

**FILED
Court of Appeals
Division II
State of Washington
10/8/2019 1:05 PM**

No. 53142-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

WALTER “JIM” BISHOP dba BISHOP
ENTERPRISES,

Respondent/Cross-Appellant,

v.

SHIRLEY BAUBLITS; and DONALD TUCKER
AND PILAR TUCKER and the marital
community composed thereof,

Appellants.

**BRIEF OF RESPONDENT/CROSS-
APPELLANT
WALTER “JIM” BISHOP dba BISHOP
ENTERPRISES**

Lawrence B. Linville, WSBA #6401
Linville Law Firm, PLLC
Attorneys for Respondent/Cross-Appellant Walter “Jim”
Bishop dba Bishop Enterprises
800 Fifth Ave. Ste. 3850
Seattle, WA 98104
206-515-0640

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I. INTRODUCTION [RAP 10.3(a)(3)]

Walter “Jim” dba Bishop Enterprises (“Bishop”) filed suit against Shirley Baublits (“Baublits”) and Donald & Pilar Tucker (“Tucker”) seeking payment for underground utility work performed by Bishop. After suit was filed, Baublits paid her bill and was dismissed from the case.

Tucker hired Bishop to work on two (2) projects. One project was called Oceanview. The other project was called Milwaukee.

Following trial, the Court entered judgment in favor of Bishop in the total amount of \$18,731.15 (\$10,867.59 for Oceanview and \$7,863.56 for Milwaukee). At trial, it was discovered that one of Bishop’s billings (Oceanview) was incorrectly mathematically computed. The trial court entered judgment for the incorrectly mathematically computed amount. The Court denied Bishop’s request for prejudgment interest.

Bishop’s appeal seeks judgment for the correctly computed invoice total on the Oceanview project and an award of prejudgment interest.

II. ASSIGNMENTS OF ERROR [RAP 10.3(a)(4)]

1. The trial court error. The trial court’s denial of prejudgment interest was error.

- a. Were Bishop’s two (2) unpaid invoices for liquidated amounts?
- b. Is the award of prejudgment interest mandatory or discretionary?
- c. Do there exist tenable grounds supporting the denial of prejudgment interest?

2. It was error for the trial court to award an incorrectly computed amount on the Oceanview project.

III. STATEMENT OF THE CASE [RAP 10.3(a)(5)]

Tucker hired Bishop to perform certain underground utility work on two (2) separate properties: Oceanview and Milwaukee. Bishop submitted two invoices to Tucker as follows:

	Date of invoice	Amount of invoice	Exhibit
Oceanview	12/31/2016	\$10,867.59	6
Milwaukee	12/31/2016	<u>\$7,863.57</u>	7
TOTAL		<u>\$18,731.16</u>	

Tucker did not dispute the necessity of Bishop’s work or the reasonableness of his charges. Each invoice (**Exhibits 6 and 7**) itemized the tasks performed, the hours expended on each task, Bishop’s charge for

each one of the itemized tasks, and an itemization of the costs of materials and equipment.

On the Oceanview project, Bishop incorrectly added the itemized entries and came to a wrong total. The correct total was \$14,209.00: not \$13,190.50 (**Exhibit No. 6**). In its Memorandum Opinion, the trial court noted this error as follows:

“At trial it was clear the Mr. Bishop made some mistakes in financial computations and that he actually billed an amount less than the total of those figures.”

Memorandum Opinion P.3, Lns 5-6 (CP 43)

But the trial court nonetheless awarded Bishop the lower and mistaken principal amount (\$13,190.50) instead of the higher and correct principal amount (\$14,209.00). The judgment for work on the Oceanview project should have been as follows:

	Incorrect	Correct
Itemized labor and equipment	\$13,190.50	\$14,209.00
Materials	<u>\$6,060.04</u>	<u>\$6,060.04</u>
Subtotal	\$19,250.54	\$20,269.04
WSST (.084)	<u>\$1,617.05</u>	<u>\$1,702.60</u>
Subtotal	\$20,867.59	\$21,971.64
Less deposit	<u>(\$10,000.00)</u>	<u>(\$10,000.00)</u>

Principal balance owed	<u>\$10,867.59</u>	<u>\$11,971.64</u>
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The Milwaukee invoice (**Exhibit No. 7**) was correctly computed. Therefore, adding the correctly computed Oceanview and Milwaukee invoices together, the trial court should have awarded Bishop \$19,835.20 as follows:

	Oceanview	Milwaukee
Itemized labor and equipment	\$14,209.00	\$8,014.00
Materials and equipment	<u>\$6,060.04</u>	<u>\$2,930.21</u>
Subtotal	\$20,269.04	\$10,944.21
WSST (.084)	<u>\$1,702.60</u>	<u>\$919.31</u>
Subtotal	\$21,971.64	\$11,863.52
Less deposit	<u>(\$10,000.00)</u>	<u>(\$4,000.00)</u>
Principal balance owed	<u>\$11,971.64</u>	<u>\$7,863.52</u>

Instead, the trial court entered judgment in favor of Bishop in the combined amount of \$18,731.16. The trial court should have entered judgment in the corrected amount of \$19,835.16.

The Court also declined Bishop’s request for prejudgment interest, stating as following in its Memorandum Opinion, dated 02/04/2019:

“The plaintiff has asked for pre-judgment interest and attorney's fees in regard to this action. First of all, in

regard to pre-judgment interest the court concludes that pre-judgment interest is not available in this matter since the claim is not based on a fixed sum or an amount that can be computed with exactness. There is no written contract, the exact amount was disputed and this is not the kind of case where pre-judgment interest would be available like the purchase of a piece of equipment at a price certain or some sort of regular salary or open account.”

Memorandum Opinion P.3, Lns 16-21 (CP 43)

IV. ARGUMENT [RAP 10.3(A)(6)]

1. Computation error. The trial court entered judgment in favor of Bishop on both the Oceanview and Milwaukee projects stating as follows:

“The court finds in favor of the plaintiff that the billings on the Ocean View number one project as well as the Milwaukee project were reasonable and the court gives judgment to the plaintiff for \$10,867.59 and \$7,863.56 for a total judgment of \$18,731.15 plus court costs which at this time, the only cost of which the court would be aware would be the filing fee.”

Memorandum Opinion P.3, Lns 11-15 (CP 43)

There was a computational error on the Oceanview billing. An adding machine tape was run and the true itemized billing entries on the Oceanview invoice actually totaled \$14,209.00: not \$13,190.50 (**Exhibit No. 6**).

The trial court noted this computation error in its Memorandum

Opinion as follows:

“At trial it was clear the Mr. Bishop made some mistakes in financial computations and that he actually billed an amount less than the total of those figures.”

Memorandum Opinion P.3, Lns 5-6 (CP 43)

But the trial court nonetheless awarded the lower and incorrect principal amount (\$13,190.50) rather than the higher and correctly computed principal amount (\$14,209.00). The trial court should have made the following award on the Oceanview property:

	Incorrect	Correct
Itemized labor	\$13,190.50	\$14,209.00
Materials and equipment	<u>\$6,060.04</u>	<u>\$6,060.04</u>
Subtotal	\$19,250.54	\$20,269.04
WSST (.084)	<u>\$1,617.05</u>	<u>\$1,702.60</u>
Subtotal	\$20,867.59	\$21,971.64
Less deposit	<u>(\$10,000.00)</u>	<u>(\$10,000.00)</u>
Principal balance owed	<u>\$10,867.59</u>	<u>\$11,971.64</u>

The Milwaukee billing (**Exhibit No. 7**) was correctly computed.

So combining the correctly recomputed Oceanview billing and the Milwaukee invoices together, the trial court should have entered judgment in favor of Bishop as follows:

	Oceanview	Milwaukee
Itemized equipment and labor	\$14,209.00	\$8,014.00
Materials and equipment	<u>\$6,060.04</u>	<u>\$2,930.21</u>
Subtotal	\$20,269.04	\$10,944.21
WSST (.084)	<u>\$1,702.60</u>	<u>\$919.31</u>
Subtotal	\$21,971.64	\$11,863.52
Less deposit	<u>(\$10,000.00)</u>	<u>(\$4,000.00)</u>
Principal balance owed	<u>\$11,971.64</u>	<u>\$7,863.52</u>

2. Prejudgment interest. Plaintiff's claim was based on two (2) invoices (**Exhibit No. 6** and **Exhibit No. 7**) for the underground utility work performed by Bishop. The necessity for Bishop's work was undisputed and the reasonableness of Bishop's charges was undisputed. Bishop's invoices were in fixed amounts. Each invoice was mathematically calculated by adding the individual entries for labor performed and equipment furnished, together with the costs of materials furnished. A claim is liquidated if the evidence furnishes data which, if believed, makes it possible to compute the amount owed with exactness, without reliance on opinion or discretion. *Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn.App. 286, 301 (1999).

Prejudgment interest on a liquidated claim is generally a matter of

right, with limited discretion to deny interest based upon unwarranted delay in prosecuting a claim. *Colonial Imports v. Carlton Northwest, Inc.*, 83 Wn.App. 229, 244-45 (1996). At trial, there was no contention that Bishop delayed the filing or prosecution of his claims. The standard of review of the trial court's denial of prejudgment interest is whether the trial court abused its discretion. A trial court's denial of prejudgment interest that is not based upon tenable grounds is an abuse of discretion.

The trial court's denial of prejudgment interest was not based upon any inequitable conduct on Bishop's part. In its Memorandum Opinion, the trial court stated its reasons for denying prejudgment interest in its Memorandum Opinion, dated 02/04/2019:

“The plaintiff has asked for pre-judgment interest and attorney's fees in regard to this action. First of all, in regard to pre-judgment interest the court concludes that pre-judgment interest is not available in this matter since the claim is not based on a fixed sum or an amount that can be computed with exactness. There is no written contract, the exact amount was disputed and this is not the kind of case where pre-judgment interest would be available like the purchase of a piece of equipment at a price certain or some sort of regular salary or open account.”

Bishop respectfully submits that the trial court's stated reasons do not tenably support the trial court's denial of prejudgment interest. The trial court stated that Bishop's claim was not based on a fixed sum or an amount that could be computed with exactness. That is not correct.

Bishop's two (2) billings were for a fixed sum and were computed on the basis of multiple entries for labor and the costs of materials.

The trial court denied payment of prejudgment interest in part because there was no written contract. The law does not require a written contract to support the award of prejudgment interest on a liquidated claim.

The trial court denied prejudgment interest in part because Tucker disputed Bishop's invoices (Tucker did not). The amounts of Bishop's invoices were undisputed: unchallenged. Nonetheless, whether the amount of a claim is disputed or undisputed is not a determining factor in determining whether a claim is liquidated or unliquidated.

“[T]he existence of a dispute over part or all of a claim does not change the claim from a liquidated one to an unliquidated one. It is the character of the claim and not of the defense that determines the question.”

Prier v. Refrigeration Engineering Co.,
74 Wn.2d 25, 35, 442 P.2d 621 (1968).

Subject to notions of equity (*Colonial Imports, Supra*) the issue is whether the amount can be calculated with exactness and without reliance on opinion or discretion. Likewise, the fact that a defendant is partially successful in reducing its share of liability for the plaintiff's liquidated claim does render the claim unliquidated. *Hadley v. Maxwell*, 120 Wn.App. 137, 144, 84 P.3d 286 (2004). (“Moreover, a liquidated claim

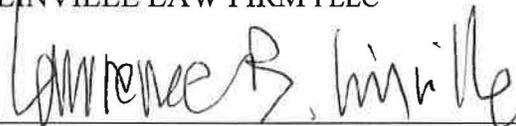
remains so even if the defendant is partially successful in reducing his or her share of liability.”)

V. CONCLUSION

The trial court erred in basing its judgment on an incorrectly computed bill. The trial court abused its discretion in not awarding prejudgment interest.

DATED this *8th* day of *October* 2019

LINVILLE LAW FIRM PLLC



Lawrence B. Linville, WSBA #6401

800 Fifth Avenue, Suite 3850,

Seattle, Washington 98104

(206) 515-0640

Attorney for Respondent/Cross-Appellant Walter
“Jim” Bishop dba Bishop Enterprises

LINVILLE LAW FIRM PLLC

October 08, 2019 - 1:05 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53142-9
Appellate Court Case Title: Walter "Jim" Bishop, et al, Respondent/Cross-App v. Shirley Baublits, et al,
Appellant/Cross-Resp
Superior Court Case Number: 17-2-00956-6

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