



IN THE SUPREME COURT OF THE STATE OF DELAWARE

R.T. VANDERBILT COMPANY, INC.,)	
)	
Defendant (below)-Appellant,)	
)	No. 510, 2013
vs.)	
)	<i>On appeal from:</i>
DARCEL GALLIHER, Individually)	Superior Court No. N10C-10-315
and as Special Administrator for the)	Judge John A. Parkins, Jr. presiding
Estate of MICHAEL GALLIHER, Deceased,)	
)	
Plaintiff (below)-Appellee.)	

CROSS-APPELLANT'S REPLY BRIEF AS TO CROSS-APPEAL

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Dated: February 7, 2014

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ARGUMENT
The Trial Court Had No Discretion To Disallow
Any Portion Of The Post-Judgment Interest Due Here

In Delaware, post-judgment interest “is not dependent upon the trial court's discretion,” but is automatic from the date of verdict until the judgment is satisfied. *See Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000); *M & G Polymers USA, LLC v. Carestream Health, Inc.*, 2010 WL 2125463, *3, ¶ 13 (Del. Super., May 21, 2010). It is a matter of right not a discretionary allowance. *Id.* Defendant cross-appellee R.T. Vanderbilt (“RTV”) cites no authority qualifying a prevailing plaintiff's right to full post-judgment interest or affording trial court's any discretion to allow only a portion thereof.

The authorities cited by RTV are inapposite. *Maryland Casualty Co. v. Hanby*, 301 A.2d 286, 288 (Del. 1973) involved pre-judgment interest, which is a different matter. *See e.g. Summa Corp. v. Trans World Airlines, Inc.*, 540 A.2d 403, 409 (Del. 1988). The same is true of *Moskowitz v. Mayor of Wilmington*, 391 A.2d 209, 211 (Del. 1978), which dealt with whether a taxpayer was entitled to pre-judgment interest on an assessment refund. Neither case contravenes the unequivocal holding in *Wilmington Country Club* or confers any discretion over the running of post-judgment interest. No authority cited by RTV holds that the trial court has the discretion to dilute a plaintiff's right to full post-judgment interest provided it allows at least ‘some.’

Cede & Co. v. Technicolor, Inc., 2003 WL 23700218, *45 (Del. Ch., Dec. 31, 2003), also cited by RTV, involved interest pursuant to the statute for stock appraisal actions and has no bearing on Mrs. Galliher's unqualified right to post-judgment interest here. Still, the court in *Cede & Co.* acknowledged that the primary and only substantive purpose of post-judgment interest is to compensate a prevailing party for the time value of money due until it is paid. The fact that post-judgment interest also serves additional purposes, such as encouraging prompt payment, provides no reason to conclude that it should become discretionary. In this regard, RTV's citation to *BP Exploration & Oil Co. v. Maintenance Services, Inc.*, 313 F.3d 936 (6th Cir. 2002) is equally misplaced. That decision, insofar as it concerns post-judgment interest, stands for the unexceptional proposition that a defendant can avoid post-judgment interest by tendering payment in full.

It is, of course, interesting that the merits of the controversy and the issue of interest were separately appealed and then consolidated in *BP Exploration & Oil*. The propriety of such procedure is precisely the point of plaintiff's motion to dismiss RTV's appeal on the merits here as untimely.¹ In this regard, RTV's citation to *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575 (Del. 2002) is both

¹ Contrary to RTV's assertion, plaintiff's choice to not restate that fully briefed matter does not waive the issue. The timeliness of an appeal is jurisdictional and, therefore, not subject to waiver. See *Preform Building Components, Inc. v. Edwards*, 280 A.2d 697, 698 (Del. 1971). This Court can and will dismiss an untimely appeal *sua sponte*, if an appellee fails to raise the issue at all.

incorrect and irrelevant. *Tyson Foods* involved finality for purposes of appeal, not when post-judgment interest begins to run. Delaware law is clear that post-judgment interest runs from the date of the jury's verdict, which is precisely what the court below held in ruling on RTV's motion to reconsider the separate issue of post-judgment interest (Add. 30-32). RTV—despite claiming that the pendency of that limited motion tolled the time for appealing as the merits—did not appeal from the trial court's adverse determination of that point. It has, therefore, abandoned the argument that post-judgment interest did not begin to run until the trial court denied its post-trial motions. In any event, plaintiff's assertion that the judgment was final for purposes of appeal on July 31, 2013 has nothing to do with finality for purposes of post-judgment interest. RTV assertions to the contrary only underscore how Delaware treats the merits and interest as separate issues.

CONCLUSION

Accordingly, for the reasons previously and herein stated, it is respectfully submitted that this Court should reverse the trial court's order suspending the running of post-judgment interest from March 8, 2013 to August 27, 2013 and hold that plaintiff-cross-appellee is entitled to post-judgment interest in full from the date of verdict until the judgment is satisfied.



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