

SUPREME COURT OF FLORIDA

Bosem v. Musa Holdings, Inc.

46 So. 3d 42 (Fla. 2010) · No. SC09-1277 · Decided September 23, 2010

SUMMARY

The Supreme Court of Florida held that prejudgment interest is a matter of right under Florida's loss theory of recovery when damages are wholly pecuniary and fixed as of a definite time. The court concluded that lost profits awarded for the unauthorized use of the plaintiff's likeness were eligible for prejudgment interest, even though the amount was determined by the trial court and characterized as unliquidated. The court quashed the Fourth District Court of Appeal's decision reversing the interest award.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Canady, C.J.; Lewis, J.; Quince, J.; Polston, J.; Labarga, J.; Perry, J.
JURISDICTION	Florida
DECIDED	September 23, 2010
DOCKET	SC09-1277
DISPOSITION	quashed
PROCEDURAL POSTURE	Review of a Fourth District Court of Appeal decision alleged to expressly and directly conflict with Argonaut Insurance Co. v. May Plumbing Co. on entitlement to prejudgment interest on lost profits.
STANDARD OF REVIEW	De novo review applies to a pure question of law.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent in Florida.
PARTIES	Marc E. Bosem, M.D., et al. v. Musa Holdings, Inc., etc., et al.

TOPICS

- damages
- remedies
- appellate jurisdiction
- standard of review
- trademark infringement

PRACTICE AREAS

- remedies
- damages
- intellectual property
- appellate procedure

QUESTIONS PRESENTED

1. Whether Florida law permits prejudgment interest on an award of lost profits when the amount of damages is determined by the trial judge in the final judgment.
2. Whether the loss theory of prejudgment interest applies to wholly pecuniary lost-profit damages even if those damages were characterized as unliquidated before judgment.
3. Whether the Fourth District's decision conflicted with *Argonaut Insurance Co. v. May Plumbing Co.*

HOLDINGS

1. Under Florida's loss theory, prejudgment interest is a matter of right on wholly pecuniary damages that can be fixed as of a definite time, including lost-profit damages, once the factfinder determines the amount of damages and the defendant's liability.
2. The characterization of damages as unliquidated does not defeat prejudgment interest under the loss theory when the loss is wholly pecuniary and can be fixed as of a definite time.
3. The Fourth District incorrectly reversed the trial court's award of prejudgment interest on Bosem's lost-profit damages.

KEY QUOTATIONS

“[W]hen a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest... from the date of that loss.” (46 So. 3d at 44-45)

“Under the “loss theory,” ... neither the merit of the defense nor the certainty of the amount of loss affects the award of prejudgment interest.” (46 So. 3d at 45)

“In all cases, either of tort or contract, where the loss is wholly pecuniary, and may be fixed as of a definite time, interest should be allowed as a matter of right, whether the loss is liquidated or unliquidated.” (46 So. 3d at 46)

FACTUAL BACKGROUND

Bosem and related entities sued Musa Holdings and related defendants for unauthorized use of Bosem's name, likeness, and biography in advertisements for competing laser-eye-surgery services. After liability was established by partial summary judgment, the trial court found that Bosem sustained \$93,306 in lost profits and awarded prejudgment interest. The Fourth District held that prejudgment interest was unavailable because the amount of lost profits was not certain until trial and reversed that portion of the judgment.

PROCEDURAL HISTORY

Bosem sued Musa for injunctive relief, fraud, false advertising, compensatory damages, unauthorized use of his image or likeness, and Lanham Act violations. The trial court granted partial summary judgment on liability, conducted a bench trial on damages, awarded \$93,306 in lost profits and prejudgment interest, and the Fourth District reversed the prejudgment-interest award while affirming on other issues. The Supreme Court of Florida accepted conflict jurisdiction, quashed the Fourth District's decision, and declined to address Bosem's other arguments.

DISPOSITION

quashed

CASES CITED

- *Bosem v. Musa Holdings, Inc.*, 8 So. 3d 1185 (Fla. 4th DCA 2009)
- *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212, 214-15 (Fla. 1985)
- *So. Baptist Hosp. of Fla., Inc. v. Welker*, 908 So. 2d 317, 319 (Fla. 2005)
- *D'Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003)
- *Air Ambulance Professionals, Inc. v. Thin Air*, 809 So. 2d 28 (Fla. 4th DCA 2002)
- *Scheible v. Joseph L. Morse Geriatric Ctr., Inc.*, 988 So. 2d 1130, 1134 (Fla. 4th DCA 2008)
- *Sullivan v. McMillan*, 37 Fla. 134, 19 So. 340, 343 (1896)
- *Jacksonville, Tampa & Key West Ry. v. Peninsular Land, Transp. & Mfg. Co.*, 27 Fla. 1, 9 So. 661 (1891)
- *Florida Steel Corp. v. Adaptable Developments, Inc.*, 503 So. 2d 1232, 1236 (Fla. 1986)
- *Lumbermens Mutual Casualty Co. v. Percefull*, 653 So. 2d 389, 390 (Fla. 1995)
- *Amerace Corp. v. Stallings*, 823 So. 2d 110, 113, 116 (Fla. 2002)
- *Jackson Grain Co. v. Hoskins*, 75 So. 2d 306, 310 (Fla. 1954)
- *Zorn v. Britton*, 120 Fla. 304, 162 So. 879, 880 (1935)
- *Farrelly v. Heuacker*, 118 Fla. 340, 159 So. 24 (1935)