

FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

SHAWN SMITH and KRISTIN COATES,)	CASE NO. SX-12-CV-380
)	
Plaintiffs,)	
)	
v.)	
)	
COMPANION ASSURANCE COMPANY and)	
RICARDO FOURNIER,)	
)	
Defendants.)	
_____)	

Cite as: 2019 VI Super 33

Appearances:

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For Defendants

MEMORANDUM OPINION

MOLLOY, Judge.

¶1 **THIS MATTER** comes before the Court on Plaintiffs' *Motion for Release of Funds Paid to the Registry of the Court* and Plaintiffs' *Motion for Award of Pre and Post Judgment Interest*, both filed on November 2, 2018. Defendants do not oppose the release of the funds they deposited into the court's registry pending post-judgment motions and appeal to the Supreme Court of the Virgin Islands and certiorari review by the United States Court of Appeals for the Third Circuit. But Defendants do oppose the award of pre and post-judgment interest. For the reasons stated below, the Court will

grant Plaintiffs' motion for the release of funds and award post-judgment interest. But their request for pre-judgment interest will be denied.

I. BACKGROUND

¶2 This action was tried by a jury between December 7-10, 2015. On December 10, 2015, the jury returned a unanimous verdict finding in favor of Defendant Companion Assurance Company ("Companion") and Defendant Ricardo Fournier ("Fournier") on Plaintiff Kristin Coates' ("Coates") claim for defamation *per se*. But the jury found in favor of Coates on her claim against Companion for breach of duty of good faith and fair dealing and awarded her \$33,000.00 in damages.¹ The jury also found in favor of Plaintiff Shawn Smith ("Smith") on his claims against Companion and Fournier for defamation *per se* and awarded him damages in the amount of \$82,500.00² and \$52,500.00³ against each defendant, respectively. The jury's verdict was memorialized in a Judgment dated January 8, 2016 (entered on January 11, 2016).

¶3 On April 15, 2016, Defendants filed a Motion for Stay of Execution of Judgment Pending Post-Trial Motions. The Court granted the motion on condition that each defendant post the appropriate bond on the judgment awarded to each plaintiff. *See* Order dated May 27, 2016. On or about July 8, 2016, Companion delivered checks to be deposited into the Court's registry as security in the amounts of \$82,500 and \$33,000, respectively. Fournier also deposited a check in the amount of \$52,500 as security for the judgment entered against him in Smith's favor.

¶4 After the Court resolved several post-judgment motions, the Defendants filed a Notice of

¹ The jury awarded Coates \$3,000.00 in compensatory damages and \$30,000.00 in punitive damages on this claim.

² The jury awarded Smith \$7,500.00 in compensatory damages and \$75,000.00 in punitive damages on this claim.

³ The jury awarded Smith \$2,500.00 in compensatory damages and \$50,000.00 in punitive damages on this claim.

Appeal with the Supreme Court of the Virgin Islands on October 3, 2016. However, the Supreme Court dismissed their appeal on May 23, 2017, because more than 120 days had passed between the January 11, 2016 Judgment and the October 3, 2016 Notice. *See generally Companion Assurance Co. v. Smith*, 66 V.I. 562 (2017).

¶5 After the Supreme Court dismissed Companion's appeal, Plaintiffs filed a motion in the Superior Court on May 26, 2017 for release of the funds the Defendants had paid into the court registry. Defendants opposed the motion and also filed a motion to continue the stay of execution pending the filing of a petition for writ of certiorari in the Third Circuit. By order dated June 12, 2017, this Court granted the motion to continue the stay pending further appellate review and denied Plaintiffs' motion for release of funds.

¶6 Defendants subsequently filed a petition with the Third Circuit on July 24, 2017, which the Third Circuit December 18, 2017. However, Defendants moved to involuntarily dismiss the certiorari proceedings based on that Court's decision in *Vooy's v. Bentley*, 901 F.3d 172 (3d Cir. 2018).⁴ The Third Circuit granted Defendants' motion on October 17, 2018.

¶7 On November 2, 2018, Plaintiffs filed a second Motion in the Superior Court for Release of Funds as well as a Motion for Award of Pre and Post Judgment Interest. Defendants did not oppose Plaintiffs' request to release funds but did oppose the motion to award pre and post judgment interest on November 14, 2018. Plaintiffs filed a reply brief on December 10, 2018.

II. DISCUSSION

⁴ At the time of the filing of this appeal, the Third Circuit continued to possess certiorari jurisdiction over certain cases appealed from the Supreme Court of the Virgin Islands. *See United Indus., Serv., Transp., Prof'l & Gov't Workers of N. Am. Seafarers Int'l Union v. Gov't of the V.I.*, 767 F.3d 193 (3d Cir. 2014). However, in *Vooy's v. Bentley*, 901 F.3d 172 (3d Cir. 2018), a decision issued on February 12, 2018, the Third Circuit reversed its decision in *United* and ruled that it has certiorari jurisdiction over the Supreme Court of the Virgin Islands only for those petitions filed on or after December 28, 2012. *Id.* at 195.

A. Motion for Release of Funds

¶8 Plaintiffs request the release of the funds that were deposited into the Superior Court's registry as security while the Court addressed several post-judgment motions and while this matter was on appeal. With appellate proceedings exhausted, there is no dispute that Plaintiffs are entitled to the monetary judgment as determined by the jury. Defendants do not object to the release of the funds. See Def.'s Opp. to Mot. for Prejudgment and Post Judgment Interest at 6 ("[D]efendants do not contest plaintiffs' motion for disbursement of the funds that defendants deposited with the Court"). Accordingly, the Court will grant the Plaintiffs' motion and direct that the Clerk of Court release the funds deposited by the Defendants.

B. Motion for Award of Pre and Post Judgment Interest

¶9 In their second motion, Plaintiffs request an award of pre and post-judgment interest on the January 11, 2016 Judgment. In the Virgin Islands, it is well recognized that the application of pre and post-judgment interest are governed by 11 V.I.C. § 951 and 5 V.I.C. § 426, respectively. Title 11, Section 951 of the Virgin Islands Code provides that "[t]he rate of interest shall be nine (9%) per centum per annum on . . . all monies which have become due." 11 V.I.C. § 951(a)(1). Title 5, Section 426(a) states that "[t]he rate of interest on judgments and decrees for the payment of money shall be 4 percent per annum." "Post-judgment interest represents the cost of withholding the amount owed the plaintiff once that sum has been determined in a court proceeding." *Poleto v. Consolidated Rail Corp.*, 826 F.2d 1270, 1280 (3d Cir. 1987). Moreover, "awarding post-judgment interest is not a reward, but rather just compensation to ensure that a money judgment will be worth the same when it is actually received as it was when it was awarded." *Dunn v. HOVIC*, 13 F.3d 58 (3d Cir. 1993).

¶10 In *Christian v. Joseph*, 29 V.I. 404, 408 (3d Cir. 1993), the Third Circuit, while sitting as the *de*

facto court of last resort for the Virgin Islands, held that the language in 5 V.I.C. § 426 “provides for automatic accrual of post-judgment interest.” This automatic accrual occurs whether or not the judgment explicitly provides for post-judgment interest. *See id.* (“We are not persuaded by Christian’s argument that the post-judgment interest does not automatically accrue absent explicit statutory provision or express inclusion in the judgment itself.”). This decision, construing a Virgin Islands statute, is binding on the Superior Court. *See Najawicz v. People*, 58 V.I. 315, 327-28 (2013); *In re: People of the V.I.*, 51 V.I. 374, 389 n.9 (2009); *see also James-St. Jules v. Thompson*, Civil No. SX-09-CV-136, 2015 V.I. LEXIS 74, at *19 (Super. Ct. June 25, 2015) (“Because a decision of the Third Circuit rendered in its capacity as the ‘de facto court of last resort in the Virgin Islands’ is binding on the Superior Court . . . this Court is bound by the Third Circuit’s decision in *Richardson [v. Knud Hansen Mem’l Hosp.]*, 744 F.2d 1007 (3d Cir. 1984)] ruling that the provisions of the [Virgin Islands Tort Claims Act] are jurisdictional.” (internal citation omitted)); *Contra Gov’t of the V.I. v. Connor*, 60 V.I. 597, 605 n.1 (2014) (*per curiam*) (clarifying that common law decisions are not binding).

¶11 Defendants oppose Plaintiffs’ request for post-judgment interest for three reasons: (1) their motion fails to cite to any legal authority in support; (2) their motion is untimely under Rule 60 of the Virgin Islands Rules of Civil Procedure; and (3) the calculation of post-judgment interest is incorrect.⁵ Defendants are correct in that, ordinarily, a movant must support her arguments with

⁵ Defendants also argued that Plaintiffs were not entitled to pre-judgment interest because the amount of the award pre-judgment was not ascertainable. Plaintiffs concede this point in their reply brief and concur that an award of pre-judgment interest is not appropriate in this case. *See* Pl.’s Reply to Opp. to Award of Post Judgment Interest at 4 (“Plaintiffs agree that due to the nature of the claims an award of pre-judgment interest would be inappropriate under the statute and cases interpreting the statute.”). This court agrees that an award of pre-judgment interest is not appropriate in this case. *See Anderson v. Bryan*, 58 V.I. 181, 187 (Super. Ct. 2013) (“As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment . . .”); *Bookworm, Inc. v. Tirado*, 44 V.I. 300, 305 (Terr. Ct. 2002) (opining that 11 V.I.C. § 951(a) provides for the award of pre-judgment interest “in situations where the amount is easily ascertainable” and “section 951(a) is not a proper mechanism for seeking prejudgment interest for a non-contractual tort”).

citation to legal authority, *see* V.I. R. Civ. P. 6-1(a) (requiring that all motions must “state with particularity the grounds for seeking the order, including a concise statement of reasons and citation of authorities”), and that failure to do so may lead to the court summarily denying the motion. *See e.g., Prosser v. Nissman*, 67 V.I. 96, 102-03 (Super. Ct. 2016) (summarily denying motion because plaintiff failed to provide proper briefing and nonmoving party was prevented from knowing what it must defend against); *V.I. Daily News v. PSC*, 45 V.I. 139, 146 (Terr. Ct. 2002) (opining that attorney’s failure to cite to binding authority rendered motion fatally deficient). However, because post-judgment interest accrues automatically under Virgin Islands law, entitlement to such an award is not premised on the filing of a motion. Thus, Plaintiffs’ failure to cite to legal authority in support does not warrant summary denial of their request.⁶

¶12 Similarly, Defendants’ argument that Plaintiffs’ motion should be denied as untimely under Virgin Islands Rule of Civil Procedure 60 is unavailing. Defendants contend that because the Judgment did not include an award for post-judgment interest, Plaintiffs had up to one year to correct that omission in the Court’s Judgment. *See* V.I. R. Civ. P. 60(c) (allowing a party up to one year to seek relief from a final judgment due to mistake or inadvertence). However, because the right to post-judgment interest is automatic, Plaintiffs did not have to file a motion to amend the judgment, nor did the judgment need to specifically include an award of post-judgment interest. This right automatically accrued upon the issuance of a judgement for a sum certain. *See Christian*,

⁶ The requirement that a movant must cite to appropriate legal authorities in a motion must also be balanced with ensuring that “rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” V.I. R. Civ. P. 1. Here, Defendants were neither surprised nor prejudiced by Plaintiffs’ failure to cite to the post-judgment interest statute. Moreover, it is clear to the Court that Plaintiffs are seeking relief under 5 V.I.C. § 426 – the only statute that permits post-judgment interest after a civil jury trial. Thus, in this limited instance, these reasons also support another basis for the Court to excuse Plaintiffs’ failure to cite to the proper legal authority for an award of post-judgment interest because such motions are of a routine nature and the basis for such relief is well known.

29 V.I. at 408 (“We are not persuaded by Christian’s argument that the post-judgment interest does not automatically accrue absent explicit statutory provision or express inclusion in the judgment itself.”).

¶13 Finally, Defendants seem to suggest that Plaintiffs applied compounding interest (interest upon interest) in their calculations. A review of the calculations does reveal that to be the case. Because the plain language of 5 V.I.C § 426 does not provide for compounding of interest and clearly states that the interest on the judgment is to be applied on a per annum basis, the Court will apply simple compounding in performing its calculations. *See State ex rel. City of Elyria v. Trubey*, 484 N.E.2d 169, 171 (Ohio App. Ct. 1984) (“[S]imple interest is to be used for post-judgment interest unless there is a specific agreement to compound interest or a statutory provision which authorizes otherwise.”); *Schwartz v. Piper Aircraft Corp.*, 282 N.W.2d 306, 325 (Ohio 1979) (opining that where there is no statutory provision for compound interest and the statute uses the words “per year”, the legislature intended the use of simple interest); *Guam United Warehouse Corp. v. DeWitt Transp. Servs. of Guam, Inc.*, 2003 Guam 20, ¶ 36 (stating “when no specific provision for interest is noted, then simple interest is to be awarded” and “interest shall be calculated on the basis of simple interest rather than compound interest in the absence of some special circumstance dictating otherwise.”).

¶14 Having determined that Plaintiffs’ are automatically entitled to post-judgment interest, the Court will now proceed to determine the amount that the Plaintiffs are entitled to. Based on the plain language of section 426, the rate of interest on a judgment starts to accrue on the date of the judgment. The Court issued the Judgment on January 11, 2016. Defendants filed their motion papers on November 14, 2018, indicating that they had no objection to the release of the funds deposited

into the court's registry.⁷ As of that date – November 14, 2018 – approximately 1037 days had passed since the Judgment issued.

¶15 Accordingly, applying the 4% per annum rate, the post-judgment interest on the judgments issued with respect to each plaintiff and to each defendant are as follows:

<u>Plaintiff</u>	<u>Defendant</u>	<u>Judgment</u>	<u>Interest (as of Nov. 14, 2018)</u>
Shawn Smith	Companion	\$82,500.00	\$9,374.48 ⁸
Shawn Smith	Fournier	\$52,500.00	\$5,962.75 ⁹
Kristin Coates	Companion	\$33,000.00	\$3,753.94 ¹⁰

III. CONCLUSION

¶16 For the reasons stated above, the Court will grant Plaintiffs' motion requesting the release of funds deposited into the registry of the Court by the Defendants. The Court will deny Plaintiffs' request for pre-judgment interest, but will grant Plaintiffs' request for an award for post-judgment interest because the application of post-judgment interest is automatic. Plaintiffs are entitled to an award of post-judgment interest on the jury's award at a rate of 4% per annum with simple

⁷ The Court will use the date of November 14, 2018 in calculating the total amount of post-judgment interest due. The reasoning behind the automatic accrual of post-judgment interest is to give litigants an incentive to pay judgments once entered. *Christian*, 15 F.3d at 297. That rationale does not support assessing post-judgment interest against the defendants after November 14, 2018. The Defendants provided security for the judgment in July 2016 while the Court addressed post-judgment motions as well as while this matter was on appeal. Additionally, in their brief, Defendants did not oppose Plaintiffs' November 2, 2018 motion to release the funds. Thus, the Court finds it inequitable to assess post-judgment interest against the Defendants after November 14, 2018. Any other result would only serve to punish the Defendants due to the Court's delay in granting Plaintiffs' motion to release the funds.

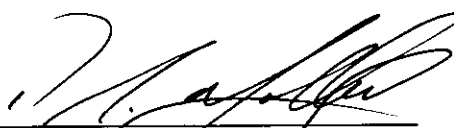
⁸ The Court arrives at this figure by using the following calculation: $((\$82,500 \times 0.04) \text{ divided by } 365) \times 1037 \text{ days}$. At this rate, interest is accrued at a rate of \$9.04 per day.

⁹ The Court arrives at this figure by using the following calculation: $((\$52,500 \times 0.04) \text{ divided by } 365) \times 1037 \text{ days}$. At this rate, interest is accrued at a rate of \$5.75 per day.

¹⁰ The Court arrives at this figure by using the following calculation: $((\$33,000 \times 0.04) \text{ divided by } 365) \times 1037 \text{ days}$. At this rate, interest is accrued at a rate of \$3.62 per day.

compounding of interest at amounts indicated in this Memorandum Opinion. An appropriate Order follows.

DATED: March 12, 2019



ROBERT A. MOLLOY
Judge of the Superior Court