

SUPREME COURT OF NEVADA

United Insurance Co. of America v. Chapman Industries

120 Nev. 745 (2004) · Decided November 19, 2004

SUMMARY

The Nevada Supreme Court held that NRS 92A.340, rather than the general interest statute NRS 99.040, governed prejudgment interest in a dissenting shareholder action because it was in effect when final judgment was entered. The court also held that the district court abused its discretion by awarding attorney fees and by allowing the entire judgment, including prejudgment interest, to accrue postjudgment interest. The court reversed those portions of the judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Nevada
DECIDED	November 19, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	United Insurance appealed from a final district court judgment in a dissenting shareholder appraisal action. The appeal challenged the calculation of prejudgment interest, the award of attorney fees to the dissenting shareholders, and the allowance of postjudgment interest on the entire judgment, including prejudgment interest.
STANDARD OF REVIEW	An award of attorney fees under NRS 18.010(2)(b) is reviewed for manifest abuse of discretion. The statutory interpretation and interest-calculation issues were resolved as questions of law.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	United Insurance Company of America v. Myron Chapman, Audrey Schlossberg, Chapman Industries

TOPICS

- corporate law
- statutory interpretation
- remedies
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether prejudgment interest in a dissenting shareholder action commenced before enactment of NRS 92A.340 should be calculated under the specific statute, NRS 92A.340, or the general interest statute, NRS 99.040.
2. Whether the district court abused its discretion by awarding attorney fees under NRS 18.010(2)(b) after United argued that NRS 92A.340 governed the interest calculation.
3. Whether the district court could allow the entire judgment, including prejudgment interest, to bear postjudgment interest when NRS 92A.340 governs the award of interest.

HOLDINGS

1. The statutory rate and method prescribed by NRS 92A.340 apply to the dissenting shareholder action even though the action commenced before NRS 92A.340 was enacted, because the statute was in effect when the final judgment was entered.
2. The district court manifestly abused its discretion by awarding attorney fees to the dissenting shareholders because United's argument that NRS 92A.340 governed was brought with reasonable grounds.
3. The district court erred by allowing the entire judgment, including prejudgment interest, to bear postjudgment interest because NRS 92A.340 requires a single interest calculation from the effective date of the action through the date of payment.

KEY QUOTATIONS

“Applying the general rule from Bing, we conclude that the statutory rate in effect when the 1996 final judgment was entered was the appropriate rate to use in calculating prejudgment interest.” (748)

“This statute provides for a single rate of interest from the effective date of the action to the date of payment, whenever that occurs, regardless of when a judgment is entered.” (749)

FACTUAL BACKGROUND

In 1987, shareholders of Unicoa Corporation dissented when Unicoa merged into United Insurance Company of America and sought appraisal and payment for their shares. While the action was pending and before final judgment, the Legislature enacted NRS 92A.340, which established a specific interest method for dissenting shareholder actions. The district court ultimately used the general interest statute, awarded attorney fees against United for asserting that NRS 92A.340 applied, and allowed the entire judgment, including prejudgment interest, to accrue postjudgment interest.

PROCEDURAL HISTORY

The dissenting shareholders filed suit in 1987 seeking appraisal and payment for their shares after Unicoa Corporation merged into United. The district court entered judgment concerning stock valuation in 1996, and the

parties appealed; the Nevada Supreme Court affirmed the valuation and vacated an attorney-fee and cost award based on an invalid offer of judgment. On remand, the district court calculated prejudgment interest under NRS 99.040, awarded attorney fees to the dissenters under NRS 18.010(2)(b), and provided that the entire judgment would bear postjudgment interest. The Nevada Supreme Court reversed those portions of the judgment and remanded. The opinion was issued on rehearing, and the court directed that its prior opinion be withdrawn from publication.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the portions of the judgment that calculated interest under NRS 99.040 and awarded attorney fees under NRS 18.010(2)(b), and remand for further proceedings consistent with the opinion, including application of NRS 92A.340.

CASES CITED

- Bing Construction v. Vasey-Scott Engineering, 100 Nev. 72, 674 P.2d 1107 (1984)
- Wilson v. Pacific Maxon, Inc., 102 Nev. 52, 714 P.2d 1001 (1986)
- Duff v. Foster, 110 Nev. 1306, 885 P.2d 589 (1994)
- Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1998)
- Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 866 P.2d 1138 (1994)
- Key Bank v. Donnels, 106 Nev. 49, 787 P.2d 382 (1990)
- Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 860 P.2d 720 (1993)
- Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995)
- Southdown, Inc. v. McGinnis, 89 Nev. 184, 510 P.2d 636 (1973)

OPINION

United Insurance Co. of America v. Chapman Industries

120 Nev. 745

PER CURIAM.

*746OPINION ON REHEARING2

Per Curiam: In this appeal, we consider whether prejudgment interest should be calculated pursuant to a general interest statute, NRS 99.040, or a specific interest statute, NRS 92A.340, in a dissenting shareholder action that commenced before NRS 92A.340 was enacted. We conclude that NRS 92A.340 applies.

FACTS

In 1987, respondents Unicoa Corporation shareholders Myron Chapman, Audrey Schlossberg, and Chapman Industries (collectively Chapman dissenters) dissented when Unicoa merged into

appellant United Insurance Company of America (United). In 1987, the Chapman dissenters filed suit, seeking an appraisal and payment for their shares. *747 In 1995, before a final judgment was entered in this case, the Legislature enacted NRS 92A.340, providing a specific interest rate to be applied in a dissenting shareholder action. In 1996, the district court entered judgment for the Chapman dissenters regarding the stock's valuation, awarded attorney fees and costs to United based on a rejected offer of judgment, and denied the Chapman dissenters prejudgment interest. The parties appealed. This court affirmed the stock valuation, but vacated the district court order awarding attorney fees and costs because the offer of judgment was invalid. On remand, the district court entered a final judgment for the Chapman dissenters, which calculated prejudgment interest pursuant to a general interest statute, NRS 99.040. The final judgment states that the entire judgment, including principal and prejudgment interest, shall bear postjudgment interest. In the final judgment, the district court awarded attorney fees to the Chapman dissenters, based on NRS 18.010(2)(b), finding that United's claim to calculate prejudgment interest pursuant to NRS 92A.340 was brought without reasonable ground. This appeal followed.

DISCUSSION

United argues that the district court should have calculated prejudgment interest pursuant to the specific interest statute, NRS 92A.340,³ rather than the general interest statute, NRS 99.040.⁴ Before NRS 92A.340 was enacted,⁵ prejudgment interest *748 in a dissenting shareholder action was calculated under NRS 99.040.⁶ United asks us to follow our 1984 decision in *Bing Construction v. Vasey-Scott Engineering*⁷ and conclude that NRS 92A.340 applies. We agree that *Bing* is controlling. In that case, a cause of action accrued prior to a statutory amendment that increased the applicable interest rate. This court concluded that the statutory rate in effect when the judgment was entered was the appropriate interest rate to apply.⁸ Applying the general rule from *Bing*, we conclude that the statutory rate in effect when the 1996 final judgment was entered was the appropriate rate to use in calculating prejudgment interest. NRS 92A.340 was enacted before the final judgment was entered. The fact that this case involves a special interest statute is insufficient to deviate from our standard rule set forth in *Bing*. Therefore, we conclude that NRS 92A.340 applies and that the district court erred in calculating prejudgment interest pursuant to the general interest statute. Next, United argues that the district court abused its discretion in awarding attorney fees pursuant to NRS 18.010(2)(b). We agree. NRS 18.010(2)(b) provides, in pertinent part, that a district court may award attorney fees to a prevailing party when the court finds that a claim was brought without reasonable ground or to harass the prevailing party.⁹ A district court's award of attorney fees will not be disturbed on appeal unless there is a manifest abuse of discretion.¹⁰ Based on our conclusion that NRS 92A.340 applies, United's claim that prejudgment interest should be calculated pursuant to NRS 92A.340 was clearly brought with reasonable grounds. Therefore, the district court manifestly abused its discretion *749 in awarding attorney fees to the Chapman dissenters pursuant to NRS 18.010(2)(b).¹¹ Finally, United argues that the district court erred in allowing the entire judgment, including prejudgment interest, to bear

postjudgment interest. We agree. This court has previously permitted an entire judgment, including prejudgment interest, to bear postjudgment interest.¹² However, NRS 92A.340, which controls the award of interest in this case, specifies that interest ‘ ‘must be computed from the effective date of the action until the date of payment.’’ This statute provides for a single rate of interest from the effective date of the action to the date of payment, whenever that occurs, regardless of when a judgment is entered. Thus, our general holdings regarding post-judgment interest do not apply in light of the specific provisions of NRS 92A.340. Accordingly, we conclude that the district court erred in allowing the entire judgment to bear postjudgment interest.

CONCLUSION

The statutory rate in effect when the final judgment was entered, set forth in NRS 92A.340, was the appropriate rate to calculate interest. Additionally, the district court abused its discretion in awarding fees under NRS 18.010(2)(b). Therefore, we reverse the portions of the judgment calculating interest pursuant to NRS 99.040 and awarding attorney fees, and we remand the matter for further proceedings consistent with this opinion. On February 11, 2004, this court issued an opinion in this appeal affirming in part, reversing in part and remanding this matter to the district court for further proceedings. Appellant and respondents timely petitioned for rehearing. On May 5, 2004, we denied respondents’ petition for rehearing. On July 22, 2004, we granted appellant’s petition for rehearing pursuant to NRAP 40 and directed the clerk of this court to withdraw the previous opinion from publication. NRS 92A.340, providing the interest rate to be applied in dissenting shareholder actions, states: Interest payable pursuant to NRS 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the average rate currently paid by the entity on its principal bank loans or, if it has no bank loans, at a rate that is fair and equitable under all of the circumstances. NRS 99.040(1) provides, in pertinent part: When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the commissioner of financial institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due When the Legislature enacted NRS 92A.340 in 1995, it repealed an earlier statute, NRS 78.477 (adopted 1991), which provided a specific interest rate to be applied in a dissenting shareholder action. When this dissenting shareholder action was commenced in 1987, neither NRS 92A.340 nor its nearly identical predecessor, NRS 78.477 (adopted 1991), existed. See *Southdown, Inc. v. McGinnis*, 89 Nev. 184, 194, 510 P.2d 636, 642 (1973).

100 Nev. 72, 674 P.2d 1107 (1984).

See *id.* at 74 n.1, 674 P.2d at 1108 n.1; see also *Wilson v. Pacific Maxon, Inc.*, 102 Nev. 52, 55, 714 P.2d 1001, 1003 (1986) (concluding that the statutory rate in effect upon entry of judgment was the appropriate rate to apply, which is consistent with case law interpreting NRS 99.040 to include prejudgment and postjudgment interest). See also *Duff v. Foster*, 110 Nev. 1306, 1308-09, 885 P.2d 589, 591-92 (1994) (concluding that the proper inquiry under NRS 18.010(2)(b) is

whether the claim was brought without reasonable grounds), overruled on other grounds by *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998). *Nelson v. Peckham Plaza Partnerships*, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994). See *Key Bank v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990) (determining that, where the law was not free from doubt and a complaint presented complex legal questions concerning statutory interpretation and legislative intent, the district court abused its discretion in awarding attorney fees on the basis of NRS 18.010(2)(b)); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993) (noting that an award made in clear disregard of guiding legal principles may constitute an abuse of discretion). *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 325, 890 P.2d 785, 790 (1995) (concluding that the weight of authority in other jurisdictions favors the allowance of postjudgment interest on prejudgment interest).