

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**RICHARD F. STOKES**  
*JUDGE*

**SUSSEX COUNTY COURTHOUSE**  
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GEORGETOWN, DE 19947  
TELEPHONE (302) 856-5264

April 21, 2016

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RE: ***CRELK Enterprises v. Meris Properties, et al.***  
Civil Action No.: S15L-07-019 RFS

Dear Counsel:

Plaintiff, CRELK Enterprises (“CRELK”), filed this mortgage foreclosure and breach of contract action against Defendant, Meris Properties (“Meris”), on July 27, 2015. This Court granted CRELK’s Motion for Judgment on the Pleadings on January 28, 2016, but the parties needed additional time determine the appropriate measure of damages. Both parties have submitted briefs with respect to the proper calculation of damages, and the matter is ripe for decision.

On April 15, 2013, CRELK loaned Meris \$350,000.00 to complete site work in the community of Waters Run; the loan was evidenced by a promissory note signed by Meris.<sup>1</sup> This was a commercial loan secured by a mortgage on commercial property. Also, defendant,

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<sup>1</sup> Compl. ¶¶ 4-5.

Michael Daniels, guaranteed payment of the loan through a Guaranty Agreement.<sup>2</sup> Pursuant to the terms of the parties' agreement, Meris agreed to repay the loan, plus 24% interest, by January 15, 2014.<sup>3</sup> On February 4, 2014, when payment in full had not been received, CRELK and Meris entered into another agreement wherein the loan's maturity date was extended to July 31, 2014.<sup>4</sup>

Defendant, Cove at Sandy Beach, an affiliate of Meris, granted CRELK a mortgage on two of its lots as further security for the loan.<sup>5</sup> On May 7, 2015, after Meris failed to issue payment in full, CRELK issued a default notice.<sup>6</sup> CRELK issued a second default notice on May 19, 2015, but Meris failed to remit any money at that time.<sup>7</sup> Soon after, CRELK filed the present action.

Meris filed an answer admitting that CRELK did loan it money and that the balance was not paid in full.<sup>8</sup> Meris also filed a Third-Party Complaint against David Eppes for failing to settle on a property owned by Cove. On January 28, 2016, this Court granted CRELK's Motion for Judgment on the Pleadings; however, the amount of damages was still in dispute.<sup>9</sup>

CRELK contends that the 24% interest rate provided in the agreement is the applicable post-judgment interest rate. Meris argues that, pursuant to 6 *Del. C.* § 2301(a), the post-judgment interest rate is 5.75%. There is also a dispute concerning the payment of attorney's fees. Both parties agree that payment of reasonable attorney's fees was included in the agreement, but Meris contends that CRELK has not offered any support for the amount it requested.

The scope of 6 *Del. C.* § 2301(a) was most recently discussed by the Delaware Supreme Court in *Delaware Technical & Community College v. Emory Hill & Co.*<sup>10</sup> In that case, Emory Hill and the Delaware Technical and Community College ("DTCC") entered into a contract for the construction of buildings on DTCC's campus.<sup>11</sup> The contract provided that outstanding

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<sup>2</sup> *Id.* ¶ 6.

<sup>3</sup> *Id.* ¶ 7.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 8.

<sup>6</sup> *Id.* ¶ 10.

<sup>7</sup> Compl. ¶ 12.

<sup>8</sup> Answ. ¶¶ 14, 16.

<sup>9</sup> *CRELK Enterprises v. Meris Properties, et al.*, C.A. No. S15L-07-019 (Del. Super. Jan. 28, 2016) (ORDER).

<sup>10</sup> 2015 WL 4094410, at \*1 (Del. July 7, 2015).

<sup>11</sup> *Id.*

payments would be subject to a monthly interest rate of 1%, not to exceed 12% per year.<sup>12</sup> A dispute arose, and both parties filed claims for breach of contract.<sup>13</sup> At trial, the jury found that each party breached contractual obligations to the other and damages were awarded to both parties.<sup>14</sup> Soon after, both parties filed motions seeking attorneys' fees, costs, and interest; however, there were differing opinions regarding the applicable post-judgment interest rate.<sup>15</sup> The Superior Court agreed with Emory Hill and held that the applicable post-judgment interest rate was the rate provided in the contract.<sup>16</sup> DTCC appealed this decision.<sup>17</sup>

On appeal, DTCC argued that 6 *Del. C.* § 2301(a) provides the applicable post-judgment interest rate, not the contract.<sup>18</sup> The Delaware Supreme Court rejected this argument and began its analysis by citing the language of the statute. In its entirety, 6 *Del. C.* § 2301(a) provides:

Any lender may charge and collect from a borrower interest at any rate agreed upon in writing not in excess of 5% over the Federal Reserve discount rate including any surcharge thereon. Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due; provided, that where the time from which interest is due predates April 18, 1980, the legal rate shall remain as it was at such time. *Except as otherwise provided in this Code, any judgment entered on agreements governed by this subsection, whether the contract rate is expressed or not, shall, from the date of the judgment, bear post-judgment interest of 5% over the Federal Reserve discount rate including any surcharge thereon or the contract rate, whichever is less.*<sup>19</sup>

The Court explained that the last sentence of 6 *Del. C.* § 2301(a) was added by the General Assembly in 2012, and the synopsis of Senate Bill 85 provided the purpose of the enactment: “This bill clarifies that the applicable post-judgment interest rate on any judgments entered *in cases of personal loans* is the lesser of the legal interest rate or the contract rate. This bill does not affect the usury statute or other special circumstances contemplated by current law.”<sup>20</sup>

Interpreting this synopsis, the Court stated:

The synopsis suggests that the Legislature intended for 2301(a) to cap post-judgment interest only in cases of personal loans to the lesser of the legal rate

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Del. Technical & Cmty. Coll.*, 2015 WL 4094410, at \*3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* \*5.

<sup>19</sup> 6 *Del. C.* § 2301(a) (emphasis in the original).

<sup>20</sup> *Del. Technical & Cmty. Coll.*, 2015 WL 4094410, at \*5 (emphasis in the original).

under 2301(a) or the contractual rate. Because Emory Hill does not seek interest due for the failure to pay a personal loan, the Contract rate applies to the accrual of post-judgment interest.<sup>21</sup>

Like the transaction in *DTCC*, the loan at issue here is not a personal loan and therefore does not fall under 6 *Del. C.* § 2301(a). It is a commercial loan; the funds were used to complete the construction of new homes.

In addition, the loan agreement in question is governed by 6 *Del. C.* § 2301(c).<sup>22</sup> Subsection (c) provides, in part:

[T]here shall be no limitation on the rate of interest which may be legally charged to the loan or use of the money, where the amount of the money loaned or used exceeds \$100,000 and where repayment thereof is not secured by a mortgage against the principal residence of any borrower.

CRELK loaned defendants \$350,000.00 to develop the community of Waters Run which is not their home residence. Consequently, subsection (c) also authorizes CRELK's collection of post-judgment interest at the contract rate of 24%. In light of the above, Meris' argument that the post-judgment interest rate in 6 *Del. C.* § 2301(a) applies is without merit. Accordingly, the applicable post-judgment interest rate is the contract rate of 24%.

The Delaware Rules of Professional Conduct provide guidance as to the factors to consider reasonable attorney's fees. Delaware Professional Conduct Rule 1.5(a) requires consideration of the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyers performing the service; and (8) whether the fee is fixed or contingent.

I have reviewed these factors. Meris' only contention concerning CRELK's request for attorney's fees is that CRELK offers no support for its claim. To date, CRELK has submitted an

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<sup>21</sup> *Id.*

<sup>22</sup> See *Sequoia Presidential Yacht Group LLC v. FE Partners*, 2014 WL 2610577, at \*2 (Del Ch. June 12, 2014) (holding that interest rate restrictions do not apply to loans in excess of \$100,000.00 that are not secured by a mortgage against the principal residence of any borrower).

affidavit in support of its request for attorney's fees and has provided the Court with billing statements that detail the hours worked. Given the nature of the representation, the time involved, the amount of the judgment, the affidavit, and the billing statements, the attorney's fees are reasonable.

Considering the foregoing, CRELK is awarded \$210,500.00 plus post-judgment interest at the rate of 24% per year from February 16, 2016, until the balance is paid in full plus \$10,308.24 in attorney's fees and costs.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ Richard F. Stokes*

Richard F. Stokes

cc: Prothonotary's Office