

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-011845

03/22/2017

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT  
A. Arnold  
Deputy

DONA LISA JOHNSON

JAMES ROBERT ECKLEY

v.

BERNARD POTOFF, et al.

LYN ANNE BAILEY

MARIA R KUPILLAS  
RICHARD V MACK  
ROBERT J SPURLOCK  
THOMAS A STOOPS

UNDER ADVISEMENT RULING

Order Granting Defendant's Motion for Partial Summary Judgment  
on Plaintiff's Claim for Prejudgment Interest

This matter came before the Court on Defendant's Motion for Partial Summary Judgment filed on October 4, 2016. The Court has benefited from the oral arguments of counsel and has reviewed all the attachments to the pleadings. In reaching its decision, the Court also considered the legal file in this matter, and the applicable rules of court, statutes, and case law.

In deciding this motion, the Court is applying the well-established standard established by *Orme School v. Reeves*, 166 Ariz. 301 (1990). This court will grant summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of the evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense."

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When alleged damages are unliquidated, prejudgment interest may not be granted to the claimants as a matter of law. The controlling statute states that the Court should not award “[p]rejudgment interest for any unliquidated, future, punitive or exemplary damages that are found by the trier of fact.” A.R.S. § 44-1201(D)(1). Defendant argues that Plaintiff is precluded from prejudgment interest because the alleged damages are unliquidated. Defendant insists that evidence regarding costs of construction repairs is inexact and based entirely on opinion and discretion. This position is supported by holdings of both state and federal courts. Defendant correctly cites the United States District Court’s belief that “ascertaining construction repairs necessarily involves opinion and discretion.” *Vigilant Ins. v. Sunbeam Corp.*, 231 F.R.D. 582, 596 (D. Ariz. 2005). The Arizona Court of Appeals determined that mere estimates “do not reach the level of exactitude required for an award of prejudgment interest.” *Custom Roofing Co., v. Alling*, 146 Ariz. 388, 391 (Ct. App. 1985).

With regard to this issue, Plaintiff responds by arguing that some of the damages are capable of exact computation without opinion or discretion and deserve to be treated at liquidated damages. Plaintiff argues that items like the home’s purchase price, services already paid for, expert costs, and construction materials qualify as liquidated damages, affording an appropriate prejudgment interest request. In the reply, Defendant demonstrates that Plaintiff’s falls short. The Court has considered Plaintiff’s response to this portion of the Defendants’ motion and has taken all inferences in the light most favorable to Plaintiff. Nonetheless, Plaintiff’s grievances were not persuasive.

The Court will remain consistent with the position that estimates of repair costs, largely derived from opinion and discretion, do not constitute liquidated damages. Even reading the facts in the light most favorable to Plaintiff, the record does not indicate that reasonable minds could differ upon the inexact nature of appraisals and estimates offered by Plaintiff.

IT IS ORDERED granting Defendant’s Motion for Partial Summary Judgment on Plaintiff’s Claim for Prejudgment Interest.