The Appealing Judgment Creditor's Right to Interest

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will carefully scrutinize the situations wherein a compromise is advantageous. The public in general, and defendants in criminal cases in particular, must be able to trust in the American system of justice if it is to survive.

DAVID HECHT

THE APPEALING JUDGMENT CREDITOR'S RIGHT TO INTEREST

The plaintiff obtained a 15,000 dollar judgment. Believing the verdict inadequate, he appealed to the Third District Court of Appeal. The judgment was affirmed and a petition for rehearing denied. Thereupon the defendant tendered payment of the judgment, without including the interest that had accrued since the date of the original judgement. The plaintiff refused the tender and unsuccessfully petitioned for writs of certiorari to the Supreme Court of Florida and the Supreme Court of the United States. Upon conclusion of the proceedings in the United States Supreme Court, the defendant again tendered payment of the judgment without interest. The plaintiff again refused the tender and filed a motion with the trial court to compel the defendant to pay the principal with interest from the date of the original judgment, claiming that both tenders without interest were invalid. Upon hearing the motion, the trial court ordered the defendant to pay interest only from the date of judgment to the date of initial tender. On appeal by the plaintiff, held, reversed and remanded: A tender of payment by a judgment debtor to an appealing judgment creditor is an insufficient tender where the accrued interest from the date of the original judgment is not included in the tender. Stager v. Florida E. Coast Ry., 189 So.2d 192 (Fla. 3d Dist. 1966).

In the absence of a statute the common law rule is that judgments do not bear interest. Courts that grant interest without statutory authorization generally do so because the judgment debtor has caused a delay in the proceedings. The right to interest on judgments has been established by statute in most jurisdictions. Under the typical statute interest

5. E.g., Fitzgerald v. Bixler, 350 Mich. 688, 87 N.W.2d 174 (1957), where the court penalized a party for causing an unnecessary appeal; Hilton v. State, 60 Neb. 421, 83 N.W. 354 (1900) and Clinton v. Gant, 337 S.W.2d 761 (Tenn. 1960), where the party against whom the verdict was rendered caused delay. See generally Annot., 1 A.L.R.2d 495 (1945).
is allowed on the theory that the injured party is to be indemnified in toto. This is premised on the recognition that the judgment debtor should not have the interest-free use of the money when he has failed to pay his liquidated debt.7

Generally the state statutes which provide for interest on judgments allow the judgment creditor accrued interest either from the time of the injury,8 or the verdict,9 or the judgment.10 Where a proper tender of the judgment is made the running of interest is suspended.11 The scope of this note shall be restricted to the accrual of interest from the time of judgment.

Historically courts have had difficulty determining whether interest on the judgment should be allowed when the litigants seek appellate review. It is generally held that the mere taking of an appeal does not of itself stop the running of interest.12 Therefore, to determine whether interest accrues during an appeal it is imperative to consider the advocacy position of the party seeking review. When both parties appeal from a judgment most courts have not allowed interest on the theory that both are responsible for the delay of the proceedings.13 When the debtor is the

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In any action whether on contract or for tort, the jury may allow interest on the sum found by the verdict or any part thereof, and fix the period at which the interest shall commence.


8. Here interest is in the form of compensation, e.g., Redfield v. Ystalyfera Iron Co., 110 U.S. 174 (1884).


All judgments (and decrees) shall bear interest at the rate of six per cent per annum; provided however, that when such judgment or decree shall be obtained or rendered on a written contract or obligation providing for interest at a less rate than six per cent per annum then such judgment or decree shall bear interest at the rate specified in such written contract or obligation.

See also Skinner v. Ochiltree, 148 Fla. 705, 5 So.2d 605 (1941).

11. Where a debtor is ready and willing to pay his obligation and is prevented from making payment by an act or omission of the creditor, the accrual of interest on the obligation is suspended. Holmes v. Bates, 218 Miss. 233, 67 So.2d 273 (1953); Farnworth v. Jensen, 117 Utah 494, 217 P.2d 571 (1950). It is also a general rule that a lawful, bona fide tender of the amount due stops the accrual of further interest. Bray v. Fain, 98 Fla. 250, 123 So. 739 (1929); Garrigue v. Keller, 164 Ind. 676, 74 N.E. 523 (1905); Forwood v. Magness, 143 Md. 1, 121 A. 855 (1923).


13. In Wisman v. Cleveland Ry., 67 N.E.2d 5 (Ohio C.P. 1945), the court determined
unsuccessful appellant courts have allowed interest from the original date of judgment notwithstanding the appeal because the liability of the debtor arose with the original determination and he has had the use of the money during the pending of the appeal.  

A problem arises when the judgment creditor appeals. Should he be allowed interest on the judgment of which he seeks review? One line of reasoning for denying interest is that he caused the delay himself by taking the appeal and that he alone should suffer.

Another line of reasoning is offered by those courts which have held that whether or not to allow interest on the appealing judgment creditor is a matter of judicial discretion and depends on the individual case. Still other courts reject the idea of chastizing the judgment creditor when he seeks review, reasoning that once a balance due has been legally established interest should run from this date. The party seeking review is said to be merely following proper judicial procedure, i.e., testing the correctness of the determination.

In the instant case, the district court, recognizing the accrual of interest question as one of first impression in Florida, unequivocally adopted the view that the only way a judgment debtor can terminate his liability to pay interest pending an appeal is to make an actual tender with accrued interest. The court found that the tender failed because the

that interest continues if the debtor appeals first. Accord, Harden v. Harden, 191 Okla. 698, 130 P.2d 311 (1942). In State ex rel. Southern Real Estate & Financial Co. v. City of St. Louis, 234 Mo. App. 209, 115 S.W.2d 513 (1938), the court determined that the interest was tolled regardless of which party appealed first.

14. Connor v. Federal Deposit Ins. Corp., 113 Vt. 379, 34 A.2d 368 (1943). This is because the judgment debtor has deprived the judgment creditor of the use of the money during the pending of the appeal.


16. E.g., Blankenship v. Rowntree, 238 F.2d 500 (10th Cir. 1956); Feldman v. Brodsky, 204 N.Y.S.2d 657 (Sup. Ct. 1960); defendant appealed, he alone is liable for the interest.

17. Lundgren v. Freeman, 307 F.2d 104, 112 (9th Cir. 1962), interpreting the Oregon general interest statute:

[T]hat interest on judgments and decrees for the payment of money shall be from the date of their entry. The last is true even if there is a subsequent appeal—if the judgment is affirmed . . . The policy behind these provisions seems to be that once a balance due has been ascertained, interest should run from this date, and that one party's having the right to have the correctness of the determination further litigated, as by motion for new trial or appeal, should have no effect if such further litigation be unsuccessful.

This appears to follow the Oregon Supreme Court's ruling in Compton v. Hammond Lumber Co., 61 P.2d 1257 (Ore. 1936), which held that where a judgment in favor of a plaintiff on the first cause of action was affirmed without modification on petition for rehearing, the plaintiff was entitled to interest on the amount of the judgment from the date of entry in the trial court.

debtor offered only the amount of the judgment against him without including the accrued interest. The court appeared strongly impressed with the "clear cut choice" doctrine whereby the debtor, by valid tender of the judgment, has the option to avoid or terminate the accrual of interest. Thus, if the debtor makes initial tender at the time of judgment, no interest will accrue. If he makes a later tender with interest to date, the interest stops running at that time.

By allowing an unsuccessful appealing judgment creditor interest from the date of the original judgment in the absence of a valid tender, notwithstanding the appeal, Florida is in a growing minority. By its decision the Florida appellate court makes no distinction as to which party appeals or as to the equities of the case. At first glance it may appear that the creditor-appellant should not be permitted to receive interest on his judgment. It is the creditor who is refusing to be made whole. He is also the party delaying the termination of the litigation, and with appellate procedure as it is today the delay is certain to be lengthy. Where, then, is the logic which permits the creditor to benefit from his own dilatory actions? The answer to the foregoing question goes to the very nature of indemnitory judgments. Clearly, the debtor becomes legally obligated to pay a judgment from the time of its entry. The California, Illinois, and Florida positions recognize that the debtor is now the party with the power of choice. He may make immediate tender and thereby eliminate the accrual of interest, or if the interest has started to run, he may toll the accrual by tender with the interest to date. Therefore, the non-tendering debtor will not be permitted to profit by his delay; neither will the creditor be punished for exercising his legal right of appeal.

It is the writer's opinion that Florida has taken the more uniform, least complicated, and most equitable view. It is hoped that in time this realistic approach will gain favor with those jurisdictions which now oppose its application.

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Traditionally, admiralty courts have had the discretion to control the allowance of interest on judgments by fixing the rate and the time from which it shall run. Virgin Islands Corp. v. Merwin Lighterage Co., 177 F. Supp. 810 (D.V.I. 1959).


21. Stager v. Florida E. Coast Ry., 189 So.2d 192, 193 (Fla. 3d Dist. 1966).