

UTAH COURT OF APPEALS

CWS, LLC v. Scott Montgomery

2025 UT App 183 · No. 20231083-CA · Decided December 11, 2025

SUMMARY

The Utah Court of Appeals affirmed summary judgment awarding Scott Montgomery deferred compensation under the CWS, LLC Operating Agreement. The court upheld damages awarded to CWS for Montgomery’s competing business but remanded for reconsideration of prejudgment interest and attorney fees. The opinion addresses contract interpretation, competing activities, preservation of appellate issues, prejudgment interest, and prevailing-party attorney fees.

CASE DETAILS

COURT	Utah Court of Appeals
WRITING FOR THE COURT	Gregory K. Orme; Michele M. Christiansen Forster; David N. Mortensen
JURISDICTION	Utah Court of Appeals
DECIDED	December 11, 2025
DOCKET	20231083-CA
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	CWS appealed the trial court's partial summary judgment awarding Montgomery unpaid deferred compensation. Montgomery cross-appealed the awards of prejudgment interest and attorney fees to CWS after a jury found that he breached CWS's Operating Agreement by engaging in a competing business.
STANDARD OF REVIEW	Summary judgment and contract interpretation are reviewed for correctness, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party. The decision to award prejudgment interest is reviewed for correctness. The prevailing-party determination is reviewed for abuse of discretion, while the sufficiency of findings supporting attorney fees is reviewed for correctness.
PRECEDENTIAL VALUE	Published
PARTIES	CWS, LLC v. Scott Montgomery

TOPICS

contract interpretation

breach of contract

damages

appellate procedure

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QUESTIONS PRESENTED

1. Whether the plain language of CWS's Operating Agreement prohibited Montgomery from deferring his salary and bonus compensation without approval from members holding more than fifty percent of the membership interests.
2. Whether a genuine dispute of material fact existed regarding Montgomery's entitlement to and the amount of his unpaid deferred compensation.
3. Whether CWS preserved its argument that Montgomery could not recover deferred compensation because he failed to substantially perform under the Operating Agreement.
4. Whether CWS's Capitol-related damages were sufficiently fixed, measurable, and calculable to support prejudgment interest.
5. Whether prejudgment interest was proper on the line-item damages after Montgomery had previously tendered payment and CWS rejected the tender.
6. Whether the trial court adequately supported its determination that CWS was the prevailing party and its award of attorney fees.

HOLDINGS

1. The Operating Agreement's plain language did not prevent Montgomery from deferring his salary and bonuses. His decision to defer payment fell within the broad managerial discretion granted by the Agreement and did not constitute an impermissible change to the terms of his compensation.
2. The trial court properly granted partial summary judgment because there was no genuine dispute regarding the amount of compensation owed after Montgomery agreed at the summary-judgment hearing to accept the amount CWS acknowledged was due.
3. The court declined to address CWS's substantial-performance argument because CWS did not preserve it in the trial court.
4. Prejudgment interest was legally appropriate on the Capitol-related damages because the damages were fixed as of particular times and measurable and calculable from stipulated figures, but the trial court used an incorrect damages base. The interest must be recalculated using the jury's actual damages award.
5. Prejudgment interest was improper on the line-item damages because Montgomery tendered payment before litigation and the delay resulted from CWS's refusal to accept the tender, not from Montgomery's withholding of the money.
6. The attorney-fee award could not stand because the trial court made only a conclusory prevailing-party determination and failed to explain the factors supporting its decision. The issue was reversed and

remanded for reconsideration and new findings.

KEY QUOTATIONS

“We conclude that its plain language did not prevent Montgomery from deferring his compensation, even though he would have been entitled to take every penny he was due in the timeframe outlined in Exhibit B had he so elected.” (¶ 29)

“Awarding prejudgment interest under these circumstances would be inconsistent with the purpose of such an award.” (¶ 45)

“A trial court may . . . select, according to the factually varied context of each particular case, the factors that are most relevant to its fee calculation—but select them it must.” (¶ 53)

FACTUAL BACKGROUND

Montgomery and David Robison formed CWS, a commercial and residential window distributor, and Montgomery served as its manager from 2007 to 2019. The Operating Agreement provided Montgomery a salary and bonuses, granted him broad management discretion, and prohibited participation in competing activities. Montgomery deferred salary and bonus payments while managing CWS, but in 2014 formed Capitol Commercial Glazing, which used CWS assets and employees; he later received distributions from Capitol and proceeds from selling his interest in it. After Montgomery was removed as manager, CWS sued him, and the parties litigated his deferred compensation claim and CWS's competing-activity claim.

PROCEDURAL HISTORY

CWS sued Montgomery for several claims, including breach of the Operating Agreement based on his creation and operation of Capitol Commercial Glazing. Montgomery counterclaimed for approximately \$1.8 million in deferred salary and bonuses. The trial court granted Montgomery partial summary judgment on his compensation counterclaim, and after trial a jury found Montgomery liable for engaging in a competing activity and awarded CWS \$1,809,601 in damages. The trial court awarded both parties damages and prejudgment interest and awarded CWS attorney fees as the prevailing party. The Utah Court of Appeals affirmed the partial summary judgment, reversed prejudgment interest on the line-item damages, remanded the Capitol-related prejudgment interest for recalculation, and reversed and remanded the attorney-fee award for reconsideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for the trial court to recalculate prejudgment interest on the Capitol-related damages using the jury's actual \$1,809,601 damages award; eliminate the prejudgment interest award on the line-item damages; and reconsider attorney fees anew, including who prevailed and the amount of any fee award, with findings explaining the relevant factors. Any appellate attorney-fee entitlement is also to be determined on remand.

CASES CITED

- Desert Mountain Gold LLC v. Amnor Energy Corp., 2017 UT App 218, ¶ 11, 409 P.3d 74
- iDrive Logistics LLC v. IntegraCore LLC, 2018 UT App 40, ¶ 30, 424 P.3d 970
- Diversified Striping Sys. Inc. v. Kraus, 2022 UT App 91, ¶¶ 44, 77, 516 P.3d 306
- Giles v. Mineral Resources Int'l, Inc., 2014 UT App 37, ¶ 9, 320 P.3d 684
- Airstar Corp. v. Keystone Aviation LLC, 2022 UT App 73, ¶ 53, 514 P.3d 568
- KeyBank NA v. Systems West Computer Resources, Inc., 2011 UT App 441, ¶ 19, 265 P.3d 107
- UDAK Props. LLC v. Canyon Creek Com. Center LLC, 2021 UT App 16, ¶ 18, 482 P.3d 841
- Green River Canal Co. v. Thayn, 2003 UT 50, ¶¶ 24, 33, 84 P.3d 1134
- Lavender v. FCOI Preserve, LLC, 2025 UT App 47, ¶¶ 46, 112, 569 P.3d 1037
- Winn v. McKinlay, 2025 UT App 16, ¶ 39, 565 P.3d 101
- Hunter v. Finau, 2024 UT App 17, ¶ 18, 545 P.3d 294
- Encon Utah LLC v. Fluor Ames Kraemer LLC, 2009 UT 7, ¶¶ 53, 55, 64, 210 P.3d 263
- New York Avenue LLC v. Harrison, 2016 UT App 240, ¶ 40, 391 P.3d 268
- Kraatz v. Heritage Imports, 2003 UT App 201, ¶ 75, 71 P.3d 188
- Tschaggeny v. Milbank Ins. Co., 2007 UT 37, ¶ 28, 163 P.3d 615
- Capozzoli v. Madden, 2024 UT App 176, ¶ 48, 561 P.3d 727
- Young H2ORE LLC v. J&M Transmission LLC, 2024 UT App 10, ¶¶ 26, 48-49, 543 P.3d 1264
- Olsen v. Lund, 2010 UT App 353, ¶ 7, 246 P.3d 521
- Wihongi v. Catania SFH LLC, 2020 UT App 109, ¶ 9, 472 P.3d 308
- Foote v. Clark, 962 P.2d 52, 55-57 (Utah 1998)
- Selvage v. J.J. Johnson & Assocs., 910 P.2d 1252, 1265 (Utah Ct. App. 1996)
- Monaco Apartment Homes v. Figueroa, 2021 UT App 50, ¶ 6, 489 P.3d 1132
- Miller v. Martineau & Co., 1999 UT App 216, ¶ 47, 983 P.2d 1107
- Globe Contracting LLC v. Hour, 2025 UT App 98, ¶ 89 n.14, 575 P.3d 235
- Williamson v. Farrell, 2024 UT App 111, ¶ 46 n.14, 557 P.3d 214