

No. 43035-5-II

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DIVISION II

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COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

PETER CHARLES SEIDEL, a single man, Respondent/Cross-Appellant,

v.

CAROLINE HARDING, a single woman, and The CAROLINE
HARDING LIVING TRUST, Appellant/Cross-Respondent.

BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

This matter arises out of a claim of unjust enrichment. In the underlying matter, Peter Seidel (hereinafter “Seidel”) sought recovery of the value of his capital improvement labor to five properties owned and retained by Caroline Harding (hereinafter “Harding”). After a bench trial, Pacific County Superior Court Judge Sullivan issued a written opinion finding that Harding’s properties were enriched by Seidel’s labor on capital improvements to said properties. Judge Sullivan determined Seidel was entitled to recover \$35.00 per hour for 1,500 hours of work for the Bay Center property and entered a judgment for \$52,500.00. Judge Sullivan also ruled that Seidel was entitled to pre-judgment interest at 12 percent from August 10, 2007, until entry of the judgment, in the amount of \$22,600.00.

Harding appeals and argues that Judge Sullivan erred in granting pre-judgment interest. Judge Sullivan determined a fixed hourly rate and fixed number of hours of labor for capital improvements for which Seidel was entitled to recovery. The calculation of the judgment amount was not a matter of discretion or opinion, and, therefore, the claim is liquidated and Seidel is entitled to all his pre-judgment interest.

Seidel cross-claims that the pre-judgment interest imposed by Judge Sullivan was miscalculated. Seidel is entitled to recover pre-judgment interest from August 10, 2007, through January 27, 2012. This is greater than \$22,600.00. Seidel also asks for recovery of attorney's fees and costs for this appeal.

II. ASSIGNMENT OF ERROR

1. The trial court miscalculated the pre-judgment interest.

III. COUNTERSTATEMENT OF CASE

Seidel and Harding lived together from 2001 until they separated on August 10, 2007. Clerk's Papers (CP) 169. During this time, the two were sweethearts expecting to spend the rest of their lives together. CP 164, 170. Between 2001 and August 10, 2007, Seidel contributed labor toward capital improvements on five of Harding's properties in Pacific County.¹ CP 170. As a result of the parties' separation, Harding received a windfall from Seidel's contributions to the Bay Center property. CP 163. In 2007, Harding drafted a promissory note in favor of Seidel in the amount of \$80,000.00 for his out-of-pocket cash expenses for the capital improvements to Harding's properties. Exhibit 112. Seidel sued Harding for recovery of the \$80,000.00 in Pacific County under cause number 08-

¹ This property is in the name of the Harding Trust, but for the purpose of simplicity given her control of the Trust, we refer to Harding as the owner.

2-00098-4 in 2008. Seidel prevailed and received a judgment for \$80,000.00 for his costs and out-of-pocket expenses for the improvements to the Bay Center property. CP 163.

In September, 2008, Seidel commenced the underlying suit alleging Harding was unjustly enriched by Seidel's capital improvements to the five Pacific County properties owned by Harding. A quadripartited bench trial was held beginning March 23, 2010, and concluded after five days of trial spread over seven or more months. The trial did not conclude until the end of 2010. Closing arguments by each counsel were submitted in writing in January 2011, and the court issued a written opinion on May 13, 2011. The court ruled that Harding was unjustly enriched and that Seidel was entitled to receive monetary compensation for his capital improvement labor to the Bay Center property. CP 161-67. A judgment was entered on January 3, 2012, and an amended judgment was entered on January 27, 2012. CP 182-185. The difference between the initial judgment and the amended judgment was the inclusion of costs awarded to Seidel of \$250.00.

The following facts were found by the court either in the court's written opinion or the written Findings of Fact and Conclusions of Law. The court found that the prior litigation involving the promissory note was

for out-of-pocket expenses and did not include the labor of Seidel for capital improvements the Bay Center property. CP 169. Harding was the owner of the Bay Center property. CP 169. After Seidel and Harding's relationship ended, Harding retained the value of the labor expended by Seidel for capital improvements to the Bay Center property. CP 169-70. The capital improvement contributions of Seidel exceeded those of Harding and substantially increased the value of the Bay Center property. CP 170. The court reviewed the testimony at trial and the many exhibits entered during the trial and determined that, based on Seidel's actual carpentry/contractor experience, he was entitled to an hourly rate of \$35.00 per hour for his labor for capital improvements to the Bay Center property. Finding of Fact 17; CP 170. The court also determined that Seidel was entitled to be compensated for 1,500 hours of his work done on the Bay Center property. Finding of Fact 18, CP 170. The court calculated the total judgment by multiplying the hourly rate by the number of hours and entered a judgment against Harding for \$52,500.00. CP 170-71, 184-85. The court awarded Seidel pre-judgment interest from August 10, 2007, through the date of the entry of judgment entered January 3, 2012, and indicated in the amended judgment entered January 27, 2012

that the pre-judgment interest was \$22,600.00. CP 182. Harding timely filed a notice of appeal and Seidel cross-appealed.

Harding's Statement of the Case alleges multiple facts which are irrelevant and unsubstantiated. Harding asks this court to review only the imposition of pre-judgment interest but asserts slanted facts regarding the relationship between Harding and Seidel and implying fraud by Seidel regarding the previous judgment on the promissory note. Brief of Appellant pg. 4-5. Seidel disputes this account of the facts but maintains that facts surrounding the relationship and distribution of assets are irrelevant to the issue before this Court. Accusations by Harding regarding the relationship between Harding and Seidel and the judgment entered in the previous litigation are irrelevant and should be disregarded.

Harding challenges only the award of pre-judgment interest and then attempts to circumvent the lack of a transcript of the proceedings and sway this appeal using unsupported and irrelevant assertions and opinions regarding Seidel and his former romance with Harding. In support of these assertions, Harding cites pleadings and documents filed by counsel, not the evidence or testimony presented at trial. Harding states facts regarding the claims and testimony at trial without providing a transcript of the trial. Without a transcript of the testimony, any review of these

facts by this court is impossible as there is an incomplete record on review.

IV. ARGUMENT

A trial court's award of pre-judgment interest is reviewed for abuse of discretion. *Curtis v. Security Bank of Washington*, 69 Wn. App. 12, 20, 847 P.3d 507, review denied, 121 Wn.2d 1031, 856 P.2d 383 (1993). A challenged finding of fact must be supported by substantial evidence as determined by a review of the underlying testimony and evidence. *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Substantial evidence is evidence sufficient to convince a fair-minded, rational person of the truth of the finding. *Sunnyside* at 879. Conclusions of law are reviewed de novo to determine if they are supported by the findings of fact. *Bingham v. Lechner*, 111 Wn. App. 118, 127, 45 P.3d 562 (2002), citing *City of Seattle v. Megrey*, 93 Wn. App. 391, 393, 968 P.2d 900 (1998).

A. **The trial court's determination Harding was unjustly enriched does not render the damages unliquidated.**

A claimant is entitled to pre-judgment interest if their claim is liquidated or determinable. *Mall Tool Co. v. Far West Equipment Co.*, 45 Wn.2d 158, 176, 273 P.2d 652 (1954), rehearing denied September 25, 1954. A claimant is not entitled to pre-judgment interest if his claim is

unliquidated. *Mall Tool* at 176. A claim is liquidated if the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness. *Prier v. Refrigeration Engineering Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968). A claim is determinable if it is a claim “for an amount due on a specific contract for the payment of money and the amount due is determinable by computation with reference to a fixed standard contained in the contract, without reliance upon opinion or discretion.” *Mall Tool* at 176.

A claim of unjust enrichment does not preclude recovery of pre-judgment interest. *Bailie Communications, Ltd. v. Trend Business Systems, Inc.*, 61 Wn. App. 151, 810 P.2d 12 (1991), *reconsideration denied* July 18, 1991, *as changed* August 22, 1991. Pre-judgment interest is founded on the public policy principal that “[t]he plaintiff should be compensated for the ‘use value’ of the money representing his damages for the period of time from his loss to the date of judgment.” *Bailie* at 162, *citing Mall Tool* at 177; *see also Grays Harbor County v. Bay City Lumber Co.*, 47 Wn.2d 879, 891, 289 P.2d 975 (1955). The discretionary determination of whether or not a person has been unjustly enriched is exactly the principal upon which there is a right of recovery of pre-

judgment interest. *Stevens v. Brink's Home Security, Inc.*, 162 Wn.2d 42, 51-52, 169 P.3d 473 (2007).

Harding argues that the court exercised its discretion in determining there was unjust enrichment and that, therefore, the damages are unliquidated. Brief of Appellant pg. 14. Because Harding retained the benefit of the real property improved by Seidel, the trial court properly determined that this was a matter of unjust enrichment. Finding of Fact 12; CP 170. This obviously required the court to exercise its discretion as it weighed the evidence and credibility of the testimony. This finding of unjust enrichment, however, is separate from the finding of damages and does not, therefore, influence whether or not the damages are liquidated.

B. Seidel's damages are liquidated, and, therefore, he is entitled to pre-judgment interest.

A claimant is entitled to pre-judgment interest if his claim is liquidated. *Mall Tool* at 176. “[W]here the amount sued for may be arrived at by a process of measurement or computation from the data given by the proof, without any reliance upon opinion or discretion after the concrete facts have been determined, the amount is liquidated and will bear interest.” *Prier* at 33, quoting CHARLES T. MCCORMICK, HANDBOOK ON THE LAW OF DAMAGES §54 (1935). Pre-judgment interest is awarded

on the principal that a defendant “who retains money which he ought to pay to another should be charged interest upon it.” *Prier* at 34.

Harding assigns error to the trial court’s Finding of Fact No. 21 and Conclusion of Law No. 7, each of which are the court’s determination that Seidel is entitled to pre-judgment interest. Harding argues that the trial court had to exercise its discretion to determine Seidel’s hourly rate and number of hours for labor for capital improvements to Harding’s property. However, Harding does not assign error to the trial court’s Finding of Fact No. 17 setting Seidel’s hourly rate at \$35.00 per hour based on Seidel’s actual carpentry/contractor experience. Harding also does not assign error to the trial court’s Finding of Fact No. 18, determining Seidel was entitled to compensation for 1,500 hours for his labor on capital improvements to the Bay Center property. Findings of fact which are unchallenged are verities on appeal. *In re Marriage of Brewer*, 137 Wn.2d 756, 766, 976 P.3d 102 (1999).

Compensation for unpaid work under a theory of unjust enrichment entitles the claimant to pre-judgment interest where the amount is determinable by computation based on the hours worked and a fixed hourly rate. *Stevens* at 42, *see also Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 723, 153 P.2d 846 (2007) (finding that a dispute over the

number of hours worked did not render the claim unliquidated). “[E]ven though the adversary successfully challenges the amount and succeeds in reducing it,” the claim is still liquidated. *Scoccolo Const., Inc. ex rel. Curb One, Inc. v. City of Renton*, 158 Wn.2d 506, 520, 145 P.3d 371 (2006), citing *Prier* at 33, quoting CHARLES T. MCCORMICK, HANDBOOK ON THE LAW OF DAMAGES §54 (1935). This is because, “[i]t is the character of the original claim, rather than the court’s ultimate method for awarding damages, that determines whether pre-judgment interest is allowable. *Spradlin Rock Products, Inc. v. Public Utility District No. 1 of Grays Harbor County*, 164 Wn. App. 641, 266 P.3d 229 (2011), citing *Prier* at 33.

In *Scoccolo*, the plaintiff sought damages and the defendant argued for a much lower figure. The jury awarded a number between the two sought. There was no challenge to the reasonableness of the claimed expenditures and the award of pre-judgment interest was affirmed on appeal. *Scoccolo* at 520. In the present case, the Findings of Fact conclude that Seidel is entitled to be compensated at \$35.00 per hour for 1,500 hours of work of improvements to the Harding’s property. Findings of Fact 17 and 18; CP 170. Harding argues that the unchallenged findings of fact regarding the hourly rate and number of hours do not establish

sufficient evidence to conclude the court's finding of fact that Seidel is entitled to pre-judgment interest. Harding compares this case to *Kiewit-Grice v. State of Washington*, 77 Wn. App. 867, 873, 895 P.2d 6 (1995), in which the jury's determination of damages could have been for the damages that the defendant claimed were unreasonable. *Kiewit-Grice*, however, relied on the testimony of the consulting engineer who had testified for the defense regarding the reasonableness of the plaintiff's claimed expenditures. *Kiewit-Grice* at 873. Harding also cites *Lloyd v. American Can Co.*, 128 Wash. 298, 222 P. 876 (1924) to support her assertion that the damages are unliquidated. *Lloyd* is notably older than the majority of the cases discussing liquidated and unliquidated damages. *Lloyd* does, however, demonstrate that where the court overturns an award of pre-judgment interest due to a discretionary finding regarding an hourly wage, the court reviews the evidence and testimony at trial to make this determination. *Lloyd* at 298. As this record has not been provided, there is insufficient evidence to raise this inquiry.

It is clear from the trial court's opinion that Seidel presented evidence that he should be compensated at an hourly rate for the number of hours of his labor for capital improvements to Harding's property. CP 164. It is also clear from the court's opinion that Harding presented

evidence that the value of the property should be used to determine the value of Seidel's labor for capital improvements to Harding's property. CP 166. The record before this court does not indicate there was any testimony from a competing expert regarding Seidel's hourly rate. The mere fact that testimony is required to establish the value of the relief requested does not mean the damages are unliquidated. In *Walla Walla County Fire Protection District No. 5 v. Washington Auto Carriage, Inc.*, 50 Wn. App. 355, 359, 745 P.3d 1332 (1987), there was testimony offered to establish the market value of equipment on a truck at the time of a fire. The damages were still liquidated, and the plaintiff was entitled to pre-judgment interest back to the date of the damage to the truck. *Walla Walla* at 359. Even if the defendant ultimately has to wait until the judgment to know the exact rate, a market or current value is sufficient to make damages liquidated because a fair market value is readily ascertainable by the defendant. *Egerer v. CSR West, LLC*, 116 Wn. App. 645, 655, 67 P.2d 1128 (2003).

Harding refers the court to *Car Wash Enterprises, Inc. v. Kampanos*, 74 Wn. App. 537, 548-49, 874 P.2d 868 (1994), and *Aker Verdal A/S v. Neil F. Lampson, Inc.*, 65 Wn. App. 177, 828 P.2d 610 (1992), to demonstrate where courts have found that the fact finder had to

exercise discretion thus rendering the damages unliquidated. However, the claims in *Car Wash* and *Aker* were distinctly different than Seidel's claim. The fact finders in each were statutorily required to exercise their discretion in determining the damages in apportioning liability to the parties. *Car Wash* at 548-49; *Aker* at 177.

Conclusions of law are reviewed de novo to see if they are supported by the trial court's findings of fact. *Bingham* at 127. As the trial court's finding that Seidel is entitled to pre-judgment interest is supported by the trial court's finding of fact of a specific hourly rate and number of hours of labor towards capital improvements of the Bay Center property, the conclusion is supported by sufficient evidence and Seidel is entitled to pre-judgment interest through the entry of the judgment. *Bailie* at 162-63.

C. The trial court erred in calculating the pre-judgment interest to which Seidel is entitled.

Pursuant to RCW 4.56.110(2), the judgment shall bear interest. The interest awarded was \$22,600.00. Given that the judgment was not entered until January 3, 2012, Seidel was prevented from recovering this judgment until that date. The final amended judgment entered January 27, 2012, indicates Seidel is entitled to pre-judgment interest from August 7, 2007, until January 3, 2012, at a rate of 12 percent for the judgment

amount of \$52,500.00. The amended judgment sets the total interest at \$22,600.00. The appropriate interest amount is \$52,500.00 multiplied by 12 percent multiplied by 4.41 years for a total of \$27,783.00. Seidel respectfully requests that the court remand this matter as to the amount of the pre-judgment interest for entry of a second amended judgment.

D. Seidel is entitled to receive his attorney fees and costs for this appeal as he is the substantially prevailing party.

Costs to the prevailing party are permitted on appeal under RAP 14.2. Statutory attorney fees and costs should be awarded to Seidel as the prevailing party on appeal.

V. CONCLUSION

For the foregoing reasons, Seidel respectfully requests this Court affirm the trial court's findings imposing pre-judgment interest and remand the matter for entry of a second amended judgment to correct the court's calculation of pre-judgment interest.

DATED: May 24, 2012.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Megan M. Valentine', written above a horizontal line.

Megan M. Valentine
WSBA #33570

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CERTIFICATE OF MAILING

STATE OF WASHINGTON)
) SS
 GRAYS HARBOR COUNTY)

CHRISTY J. CAREY, being first duly sworn upon oath, deposes and says that on May 24, 2012, she placed a true and accurate copy of Brief of Respondent/Cross-Appellant in an envelope addressed to the attorney for Appellant, Emmelyn Hart, Talmadge/Fitzpatrick, 18010 Southcenter Parkway, Tukwila, WA 98188.

Said copies were placed in envelopes which were securely sealed and sufficient postage placed thereon to carry said envelopes with their contents through to their destination.


 Christy J. Carey

SUBSCRIBED AND SWORN TO before me on May 24, 2012.

KATHERINE WESTON
NOTARY PUBLIC
STATE OF WASHINGTON
My Commission Expires May 10, 2013


NOTARY PUBLIC in and for the
State of Washington residing at
Aberdeen