

**NO. A10-674
STATE OF MINNESOTA
IN COURT OF APPEALS**

Keith Soderbeck,

Respondent,

vs.

Center for Diagnostic Imaging, Inc.,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. Should a party that retains the use and enjoyment of funds that it is legally indebted to pay to another have interest accrue on those funds when the party could have chosen to relieve itself of any duty to pay interest by depositing the funds with the court?

TRIAL COURT HELD: In the positive.

STATEMENT OF THE CASE

This is a medical negligence action for personal injuries arising from an improperly conducted MRI procedure. This action was commenced in Ramsey County District Court, Second Judicial District on April 2, 2003. (A.A.-1-7)¹. Eight months later, a Mediated Settlement Agreement was signed settling the matter for \$150,000. (A.A.-8-9). Respondent immediately sought to avoid the mediated settlement agreement. On March 9, 2004, Appellant brought a motion to enforce the mediated settlement agreement, which was heard before The Honorable Salvador Rosas. Judge Rosas stayed all proceedings until Respondent was medically cleared to proceed. (A.ADD.-3)². The proceedings did not resume for 2 years and 4 months. During that time period, Appellant chose not to deposit the settlement funds with the court, rather, Appellant retained the use and enjoyment of the settlement funds.

The Appellant brought a motion to enforce the settlement agreement as valid on July 17, 2006, which was granted by The Honorable Steven D. Wheeler. (A.A.-14-24). Respondent appealed that decision. The Minnesota Court of Appeals held that the settlement was valid but the wrong standard had been used in evaluating improvidence. (A.A.-25-31). Appellant moved to enforce the settlement agreement on April 23, 2008. Respondent opposed the motion on grounds of improvidence. In an order dated July 17, 2008, Judge Wheeler ruled that the settlement was valid and enforceable. (A.A.-32-40). Judge Wheeler left open the issue of interest. (A.A.-40). Appellant paid the settlement funds to Respondent on October 12, 2008.

¹ Appellant's Appendix will be referred to as A.A.

² Appellant's Addendum will be referred to as A.ADD.

Respondent brought a motion for interest pursuant to Minn. Stat. § 334.01 on November 12, 2008. Judge Wheeler granted the motion on the grounds that Appellant was legally indebted to Respondent and had retained the use and enjoyment of the settlement funds from the date of the mediated settlement through October 2008. The Appellant had not relieved themselves of the obligation to pay interest by depositing the money with the court. (A.ADD.-1-7). Appellant appealed. (A.A.-77).

The Court of Appeals opined “[t]he district court’s rationale as said to be supported by Minn. Stat. § 334.01 is unclear and requires clarification in order to be reviewed.” (A.ADD.-13). The district court’s judgment was remanded to Judge Wheeler for further explanation of the reasoning on which the award of interest was based. (A.ADD.-11-13).

Judge Wheeler issued a Clarifying Order on March 19, 2010 indicating that upon Respondent’s breach of the settlement agreement, Appellant had a choice of remedies. Appellant chose to enforce the settlement agreement as valid thereby thus acknowledging that it owed Respondent \$150,000. Because the Appellant retained the use and enjoyment of the funds while it acknowledged such indebtedness, in equity, interest was awarded as calculated pursuant to Minn. Stat. § 334.01. (A.ADD.-16-17). Appellant appealed from the March 19, 2010 clarifying order. (A.A.-78).

STATEMENT OF FACTS

This matter involves a claim for personal injuries arising out of an MRI (magnetic resonance imaging) scan that was taken on March 19, 2001. (A.A.-2). Respondent had a fragment of metal in his right eye since 1980. (A.A.-3). Appellant proceeded with the MRI despite the fact the Mr. Soderbeck disclosed that there was a metal fragment in his eye. (A.A.-3). As a result of the powerful magnets in the MRI scanner, the metal fragment in his eye moved causing intractable pain and the ultimate removal of the eye. (A.A.-4). Respondent commenced a medical malpractice action on April 2, 2003. (A.A.-1-7).

An all day mediation session on December 9, 2003 resulted in a mediated settlement agreement wherein Mr. Soderbeck would receive \$150,000 to resolve the lawsuit. (A.A.8-9). The next day, Mr. Soderbeck contacted his attorney in an effort to avoid the settlement agreement. (A.ADD.-2). Mr. Soderbeck's attorney was unwilling to challenge the settlement and was discharged. (A.ADD.-2).

Appellant moved to enforce the mediated settlement agreement on March 9, 2004. The motion was opposed by Mr. Soderbeck, who at the time was unrepresented. (A.ADD.-3). The matter was not resolved before Judge Rosas due to Mr. Soderbeck's health and the matter was continued until Mr. Soderbeck was "medically cleared to proceed." (A.ADD.-3). Appellant did not deposit the settlement funds with the court while waiting 2 years and 4 months for Mr. Soderbeck to be medically cleared to proceed.

On July 17, 2006, Appellant brought a motion to enforce the mediated settlement agreement. (A.A.-14). In Appellant's Reply Memorandum, Appellant stated: "[t]he sole issue to be decided in this motion is whether a valid, binding settlement agreement was reached between the parties." (R.A.-1).³ Mr. Soderbeck opposed the enforcement of the mediated settlement agreement. The Memorandum and Order of Judge Steven Wheeler dated October 18, 2006 states, "The Court finds that the December 9, 2003 settlement agreement is valid and enforceable." (A.A.-23). Mr. Soderbeck appealed this decision to the Minnesota Court of Appeals. (A.ADD.-3). On December 31, 2007, the Court of Appeals held that the settlement was valid but determined that the wrong standard was used to evaluate improvidence and remanded the case for further findings.⁴ (A.A.-25-31).

On April 23, 2008, Appellant brought a motion to enforce the mediated settlement agreement as provident. (A.A.-32). Appellant's Memorandum of Law stated "Defendant respectfully requests that this Court find again that the settlement was provident and enforceable." (R.A.-17). The relief that the Appellant requested was "that this Court find that its mediated settlement agreement with Plaintiff is provident and grant its motion to enforce the agreement." (R.A.-35). Mr. Soderbeck opposed the motion on the basis that the mediated settlement agreement was improvident. (A.A.-34). In an Order and Memorandum dated July 17, 2008, Judge Wheeler determined that the mediated settlement agreement was provident

³ Respondent's appendix will be referred to as R.A.

⁴ Soderbeck v. Center for Diagnostic Imaging, 2007 Minn. App. Unpub. LEXIS 1247 (Minn. App. 2007).

and granted the Appellant's motion to enforce the settlement agreement. (A.A.-32-40). Recognizing that the Appellate retained the money for a long period of time, Judge Wheeler left open the issue of interest. (A.A.-40).

Mr. Soderbeck brought a motion for interest pursuant to Minn. Stat. § 334.01, which was heard by Judge Wheeler on November 12, 2008. (A.ADD.-1). Judge Wheeler awarded interest in the amount of \$43,550.00 from December 9, 2003 through October 13, 2008 as Appellant was legally indebted to Respondent, had retained the use and benefit of the settlement funds during that time period and had not deposited the money with the court. (A.ADD.-7). The Appellant appealed. (A.A.-77).

The Court of Appeals remanded the district court's judgment for further explanation of the reasoning on which the award of interest was based. (A.ADD.-11-13).

Judge Wheeler issued a Clarifying Order on March 19, 2010 indicating that upon Respondent's breach of the settlement agreement, Appellant had a choice of remedies. It chose to enforce the settlement agreement as valid thereby acknowledging that it owed Respondent \$150,000. Because the Appellant retained the use and enjoyment of the funds while it acknowledged such indebtedness in equity interest was awarded as calculated pursuant to Minn. Stat. § 334.01. (A.ADD.-16-17). The Appellant then commenced the present appeal. (A.A.-78).

ARGUMENT

I. The standard of review is abuse of discretion.

An award of interest may be allowed in the sound discretion of the trial court. In Re: Estate of Alex Renczykowski, 409 N.W.2d 888 (Minn. App. 1987). The award of interest lies within the sound discretion of the district court as a matter of just compensation and will not be disturbed absent an abuse of that discretion. McKay's Family Dodge v. Hardrives, Inc., 480 N.W.2d 141, 148-49 (Minn. App. 1992) (holding that district court did not abuse discretion in award of prejudgment interest).

Appellant incorrectly alleges that the standard of review is de novo. The Appellant claims the de novo standard of review claiming that the issue is construction of a contract, construction of a statute and questions of law. However, in the clarifying order, Judge Wheeler clearly indicated that interest was awarded on the bases of damages because the Appellant defaulted on legal indebtedness that it acknowledged was due. Judge Wheeler also determined that interest was due in equity. Both of these determinations are questions of fact and are clearly within the trial court's discretion. Therefore, the standard of review is abuse of discretion. Clearly there is no abuse of discretion in this matter and Appellant has not alleged any.

II. Judge Wheeler's award of interest as damages is appropriate.

Judge Wheeler's clarifying order appropriately indicates that Appellant's liability to pay interest is based upon the theory of damages. Pursuant to Minnesota law, liability to pay interest is based on contract, statute or damages. Lappinen v. Union Ore Co., 29 N.W.2d 8, 20

(Minn. 1947). Interest as damages “is an amount awarded for default in paying money that is due. . . The damage resulting from delay in making payment is the value of the use of the money, which is arbitrarily measured by statute at the legal rate of interest.” Lund v. Larsen, 24 N.W.2d 827, 829 (Minn. 1946). In the strictest sense [interest as damages] is compensation allowed by law for the use or detention of money.” Younger v. State of Minnesota, 147 N.W.2d 354, 356 (Minn. 1966).

In this case, Judge Wheeler’s March 19, 2010 clarifying order clearly set forth that interest was awarded as damages. The Order indicated Appellant “acknowledged that it owed the [Respondent] \$150,000 based on the settlement agreement. This acknowledgment that the [Appellant] owed the [Respondent] \$150,000 shows that there was legal indebtedness for the \$150,000.” Interest as damages is an appropriate basis for the award of interest that is clearly within the trial court’s discretion.

1. Appellant’s motions that the settlement agreement was valid and enforceable constitute an election of remedies for specific performance thus eliminating the choice of rescission.

The Appellant chose to move for specific performance of the mediated settlement agreement, thus acknowledging it’s legal indebtedness to Respondent and making the choice of rescission unavailable. When there is a material breach of a contract, the party not in default may elect between two remedies. Anders v. Dakota Land & Dev. Co., 289 N.W.2d 161 (Minn. 1980). Through the election of remedies, the parties may demand either a decree of specific performance or a cancellation of the contract. Blythe v. Kujawa, 224 N.W. 464, 465 (Minn. 1929). The party may rescind the contract so the parties are in the same position as if the

contract had never been made; no damages are recoverable and, as a general rule, both parties must restore what they have received or the reasonable value thereof. Dunkley Surfacing Co. v. George Madsen Constr. Co., 173 N.W.2d 420 (Minn. 1970); Stark v. Magnuson, 2 N.W.2d 814 (Minn. 1942). Instead of rescinding, the party not in default may elect to allow the contract to stand and sue for damages for the breach, thus retaining the right to the benefits of part performance. Stark v. Magnuson, 2 N.W.2d 814 (1942).

The two election of remedies are inconsistent. One remedy affirms the contract and insists upon its enforcement while the other disaffirms it and puts an end to the contract. Blythe v. Kujawa, 224 N.W. 464, 465 (Minn. 1929). Breach of contract damages and rescission are inconsistent remedies because the former assumes and affirms a contract while the latter denies or unmakes the contract. Northwestern State Bank v. Foss, 197 N.W.2d 662, 665 (1972).

A party can avoid specific performance of their contracts only if the contracts were rescinded. Anders v. Dakota Land & Dev. Co., 289 N.W.2d 161, 163 (Minn. 1980). Once a party unmistakably manifests a choice of remedy that is available to them in lieu of rescission, such an election becomes the law of the case. Northwestern State Bank, 197 N.W.2d 662, 665 (1972).

In this case, the Appellant clearly manifested the choice of remedy of specific performance through it's motions to enforce the settlement agreement as valid. Appellant has vigorously worked to prove that the settlement agreement was valid and enforceable. Despite Appellant's zealously defended position that the agreement was valid and enforceable when

signed, Appellant is now claiming that the agreement was rescinded with respect to its own legal indebtedness. This position is contrary to the position the Appellant has taken throughout the course of this litigation. In Appellant's Memorandum of Law for the July 17, 2006 hearing, Appellant stated: "[t]he sole issue to be decided in this motion is whether a valid, binding settlement agreement was reached between the parties." (R.A.-1). The Appellant stated: "The settlement of a lawsuit is a contract." (R.A.-2). Appellant went on to set forth the law regarding offer, acceptance and the presumption that settlements are valid. Appellant concluded that the settlement was valid and "[a]ccordingly, it is binding upon plaintiff." (R.A.-16). Similarly, in Appellant's Memorandum of Law for the April 23, 2008 hearing Appellant stated "Defendant respectfully requests that this Court find again that the settlement was provident and enforceable." (R.A.-17). The relief that the Appellant requested was "that this Court find that its mediated settlement agreement with Plaintiff is provident and grant its motion to enforce the agreement." (R.A.-35). Clearly the Appellant manifested its choice of remedies for specific performance.

On the other hand, the Appellant never took any action to rescind the contact and cannot now claim that the \$150,000 set forth in the settlement agreement was not due and owing. The Appellant cannot have it both ways. It cannot chose specific performance by stating that the agreement is valid and enforceable and then claim that it did not owe the amount set forth in the agreement. Either the settlement agreement was valid and \$150,000 was due and owing, or the settlement agreement could have been rescinded. This contradiction was noted by Judge Wheeler in the February 2, 2009 Memorandum of Law when he noted "CDI simultaneously

asserts the validity of the settlement agreement while claiming that Plaintiff has unilaterally breached their contract, a quite untenable position. If it were a unilateral breach, when then has CDI not sought to invalidate the agreement?" (A.ADD.-7). Judge Wheeler is correct, the Appellant did not seek to rescind the agreement. Rather, it took the position that the settlement agreement was valid and enforceable the day it was signed, thus acknowledging that it was legally indebted in the amount of \$150,000.

The fact that the settlement agreement was valid and enforceable the date it was signed was affirmed by Judge Wheeler. As noted in Judge Wheeler's clarifying order, through Appellant's election of remedies, the settlement agreement was valid and enforceable against both parties as of the date it was signed. Therefore, as of the date the agreement was signed, the Appellant was legally indebted to Respondent in the amount of \$150,000.

2. Judge Wheeler's determination that the amount of Appellant's legal indebtedness was ascertainable was not an abuse of discretion.

Both Judge Wheeler's Memorandum of February 2, 2009 and the Clarifying Order of March 19, 2010 determine that the amount of Appellant's legal indebtedness was \$150,000, clearly indicating that the amount was ascertainable. Issues underlying the application of [the interest statute], including whether a claim is liquidated, readily ascertainable, or unliquidated are questions of fact. A district court's findings of fact will not be reversed unless clearly erroneous. Trapp v. Huncuh, 587 N.W.2d 61, 63 (Minn. 1998). In this case, Judge Wheeler's determination that the legal indebtedness of the Respondent was ascertainable at \$150,000 was not clearly erroneous.

Interest is due when the amount is ascertainable by computation or reference to generally recognized standards such as market value and does not depend on any contingency. Lacey v. Duluth, Missabe & Iron Range Railway Co., 51 N.W.2d 831, 834 (Minn. 1952). A dispute regarding whether funds are due is irrelevant to determining whether the amount due is ascertainable. The Minnesota Supreme Court held that “the claim, though disputed, was liquidated in the sense that the debtor ‘could have determined the amount of [his] potential liability from a generally recognized objective standard of measurement.” Pearson-Berke, Inc. v. McIntosh, 350 N.W.2d 378, 379 (Minn. 1984). “A bona fide dispute as to the amount of a claim should not bar the accrual of interest thereon. . . Where interest is considered solely in the light of compensation for the use by one of another’s funds, it should be more readily awarded.” Lacey v. Duluth, Missabe & Iron Range Railway Co., 51 N.W.2d 831, 834 (Minn. 1952).

The Appellant’s claim that its potential liability was unascertainable has no merit. In determining whether the amount due is readily ascertainable, it is instructive to look at a case regarding prejudgment interest. In Solid Gold Realty, Inc. v. Mondry, 399 N.W.2d 681 (Minn. App. 1987), there was a dispute regarding a commission for the sale of real estate. The defendant claimed that no interest was due because the damages were not readily ascertainable since the value of the property he received could have been based on alternate methods of calculation, thus reducing the commission owed. The Minnesota Court of Appeals found that the amount due was readily ascertainable. The Court noted,

In determining whether interest should be allowed the question was not whether the parties agreed on the amount of damages but whether [the defendant] could have determined the amount of its potential liability from a generally recognized objective standard of measurement. * * * Mere difference of opinion as to the exact amount of damages was not sufficient to excuse [the defendant] from compensating [the plaintiff] for loss of the use of its money.

Id. at 684 citing ICC Leasing Corp. v. Midwestern Machinery Co., 257 N.W.2d 551 (Minn. 1977). The Court of Appeals went on to hold that even if the precise amount of the commission is unknown, the amount of potential liability could be determined. The fact that liability was disputed “in no way affects his ability to calculate his potential liability.” Solid Gold Realty. at 684.

Similarly, in this case, the amount due was readily ascertainable because Appellant was able to calculate its potential liability by looking at the mediated settlement agreement. In fact, the amount due in the present case was much clearer than in Solid Gold Realty, Inc., because the amount due was clearly set forth in the mediated settlement agreement. This was not a case where personal injuries were being tried to a jury, rather, it was to determine whether the mediated settlement agreement was valid. The mediated settlement agreement clearly set forth the amount of potential liability. Judge Wheeler’s determination that the legal indebtedness was ascertainable at \$150,000 was not clearly erroneous.

3. Whether Appellant acted in good faith is irrelevant to the determination of interest because interest is not a penalty.

The Appellant’s claim that no interest is due because it acted in good faith is without merit. In this case, Judge Wheeler awarded interest because the Appellant was legally indebted to Mr. Soderbeck yet it retained the benefit and use of the funds it owed. The Minnesota

Supreme Court has held: “[w]e have repeatedly recognized that interest is not a penalty, but rather is the payment of a reasonable sum for the loss of use of money.” General Mills, Inc. v. State, 226 N.W.2d 296 (Minn. 1975). Whether Appellant acted in good faith is irrelevant and should not be considered.

III. The rate is of interest on the Appellant’s legal indebtedness is set forth in Minn. Stat. §334.01.

Pursuant to Minn. Stat. § 334.01: “The interest for any legal indebtedness shall be at the rate of \$6 upon \$100 for a year, unless a different rate is contracted for in writing.” Interest pursuant to Minn. Stat. § 334.01 is compensation allowed by law for the use or detention of money. Younger v. State, 147 N.W.2d 354, 356 (Minn. 1966). Minn. Stat. § 334.01 “applies to all legal indebtedness including tort claims.” Summit Court, Inc. v. Northern States Power Co., 382 N.W.2d 560 (Minn. App. 1986).

In this case, it is clear that the mediated settlement agreement signed on December 9, 2003 gave rise to the legal indebtedness of Appellant. Despite challenges to the validity of the mediated settlement agreement, the Minnesota Court of Appeals and the trial court determined that the mediated settlement agreement is valid and enforceable. Ultimately, Judge Wheeler determined that the mediated settlement agreement was valid on the date it was signed and it gave rise to legal indebtedness on behalf of Appellant. Pursuant to Minn. Stat. §334.01, interest is due on the legal indebtedness at a rate of 6%.

Appellant’s current position that interest is not due because the settlement was not enforceable until the workers’ compensation lien was resolved is not consistent with

Appellant's position as set forth in either of the Appellant's prior memorandums. The workers' compensation lien was never mentioned in CDI's prior motion papers other than to point out that it was not a bar to enforcing the settlement. Also, Appellant's position does not correctly set forth the facts. There was an agreement to settle the workers' compensation lien for \$25,000 at the time of the mediated settlement agreement. When the settlement did not go forward, the workers' compensation carrier withdrew from the settlement agreement. The workers' compensation lien was re-negotiated after the settlement agreement was declared valid and enforceable.

Ultimately, the Minnesota Court of Appeals and Judge Wheeler determined that the Agreement was valid and enforceable. Judge Wheeler's clarifying opinion indicated that interest was awarded as damages on amounts due and owing. Therefore, pursuant to Minn. Stat. §334.01, interest is due on the legal indebtedness at a rate of 6%.

IV. In equity, interest is proper because Appellant retained the use and enjoyment of the funds.

Judge Wheeler determined that "in equity, the [Respondent] should be awarded interest on the \$150,000." (A.ADD.-16). An award of interest under equitable circumstances is within the sound discretion of the trial court. Estate of Alex Renczykowski, 409 N.W.2d 888, 892 (Minn. App. 1987). In this case, the award of interest under equitable circumstances was not an abuse of discretion.

Interest is due because Appellant has retained the benefit and use of the money it owed to Mr. Soderbeck since the date the mediated settlement agreement gave rise to the debt.

Minnesota Courts have held that interest is due for the loss of use of money owed. “We have repeatedly recognized that interest is not a penalty, but rather is the payment of a reasonable sum for the loss of use of money. . . . Whatever may have been our archaic notions about interest, in modern financial communities a dollar today is worth more than a dollar next year, and to ignore the interval as immaterial is to contradict well-settled beliefs about value. General Mills v. State, 226 N.W.2d 296, 299 (Minn. 1975) see also Henry v. Metro. Waste Control Commission, 401 N.W.2d 401, 407 (Minn. Ct. App. 1987). “In the strict sense [interest] is compensation allowed by law for the use or detention of money. Younger v. State of Minnesota, 147 N.W.2d 354, 356 (Minn. 1966). Interest is not a penalty, but rather is the payment of a reasonable sum for the loss of use of money.” McCormack v. Hanksraft Co., Inc., 161 N.W.2d 523, 524 (Minn. 1968). “Where interest is considered solely in the light of compensation for the use by one of another’s funds, it should be more readily awarded.” Lacey v. Duluth, Missabe & Iron Range Railway Co., 51 N.W.2d 831, 834 (Minn. 1952).

In this case, Appellant retained the use and benefit of the money it owes to Mr. Soderbeck. Appellant did not suffer for retaining the use of these funds during the delay in payment. Rather, Appellant retained the benefit of using the money it owed to Mr. Soderbeck. This benefit has value. Minn. Stat. §334.01 recognizes this value and requires Appellant to pay interest for the benefit it received from using money owed to Mr. Soderbeck. Any other result would be a windfall for Appellant.

1. Appellant's costs and legal fees are irrelevant to the interest determination.

Appellant has attempted to claim that it did not enjoy the use and benefit of the funds because it incurred litigations costs. However, Appellant's costs and legal fees are completely irrelevant to the present motion for interest. Appellant clearly retained the use and benefit of the \$150,000 as there is no dispute that the funds were in Appellant's possession for the entire time period at issue. The legal indebtedness set forth in the settlement agreement is separate and distinct from costs and fees. Appellant is confusing two completely separate items of litigation.

There is no caselaw to support Appellant's position that legal fees and costs should be considered in determining interest pursuant to Minn. Stat. §334.01. Mr. Soderbeck found no mention of legal fees or costs in any caselaw pertaining to Minn. Stat. §334.01. Such a combination and/or inter-dependance of interest and legal fees would be illogical. If Appellant chose to deposit the \$150,000.00 with the court for the duration of the dispute regarding the validity and enforcement of the settlement agreement, Appellant would have still incurred legal fees and costs. However, Appellant would not now have a statutory obligation for interest. Clearly, interest for the retention, use and enjoyment of funds is separate and distinct from incurring legal fees and costs. Therefore, Appellant's legal fees and costs should not be considered in determining interest.

2. The Appellant could have avoided the obligation to pay interest by depositing the funds with the court.

Pursuant to Minn. R. Civ. Pro. 67.01, “In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money. . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such money.” Pursuant to the Minnesota Practice Series, “[t]he purpose of Rule 67.01 is to permit a party to be relieved of the responsibility for . . . interest upon a fund of money.” (Emphasis Added). David Herr and Roger S. Haydock Civil Rules Annotated 247 (2005).

In addition, pursuant to Minn. R. Civ. Pro. 67.04, “[w]here money is paid into the court pending the result of any legal proceedings, the judge may order it deposited in a designated state or national bank or savings bank.” Pursuant to the Minnesota Practice Series, “[r]ule 67.04 permits placing any money paid into court in an account where interest may be earned. If interest is earned, the party who is determined entitled to the principal amount paid into court will also be entitled to the interest.” David Herr and Roger S. Haydock Civil Rules Annotated 251 (2005).

In Thompson v. Gasparro, 257 N.W.2d 355 (Minn. 1977) Gasparro executed a promissory note to T. Eugene Thompson for attorneys fees. The promissory note was not paid when it became due. Thompson commenced an action on the note. The action was interrupted when Thompson was convicted of first-degree murder and sentenced to life in prison. During his confinement, Thompson obtained legal counsel who reinstated the action on the note and prevailed at trial. Thompson sought interest on the note. The district court awarded interest

from the time note was due until the date of Thompson's conviction for first degree murder. The trial court reasoned that because Thompson, through his conviction and imprisonment, unilaterally caused the undue delay in the proceedings and should be denied recovery of the full amount of interest. The Minnesota Supreme Court reversed the trial court holding that interest was due from the time the note became due until the date judgment was entered. The Supreme Court noted that the defendants had the option of paying the note or pursuing legal action to prevent the accrual of interest. The defendants chose not to pay the note and retained the money. "Interest is the payment of a reasonable sum for the loss of the use of money." Id. at 356. "It is a general rule that interest is an integral part of the debt and a claim for it must stand or fall with the principal debt." Id. at 356.

Similarly, in this case, Appellant had the option of depositing the disputed funds with the court once it became clear that there would be a delay in the proceedings. Pursuant to Minn. R. Civ. Pro. 67.04, the parties would have seen to it the money was deposited in an interest bearing account. If the settlement funds had been deposited and Appellant had not prevailed on the motion to enforce the settlement agreement, the funds would have been returned to Appellant with the accumulated interest. However, since Appellant did in fact prevail, depositing the funds with the court would have relieved the Appellant of any potential obligation for interest.

Appellant correctly states that it was not required to deposit the funds with the court, however, taking such action would have relieved the Appellant of any interest obligations. Despite the fact that it was obvious that the proceedings would be substantially delayed due to

Mr. Soderbeck's dispute with the validity of the agreement and his inability to proceed forward because of his health condition, Appellant chose to retain the funds owed for its own benefit and use. As the caselaw recognizes, a defendant continuing to use money owed to another has value.

In the February 2, 2009 Order Judge Wheeler held that "CDI also asserts that it has not retained the benefits and use of the funds in question when it clearly has. Compensation has long been allowed by Minnesota law for the use and detention of money. CDI did not deposit the funds with the court, as they could have, but has kept it within their possession to invest or use as they wished. Minn. Stat. § 334.01 supports an award of interest under this rationale." A.ADD.-7. This is reiterated in Judge Wheeler's March 19, 2010 order when he stated "when the [Appellant] made the motion to enforce the settlement agreement, it could have deposited the \$150,000 with the court. The [Appellant] instead chose to keep the \$150,000 and, therefore, had the benefit of use of the funds." Because Appellant chose to retain the funds owed to Mr. Soderbeck, it must now compensate him for the use of this money in the form of the interest.

CONCLUSION

For all the reasons stated above, Keith Soderbeck respectfully requests that the trial court's ruling granting interest in the amount of \$43,550.00 be upheld.

Dated: June 11, 2010.

Respectfully submitted,

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NO. A09-569
STATE OF MINNESOTA
IN COURT OF APPEALS

Keith Soderbeck,

Respondent,

vs.

**CERTIFICATION OF
BRIEF LENGTH**

Center for Diagnostic Imaging, Inc.,

Appellant.

I hereby certify that this Brief conforms to the requirements of Rule 132.01, Subds. 1 and 3 of the Minnesota Rules of Civil Appellate Procedure for a brief produced with a proportional font. The length of the Brief does not exceed 45 pages. The Brief was prepared using WordPerfect 9.

Dated: June 11, 2010.

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