

Recent Florida Supreme Court Decision On Prejudgment Interest

September 24, 2010

The Florida Supreme Court recently released a significant decision regarding prejudgment interest. In Bosem, M.D. v. Musa Holdings, Inc., Case No. SC09-1277 (Fla. Sep. 23, 2010), the plaintiff brought a commercial misappropriation claim against the defendant, seeking lost profits damages. The trial court awarded prejudgment interest. The Fourth District reversed, finding that a plaintiff is not entitled to prejudgment interest on an award of lost profits because those damages are speculative and are not a vested property right, and, as such, cannot constitute liquidated damages. The Supreme Court disagreed. The Court noted it has consistently applied the "loss theory" to prejudgment interest, which does not prescribe to the traditional liquidated versus unliquidated damages distinction. Instead, the "loss theory" provides that a plaintiff who suffers a pecuniary or tangible loss should be made whole from the date of the loss. As such, the Court held that a plaintiff who suffers pecuniary losses, including lost profits, is entitled to an award of prejudgment interest as a matter of right as soon as the verdict has the effect of fixing the damages. Though the Court believed the issue in this case to be clear under its precedent, its decision allowing prejudgment interest on lost profits damages as a matter of right appears to be contrary to how many practitioners and courts have been viewing prejudgment interest in recent lost profit/breach of contract cases.

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