

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Harrison County Development Authority v. Tetrick & Bartlett, PLLC

No. 14-0964 (W. Va. Nov. 20, 2015) · No. No. 14-0964 · Decided November 20, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of prejudgment interest in a negligence and negligent misrepresentation action arising from embezzlement losses allegedly not detected during annual audits. The court held that the losses were not subject to reasonable calculation because the jury did not determine the year in which actionable negligence occurred or the amount embezzled during that period. The decision was issued as a memorandum decision under Rule 21 and included a dissent.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Robin Jean Davis
JURISDICTION	West Virginia
DECIDED	November 20, 2015
DOCKET	No. 14-0964
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harrison County Development Authority appealed the denial of its post-trial motion seeking prejudgment interest on a jury award arising from negligence and negligent misrepresentation claims.
STANDARD OF REVIEW	Awards of prejudgment interest are ordinarily reviewed for abuse of discretion. To the extent the award depends on interpretation of decisional or statutory law, that portion is reviewed de novo.
PRECEDENTIAL VALUE	Memorandum decision; precedential status is not otherwise specified in the opinion text.
PARTIES	Harrison County Development Authority v. Tetrick & Bartlett, PLLC

TOPICS

[damages](#)[negligence](#)[comparative fault](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

Tort Damages Appellate Procedure Commercial Litigation

QUESTIONS PRESENTED

1. Whether HCDA's embezzlement losses constituted an ascertainable pecuniary loss subject to reasonable calculation so as to support prejudgment interest under West Virginia Code § 56-6-31.

HOLDINGS

1. HCDA was not entitled to prejudgment interest because the losses were not subject to a reasonable calculation and therefore did not constitute an ascertainable pecuniary loss for purposes of West Virginia Code § 56-6-31.

KEY QUOTATIONS

“Based upon our review of the record before us and the limited circumstances of this case, we agree with respondent, and find that HCDA was not entitled to prejudgment interest because its losses were not subject to a reasonable calculation.” (4)

“In contract or tort actions, prejudgment interest is available to a litigant as part of compensatory damages if there is an ascertainable pecuniary loss.” (3)

FACTUAL BACKGROUND

From the late 1990s through 2011, Tetrick & Bartlett performed annual financial statement audits for HCDA. Beginning around 2000, an HCDA employee embezzled funds and used HCDA's credit card for personal expenditures, but the embezzlement was not discovered until 2011. A jury found the auditing firm negligent and comparatively apportioned fault 51% to the firm and 49% to HCDA, awarding \$221,000 in damages. The jury did not identify the particular audit years in which actionable negligence occurred or allocate the embezzlement losses by year.

PROCEDURAL HISTORY

HCDA sued Tetrick & Bartlett, PLLC, alleging negligence, negligent misrepresentation, and breach of fiduciary duty arising from audits that allegedly failed to detect employee embezzlement. The breach-of-fiduciary-duty claim was dismissed before trial. After a six-day trial, the jury found the auditing firm 51% negligent and HCDA 49% comparatively negligent, awarding \$221,000 in damages; the circuit court entered judgment for \$112,710 plus post-judgment interest. The circuit court denied HCDA's post-trial request for prejudgment interest, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Gribben v. Kirk, 195 W. Va. 488, 466 S.E.2d 147 (1995)
- Perdue v. Doolittle, 186 W. Va. 681, 414 S.E.2d 442 (1992)
- Capper v. Gates, 193 W. Va. 9, 454 S.E.2d 54 (1994)
- Bond v. City of Huntington, 166 W. Va. 581, 276 S.E.2d 539 (1981)
- Grove by and through Grove v. Myers, 181 W. Va. 342, 382 S.E.2d 536 (1989)

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