Types of Implied Contracts

Quantum meruit is, of course, merely one species of an implied contract. There are two classes of implied contracts: "those implied in fact as a result of the acts of the parties, generally referred to as true contracts, and quasi or constructive contracts resting upon equitable principles."[14] Quantum meruit claims would appear to be contracts implied in fact. That is, the dealings between the parties give rise to an obligation to pay for goods or services.

Other types of implied contracts fall more within the rubric of an implied by law contract. For example, where money has been paid by mistake, the obligation to repay it is not based upon any direct dealings between the parties and arises because of an implied at law contractual obligation. In cases where a party has paid money in error and seeks to recover it, courts have generally treated such claims as equitable, noting that when a "payor pays out money by reason of a mistake of fact, it may recover its erroneous payment in an action in equity."[15] As a result, interest is discretionary under the statute and has been denied because it would be "unfair to charge" the defendant "with lost interest."[16]

There is some logic in regarding these payment by mistake claims as equitable since they are based in the main on an implied at law obligation to repay. Thus, not every claim sounding in implied contract needs to be treated as one for "breach of performance of a contract." Limiting the applicability of CPLR 5001(a) to contracts implied in fact, makes sense. But, the disconnect occurs because of the lack of uniformity of treatment of quantum meruit claims, which are implied in fact, not law.

Hopefully, at some future juncture the Court of Appeals or the Legislature will provide clarification.

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1. *Spodek v. Park Prop. Dev. Ass'n*, 96 N.Y.2d 577, 733 N.Y.S.2d 674 (2001); *New England Ins. Co. v. Healthcare Underwriters Mut. Ins. Co.*, 352 F.3d 599 (2d Cir. 2003).
2. 28 U.S.C.A. §1961; *Stillman v. Inservice Am. Inc.*, 738 F. Supp. 2d 480 (S.D.N.Y. 2010); Siegel, Commentary to CPLR 5001 at C:5001:2.
3. 243 A.D.2d 877, 879, 663 N.Y.S.2d 313, 315 (3d Dept. 1997). The same result was reached in *Govern & McDowell v. McDowell & Walker Inc.*, 75 A.D.2d 979, 428 N.Y.S.2d 367 (3d Dept. 1980).
4. 4 A.D.3d 589, 593, 772 N.Y.S.2d 116, 119 (3d Dept. 2004).
5. 114 A.D.2d 823, 495 N.Y.S.2d 183, 184 (1st Dept. 1985).
6. 45 A.D.3d 413, 414, 846 N.Y.S.2d 51, 52 (1st Dept. 2007).
7. 252 A.D.2d 468, 469, 676 N.Y.S.2d 152, 154 (1st Dept. 1998).
8. *Tesser v. Allboro Equip. Co.*, 73 A.D.3d 1023, 904 N.Y.S.2d 701 (2d Dept. 2010); *Brent v. Keesler*, 32 A.D.2d 804, 302 N.Y.S.2d 349 (2d Dept. 1969).
9. *Home Insulation & Supply Inc. v. Buchheit*, 59 A.D.3d 1078, 872 N.Y.S.2d 808 (4th Dept. 2009).
10. No. 05 Civ 3377 2007 WL 2230078 (S.D.N.Y. Aug. 2, 2007).
11. No. 91 Civ. 865 1997 WL 218470 (S.D.N.Y. April 30, 1997).
12. 738 F. Supp. 2d 480 (S.D.N.Y. 2010).
13. 308 F. Supp. 2d 164 (S.D.N.Y. 2003).
14. *Adams & Co. Real Estate Inc. v. E&B Supermarkets Inc.*, 26 A.D.2d 365, 366, 274 N.Y.S.2d 776, 778 (1st Dept. 1966).
15. *Allcity Ins. Co. v. Bankers Trust Co.*, 80 Misc. 2d 899, 901, 364 N.Y.S.2d 791, N.Y. Co. Ct. (1975).
16. *Allcity*, 80 Misc. 2d at 902, 364 N.Y.S.2d at 794.; accord, *Liberty Mut. Ins. Co. v. Newman*, 92 A.D.2d 613, 459 N.Y.S.2d 806 (2d Dept. 1983); *A.I. Trade Fin. Inc. v. Petra Bank*, No. 89 Civ. 7987 1997 WL 291841 (S.D.N.Y. June 2, 1997).