IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 16, 2023 Session

ROGER FULMER ET AL. v. SARCO, GP D/B/A SARCO ET AL.

Appeal from the Circuit Court for Sumner County
No. 83CCI-2019-CV-284 Joe Thompson, Judge

No. M2022-01479-COA-R3-CV

This is an action to recover amounts due under a promissory note. The trial court awarded the plaintiffs $50,000.00 in compensatory damages, attorney's fees of one-third of that amount, and prejudgment interest on both the compensatory damages and attorney's fees. We affirm the trial court's judgment that the individual defendants are individually liable on the obligation and that the ad damnum clause permitted the plaintiffs to recover $50,000.00 in compensatory damages, plus attorney's fees and prejudgment interest. We vacate the attorney's fees award and remand for a determination of the plaintiffs' reasonable attorney's fees. We reverse the award of prejudgment interest on the attorney's fees award only. Affirmed in part, vacated in part, reversed in part, and remanded.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part; Vacated in Part; Reversed in Part; and Remanded

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which ARNOLD B. GOLDIN, and KENNY ARMSTRONG, JJ., joined.

Russell E. Edwards, Hendersonville, Tennessee, for the appellants, SARCO, GP d/b/a SARCO, Daniel Silverman, and Maike Silverman.

Joe Bednarz, Jr. and Aaron Armstrong, Hendersonville, Tennessee, for the appellees, June Fulmer, and Roger Fulmer.

MEMORANDUM OPINION[1]

[1] Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 2, 2019, Plaintiffs/Appellees Roger Fulmer and Jane Fulmer ("Appellees") filed a complaint in the Sumner County Circuit Court ("the trial court") against Defendants/Appellants SARCO, GP ("SARCO"), and its general partners Daniel Silverman and Maike Silverman (together with SARCO, "Appellants"). Therein, Appellees alleged that SARCO entered into a promissory note ("the Note") with Appellees in 2017 to purchase real property in Hendersonville, Tennessee. Mr. Silverman signed the Note in his capacity as a general partner for SARCO. Under the Note, SARCO agreed to pay Appellees $60,000.00 for the property, in monthly installments of $200.00. The Note was to mature and be payable in full on November 1, 2018. According to Appellees, all necessary documents to reflect the sale and the Note were executed and recorded.

Appellees further alleged that they executed a release of their lien and security interest in the property in January 2018, upon Appellants' promise to pay all money owing on the Note. Appellants thereafter sold the real property, but allegedly Appellants failed to repay the entire amount owed to Appellees. As such, Appellees raised claims of breach of contract and quantum meruit. In their prayer for relief, Appellees asked for the following:

> 29. That judgment be entered against [Appellants], for monetary damages of $50.000 [], including all damages and losses incurred by [Appellees] as a result of [Appellants'] breach of contact with the [Appellees]; unjust enrichment damages; for prejudgment and post-judgment interest; attorney's fees; court costs; and for recovery of costs incurred by [Appellees].
> 30. For such other and further relief as the Court deems just, proper, and equitable.

The complaint further asserted that both Mr. and Mrs. Silverman should be held jointly liable for the damages as general partners of SARCO. Appellants attached to their complaint a copy of the Note, which contains the following attorney's fees provision:

> If the Note Holder is required to take action to enforce its rights under the Note, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees.

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be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Appellants, by and through counsel, filed an answer on May 13, 2019, admitting that they had entered into the Note with Appellees, but denying that they failed to pay the money owed on the Note. The trial court later struck Appellees' demand for a jury, set a bench trial, and allowed Appellants' counsel to withdraw. Appellants were permitted thirty days to retain alternative counsel. By this order, Appellants had until July 29, 2020, to obtain new counsel.

On August 24, 2020, Mr. Silverman, acting pro se, filed a letter in which he asked for a continuance of the September 3, 2020 trial due to a work conflict and for an additional forty-five days to retain counsel. Appellees responded in opposition to the request for a continuance on August 31, 2020.

On September 1, 2020, the trial court denied Mr. Silverman's request for a continuance. Trial occurred as scheduled on September 3, 2020. The trial court entered judgment in Appellees' favor on September 16, 2020. Specifically, the trial court awarded Appellees $50,000.00 in compensatory damages; attorney's fees under the Note "in the amount of one-third of the total Judgment, or sixteen thousand six hundred and sixty-six dollars and sixty-six cents ($16,666.66) to be added to the amount of compensatory damages"; prejudgment interest of ten percent per annum from November 1, 2018, to September 3, 2020, amounting to $12,787.52; and post-judgment interest until the judgment is paid in full. The trial court attached to its order the court's calculations regarding interest, as well as Appellees' contingency fee agreement with their retained counsel, which contract was signed by Mr. Fulmer.

On October 13, 2020, Appellants, by and through counsel, filed a motion for relief from the final judgment under Rule 60.02 of the Tennessee Rules of Civil Procedure. Therein, Appellants argued, inter alia, that the judgment was in excess of the $50,000.00 ad damnum clause, that Appellees had signed a power of attorney in favor of Mr. Silverman to sell the subject property, and that Appellants had paid nearly $40,000.00 to Appellees. As such, Appellants asked that the judgment be declared void to the extent that it was in excess of $50,000.00, that the trial court find that Appellees misled the court, and that the trial court find that the judgment was satisfied by previous actions of the parties. Appellees responded in opposition to the motion on September 5, 2021.

Eventually, on June 27, 2022, the trial court entered an amended order of judgment that was essentially the polar opposite of its prior order in that it largely recited Appellants' Rule 60.02 motion. In essence, the trial court's June 2022 order concluded that Appellees failed to demonstrate a material breach of the contract and denied Appellees any monetary damages. On July 19, 2022, Appellees filed a motion to alter or amend the judgment, asserting that at the hearing on the Rule 60.02 motion, the trial court had actually denied Appellants' motion and asked each party to submit proposed orders. Appellants' proposed order was thereafter entered by mistake. In support of this motion, Appellees filed the affidavit of their counsel.

On October 11, 2022, the trial court entered a second amended order of judgment in which it reinstated the judgment in favor of Appellees in its entirety. This order, however, did make additional factual findings in favor of the judgment, including that only Mr. Silverman was present for the bench trial, but that he did not testify or present any proof. From this order, Appellants now appeal.

II. ISSUES PRESENTED

Appellants raise the following issues, which are taken from their brief:[2]

1. Whether the trial court erred in making the judgment against Mr. and Mrs. Silverman individually.
2. Whether the trial court erred in awarding a judgment in excess of $50,000.00.
3. Whether the trial court erred in its award of Appellees' attorney's fees.
4. Whether the trial court erred in its award of prejudgment interest.

III. STANDARD OF REVIEW

In an appeal from a bench trial, we review the trial court's factual findings de novo, with a presumption of correctness unless the evidence preponderates otherwise. ***Law v. Law***, No. E2021-00206-COA-R3-CV, 2022 WL 1221084 (Tenn. Ct. App. Apr. 26, 2022) (citing ***Boote v. Shivers***, 198 S.W.3d 732, 740 (Tenn. Ct. App. 2005); Tenn. R. App. P. 13(d)). The presumption of correctness does not apply to the trial court's legal conclusions, which are reviewed de novo. ***Boote***, 198 S.W.3d at 741.

IV. ANALYSIS

A.

Appellants first argue that the trial court erred in holding that Mr. and Mrs. Silverman were jointly and severable liable with SARCO on the judgment. Appellees assert that this argument was waived and that, in any event, the judgment against Mr. and Mrs. Silverman is valid.

We agree with Appellees that an argument cannot be raised for the first time on appeal: "It is well settled that issues not raised at the trial level are considered waived on appeal." ***Moses v. Dirghangi***, 430 S.W.3d 371, 381 (Tenn. Ct. App. 2013) (citing ***Waters v. Farr***, 291 S.W.3d 873, 918 (Tenn. 2009)). The party asserting waiver, however, has the

[2] Appellants' counsel on appeal did not represent them during any of the substantive proceedings in the trial court.

burden of proof. ***Fayne v. Vincent***, 301 S.W.3d 162, 171 (Tenn. 2009). In this case, Appellees' complaint clearly stated that they sought to hold Mr. and Mrs. Silverman personally liable on any judgment obtained. Appellants point to no pleadings in which they objected to personal liability. Nothing in the statement of the evidence indicates that Mr. Silverman objected to his own personal liability. And it appears that Mrs. Silverman did not attend trial, so she could not have raised this argument on her own behalf at that hearing.

Still, even if this argument was not waived, we agree that the trial court properly held that Mr. and Mrs. Silverman can be held liable on SARCO's judgment. Here, the trial court found in its amended order of judgment that Mr. and Mrs. Silverman are the sole partners of the general partnership SARCO. Likewise, the statement of the evidence states that Mr. and Mrs. Silverman were general partners of SARCO. Tennessee Code Annotated section 61-1-307(b) provides that "[a]n action may be brought against the partnership and, to the extent not inconsistent with § 61-1-306, any or all of the partners in the same action or in separate actions." Section 61-1-306(a) goes on to provide that "[e]xcept as otherwise provided in subsections (b)-(g), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law." Appellants do not assert that any statutory exceptions to section 61-1-306(a) are present here. Instead, they cite caselaw involving the obligations of a corporation. *See* ***Anderson v. Davis***, 34 Tenn. App. 116, 117, 234 S.W.2d 368, 368 (Tenn. Ct. App. 1950). Respectfully, because Tennessee law regarding corporations is different than law applicable to general partnerships, this law is inapposite to the question presented in this case. *See* ***Pamperin v. Streamline Mfg., Inc.***, 276 S.W.3d 428, 436 (Tenn. Ct. App. 2008) ("A shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's own acts or conduct." (quoting Tenn. Code Ann. § 48-16-203(b) (2002))). As such, the trial court did not err in holding Mr. and Mrs. Silverman jointly and severally liable on the judgment against SARCO.

B.

Appellants next assert that the trial court erred in awarding Appellees a judgment in excess of their ad damnum clause. Although Appellees concede that this argument was raised in the trial court, they assert that it lacks merit.

Rule 8.01 of the Tennessee Rules of Civil Procedure provides that a claim shall contain "a demand for judgment for the relief the pleader seeks." Based on this rule, commentators have stated that our rules "do not permit . . . a party to recover money damages in excess of the amount sought in the ad damnum of the complaint." ***Romine v. Fernandez***, 124 S.W.3d 599, 605 (Tenn. Ct. App. 2003) (quoting Robert Banks, Jr. & June F. Entman, *Tennessee Civil Procedure* § 5–4(c) (1999)); *see also* ***Cross v. City of Morristown***, No. O3A01-9606-CV-00211, 1996 WL 605248, at *3 (Tenn. Ct. App. Oct. 23, 1996) ("A judgment that exceeds the *ad damnum* clause is invalid." (citing ***Gaylor v.***

Miller, 166 Tenn. 45, 59 S.W.2d 502, 504 (Tenn. 1933))). "This rule is based on considerations of fairness because the purpose of a complaint is to provide an adverse party with sufficient notice of the allegations the party is called on to answer." ***Harrison v. Laursen***, No. 01A01-9705-CH-00238, 1998 WL 70635, at *5 (Tenn. Ct. App. Feb. 20, 1998).

Here, Appellants contend that the ad damnum clause at issue capped damages at a maximum of $50,000.00, inclusive of prejudgment interest and attorney's fees.[3] As such, they ask that the judgment be reduced to a maximum of $50,000.00, regardless of Appellees' entitlement to attorney's fees or prejudgment interest. Respectfully, we disagree.

As an initial matter, we note that the Tennessee Supreme Court has previously affirmed damages awards that exceeded the ad damnum clause if the compensatory damages and prejudgment interest awards were considered collectively. *See* ***Morrison v. Allen***, 338 S.W.3d 417 (Tenn. 2011). In ***Morrison***, the plaintiff's complaint "explicitly sought the following: '[t]hat the [P]laintiff be awarded damages in the amount of $1,000,000'; '[t]hat the [P]laintiff receiv[e] treble damages and attorneys' fees under the [Tennessee Consumer Protection Act ("TCPA")]'; and '[t]hat the [P]laintiff be awarded prejudgment interest.'" ***Id.*** at 441 n.16 (sixth alteration added). The trial court awarded the plaintiff $1,000.000.00 for breach of contract, plus prejudgment interest of $247,120.94. ***Id.*** at 424. The trial court awarded additional damages for claims of negligence under the TCPA and considerable attorney's fees.

The Court of Appeals reversed the trial court in part, holding that the breach of contract damages should be reduced by the $900,000.00 settlement that the plaintiff received from an insurance company. But we affirmed the tort damages. ***Id.*** at 425.

The Tennessee Supreme Court reversed much of this Court's ruling. First, it held that the defendant insurance brokers were not entitled to a credit on the judgment for the amount of the plaintiff's settlement with her insurance company. The Tennessee Supreme Court therefore reinstated the $1,000,000.00 award for breach of contract. ***Id.*** at 437. Next, our high court reversed the tort damages and the accompanying award of attorney's fees. Finally, the Tennessee Supreme Court also affirmed the award of prejudgment interest on the breach of contract damages. ***Id.*** at 431 n.6. The Tennessee Supreme Court held that the total $1,274,120.94 award did not exceed the ad damnum clause because the clause "clearly sought" compensatory damages "plus" prejudgment interest. This request, the Court held, provided the defendants with "sufficient notice of the amount of the claim" to withstand the defendants' legal challenge to the award as excessive based on the ad damnum clause. ***Id.*** at 441.

[3] Although the trial court also awarded post-judgment interest, Appellants do not appear to take issue with the inclusion of that type of interest in addition to the total of $50,000.00 requested.

From ***Morrison***, we can discern that other forms of monetary relief, such as prejudgment interest, may be awarded in addition to a specific amount of damages requested in an ad damnum clause when the complaint provides the defending party of sufficient notice of the amount of the claim. ***Id.***; *see also* ***Harrison***, 1998 WL 70635, at *5. This is true even when the plaintiff fails to set forth a specific dollar figure for these types of damages. The question then, in this case, is whether Appellants had sufficient notice that Appellees were seeking $50,000.00 in compensatory damages, plus prejudgment interest and attorney's fees. We conclude that they were.

Here, in the body of their complaint, Appellees asserted that they were entitled to "compensatory damages of $50.000 dollars" from Appellants as a result of SARCO's breach of the Note. Although the above figure appears to contain a typographical error, it is clear that Appellees were seeking $50,000.00 in compensation for breach of contract. The ad damnum clause further clarifies this request, asking "*for* monetary damages of $50,000 [], including all damages and losses incurred by [Appellees] as a result of [Appellants'] breach of contact with [Appellees]; unjust enrichment damages; *for* prejudgment and post-judgment interest; attorney's fees; court costs; and for recovery of costs[.]" (Emphasis added).

In our view, the ad damnum clause contains two independent clauses involving damages. First, following the initial prepositional phrase, Appellees seek monetary damages of $50,000.00 for either breach of contract or unjust enrichment. These requests clearly are attached due to the single preposition ("for") used to open the series. *See, e.g.*, Strunk and White, *The Elements of Style*, 27 (4th ed. 2000) ("[A]n article or a preposition applying to all the members of a series must either be used only before the first term or else be repeated before each term."); *see also, e.g.*, ***SuperGuide Corp. v. DirecTV Enters., Inc.***, 358 F.3d 870, 886 (Fed. Cir. 2004) (applying this rule). The ad damnum clause then utilizes the preposition "for" a second time to introduce a second series of requested relief, i.e., the relief that was not yet quantifiable at the time the complaint was filed—interest, attorney's fees, and costs. Because the first two requests for relief—damages related to breach of contract and unjust enrichment—fall under a single preposition, the second use of the preposition "for" indicates that what follows is not a part of the initial series. So then, the $50,000.00 cap does not apply to the second series of requested relief. Indeed, this is very similar to the ad damnum clause in ***Morrison***, in which the request for $1,000,000.00 in compensatory damages was separated by the article "that[.]" 338 S.W.3d at 441 n.16. That phrasing was held to "clearly" indicate a request for compensatory damages "plus" prejudgment interest. ***Id.*** at 441. Although ***Morrison*** only dealt with prejudgment interest, we see no reason not to apply its holding to attorney's fees; like prejudgment interest, attorney's fees are not necessarily quantifiable at the start of litigation. And under ***Morrison***, we can glean that the failure to include a specific monetary amount for these as

yet unquantified types of relief is not fatal to Appellees' claim.[4] As such, we conclude that giving the ad damnum clause its proper interpretation, Appellants had reasonable notice that Appellees were seeking $50,000.00 in compensation for breach of contract or unjust enrichment, plus prejudgment interest and contractual attorney's fees. The trial court therefore did not violate the ad damnum clause by awarding prejudgment interest and attorney's fees in addition to the $50,000.00 in compensatory damages.

C.

Having failed to persuade us that the awards of attorney's fees and prejudgment interest should be eliminated to fall within the $50,000.00 compensatory damages requested, Appellants assert in the alternative that the trial court erred in awarding attorney's fees based on Appellees' contingency fee agreement. Once again, Appellees assert that this argument is waived and that it lacks merit. Respectfully, we disagree.

As an initial matter, we cannot conclude that Appellees met their burden to demonstrate that this argument is waived. It is true that Appellees requested attorney's fees in their complaint and attached the Promissory Note thereto. Until the trial court's initial order of judgment, however, nothing in the record indicates that Appellees were seeking to impose their contingency fee agreement on Appellants. Indeed, nothing in the statement of the evidence indicates that this agreement was discussed, nor is the contingency fee agreement included as a trial exhibit. Moreover, although this issue was not addressed in Appellants' Rule 60.02 motion, it appears that in entering the amended order of judgment, the trial court put in place an entirely new judgment from which Appellants could appeal. So then, this issue only arose at the time that judgment was entered in this case. But our rules do not require that parties file motions to alter or amend judgments in order to preserve their appellate rights in non-jury cases. *See* ***Eastman Credit Union v. Bennett***, No. E2015-01339-COA-R3-CV, 2016 WL 1276275, at *11 (Tenn. Ct. App. Mar. 31, 2016) ("[H]aving raised the issue on appeal of attorney's fees for work completed at trial, Eastman was not required to file a motion to alter or amend the judgment or motion for new trial in order to avoid waiving the issue." (citing Tenn. R. App. P. 3(e) (providing that except for certain issues arising from a jury trial not applicable here, "[a]n appeal as of right may be taken without moving in arrest of judgment, praying for an appeal, entry of an order permitting an appeal or compliance with any other similar procedure.")))). So we conclude that this issue is properly before this Court.

Moreover, we conclude that the trial court erred in its treatment of Appellees'

[4] We note that some jurisdictions have held that claims for attorney's fees under a contract may be valid even when not included in an ad damnum clause. *See* ***Murphy v. Stowe Club Highlands***, 171 Vt. 144, 161, 761 A.2d 688, 700 (Vt. 2000) (discussing cases); *see also, e.g.*, ***Stroud v. B-W Acceptance Corp.***, 372 F.2d 185, 189 (10th Cir. 1967) ("It was not error to award such fees even though they were not included in the appellee's ad damnum clause."). We need not decide that issue because Appellees clearly requested attorney's fees in their ad damnum clause.

attorney's fees. Here, the trial court awarded Appellees one-third of the amount of compensatory damages collected, as that is the amount that Appellees agreed to pay their counsel in their contingency fee agreement. While a one-third fee may have been what Appellees agreed to pay their counsel, it is not what Appellants agreed to pay in the Note. Importantly, neither SARCO nor Mr. or Mrs. Silverman were parties to the contingency fee agreement between Appellees and their counsel. Rather, the Note provides that Appellees may be entitled to costs and expenses including "reasonable attorney's fees." The Tennessee Supreme Court has held that absent fraud or mistake, contractual attorney's fee provisions should be interpreted "as written[.]" ***Eberbach v. Eberbach***, 535 S.W.3d 467, 478 (Tenn. 2017). As a result, what Appellees agreed to pay their own attorney is not dispositive of what constitutes a reasonable fee under the circumstances of this case.

Instead, it is well-settled that language providing for the award of reasonable attorney's fees "requires the trial court to determine a 'reasonable' amount of attorney's fees and expenses to be awarded." ***Rivera v. Westgate Resorts, Ltd., L.P.***, No. E2017-01113-COA-R3-CV, 2018 WL 1989620, at *4 (Tenn. Ct. App. Apr. 27, 2018). "Such determination regarding the reasonableness of the amount awarded would inherently require the court to consider the factors listed in Tennessee Supreme Court Rule 8, RPC 1.5." ***Id.*** (citing ***First Peoples Bank of Tenn. v. Hill***, 340 S.W.3d 398, 410 (Tenn. Ct. App. 2010) (determining that a fee award made pursuant to a contractual provision must be reasonable and must take into consideration the appropriate factors)). Here, nothing in the trial court's order suggests that it determined what a reasonable fee would be under the circumstances or that it considered even a single factor in Rule 8, RPC 1.5 beyond a contingency fee contract to which Appellants were not bound. The trial court's award of attorney's fees is therefore vacated, and remanded to the trial court for the determination of a reasonable fee in light of the circumstances and the relevant factors.

D.

Finally, Appellants contend that the trial court erred in its assessment of pre-judgment interest to Appellees. Specifically, they argue that the trial court erred in using the maximum rate allowed for prejudgment interest and for awarding prejudgment interest on Appellees' attorney's fees.

Appellees again assert that this argument was waived. However, the record suggests that the trial court made its own calculations regarding prejudgment interest, rather than relying on calculations submitted by Appellees at the time of trial. *Cf.* ***Coleman Mgmt., Inc. v. Meyer***, 304 S.W.3d 340, 355 (Tenn. Ct. App. 2009) (holding that arguments concerning prejudgment interest were waived when the opposing party failed to object to exhibits detailing prejudgment interest calculations at trial). Certainly, the statement of the evidence does not reflect any mention of prejudgment interest as being discussed during Appellees' presentation of proof. As a result, Appellants could not have raised their objections to the trial court's chosen rate of prejudgment interest or the fact that

prejudgment interest was attached to the attorney's fees awarded until the judgment in this case. And, again, our rules do not require post-trial motions in order to preserve appellate review in non-jury cases. *See* Tenn. R. App. P. 3(e). So these arguments are not waived.

"An award of prejudgment interest is within the sound discretion of the trial court and the decision will not be disturbed by an appellate court unless the record reveals a manifest and palpable abuse of discretion." ***Myint v. Allstate Ins. Co.***, 970 S.W.2d 920, 927 (Tenn. 1998) (citing ***Spencer v. A–1 Crane Serv., Inc.***, 880 S.W.2d 938, 944 (Tenn. 1994); ***Otis v. Cambridge Mut. Fire Ins. Co.***, 850 S.W.2d 439, 446 (Tenn. 1992)). As the Tennessee Supreme Court has explained,

> Several principles guide trial courts in exercising their discretion to award or deny prejudgment interest. Foremost are the principles of equity. Tenn. Code Ann. § 47-14-123. Simply stated, the court must decide whether the award of prejudgment interest is fair, given the particular circumstances of the case. In reaching an equitable decision, a court must keep in mind that the purpose of awarding the interest is to fully compensate a plaintiff for the loss of the use of funds to which he or she was legally entitled, not to penalize a defendant for wrongdoing. ***Mitchell v. Mitchell***, 876 S.W.2d 830, 832 (Tenn. 1994); ***Otis***, 850 S.W.2d at 446.
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> In addition to the principles of equity, two other criteria have emerged from Tennessee common law. The first criterion provides that prejudgment interest is allowed when the amount of the obligation is certain, or can be ascertained by a proper accounting, and the amount is not disputed on reasonable grounds. ***Mitchell***, 876 S.W.2d at 832. The second provides that interest is allowed when the existence of the obligation itself is not disputed on reasonable grounds. ***Id.*** (citing ***Textile Workers Union v. Brookside Mills, Inc.***, 205 Tenn. 394, 402, 326 S.W.2d 671, 675 (1959)).

Myint, 970 S.W.2d at 927. Section 47-14-123 provides that prejudgment interest may be awarded at the maximum effective rate of 10% per annum.

We begin with the prejudgment interest awarded on the claim for attorney's fees. Here, the trial court awarded prejudgment interest not only on the $50,000.00 in compensatory damages due under the Note, but also on the $16,666.66 in attorney's fees. And the trial court set the start date for prejudgment interest on November 1, 2018.

We have already determined that the trial court erred in awarding Appellees' $16,666.66 in attorney's fees without consideration of what a reasonable fee would be under the circumstances of this case. Moreover, we agree with Appellants that it is inequitable to award prejudgment interest on attorney's fees back to a date on which no attorney's fees had yet been incurred. Finally, no law has been cited to this Court or found in our research in which we have held that prejudgment interest may attach to an award of

attorney's fees awarded to an opposing party. *Cf.* ***Rezba v. Randolph***, No. M2000-01973-COA-R3-CV, 2001 WL 434872, at *4 (Tenn. Ct. App. Apr. 30, 2001) (affirming an award of prejudgment interest that was attached only to the balance on a note, but not the award of attorney's fees). *But cf.* ***Harrison v. Laursen***, No. M2001-00073-COA-R3-CV, 2002 WL 83610, at *3 (Tenn. Ct. App. Jan. 22, 2002) (holding that prejudgment interest was proper on a judgment of attorney's fees owed by a client to his former counsel under an oral contract to settle a larger debt). Under these circumstances, we conclude that the equities favor Appellants' argument that prejudgment interest should attach only to the $50,000.00 due on the Note.

Appellants next assert that the trial court should have utilized an interest rate more in line with the post-judgment interest rates allowed under Tennessee Code Annotated section 47-14-121. As previously discussed, the prejudgment interest rate is determined by section 47-14-123, not section 47-14-121. Appellants have not shown that the trial court strayed beyond the applicable legal standards, failed to properly consider the factors customarily used to guide its decision, or caused an injustice to the party complaining by applying an incorrect legal standard, reaching an illogical conclusion, or basing its decision on a clearly erroneous assessment of the evidence. *See* ***Lee Med., Inc. v. Beecher***, 312 S.W.3d 515, 524 (Tenn. 2010). Instead, Appellants simply ask that we substitute our judgment for that of the trial court; this, we cannot do. ***Myint***, 970 S.W.2d at 927. The trial court's decision to award Appellees the maximum allowable rate of prejudgment interest is therefore affirmed.

V. CONCLUSION

The judgment of the Sumner County Circuit Court is affirmed in part, vacated in part, reversed in part, and remanded for further proceedings consistent with this Opinion. Costs of this appeal are taxed one-half to Appellants, SARCO, GP, Daniel Silverman, and Maike Silverman, and one-half to Appellees Roger Fulmer and Jane Fulmer.

s/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE