

077

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,237

UNDERWRITERS AT LaCONCORDE,
as Subrogee of INTERNATIONAL
AIRCRAFT SALES AND LEASING
CORPORATION,

Appellant/Petitioner,

vs.

AIRTECH SERVICES, INC.,

Appellee/Respondent.

FILED

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Chief Deputy Clerk

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BRIEF OF PETITIONER
ON THE MERITS
(With Separate Appendix)

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ISSUE PRESENTED

ISSUE:

DID THE CIRCUIT COURT ERR IN ENTERING ITS ORDER STRIKING PREJUDGMENT INTEREST FROM THE FINAL JUDGMENT, AND DID THE THIRD DISTRICT COURT OF APPEAL ERR IN AFFIRMING THE CIRCUIT COURT ORDER STRIKING PREJUDGMENT INTEREST FROM THE FINAL JUDGMENT.

PREFACE

This action arose from an Order entered by the trial Court striking prejudgment interest from a Final Judgment in a civil action for recovery of liquidated damages. In this brief on the merits, the Appellant/Petitioner, Underwriters at LaConcorde, as Subrogee of International Aircraft Sales and Leasing Corp., will be referred to respectively as "International" and "LaConcorde" or jointly as "International/LaConcorde". The Appellee/Respondent, Airtech Services, Inc., will be referred to as "Airtech". References to the Appendix submitted herewith will be designated by the symbol [A.], Transcript submitted herewith will be designated by the symbol [T.], Record submitted herewith will be designated by the symbol [R.], and all emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

This appeal arose from a civil negligence case brought by LaConcorde to recover the liquidated damages it incurred as a result of the crash of International's aircraft. (R.1-4) On February 24, 1978, the International aircraft crashed on its first flight after having been repaired in Airtech's maintenance facility. (R.1-4, 606-616) LaConcorde, the insurer of International's aircraft, paid International for the damage to the aircraft resulting from the crash. LaConcorde, then brought a subrogation action in Dade County Circuit Court to recover from Airtech the liquidated damages it sustained as a result of the crash. The cause of action against Airtech in this subrogation action was based on negligent maintenance or repair of the aircraft.

The jury's verdict:

- A.) found La Concorde's damages to be \$135,514.66; and
- B.) found Airtech to be 100% negligent in the cause of the crash. [A.1-2]

Based on the jury verdict, the lower court entered a Final Judgment against Airtech for the damages awarded in the jury verdict. In that Final Judgment, the lower court included an award of prejudgment interest on the damages awarded in the verdict. [A.3]

Airtech filed a motion to strike prejudgment interest [R.825-826] and the lower court after hearing argument of counsel entered an Order deleting the award

of prejudgment interest from the Final Judgment [A.4] based on prior opinions in the Third District Court of Appeal that prejudgment interest must be awarded by the jury in their verdict.

LaConcorde's counsel appealed the lower Court's Order striking prejudgment interest from the Final Judgment. In an opinion filed April 23, 1985, the Third District Court of Appeal affirmed the Order of the lower Court striking prejudgment interest. [A.5-11]

The Third District Court of Appeal in its written opinion stated three times that its decision was based on the following holding:

"We disagree and hold that prejudgment interest is a question for jury determination; [A.6]

"The Third District Court of Appeal, however, considers an award of prejudgment interest a question for jury determination without regard to whether the damages are liquidated." [A.7]

"In conclusion, we reiterate our previous holding that prejudgment interest is an element of damages to be decided by the jury ..." [A.9]

La Concorde's counsel timely filed a Motion for Rehearing [A.12-16] and was denied a rehearing by the Third District [A.17].

LaConcorde timely filed its notice to invoke this Court's discretionary jurisdiction on the basis that the decision of the Third District Court expressly and directly conflicts with the decisions of the First District Court of Appeal and Fourth District Court of Appeal on the same question of law.

The Florida Supreme Court on July 3, 1985, rendered its decision in the case of Argonaut Insurance Company, et al., v. May Plumbing Company, Northern Assurance Company, Commercial Union Insurance Company and Chicago Insurance Company, 474 So.2d 212 (Fla. 1985). [A.18-21] In deciding Argonaut, supra., the Florida Supreme Court held:

"Once a verdict has liquidated the damages as of a date certain, computation of prejudgment interest is merely a mathematical computation. There is no 'finding of fact' needed."

The holding of the Third District Court of Appeal in its decision in this case currently before this Honorable Court is in direct and complete opposition to the Florida Supreme Court's holding on the law in Florida that there is no finding of fact by the jury needed in awarding prejudgment interest.

SUMMARY OF ARGUMENT

The Circuit Court erroneously granted Airtech's Motion to Strike Prejudgment Interest from the Final Judgment because the Court in the granting of that motion acted contrary to the Florida law on prejudgment interest. Under Florida law when a verdict liquidates damages on a Plaintiff's out-of-pocket, pecuniary losses, Plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss.

The Third District Court of Appeal erroneously affirmed the Circuit Court's Order Striking Prejudgment Interest from the Final Judgment since the Third District affirmed the trial Court based on the theory that Florida law requires a jury/finder of fact determination on the question of prejudgment interest and as such, the trial Court can not award prejudgment interest when the question of prejudgment interest was not decided by a jury.

The Order of the Circuit Court and the decision of the Third District to affirm the Circuit Court Order is antithetical to the Florida law on prejudgment interest which was succinctly stated in the recent Florida Supreme Court opinion in Argonaut Insurance Company, et al., v. May Plumbing Company, Northern Assurance Company, Commercial Union Insurance Company and Chicago Insurance Company, 474 So.2d 212 (Fla. 1985). The Argonaut opinion held:

"Once a verdict has liquidated damages of a date certain, computation of prejudgment interest is merely a mathematical computation. There is no 'finding of fact' needed. Thus, it is purely a

ministerial duty of the Trial Judge or Clerk of the Court to add the appropriate amount of interest to the principal amount of damages awarded in the verdict." [A.21]

Since the Order currently before this Court was based upon the Third District Court of Appeal's interpretation of the old law prior to the Florida Supreme Court's decision in Argonaut, supra., the Circuit Court Order Striking Prejudgment Interest from the Final Judgment and Third District Court of Appeal's ruling affirming the Circuit Court Order is erroneous and the Appellant/Petitioner is entitled to a reversal of those rulings, and a reversal of those rulings are mandated by the Argonaut opinion. Further, Appellant/Petitioner is entitled to have its award of prejudgment interest reinstated in the original Final Judgment.

ARGUMENT

THE CIRCUIT COURT ERRED IN GRANTING THE MOTION TO STRIKE PREJUDGMENT INTEREST FROM THE FINAL JUDGMENT AND THE THIRD DISTRICT COURT OF APPEAL ERRED IN AFFIRMING THE TRIAL COURT ORDER ON THE HOLDING THAT PREJUDGMENT INTEREST IS ALLOWABLE ONLY IF THE JURY/FINDER OF FACT DECIDED THE QUESTION OF ENTITLEMENT TO PREJUDGMENT INTEREST.

The Florida Supreme Court in a recent decision reaffirmed that there is no finding of fact needed as to prejudgment interest where the verdict liquidates damages on Plaintiff's out-of-pocket, pecuniary losses. (Emphasis added) The undersigned attorney for LaConcorde not only agrees with this Honorable Court's above holding, but has consistently argued that the above holding was the law in Florida as to prejudgment interest.

The attorney for LaConcorde in opposition to Airtech's Motion to Strike Prejudgment Interest, argued that the Circuit Court trial judge was correct in including prejudgment interest in the original Final Judgment. LaConcorde's argument was based on the theory that prejudgment interest can be awarded by the trial Court and need not be submitted to the jury/finder of fact for determination.

Further, the attorney for LaConcorde, when appealing to the Third District Court of Appeal, the Order of the Circuit Court striking prejudgment interest from the original Final Judgment, argued that the Circuit Court was in error in striking prejudgment interest from the original Final Judgment since the question of prejudgment interest need not be submitted to the

jury/finder of fact for determination and may be awarded by the Circuit Court.

The attorney for Airtech in support of its Motion to Strike Prejudgment Interest from the Final Judgment argued to the Circuit Court that its inclusion of prejudgment interest in the Final Judgment was erroneous since the Third District Court of Appeal has ruled that the trial Court is without authority to grant prejudgment interest, unless the question of prejudgment interest was submitted to the jury for determination, and a determination by the jury in favor of prejudgment interest was set forth in the verdict. Based on this theory Airtech argued that the trial Court was without authority to include prejudgment interest in the Final Judgment in this case.

The attorney for Airtech in its brief to the Third District Court of Appeal argued that the trial court was correct in striking prejudgment interest from the Final Judgment since the Circuit Court trial judge is without authority to award prejudgment interest where the question of prejudgment interest was not submitted to the jury for determination and the jury's determination was not evidenced by the verdict. Airtech's attorney further argued in his brief that the above theory was the current law in the Third District with reference to an award of prejudgment interest and as such, was the controlling law to be followed by the Third District Court of Appeal in deciding LaConcorde's appeal.

The Third District Court of Appeal filed its opinion April 23, 1985 in LaConcorde's appeal and Airtech's Cross-Appeal. The

Third District as part of its opinion affirmed the Circuit Court's Order which struck prejudgment interest from the Final Judgment and three times in the opinion, the Third District held as follows:

"We disagree and hold that prejudgment interest is a question for jury determination; ...[A.6]"
(Emphasis added)

"The Third District Court of Appeal, however, considers an award of prejudgment a question for jury determination without regard to whether the damages are liquidated." [A.7]. (Emphasis added)

"In conclusion, we reiterate our previous holdings that prejudgment interest is an element of damage to be decided by the jury" [A.9] (Emphasis added)

Subsequent to the Third District Court's opinion filed in this matter April 23, 1985, and the lodging of this appeal in the Supreme Court, the Florida Supreme Court filed on July 3, 1985, its opinion in Argonaut Insurance Company, et al., v. May Plumbing Company, Northern Assurance Company, Commercial Union Insurance Company and Chicago Insurance Company, 474 So.2d 212 (Fla. 1985). In its Argonaut opinion, this Honorable Court stated:

"Once a verdict has liquidated the damages as of a date certain, computation of prejudgment interest is merely a mathematical computation. There is no 'finding of fact' needed. Thus, it is purely a ministerial duty of the trial judge or Clerk of the Court to add the appropriate amount of interest to the principal amount of the damages awarded in the verdict. ...In short, when a verdict liquidates damages on a Plaintiff's out-of-pocket, pecuniary losses, Plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss." [A.21]

Based on the Court's holding in Argonaut, supra., that there is no "finding of fact" needed, and

that Plaintiff is entitled, as a matter of law, to prejudgment interest, it is apparent that the Third District Court of Appeal's opinion in this case which affirmed the lower Court's striking of prejudgment interest was erroneously entered and in fact was based on an interpretation of Florida's prejudgment interest law which is totally contrary to and antithetical to the actual law in Florida on prejudgment interest. Based on the above, it is apparent that LaConcorde was correct in its argument to the Circuit Court and the Third District Court of Appeal that:

- 1) the trial Court had authority to include prejudgment interest and the trial Court was correct in originally including prejudgment interest as part of the Final Judgment
- 2) the trial Court erred in entering the Order Striking Prejudgment Interest From the Final Judgment and
- 3) the Third District Court of Appeal erred in affirming the Circuit Court's Order Striking Prejudgment Interest From the Final Judgment.

Appellant LaConcorde is therefore entitled to a reversal of the Third District Court of Appeal's decision affirming the Order of the trial Court striking prejudgment interest from the original Final Judgment, and LaConcorde is entitled to a reversal of the Circuit Court Order Striking Prejudgment Interest From the Final Judgment since the Order and its affirmance were decided under the old law prior to this Honorable Court's decision in Argonaut, supra. and LaConcorde is entitled to reinstatement into the original Final Judgment, an award of prejudgment interest at the statutory rate.

CONCLUSION

The Appellant LaConcorde respectfully requests that this Honorable Court reverse the decision of the Third District Court of Appeal which affirmed the Circuit Court's Order Striking Prejudgment Interest From the Final Judgment and further requests that this Honorable Court reverse the Circuit Court Order Striking Prejudgment Interest From the original Final Judgment and requests that this Honorable Court enter an Order requiring the Circuit Court to reinstate into the original Final Judgment an award of prejudgment interest calculated at the statutory rate and tax costs in favor of Plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Initial Brief on the Merits was mailed to GILBERT E. THEISSEN, ESQ., Walsh, Theissen & Boyd, P.A., 633 S.E. Third Avenue, Suite 402, Ft. Lauderdale, Florida, on this 25th day of November, 1985.

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