



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELPHI PETROLEUM, INC.,)
)
 Appellant,)
 Cross-Appellee,) No 261,2020
)
 v.) On Appeal From the Superior
) Court of the State of Delaware
)
 MAGELLAN TERMINAL HOLDINGS,)
 L.P.,) C.A. No. N12C-02-302 FWW
) C.A. No. N19C-05-015 FWW
)
 Appellee,)
 Cross-Appellant.)

CROSS-APPELLANT'S REPLY BRIEF ON CROSS-APPEAL

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I. Magellan’s Summary of Arguments on Cross-Appeal

1. The Superior Court entered Delphi’s proposed order requiring Magellan to pay interest to Delphi from the date of the parties’ Settlement Agreement (December 21, 2018) to the date of Magellan’s payment of the settlement amount (May 29, 2019). A168. Delphi concedes the Settlement Agreement did not require payment on or by a specific date, but it argues the Superior Court “determined that Magellan had not paid in a reasonable time.” Resp. Br. at 1. The Superior Court *did not* make this alleged holding, and there is nothing in the record to support Delphi’s claim that it did.

2. Even accepting Delphi’s argument at face value, the interest award is erroneous. The Superior Court held that interest began to run on December 21, 2018. This was not a “reasonable time” for payment because the parties entered into the Settlement Agreement after business hours on that date, and for months thereafter, exchanged drafts of a document that contemplated a future payment date. It was reasonable for Magellan to defer payment while these discussions were ongoing and until Delphi sought to repudiate the Settlement Agreement.

3. Delphi does not dispute that (1) it did not request interest in any motion presented to the Superior Court related to the Settlement Agreement, (2) Magellan never had the opportunity below to address Delphi’s claimed entitlement to interest, (3) the parties did not provide factual or legal authority on that issue, and (4) the

Superior Court never addressed the issue as a factual or legal dispute. The Superior Court erred in awarding interest to Delphi under these circumstances.

REPLY ARGUMENTS ON CROSS-APPEAL

I. The Superior Court did not hold that Magellan failed to pay the settlement amount within a reasonable time.

Delphi argues the Superior Court properly awarded interest because Magellan did not pay the settlement amount when it was due. However, Delphi concedes the Settlement Agreement “did not provide for a specific payment date.” Resp. Br. at 1. Thus, it admits Magellan was required to pay the settlement amount only within a “reasonable time” of entering into the agreement. *Id.* Delphi contends the Superior Court found a “reasonable time” for payment was December 21, 2018, *i.e.*, the date the parties entered into the Settlement Agreement, and that interest began to run on that date. But Delphi cites no such holding by the Superior Court. Indeed, the court never addressed the issue of a “reasonable time” for payment and certainly never held that Magellan had failed to pay the settlement proceeds within a reasonable time.¹ This non-existent holding cannot support the court’s interest award.

Undeterred, Delphi contends the court must have found Magellan breached the Settlement Agreement or else the court would not have awarded interest because

¹ Delphi contends that “Magellan’s breach of the alleged agreement by its refusal to timely pay the settlement amount precluded Magellan from enforcing the alleged agreement.” Resp. Br. at 8. This argument fails for at least three reasons. First, Delphi never made this argument before this appeal and has always contended *there was no settlement*. Second, as shown above and in Magellan’s Answering Brief, the Superior Court did not hold that Magellan breached the Settlement Agreement. Third, even if a breach occurred, the delay in payment was not the type of material breach that is necessary to void the agreement under Delaware law.

“[t]here is no other basis to support an award of interest.” *Id.* at 6. This argument is circular. According to Delphi, the interest award was appropriate because the Superior Court found Magellan breached the contract; but Delphi’s sole basis for claiming the court found a breach was that it awarded interest. This illogical and illusory argument should be rejected.

Delphi overlooks the most obvious reason for the interest award: the Superior Court merely adopted in full the proposed order Delphi submitted, which included—without explanation or justification—an award of interest. Because the Superior Court did not hold that Magellan failed to pay the settlement amount in a timely manner and Delphi admits that “no other basis” for awarding interest exists, *Resp. Br.* at 6, the court’s interest award should be reversed.

II. Magellan paid the settlement amount within a “reasonable time.”

Even assuming (without basis in the record) that the Superior Court concluded Magellan failed to pay the settlement proceeds in a timely manner, any such conclusion would have been erroneous. The evidence shows—and Delphi does not dispute—that the parties contemplated execution of a document detailing the time and manner of payment. It was reasonable for Magellan to defer payment while the parties attempted to finalize this document and the corresponding payment terms.

There is no basis in the record to support any conclusion that Magellan should have made payment on December 21, 2018, and that interest began to run on that date. The parties did not reach the Settlement Agreement until after business hours that day, so it is unreasonable to assume payment logistically could have occurred then. Further, Delphi concedes the parties contemplated a written document that would outline the timing and manner of payment and exchanged drafts of that document in the weeks following the December 2018 Settlement Agreement. Resp. Br. at 6-7 (describing how the parties “proposed no fewer than nine drafts between December 26, 2018 and January 17, 2019”). Delphi offers no persuasive reason why Magellan should have paid the settlement amount while the parties were still discussing the mechanics of how the payment should be made.²

² Delphi cites *Lamourine v. Mazda Motors of America, Inc.*, 979 A.2d 1111, 2009 WL 2707387 (Del. 2009), for the proposition that “where an obligation to pay

Delphi argues these discussions ended in late January, asserting that “[i]t was clear by January 17, 2019 that the parties had reached an impasse and stopped negotiating.” Resp. Br. at 6. Delphi fails even to acknowledge—much less to refute—its own admissions to the contrary. On January 17, 2019, Magellan’s counsel sent Delphi’s counsel a version of the written document that “Magellan [was] willing to sign.” A550. She also attached a redlined version of the document “showing the (mostly minor) changes from the version [Delphi] sent” the day before. *Id.* On January 30, 2019, counsel for Delphi emailed counsel for Magellan to say that he expected to “get back to [her] shortly” regarding the draft. A563. Contrary to Delphi’s current assertion, neither party declared an impasse or signaled the end of the parties’ attempts to draft a document for execution. Instead, Magellan indicated its willingness to execute the current draft, and Delphi promised to “get back to” Magellan “shortly.” Magellan waited for the promised response.

stems from a settlement agreement, interest begins accruing on the date of the settlement agreement.” Resp. Br. at 8. Delphi misstates the holding in *Lamourine*. There, the Court held only that “[p]re-judgment interest accrues from the date the obligation to pay arises.” 2009 WL 2707387, at *4. The Court concluded no pre-judgment interest was warranted because “the settlement agreement was the source of the defendant’s obligation to pay, and the defendants paid the settlement monies . . . in accordance with that agreement.” *Id.* Under *Lamourine*, interest does not accrue on the date a settlement agreement is *entered*. Instead, it accrues when payment is *due* under the agreement. Here, the Settlement Agreement did not specify a date for payment, and interest did not begin to accrue until Magellan’s obligation to pay arose.

Almost three months later, counsel for Delphi finally responded. Again, Delphi did not declare an impasse or an end to the parties' efforts to agree on a document that, *inter alia*, detailed payment terms. Nor did it assert Magellan was untimely in making payment. Instead, on April 9, 2019,³ counsel for Delphi emailed Magellan's counsel, stating:

I know we have a common interest in foregoing any more litigation and, although the parties agreed on a settlement, they haven't been able to agree on the wording of the document memorializing the settlement. ***I intend to get back to you on that matter later this week or early next .***

...

A565 (emphasis added). Thus, Delphi expressly admitted that discussions regarding the "document memorializing the settlement," which necessary would include timing and manner of payment, were still ongoing as of April 9, 2019. Because the draft document provided detailed instructions for how and when Magellan should pay the settlement amount, it was reasonable for Magellan to refrain from making payment until either the document was finalized or a true impasse was reached. ***At no point in any of the communications up to and including April 9, 2019, did Delphi ever take the position that payment was due or suggest in any way that Magellan had failed to pay in a timely manner.***

³ For obvious reasons, Delphi fails to acknowledge the April 9, 2019 letter at any point in either of its briefs. The letter is devastating to Delphi's positions in its appeal and on this cross-appeal.

Delphi's counsel did not "get back to" Magellan's counsel later that week or the next as he said he would. Instead, on April 15, 2019, this Court decided the appeal in Delphi's favor, and Delphi chose to seek to repudiate the Settlement Agreement. After Delphi informed the Superior Court that it disputed that an enforceable Settlement Agreement existed, A252, Magellan paid the settlement amount of \$1,050,000 by wire transfer to Delphi within three weeks. A567. This was a reasonable time for payment. The Superior Court's decision to award interest from December 21, 2018 until the date of payment should be reversed.

III. Magellan was denied any opportunity to oppose Delphi's request for interest.

As shown in Magellan's opening brief on this cross-appeal, Delphi filed no motion seeking interest and made no request for interest until after the court held the Settlement Agreement to be enforceable. In that order, the court requested that the parties submit proposed orders. The Superior Court ultimately selected Delphi's submission, which included an award of interest. Magellan had no opportunity to object to the interest award or to explain why interest is unavailable, including the fact that Delphi agreed to release any claim to any monies other than the \$1,050,000 settlement payment agreed to by the parties.

In its Response Brief, Delphi does not dispute that Magellan lacked a full and fair opportunity to oppose Delphi's request for interest. Nor does it contest the fact that Delphi released any right it may have had to an award of interest in this case. Delphi argues only that it could not have sought interest any earlier in the trial court because it disputed the existence of the Settlement Agreement. Resp. Br. at 1-2. However, nothing prevented Delphi from arguing, in the alternative, that Magellan had breached the agreement and that in that event it would be entitled to interest in connection with that alleged breach. Its failure to do so deprived Magellan of its right to refute the argument in the Superior Court and requires reversal here.

CONCLUSION

For the reasons set forth above and in Magellan's Answering Brief on Appeal, the Superior Court erred in adopting Delphi's proposed order to the extent it required Magellan to pay Delphi interest on the settlement amount. The court made no findings or conclusions to support the award of interest, and the facts of the case do not permit it. The interest award should be reversed.

Respectfully submitted,

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