Parkside Apartment Partners v. Cadle Company II

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NOT TO BE PUBLISHED

After paying in protest a late charge for failing to make a final, balloon payment on a note held by defendant The Cadle Company II, Inc. (Cadle), plaintiff Parkside Apartment Partners (Parkside) initiated this action seeking to recover the late charge. The trial court entered judgment for Cadle, and Parkside appealed. In an unpublished opinion, we reversed, concluding the late charge was imposed in error. (Parkside Apartment Partners v. The Cadle Company II, Inc. (May 14, 2007, C049821) [nonpub. opn.].)

On remand, the trial court entered judgment for Parkside for the amount of the late charge less actual damages suffered by Cadle as a result of the late payment. The court also awarded Parkside attorney fees and prejudgment interest, with such interest to run from the date of remittitur on our prior opinion.

Parkside again appeals, this time challenging the decision to run interest from the date of the remittitur. Parkside contends prejudgment interest should run from the date it was forced to pay Cadle the late charge under protest. We agree and again reverse.

Facts and Proceedings

Parkside has filed a motion to augment the record on appeal to include various documents filed below and the transcript of the hearing on Parkside's request for attorney fees and prejudgment interest. We grant that motion. (See Cal. Rules of Court, rule 8.155.)

On December 31, 1996, Metropolitan Life Insurance Company (Metropolitan) and Parkside entered into an agreement whereby Parkside assumed a debt of $4,777,976.18 at 9.5 percent interest secured by an apartment complex in Sacramento. The debt was to be repaid in monthly installments of $37,530, with a final, balloon payment on February 1, 2002. On November 2, 2001, Metropolitan assigned its beneficial interest in the note and deed of trust to Cadle. (Parkside v. Cadle, supra, C049821, at p. 4.)

Parkside failed to pay Cadle the amount due on the maturity date. On March 27, 2002, Cadle filed suit against Parkside. Parkside eventually obtained substitute financing. However, in addition to other sums due, Cadle demanded that Parkside pay a late charge of $172,909.78. Parkside paid the late charge under protest in order to close escrow on the new loan. (Parkside v. Cadle, supra, C049821, at pp. 4-5.)

On April 17, 2003, Parkside filed the present action against Cadle seeking to recover the late charge. Parkside claimed the late charge provision of the note did not apply to the final, balloon payment. On March 22, 2005, the trial court entered judgment for Cadle, concluding the late charge was properly imposed. (Parkside v. Cadle, supra, C049821, at p. 5.)

Parkside appealed and, as indicated above, we reversed. We concluded the late charge provision of the parties' contract, which permitted the imposition of a late charge on any unpaid "installment," did not apply to the final, balloon payment. We explained the contract language was uncertain, but the contracting parties' conduct indicated they did not intend the provision to apply to the final payment. (Parkside v. Cadle, supra, C049821, at pp. 12-15.)

We further explained that interpretation of the provision to apply to the final payment would make it an unlawful penalty clause. (Parkside v. Cadle, supra, C049821, at pp. 15-18.) We concluded Cadle is entitled only to actual damages suffered as a result of Parkside's failure to make the final payment. (Parkside v. Cadle, supra, C049821, at p. 18.) We remanded to the trial court with directions "to determine Cadle's actual damages for breach and enter judgment for Parkside for the amount of the late charge, less actual damages suffered by Cadle, plus interest." (Parkside v. Cadle, supra, C049821, at pp. 18-19.)

On remand, the parties stipulated that Cadle's actual damages were $7,311.42, which was the amount the trial court previously determined to be Cadle's labor costs related to the defaulted loan. (See Parkside v. Cadle, supra, C049821, at p. 16.) Subtracting this amount from the $172,909.78 late charge, the court arrived at a damage award to Parkside of $165,598.36. The court also awarded Parkside attorney fees of $57,500 and costs of $1,323.32. Finally, the court awarded prejudgment interest from July 26, 2007, the date of the remittitur from our prior opinion.

Discussion

The sole issue raised on appeal concerns the date from which prejudgment interest runs. Parkside contends prejudgment interest should run from January 31, 2003, the date it was required to pay the late charge under protest. Cadle contends interest should run from the date of our remittitur, as the trial court concluded. Parkside has the better argument.

Civil Code section 3287, subdivision (a), reads: "Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in

him upon a particular day, is entitled also to recover interest thereon from that day . . . ."

"Damages are deemed certain or capable of being made certain within the provisions of subdivision (a) of [Civil Code] section 3287 where there is essentially no dispute between the parties concerning the basis of computation of damages if any are recoverable but where their dispute centers on the issue of liability giving rise to damage." (Esgro Central, Inc. v. General Ins. Co. (1971) 20 Cal.App.3d 1054, 1060.) The relevant test for determining whether there is a dispute over the amount of damages is whether the defendant knows the amount owed or from reasonably available information could compute the amount. (Duale v. Mercedes-Benz USA (2007) 148 Cal.App.4th 718, 729.)

There are two competing policies underlying Civil Code section 3287. "[I]nterest traditionally has been denied on unliquidated claims because of the general equitable principle that a person who does not know what sum is owed cannot be in default for failure to pay." (Chesapeake Industries, Inc. v. Togova Enterprises, Inc. (1983) 149 Cal.App.3d 901, 906.) A countervailing policy recognizes that "injured parties should be compensated for the loss of the use of their money during the period between the assertion of a claim and the rendition of judgment." (Ibid.)

In the present matter, there is no dispute about the amount of damages Parkside was seeking from Cadle for breach of the note. Cadle improperly forced Parkside to pay $172,909.78 as a late charge for nonpayment of the final, balloon payment, and Parkside sued to recover that amount. Parkside lost the use of that $172,909.78 from the date it was required to pay Cadle.

In our earlier opinion, we did not conclude that Parkside is entitled to the full amount of the late charge. We concluded Cadle is entitled to an offset for the amount of actual damages incurred as a result of the nonpayment. The parties stipulated that Cadle's actual damages were $7,311.42, leaving a net judgment of $165,598.36.

In awarding prejudgment interest from the date of our remittitur, the trial court necessarily concluded Parkside's damages were not certain or capable of being made certain until that date. In other words, it was our decision that set the amount of damages. However, that conclusion betrays a fundamental misunderstanding of the controlling legal principles.

The underlying dispute between the parties was not over the amount of damages but whether the note authorized Cadle to charge a late fee on the final payment. In other words, the dispute was over the issue of liability, not damages. Once we determined Cadle could not charge the late fee, the amount of damages was established.

Of course, the exact amount of Parkside's damages was not established until, following remand, the parties stipulated to Cadle's actual damages from nonpayment of the final payment. However, this was a simple matter of calculation on which there was no dispute between the parties.

Furthermore, the actual damages incurred by Cadle was in the nature of an offset against Parkside's recovery. The existence of an unliquidated offset will not preclude an award of prejudgment interest on the balance of a plaintiff's claim. (Coleman Engineering Co. v. North American Aviation, Inc. (1966) 65 Cal.2d 396, 409; Hansen v. Covell (1933) 218 Cal. 622, 629-631; McCowen v. Pew (1912) 18 Cal.App. 482, 487.)

Cadle contends that "when a 'judgment is reversed on appeal and a new judgment entered, interest on that new judgment only runs from the date of the new judgment.'" Cadle cites as support Snapp v. State farm Fire and Casualty Company (1964) 60 Cal.2d 816, Stockton Theaters, Inc. v. Palermo (1961) 55 Cal.2d 439, and Niles Sand, Gravel & Rock Co. v. Muir (1921) 55 Cal.App. 539. However, those cases are inapposite. Snapp and Stockton Theaters concerned postjudgment interest, not prejudgment interest. The question presented was whether, upon reversal or modification of a judgment, the new judgment bears interest from the date of the new judgment or the date of the original judgment. Although Niles Sand, Gravel & Rock involved prejudgment interest, the question there was when such interest ends, not when it begins. The court concluded prejudgment interest ends at the time of the original judgment rather than a modified judgment.

Cadle also relies on In re Marriage of Milhan (1980) 27 Cal.3d 765, a case cited by the trial court. There, the court said: "When a judgment is reversed on appeal, a new award subsequently entered by the trial court can bear interest only from the date of the new judgment." (Id. at p. 779.) The court further indicated the date of the remittitur from the reversal is the date of the new judgment. (Ibid.) However, as with Snapp and Stockton Theaters, this case dealt with postjudgment interest, not prejudgment interest.

Because the amount of Parkside's claim was not in dispute except insofar as Cadle was entitled to an offset for the actual damages incurred for nonpayment, Parkside is entitled to prejudgment interest on its net recovery of $165,598.36 from January 31, 2003, the date it was forced to pay the late charge in protest.

Disposition

The judgment is reversed and the matter remanded to the trial court for entry of a new judgment identical to that entered on October 6, 2008, except that prejudgment interest shall run from January 31, 2003, rather than July 26, 2007. Parkside is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

We concur: NICHOLSON , Acting P.J., ROBIE, J.