

STATE OF VERMONT
WINDSOR COUNTY, SSThomas L. Reynolds
Plaintiff

v.

Daryl Snader
Dale Snader
Darlene Snader
DefendantSUPERIOR COURT
Docket No. 679-10-07 WrcvDECISION ON MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT
OR NEW TRIAL

This matter came on for trial by jury on May 6, 2009. Based upon previous rulings of the court, the only issue for trial was whether the Defendants should be given credit for any payments claimed to have been made toward the debt. As Defendants were alleging partial payment as an affirmative defense, they bore the burden of proof at trial.

Under the posture of the case, the Defendants were successful in their affirmative defense by virtue of the jury's finding that they should be given a \$75,000 credit against monies owed to the Plaintiff. Plaintiff contended that no payments against the debt obligation had been made. Plaintiff contends Defendants should not be entitled to V.R.C.P. 50 review since they prevailed on the payment issue, a reading of Rule 50 which the Court considers as too narrow. Accordingly, the Court will consider the merits of Defendants' contentions on the payment credits.

The Plaintiff and Daryl Snader engaged in a number of business transactions over several years. There was considerable conflicting testimony about loans and payments. Little was introduced by way of documentation of payments relating to any of these multiple transactions.

The jury found that Defendants should be credited with a \$75,000 payment. This payment was in connection with the settlement of an action in Minnesota involving, amongst others, Gordon and Donna Hawk, who are not parties to this suit. In settlement of claims in Minnesota, Plaintiff received an assignment of the Hawks' 50,000 member interest units (shares) in a company, Carolina Building Solutions, L.L.C.. The jury chose to believe this assignment should be credited against the debt obligation of Daryl Snader, even though that issue was vigorously contested. Defendants claim the finding was in error insofar as the date the jury credited the payment to the Defendants, claiming the assignment of the stock was contemporaneous with the settlement of the Minnesota claims. This is important in that it affects the amount of interest which has accrued.

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Defendants further claim the jury was in error by not also crediting \$38,500 to the Defendants, representing the value of stock in Snader Transportation issued to Plaintiff.

A similar case was *Trepanier v. Eldred*, 137 Vt. 108 (1979). In that case the Court stated "on the issue of payment, the only point of dispute here, V.R.C.P. 8(c) places the burden of proof, as with other affirmative defenses, upon the party asserting the defense. *Town of Shelburne v. Kaelin*, 136 Vt. 248, 251, 388 A.2d 398, 400 (1978). Such party "shall affirmatively set forth and establish" the affirmative defense." 137 Vt. at 108.

With respect to the date of credit of the \$75,000 payment by receipt of the units, it was Defendants' burden not only to establish payment, but also the date of payment. Defendants' allege the jury was in error because it disregarded the unit certificate, which Defendants claim establishes the date of receipt of the units by Plaintiff as being sometime in 2005.

The front of the 50,000 unit certificate to the Hawks was placed in evidence (P. Ex. 15). The back of the certificate was not introduced into evidence. The face of the certificate does not show any transfer of ownership. There was no evidence introduced as to the date of actual transfer of the shares or receipt of the proceeds by Plaintiff from sale of the units. There was testimony that as of the time of Plaintiff's deposition in May 2008 the shares had been transferred to him. The evidence or actual date of receipt of the units was sparse at best.

Based upon the evidence before the jury, it was reasonable for them to conclude that May 2008 should be used as the date of receipt of the Carolina Building Solution member units, and thus the date of credit, especially given the absence of evidence establishing another date. It has long been recognized that the weight to be given to the evidence is a matter solely within the province of the jury. *Noyes v. Parker*, 64 Vt. 379 (1892).

With respect to the jury's determination not to award an additional \$38,500 credit against the debt through the transfer of stock in Snader Transporting, Inc. to Plaintiff, this was an issue upon which the testimony was directly conflicting. Daryl Snader claimed this was done in partial payment of the debt at issue in this case. Plaintiff testified it was not related to this transaction. The jury chose to believe the Plaintiff, as was their province. *State v. Boucher*, 144 Vt. 276 (1984).

The Defendants further object to the calculation of late fees and attorney's fees, both of which were expressly allowed under the terms of the note. Defendants did not object to the late fee accounting and the affidavit of attorneys fees submitted by Plaintiff on May 14, 2009, nor request a hearing on those issues under V.R.C.P. 78(b).

Although not specifically raised in the Defendants' motion, both the interest issue and the amount of attorneys fees were issues properly considered by the Court, not the jury. The determination of attorney's fees, where they are allowed, is an equitable

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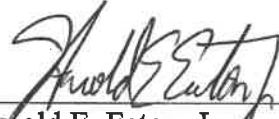
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accounting, to which there is no right to a jury trial. *Murphy v. Stowe Club Highlands*, 171 Vt. 144 (2000). The issue of prejudgment interest on a reasonably ascertainable sum is also not the province of the jury. *Remes v. Nordic Group, Inc.* 169 Vt. 37 (1999).

The interest/late fee calculation here was supported by a detailed accounting. The attorney fee claim supported by a detailed affidavit. Both were sufficient for the Court to make the interest and attorney fee award consistent with the terms of the note and the statute concerning computation of interest. 9 V.S.A. § 49. The opportunity to object to either or both was afforded before entry of judgment. No objection was made, nor is any error found in the interest or attorney's fee award even in the absence of any objection.

For the reasons stated herein, Defendants' motion is **DENIED**.

Dated at Woodstock this 10th day of July, 2009.



Harold E. Eaton, Jr.
Superior Court Judge

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WINDSOR COUNTY CLERK