

COMMENTARY

## Some Interesting Things About Interest

Interest is an “integral part of New York litigation, including judgment enforcement.” There are many intricacies to the rules. This article focuses on the basics every civil litigator should know.

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Fee Disputes

By Bernard D’Orazio



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Interest is an integral part of New York litigation, including judgment enforcement. There are many intricacies to the rules, but here the focus will be on the basics every civil litigator should know, plus a few other nuggets.

## **Pre-Judgment Interest**

In New York civil practice, judgments are entered by the Clerk of the court, not a judge (or his personal clerk), although a judge can and sometimes will sign a judgment. The attorney for the prevailing party normally will file the proposed judgment with the Clerk. The judgment should have a space for pre-judgment interest, which will be calculated by the Clerk. The clerk will also “tax” (determine) costs and disbursements if you file a “Bill of Costs” with the judgment, as you should. *See* CPLR 8201 (costs) and CPLR 8301 (disbursements).

A party suing for breach of a contractual right or for interference with the title to, possession, or enjoyment of property is entitled to pre-judgment interest at 9% from the date of the breach or interference. CPLR 5001(a).

If there is a contract specifying a different rate of interest the party is

have differed on whether pre-judgment interest on quantum meruit causes of action is mandatory.

In tort and all other cases, pre-judgment interest accrues from the date of liability is determined, not the date of the injury or wrong. For this reason, it can be wise for a plaintiff to move for summary judgment on liability where it is clear; e.g., rear end collisions, construction accidents covered by the Labor Law. The rule is the same in intentional tort cases—no pre-judgment interest from the date of the injury.

CPLR 5004 was amended in 2021 to reduce the post-judgment interest on judgments on consumer debt obligations to 2%. Interest accrues up to the date any judgment is satisfied. Judgments are valid for 20 years but remember that judgment liens on real property expire after just 10 years, CPLR 5203(a), but they can be extended.

A judgment creditor will not be denied post-judgment interest simply because he was dilatory in enforcing his judgment or in demanding payment. A judgment debtor who wishes to stop the accrual of interest should tender payment in full. See *ERHAL Holding Corp. v. Rusin*, 252 A.D.2d 473 (2d Dep't 1998).

## **Interest Rules in Federal Court Litigation**

The rules in federal court cases in New York are similar but there are some important differences.

In diversity jurisdiction cases, the federal court will apply New York law under the *Erie* doctrine to determine pre-judgment interest. See 28 U.S.C. §1961. Pre-judgment interest in federal cases, typically at the federal post-judgment rate (see below), is a matter of judicial discretion.

Post-judgment interest on all federal judgments is tied by the statute to the “weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the

calendar week” preceding the date the Judgment was entered. This rate was close to zero for many years while New York’s remained at 9% throughout. Presently the federal rate is about 4%. The rate that was in effect on the date the federal judgment was entered is final and does not vary if interest rates change in the years to come. This federal rule applies even if a federal judgment is subsequently entered as a New

York judgment for enforcement purposes.

## Some Other Principles

Absent extraordinary circumstances, a court applying New York law does not have discretion under CPLR 5001(a) to deny a party pre-judgment interest in contract and property interference cases. Nor does the court have discretion to change the date pre-judgment interest begins to run. See *Trumbull Equities LLC v. Mt. Hawley Ins. Co.*, 191 A.D.3d 587 (1st Dept. 2021). Some judges may not be aware of these rules.

A party is entitled to pre-judgment interest on attorney fees awards, measured from the date of the ruling awarding the fees, not the date the fees were quantified. See, e.g., *Solow Mgmt. Corp. v. Tanger*, 19 A.D.3d 225, 226-27 (1st Dept. 2005).

In cases involving foreign currency amounts, the judgment must be entered in dollars, with conversion at the prevailing exchange rate as of the date of entry of the judgment. See Judiciary Law §27. When a sister state judgment is domesticated in New York, post-judgment interest will remain governed by the law of the state where the judgment was originally entered.

Pre-judgment interest is not recoverable on any amounts denominated as punitive damages, but the amount awarded will accrue interest post-judgment. Parties, by a specifically drafted provision in a contract, can alter the post-judgment interest rate, but the provision must be very

specific; e.g., simply invoking New York law to any dispute will not suffice to make the New York post-judgment rate apply to a federal court judgment. See, e.g., *Banque Nat. de Paris v. 1567 Broadway Ownership Assocs.*, 248 A.D.2d 154 (1<sup>st</sup> Dep't 1998).

Because interest is a substantial right, failure to include a request for pre-judgment interest should not be final or fatal. The judgment can be amended pursuant to CPLR 5019 to correct the error, *nunc pro tunc*. See *Spatz v. Pulensky*, 267 A.D. 1031 (3d Dep't 1944).

One final point. Do not forget to consider interest in any settlement discussions, pre- or post-judgment. It often is a very significant factor. Ignore the "its only interest" comment by defendant or debtor's counsel. Where you are entitled to it, interest is just as much part of the debt that is owed as the principal amount itself.

*Bernard D'Orazio is principal attorney with Bernard D'Orazio & Associates where his practice focuses on high value debt collection and judgment enforcement matters.*

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